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Monday
8 July 2013

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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(HANSARD)

IN THE THIRD SESSION OF THE FIFTY-FIFTH PARLIAMENT OF THE
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COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
FIFTY-NINTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES

VOLUME DCCXLVII

THIRD VOLUME OF SESSION 2013-14

House of Lords

Monday, 8 July 2013.

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Lord Mackay of Drumadoon took the oath.

Child Safety: Video Games

Question

2.36 pm

Asked by Baroness Massey of Darwen

To ask Her Majesty's Government what age restrictions are applied to the sale of video games; and how they will encourage parents to safeguard children against inappropriate materials.

Baroness Garden of Frognal: My Lords, in 2012, we brought into force changes to the Video Recordings Act so that, unless they are entirely suitable for all audiences, video games must carry age ratings. The ratings system used is the pan-European game information, PEGI. It is an offence to sell PEGI 12, 16 or 18-rated games to those younger than the rating. The age ratings empower parents to make informed decisions about the suitability of games for their children.

Baroness Massey of Darwen: I thank the Minister for that comprehensive reply. I am sure that she is aware that some video games are extremely pornographic and violent and that, even for adults, there should be enforced regulation on them. Is she further aware that some parents and other adults buy these games for children inadvertently because the labelling is unspecific and unclear? Will she explain how the Games Rating Authority is dealing with putting better controls for parents on those games?

Baroness Garden of Frognal: The noble Baroness makes some valid points there. The PEGI ratings now have traffic light warnings to try to make it clearer

which are the particularly inappropriate games for children. It is also trying to make clear that the age-rating symbols relate to the content of the game, not to the playability, because that has also been a misunderstanding. There are prominent statements on the website, askaboutgames.com, which has had a quarter of a million visitors since it was set up, and which has a great many explanatory aspects. The noble Baroness is right that there are different sorts of unsuitability—but there are symbols on the PEGI guidance as to whether the game involves violence, pornography, fear, and so on, which again should guide both parents and young people.

Lord Storey: My Lords, the Minister will be aware that parents generally have regard to the classification of films by the British board. That is probably a result of widespread consultation with parents. Will the games industry regulatory body have the same consultation with parents to ensure that they understand how the labelling and marking works?

Baroness Garden of Frognal: My noble friend makes a valid point. Of course, we need to get the communication to parents as accurate as we can. The difference between film classification and games classification is that games are interactive, children are playing them with people on screen, and the graphics have become ever more lifelike and realistic since the days when they were little cartoon characters, so it is really important is that both children and parents are aware of what these games mean.

The Earl of Listowel: My Lords, is the Minister also concerned about the number of children who become so engrossed in these games that they neglect their friendships, their schoolwork and their sports? Is advice being given to parents about tackling the problem, and are services available to parents when children are so engrossed in games that they neglect the rest of their lives?

Baroness Garden of Frognal: The noble Earl is right to highlight the addictive nature of some of these games. There are various parental controls. There can

[BARONESS GARDEN OF FROGNAL]

be timings, for instance, put on the games to ensure that children automatically have a break after a certain length of time. However, a lot of this will be up to parents, and the more guidance we can get to them the better because, as the noble Earl knows, these games can be addictive and can cause children to spend an awful lot of time on them.

Baroness Uddin: My Lords, does the Minister accept that, while it is very important to ensure that parents take their full responsibility, parents must know the fullest amount of information available about the illegality of some of these games? I note the fact that this is not all the Government's responsibility, but what is her department doing to ensure that information is communicated to parents? Also, many parents do not speak good enough English, so how would she ensure that broader ranges of parents are aware of these games being illegal?

Baroness Garden of Frognal: There are also a great many initiatives from internet service providers, which are collaborating very constructively with the Government. There is the Internet Watch Foundation, for instance; we are also working with the Child Exploitation and Online Protection Centre, CEOP, to try to make sure that there are mechanisms within the games, which can be controls. If there are ways in which children can be identified from playing the games, they will be prevented from doing that. It is ongoing work, and we are working very constructively with all those concerned to make sure that the information gets out correctly.

Lord Eden of Winton: My Lords—

Baroness Howe of Idlicote: My Lords, would the Minister—

The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford): Forgive me, but it is this side and then we will come to the noble Baroness, Lady Howe.

Lord Eden of Winton: I am grateful, my Lords. Very quickly, while welcoming very much the answers that my noble friend has given, I wonder whether she is aware that, whether or not these games are good in intent for children, they are very attractive to them. Placing the onus on the parents is therefore rather a heavy duty, and we should not leave them alone. Will she give consideration to tackling this problem at source, with the producers and purveyors of these products being taxed or their products made less attractive to them financially in some way?

Baroness Garden of Frognal: As I made reference to before, we are working very constructively with the internet service providers' industry, which is as concerned to make sure that inappropriate materials are not accessed by young people online. The providers are very well aware of the damage that it can do to young children to find themselves, perhaps inadvertently, drawn into a game which shows extreme violence or engenders extreme fear. It is a matter for all parties to work together on this one.

Baroness Howe of Idlicote: My Lords, to finish what I was saying, would the Minister further urge the games regulator, the GRA, to consider following the example of the BBFC by promoting understanding of classification through a programme of specific visits to schools, along with education through its website and apps?

Baroness Garden of Frognal: Again, the noble Baroness makes a very helpful point. There is a lot of information going out to schools in the form of the posters. Of course, internet safety is one part of the school curriculum that tries to ensure that young people themselves are aware of what the dangers are. We are getting co-operation, and indeed funding, from the providers.

Lord Stevenson of Balmacara: I do not know whether I heard the noble Baroness correctly. I think she said that traffic lights were being introduced on to the packaging for these things. It strikes me that indicating red for danger or red for encouragement might be a difficulty in this area. My main point is that PEGI is an industry-led body and that one increasingly finds that in video games inserts are being used from films and related materials. Is there not a case for trying to get co-ordination across this, and having some sort of accommodation with the BBFC?

Baroness Garden of Frognal: The BBFC is indeed involved in this. It has just become the independent reviewer of the content of mobile operators and, as the noble Lord says, there is some overlap between what goes on in the film industry and what goes on in the video games industry. It is a question all the time of trying to keep one step ahead of cunning children, who have a tendency to be one step ahead of their parents.

Education: Sex Education *Question*

2.44 pm

Asked by Baroness Gould of Potternewton

To ask Her Majesty's Government which organisations and individuals have challenged their proposed changes to sex education.

The Parliamentary Under-Secretary of State for Schools (Lord Nash): My Lords, as part of the national curriculum review, the Government received representations from organisations and individuals on the draft curriculum for science, which includes information on reproduction and the human life cycle. A number of organisations, including the Sex Education Forum, were signatories to a letter to the *Times* on 15 April outlining concerns that the science programme of study omitted detail on reproduction and growth. I assure noble Lords that we have taken their representations on board, and revised programmes for study have been published this morning.

Baroness Gould of Potternewton: I thank the Minister for his reply. I have some inkling of what is in the Statement, although I look forward to reading the document in full. Does he accept that the proposed

watering down of the biological sex education content within that document means that many pupils will leave primary school with little knowledge of the human life cycle? Within that context, does the document state explicitly that the menstrual cycle shall be taught without details of hormones? Can the Minister indicate how that is going to be monitored in schools? If a teacher does in fact mention hormones, are they likely to be disciplined?

Lord Nash: My Lords, in the new curriculum there is as much, if not more, about reproduction and the life cycle as in the previous curriculum. Key stage 2 science includes changes experienced in puberty, but this Government believe that it is right that teachers should make the final decision about when and how that content is covered. Of course, Ofsted inspects to ensure that pupils receive the right cultural, moral and social experience.

Baroness Walmsley: How many young people themselves have been consulted about the content of this curriculum? If a lot of young people had been, I am sure they would have told the Government that they want to know the information in time, before the hormonal changes take place. Timeliness is related not only to puberty but to contraception, sexual health and the prevention of unwanted teenage pregnancy.

Lord Nash: My noble friend is quite right in her observations. The non-statutory notes and guidance specifically say that pupils should draw a timeline to indicate stages in the growth and development of humans, and should learn about the changes experienced in puberty.

Baroness Massey of Darwen: Have comments by the National Youth Parliament been taken into account? Could the Minister give us a hint as to the Government's response?

Lord Nash: We have taken its comments into account, but I am afraid that I will have to write to the noble Baroness in detail to answer her question.

The Earl of Listowel: What progress are we making in terms of how our closest neighbours deal with teenage pregnancy? What are we learning from them in their teaching of sex education?

Lord Nash: Our teenage pregnancy rates are now at their lowest level in more than 40 years, and data for 2011, released by the Office for National Statistics in February this year, showed a continuing decline. The Government believe that the best protection is a good education, and we believe that our curriculum reforms will strike the right balance to allow all schools to improve their focus on the issues that are relevant to the circumstances.

Baroness Brinton: My Lords, I am sure that the House is pleased that the Government have put more about sex and relationships into the curriculum, but surely some concerns must remain if academies can

choose not to teach it. How are the Government going to ensure that academies teach young people about sex and relationships?

Lord Nash: My noble friend is quite right that academies are not obliged to teach sex education, although, if they do, they have to have regard to the Secretary of State's guidance on these matters. I repeat the point that Ofsted inspects for all social, moral and cultural provision in schools, and we will be ensuring that it focuses on this point.

Japanese Knotweed Question

2.49 pm

Asked by **Baroness Sharples**

To ask Her Majesty's Government what progress has been made in eliminating Japanese knotweed in the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): My Lords, we commenced a controlled release of *Aphalara itadori* to tackle Japanese knotweed in 2010. The signs are encouraging for the establishment of this highly specialist psyllid. *Aphalara* successfully overwintered but numbers remained low and so additional releases were made in spring 2012 and spring 2013. No non-target impacts have been observed by the programme of close monitoring.

Baroness Sharples: Will the psyllid really be enough to kill off this pernicious weed? There are increasing reports of wretched owners of land who have had their land affected by Japanese knotweed and have been refused mortgages. Why can we not give them natural Roundup which is unpolluted? I managed to kill off my knotweed a number of years ago.

Lord De Mauley: My Lords, experience from around the world has shown that biocontrol tends to take five to 10 years from the initial releases to achieve effective control. Despite poor summer weather since its release, *Aphalara* has shown that it can survive in small numbers and overwinter in the wild here. The question is how we can encourage it to achieve survival in larger numbers.

My noble friend mentions mortgages, and we are aware that some mortgage lenders have become reticent to lend if Japanese knotweed poses a threat to the property concerned. We have undertaken some work to estimate the impact of this. The RICS believes that recent concerns by valuers and lenders are often based on misunderstandings, and it consulted on that in 2011 in order to help valuers and mortgage lenders to understand the implications. Cornwall council has also provided guidance for mortgage lenders.

On the use of Roundup, I understand that others have also had success with it. Of course, it needs to be applied with care, and we are also looking carefully at a couple of other possible biocontrol options.

Lord Dubs: My Lords, if the Government are not willing to legislate, can the Minister at least urge local authorities to co-operate locally? When a resident spots knotweed in an adjacent property, the local authority can be helpful in identifying the owner of that property so that something can be done about it. At the moment, some local authorities wash their hands of the problem.

Lord De Mauley: Yes, my Lords. I understand the point that the noble Lord makes. We have to balance, on the one hand, a determination to control this odious invasive species and, on the other, an imperative not to unnecessarily penalise people who are simply not in a position to do anything about it. However, I take the noble Lord's point.

Baroness Gardner of Parkes: I did not take in the name of the treatment—it was “apha” something—but is there any risk of it becoming like the Hawaiian cane toad of Australia and proving to be a menace in itself?

Lord De Mauley: Yes, my Lords. It is called *Aphalara itadori* and my noble friend is entirely right. On top of research work that has already been done testing it against more than 90 plant species, we are going through a phased release over five years to make absolutely sure that it focuses entirely and exclusively on Japanese knotweed. That is a really important point.

The Countess of Mar: My Lords, Japanese knotweed is frequently found on publicly owned land, such as railway property and council land. In view of the fact that the Government seem to be totally unable to enforce regulations regarding ragwort, how can any rulings be given on Japanese knotweed?

Lord De Mauley: The noble Countess has a point but this Question is about the use of a biocontrol against it. She mentions Network Rail, which, as a matter of interest, is a member of the project consortium for the natural control of Japanese knotweed and is fully involved in discussions about how the trial proceeds. Along with Defra, it sponsored the Environment Agency knotweed code of practice, published in 2006. It has been a major funder of the research and was among the instigators of the project.

Lord Davies of Oldham: My Lords, the Minister will be aware that the Royal Horticultural Society calls this plant “a real thug”. It does so because of the immense damage that it does. There was a person in my neighbourhood whose house was worth £350,000 but was sold for £50,000 because the weed had invaded the premises. We are also well aware that Network Rail spends a very large sum of money every year protecting the permanent way from knotweed. I fear that the Minister is talking rather gently about a very severe problem, and I hope that he will inject some urgency into the Government's response.

Lord De Mauley: My Lords, I am aware of frankly tragic stories about people having trouble selling properties and obtaining mortgages, and I have huge sympathy for them. That is why this work is so important.

Lord Greaves: My Lords, I congratulate the noble Baroness, Lady Sharples, on her persistence in this matter, which is vital, and I congratulate the Government on the continuation of the experiments with the psyllid *Aphalara itadori*. Is it not the case that under the Wildlife and Countryside Act 1981 it is already an offence to plant or cause this species to grow in the wild? Is it not time that that was strengthened and that allowing this plant to grow on your land without taking steps to remove it became an offence?

Lord De Mauley: My noble friend is certainly right that it is an offence to allow it to be introduced into the wild but we think that that is a step too far. It is a real challenge to get it under control and we want to find an effective biocontrol before we consider a move such as that suggested by my noble friend.

Lord Glenarthur: My Lords, can my noble friend say to what extent the spread of this knotweed has developed throughout the whole of the United Kingdom and to what extent the devolved Administrations are playing their part in trying to eradicate it?

Lord De Mauley: That is also an important point. The Welsh Government are a member of the project consortium for the natural control of Japanese knotweed and have been a major funder of the research. The licensing authorities in England and Wales work closely together to ensure a consistent approach. We have kept the Scottish Government updated at key points in the project, although, to answer my noble friend's first question, Japanese knotweed is not such a significant problem in Scotland.

Lord Howarth of Newport: What do the Japanese do about it?

Lord De Mauley: My Lords, they are blessed with this psyllid, *Aphalara itadori*, and that is where we got it from. The issue is to ensure that it is as effective under our conditions as it is under Japanese conditions.

Baroness Byford: My Lords, is it not important that the Government take great precautions to prevent the importation of things such as Japanese knotweed? Such things do not just arrive; they are brought in. I know that there have been discussions at European level on the control of imports of plants; for example, Ash plants that might affect our trees, and many others. That is crucial because once Japanese knotweed gets hold, you cannot stop it.

Lord De Mauley: My noble friend is quite right. A non-native species risk assessment of Japanese knotweed has been carried out under the GB non-native species mechanism. It is one of more than 50 risk assessments on plants that have been published. Japanese knotweed is assessed as high risk. There are many others. My noble friend will be aware that we are doing considerable work bearing down on pests such as this which are coming at us from abroad.

Baroness McIntosh of Hudnall: Will the noble Lord explain to those of us who are enthusiastic gardeners but have never seen Japanese knotweed what we should

be looking out for? On a more serious note, is he confident that public information—for example, in garden centres and other places where people purchase plants—is at a sufficiently high level to ensure that people who should be aware of what to look out for know what they should be looking for?

Lord De Mauley: My Lords, I quite agree with the noble Baroness that public awareness is one of the most important aspects. I will resist the temptation to describe the appearance of Japanese knotweed in front of your Lordships.

Noble Lords: Oh!

Lord De Mauley: All right then. Defra is helping with the start-up of local action groups which are being established across England to reduce or eradicate invasive non-native plants, including Japanese knotweed. One of the objectives of these groups is to raise awareness of the environmental, social and economic problems that invasive non-native species can cause. They are raising awareness on a local and national scale with landowners, volunteers, potential partners and other interested parties. I should also say that information on GB non-native species is available on the secretariat website, which includes an identification sheet.

Legal Aid, Sentencing and Punishment of Offenders Act 2012: Part 1

Question

3 pm

Asked by Lord Bach

To ask Her Majesty's Government what assessment they have made of the impact on the not-for-profit sector of the first three months of implementation of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, post-legislative scrutiny of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will take place, as is normal, three to five years after Royal Assent. However, the Ministry of Justice will carry out a variety of exercises to monitor the impact of the Act from now on.

Lord Bach: My Lords, I am grateful to the Minister. However, does the evidence available not point clearly to a world where not-for-profit organisations will be decimated, and their clients—often the poor, disadvantaged and sometimes disabled—will no longer have access to legal advice? Just look at what is happening already. Birmingham Law Centre is closing, the well renowned Mary Ward Centre in London, which had 800 welfare benefit cases last year, has precisely nought at the moment, and Coventry Law Centre—I declare my interest as patron of that organisation, which has a superb reputation—has had to turn away from reception at least 350 people who had housing, immigration, debt, employment and family legal issues. I put it to the Minister that this is not good enough for a country

that, until this legislation, could pride itself that its legal system tried to be fair to everyone. What are the Government going to do about it?

Lord McNally: My Lords, the Act has been in force for 99 days. It is difficult to get an accurate picture of what is happening in this sector because of a surge of applications before 1 April. However, as I said, the department is carrying out a variety of checks and researches on the impact and we will keep a careful study of what happens.

Lord Marks of Henley-on-Thames: My Lords, can my noble friend say at this stage how far organisations such as Citizens Advice appear to be coping with the changes? In particular, what, if anything, are the Government doing to assist Citizens Advice and others in the sector to introduce new methods of working to help them provide their services where legal aid is not available?

Lord McNally: My Lords, I think we have had these figures before, but since 2010 the Government have provided around £160 million to support the not-for-profit sector, £107 million for the transition fund administered by the Cabinet Office and £20 million via the advice services fund 2011. In 2010-11, the income of the national citizens advice organisation was £62.3 million, with one of its largest grants being £18.9 million from the Department for Business, Innovation and Skills. However, Citizens Advice is also getting contracts under the new Legal Aid Agency civil contracts; 35 such contracts were granted to citizens advice bureaux.

Lord Goldsmith: My Lords, is the Minister able to help us on this despite the fact that the post-legislative scrutiny has not taken place? In addition to the places that my noble friend Lord Bach referred to, the Fulham Legal Advice Centre closed last month, I understand as a result of losing the money which used to come from those areas of work that have been taken out of scope under LASPO. Half the caseworkers in the Surrey Law Centre, which I believe serves the Lord Chancellor's own constituency, are being made redundant through lack of funds. I declare an interest as chairman of the Access to Justice Foundation and president of the Bar Pro Bono Unit, both of which are involved in providing support to the not-for-profit sector in giving free legal advice. Can the Minister also confirm that these problems are happening against a background of increasing demand? There has been a 100% increase in inquiries to the LawWorks inquiry line and a 26.7% increase in inquiries to the Bar Pro Bono Unit. Will the Minister say what more the Government will do, rather than simply leaving it for three to five years to do a review?

Lord McNally: On the contrary, I thought that I had made it clear in my Answer that we are not leaving it for three to five years. The intention is to monitor and review the impact of LASPO on all the affected groups outlined in the equality impact assessment. The Legal Aid Agency, Her Majesty's Courts and Tribunals Service and providers will complement the use of administrative data with bespoke research exercises where appropriate. We have worked with the Legal Services Board and the Law Society to carry out a

[LORD McNALLY]

survey of providers of legal advice that will provide a baseline against which changes might be measured in the future. Ad hoc reviews are also conducted where a provider stops undertaking legal aid work.

I am not pretending that law centres have not been hit by this change. However, as I indicated in the previous answer, we have given a lot of money to the transition fund to help law centres and other not-for-profit sectors to reorganise so that they remain effective.

Lord Naseby: Is not extraordinary that lawyers in the United Kingdom appear to think that around £220 million—the saving required—is a figure that should be brushed aside, and that after just three months there should be a review of the whole process? I urge the Minister to give a strong answer to the judiciary’s response to the consultation, particularly given that the response stated:

“Many young and talented lawyers are no longer choosing to practise in crime”,

which in the long term will affect the quality of the defence and prosecution barristers involved in criminal trials. Is it really the responsibility of the legal aid budget to fund that dimension of legal practice?

Lord McNally: Welcome though my noble friend’s intervention was, he is treading on areas that we will be debating on Thursday, when we have a very full and interesting debate on legal aid. I will say, however, that the noble Lord, Lord Bach, spent most of the last year predicting a perfect storm when LASPO came into effect. In fact, there has not been a perfect storm: the market is adjusting and advice is being given. However, the not-for-profit sector has had to make the adjustment that many others, including my own department, have had to make in the face of economic realities.

Children and Families Bill

Order of Consideration Motion

3.08 pm

Moved by Lord Nash

That it be an instruction to the Grand Committee to which the Children and Families Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 6, Schedule 1, Clauses 7 to 12, Schedule 2, Clauses 13 to 72, Schedule 3, Clauses 73 and 74, Schedule 4, Clauses 75 to 87, Schedule 5, Clause 88, Schedule 6, Clauses 89 to 98, Schedule 7, Clauses 99 to 112.

Motion agreed.

Marriage (Same Sex Couples) Bill

Report (1st Day)

3.08 pm

Clause 1 : Extension of marriage to same sex couples

Amendment 1

Moved by Lord Mackay of Clashfern

1: Clause 1, page 1, line 5, at end insert “and shall be referred to as “marriage (same sex couples)””.

() Marriage between opposite sex couples shall be referred to as “marriage (opposite sex couples)”.”

Lord Mackay of Clashfern: My Lords, I should first declare an interest. I am the honorary president of the Scottish Bible Society and a member of various Christian groups. I have also been for quite a long time a member of Barnardo’s, which has a certain amount of interest in this area of the law.

The purpose of the first amendment, and of the second amendment that is to be taken with it, is to recognise in the Bill the distinction that exists in fact between marriage for same-sex couples and marriage for opposite-sex couples. I have used only language that occurs already in the Bill. It is striking that the Bill is called the Marriage (Same Sex Couples) Bill. Therefore, I cannot see that what I propose can be objectionable to anybody who wishes to further the Bill in the future. If it is appropriate to refer to what is now being introduced as the Marriage (Same Sex Couples) Bill, it must surely be right to use that name to refer to what exists already in the law, and will continue to exist in the law after this Bill becomes an Act, as I certainly expect that it will.

It seems to me obvious that there is an important distinction between these two types of marriage. My understanding is clear that the Government wish to afford the gold standard to same-sex marriage. That means using the word “marriage” to describe what is involved, which I accept for the purposes of this amendment. Therefore, I cannot see that it in any way degrades what is asked for and granted to same-sex couples in the Bill. The Bill makes distinctions between same-sex marriage and opposite-sex marriage in a number of respects. I need not mention the more technical ones, but there is a fundamental difference in relation to the consummation of the marriage and on the effect to a child of being born to a member of a same-sex couple. That has a very important effect on children.

My understanding is that opposite-sex marriage is a uniquely well designed system for the bringing into the world, and the nurture in the world, of children because opposite-sex marriage involves a direct link between the child and two parents, which arises from the nature of the child’s birth. That, I think, is not in any way replicated in any other form of marriage. Of course, it is possible for children to become children of a marriage in various ways—for example, by adoption and by in vitro fertilisation, which have their own characteristics. Those of your Lordships who sat on the Human Fertilisation and Embryology Bill Committee some time ago, which sought to amend the 1990 Act, will remember hearing people born by means of IVF give very cogent and sensitive evidence on the difficulty of getting information that that had happened and of tracing their roots. I am sure your Lordships are aware that tracing one’s roots and being able to say something about one’s ancestry can be an important factor in the nurture and development of children and, indeed, in the well-being of adults, as people have a great interest in that.

It seems to me essential to recognise that distinction in the Bill as a matter of ordinary drafting. This is not a marriage Bill; it is a Bill which adds to the existing

structure a new concept, as I think we should recognise throughout the Bill. It is recognised in the Bill's Title and is reflected in the heading of various documents, including today's Marshalled List. In my submission, it is vital that we do not lose sight in future of that aspect of what people have called "traditional marriage" as it is an extremely valuable part of the arrangements that we have had for the birth and nurture of children.

I said in Committee and I say again that the protection of children by marriage, when it works, is extremely important and so far the state has not been able to devise a system which is equally effective. I speak in the presence of people who know much more about this than I do, but I believe that when the natural family fails a child and he has to go into care—which sadly happens, though fortunately not in the majority of cases—one of the difficulties as a matter of practice is to get a bond between a child and a particular individual in, for example a local authority. That is for the very practical reason that local authority staff change and take over different responsibilities and so on. I am sure that that is not the only difficulty, but it is certainly an important one.

I have said that the Bill deals with same-sex marriage and opposite-sex marriage differently in various places and mentioned the technical situation of a child born to a member of the marriage. That child does not enjoy the protection of the marriage on birth. It may be possible for the child to be adopted by the couple, but that is a different process. It is not a direct result of being born to a partner in the marriage. However, perhaps the most striking difference in treatment between same-sex marriage and opposite-sex marriage is in relation to the churches and religious organisations. The nature of the treatment in these two groups is very different indeed. Therefore, it seems only sensible to recognise as a matter of definition what it is that the different treatment applies to.

In my submission, this is the minimum that will secure recognition in the Bill of the distinction between the two. I believe that it completely meets the aims which were intimated as part of what this Bill is about in the sense that it gives marriage with the gold standard to same-sex couples, while retaining, without differentiating to any extent between the two as a value judgment, the essential distinction. This is not a matter of arbitrariness, but of simple fact. Recognising that fact in the Bill seems to me to bring it much closer to what ordinary people—and I count myself in that category—understand the Bill to do. Trying to make out that the two are the same seems to many people, including myself, to be an exercise in fantasy. The factual position is that there is a fundamental distinction which no majority in Parliament or elsewhere can annihilate.

Your Lordships will understand that Amendment 2 is complementary. Later amendments are consequential if the first two are accepted. I am sorry that there are so many of them. This is the minimum that seems to work, although I and other noble Lords think that it may be possible to go further. The later amendment of the noble Lord, Lord Armstrong, to which I and others have added our names, indeed goes further

than the minimum. However, my amendment is the essential minimum and if your Lordships were to accept it, a question would remain as to whether the Bill should go further. I beg to move.

Lord Glenarthur: I very much support my noble and learned friend. The debates at Second Reading and in Committee referred to the word "marriage" as being the point at issue and how it could be described in the Bill. The problem with the Bill has been the word "marriage" and it is difficult to find another solution to that problem. For those who have concerns about finding a way to redefine marriage, which the Bill tries to do, it seems sensible, notwithstanding all the sensible comments of my noble and learned friend about the relevance of children to all this, to have a form of words that qualifies marriage under all its circumstances rather than totally redefines it. I very much support the amendment.

Lord Anderson of Swansea: My Lords, it is good to follow the noble and learned Lord, who describes himself as an ordinary person but who happens to be a former Lord Chancellor, one of the most distinguished lawyers in this country. I congratulate the noble and learned Lord on his diligence and ingenuity. I wish that I had thought of the amendment, in which he reproduces the title of the Bill. He clearly sees both sides and has made a serious effort to build a bridge between what might otherwise have become a very polarised debate. Yet, he has given both sides the substance of what they seek.

There are those who believe in traditional marriage, the definition that has existed since time immemorial, and others who wish to extend the definition to include same-sex couples. The Government wish to change that definition with all deliberate speed. I shall not linger on this matter but the deliberate speed is something that puzzles many of us, given that it looks as if the Government were converted to this idea only some time after the election manifestos of three years ago. Now there is nothing stopping them in their haste to get the Bill onto the statute book. Tradition has to be got rid of speedily.

For some, marriage is not just a ceremony with an approved form of words and mutual vows but a sacrament that has existed for many years. I, for example, look forward to my wife and I renewing our vows in a church with the local vicar on the occasion of our golden wedding anniversary in September. For us, our marriage 50 years ago was not some simple ceremony but a form of sacrament before God. Some hold that dear for that reason. For others who have come to their view only over the past year or two—and I include the Government and the official Opposition—the extension of the definition is necessary for equality. Perhaps that is as part of a Damascene conversion as they did not think so a year or two ago.

The amendment of the noble and learned Lord allows two things. Same-sex couples will be able to say in all honesty that they are married and truthfully assert that status when they discuss their marriages with other people. At the same time, the proposal recognises that same-sex marriages cannot be the same as traditional marriages. The noble and learned Lord

[LORD ANDERSON OF SWANSEA]
mentioned characteristics such as non-consummation, adultery, being physically different, and the effect on children, a subject in which he has had a close interest. It is therefore absurd to try to make the same that which is essentially different. The amendment therefore allows for same-sex couples to be distinct but at the same time to be married and to be able to say so when they discuss their relationship with other people. It is an ingenious effort to bridge the gap, which I wholeheartedly support and commend to your Lordships' House.

Lord Lester of Herne Hill: My Lords, we all agree that marriage is a vital institution. The exclusive commitment of two individuals to each other nurtures mutual love, support and stability. For those who choose to marry and their children, marriage provides legal, financial and social benefits and, in return, legal, financial and social obligations.

Two competing views of marriage were helpfully identified by Justice Alito in his opinion in the United States case of Windsor on 26 June, in which he dissented from the majority—the majority having decided that the denial by the Defense of Marriage Act of federal benefits to same-sex couples lawfully married under New York law was unconstitutional.

In his dissent, Justice Alito referred to the traditional conjugal view that sees marriage as,

“an intrinsically opposite-sex institution—the solemnizing of a comprehensive, exclusive, permanent union that is intrinsically ordered to producing new life, even if it does not always do so ... Throughout human history and across many cultures, marriage has been viewed as an exclusively opposite-sex institution and as one intrinsically linked to procreation and biological kinship”.

That is the view of my noble and learned friend Lord Mackay and others who have spoken so far.

Justice Alito then referred to what he called the newer view that is the consent-based vision of marriage,

“a vision that primarily defines marriage as the solemnization of mutual commitment—marked by a strong emotional attachment and sexual attraction—between two persons. At least as it applies to heterosexual couples, this view of marriage now plays a very prominent part in the popular understanding of the institution ... Proponents of same-sex marriage argue that because gender differentiation is not relevant to this vision, the exclusion of same-sex couples from the institution of marriage is,

what he describes as,

“rank discrimination”.

The Bill removes that rank discrimination by securing equality for same-sex couples according to the newer view of consent-based marriage while protecting the traditional conjugal view of opposite-sex marriages for religious organisations such as the Church of England, the Catholic Church and others which do not wish to celebrate or solemnize same-sex marriages. It protects freedom of religion in that important way.

The supporters of this group of amendments—I shall make only one short speech on all of the amendments, which are grouped together on an industrial scale—do not like the Bill and seek to substitute for the phrase “the marriage of same sex couples” the phrase “marriage (same sex couples)”. They believe strongly in the traditional conjugal view of marriage as being much better, as we have heard, for the upbringing of children and they do not believe that the marriage of same-sex couples is to

be regarded equally. They reflect their deeply held religious beliefs that I understand and fully respect.

However, these amendments would obscure the main purpose of the Bill, which is to enable same-sex couples to marry in accordance with the newer view of consent-based marriage because they are excluded under the traditional conjugal view of marriage. There should be no hierarchy that puts traditional marriage above consent-based marriage, whether in the definition of the marriage of same-sex couples or whether they are to be treated equally in all respects with the marriage of opposite-sex couples.

The attempt to define same-sex marriage differently from opposite-sex marriage while claiming that they are somehow equal would inevitably be seen by ordinary men and women in the street—and by me, as a not very ordinary man in the street, I suppose—as attempting to give the traditional view of marriage a superior status. It is essential to be sure that the marriage of same-sex couples is not regarded as less worthy than the marriage of opposite-sex couples. That is why I cannot support these amendments.

3.30 pm

The Earl of Listowel: My Lords, I listened with great interest as the noble and learned Lord, Lord Mackay of Clashfern, presented his case, particularly to what he said about children and families and the importance for children to grow up in a very strong environment, ideally with a father and a mother. I do not think that he said that specifically, but he talked about children coming into the care system and the difficulties at finding someone who will make a real commitment to the child. In my own family, marriage was fairly relaxed from a religious point of view, but it was there in preparation for having a child and gave us children a secure base to look forward to.

I listened to the noble Lord, Lord Lester, speaking about the old view and the modern view of marriage. The old view is there for families and to give a strong framework in which children can grow up, and the modern view is much more about individual adults choosing what is best for them and what they feel most comfortable with. I am reminded of a report from the Children's Society—the Good Childhood inquiry—some time ago, which drew attention to exactly that change and shift in adults, and the unfortunate consequence for children, with so many children nowadays growing up without contact with their fathers. That freedom of choice for adults has become a very unhappy situation for many children who do not have that security of having a father around.

This is such a difficult question and it is helpful that the noble and learned Lord has tabled the amendment. It is important to distinguish between this new version of marriage that we are discussing today, and traditional marriage, especially as there is some misunderstanding about the impact of same-sex parenting and heterosexual parenting on child development. There are strong feelings on both sides, and some say now that the question is quite finalised: we all know that same-sex parenting has the same outcomes for children as heterosexual parenting. However, I think that there are a number of difficulties about that particular point

of view, and I would say briefly that same-sex parenting has been around for only a short time; it is a new phenomenon, so scientifically there has not been the time for extensive or controlled research to verify either way, or to provide data on these outcomes. We will come back to this later in the debate, but I support strongly what the noble and learned Lord proposes, and I hope that the Minister will feel inclined to accept it.

Baroness Butler-Sloss: My Lords, I am grateful to the noble and learned Lord across the Chamber. I want to make a brief point to the noble Lord, Lord Lester. If the noble and learned Lord, Lord Mackay, had asked for the phrase, “traditional marriage”, the point made would have some benefit and would be something that we should perhaps take into account. But the amendment refers to “same sex couples” and “opposite sex couples”, so how on earth can anyone suggest anywhere that one sort of couple is better than another sort of couple? They just happen to be different—different and equal. So I cannot see how the noble Lord, Lord Lester, can make the point that one group will be downgraded because they are the same sex and another will not be downgraded because they are opposite. That is not an argument that can be used in the present wording—very clever and careful wording, if I may respectfully say so—of the noble and learned Lord’s amendment.

The Lord Bishop of Chester: My Lords, I find myself asking, what would actually change in the Bill if we accepted the amendment? As I understand it, there would be recognition of difference yet equal treatment of the two types of couple. That is what would happen. Therefore, I ask the noble Lord, Lord Lester, who we all respect so greatly, is it the case that the couples would not be regarded equally when, in fact, the treatment of the couples would be exactly equal in law? The noble and learned Baroness, Lady Butler-Sloss, made a similar point. Would accepting the amendment of noble and learned Lord, Lord Mackay of Clashfern—there are two Lord Mackays now in the House—accord either of these forms of marriage a superior status, as was alleged? I do not see that on the face of the Bill. It simply accepts a certain difference.

Behind this lies a seductive aspect of the Equality Act itself, that any differentiation amid the protected characteristics is all the same. Therefore, the difference between a woman of childbearing age and a woman beyond childbearing age is just the same as the difference between a man and a woman. That is plainly not the case. There is a greater distinction between a man and a woman biologically than between a woman of childbearing age and one who is not. An element of recognition of difference within equal treatment in law is entirely consistent with the purposes of the Bill.

Lord Waddington: I read on Saturday a speech made by the most reverend Primate the Archbishop of Canterbury. I will not trouble the House with much of the speech, but it contained this particular passage:

“The opposition to the Bill, which included me and many other bishops, was utterly overwhelmed ... There was noticeable hostility to the view of the Churches”.

I was not surprised by what I read. There are many of us not of the church who have experienced the

same hostility to our views. I hope that supporters of the Bill do not forget that a substantial proportion of the population were, and are still, greatly disturbed that the Government should have introduced a measure that rejects the traditional view of marriage. Many of us are surprised that, far from trying to meet the concerns of such people, the Government have turned down every opportunity to soothe the susceptibilities of those who find the concept of same-sex marriage difficult to stomach.

Surely the Bill should not reach the statute book without the Government doing something to acknowledge that, until recently, it was almost universally accepted—it was certainly so accepted by the previous Government—that marriage could be only between a man and a woman. The views of those who still hold that belief are therefore worthy of respect and should be acknowledged in the Bill. The best way of doing that is not just by a declaration in the form set out in Amendment 4, but by a clear statement that the marriage of a same-sex couple and the marriage of an opposite-sex couple are equally valid but clearly different. The differences have been gone over time and time again since Second Reading and I will not go into them now, but they are different.

I do not think that so far this burying of traditional marriage, and putting something entirely new in its place, has yet been fully recognised by the populace. I wonder how many realise that this legislation authorises in law a man who is married to another man to be called a husband, and a woman married to another woman to be called a wife. Wife in its old meaning has been abolished by a little-read schedule to the Bill and, no doubt, the proper use of the term will soon disappear. These are dramatic changes—changes that pay no regard to the normal use of the English language, tradition, common sense or common courtesies. It is up to those initiating such change to try and make it reasonably palatable for those who were brought up to accept that marriage is the union of a man and a woman. I hope that, even at this late hour, the Government will recognise that they have some obligation in this matter.

Lord Pannick: My Lords, I do not support the amendments because each of them would wrongly suggest to the happy couple entering into a state of matrimony—to their families, their friends and to the world at large—that theirs is not a marriage like any other. The amendments would suggest that it is a distinct form of marriage to be placed in a category of its own. Since the very purpose of the Bill is to recognise same-sex marriages as the voluntary union of one man with another or one woman with another, in the same way as the voluntary union of a man and a woman, it would surely be bizarre in the extreme for us churlishly to take away by a subsection part of the recognition and status that the Bill will accord.

No one would seriously suggest, I assume, that there should be a legislative provision that states that marriage between divorced persons shall be referred to as marriage (divorced couples). The whole point of the Bill is that all lawful marriages, which will include marriages between same-sex couples, are marriages—

[LORD PANNICK]

although, as we all know from our personal experience, each and every marriage is unique.

The noble and learned Lord, Lord Mackay of Clashfern, emphasised that there are some respects in which the Bill treats a same-sex marriage as different from a marriage of an opposite-sex couple. But the whole point of the Bill, surely, is that, notwithstanding those differences, the Bill will implement the basic and vital principle that a same-sex marriage is a marriage with the same status and consequences as any other.

I entirely understand why those who are fundamentally and sincerely opposed to the Bill should wish to introduce these amendments. But they should recognise why those of us who support the Bill regard them as simply incompatible with the fundamental purpose of the legislation.

Lord Mackay of Clashfern: The noble Lord said that the two types of marriage are to have exactly the same consequences. I think I heard him correctly.

Lord Pannick: I said that I understood the noble and learned Lord's point that the Bill in various respects, which he referred to, treats same-sex marriage and opposite-sex marriage as distinct in various respects. But I made the point that the purpose of the Bill is nevertheless to recognise that each category should be accepted as a lawful marriage for the purposes of the law of England.

Lord Mackay of Clashfern: The noble Lord will be able to say which of my amendments in any way detracts from that. I understood him to say in his earlier submission that there was no difference in consequence. There is a very vital difference in consequence in this respect: a child born to a woman in a same-sex marriage is not a child of the marriage.

Lord Pannick: I respectfully object to the suggestion that a Bill with these purposes and valuable effects should distinguish between same-sex marriage and opposite-sex marriage and necessarily imply a division between them. That is what I object to.

Lord Cormack: My Lords, I added my name to the amendment because I felt that it was not churlish, derogatory or demeaning. In fact, it indicates that those of us who have profound misgivings about the Bill have done all that we can to acknowledge the validity of the arguments of those who are its champions. All the amendment does is repeat certain words that are in the Bill. The noble Lord, Lord Pannick, or any other noble Lord can talk until he is blue in the face without altering the fact that there is a difference between a same-sex marriage and a marriage between a man and a woman. All this amendment does is acknowledge that. It concedes the word "marriage".

3.45 pm

In the first series of amendments in Committee, the noble Lord, Lord Hylton, and I spoke to an amendment which used the word "union". The noble Lord, Lord Alli, and others told us that that was offensive, although he recognised that we had not meant it to be. An amendment of the noble Lord, Lord Armstrong of

Ilminster, was a little stronger than the one moved this afternoon by my noble and learned friend Lord Mackay. The noble Lord, Lord Hylton, and I have not tabled our amendment again, and nor has the noble Lord, Lord Armstrong of Ilminster, tabled his. We have coalesced—and coalition is a good thing, so we are told—behind my noble and learned friend Lord Mackay in supporting his amendment. We have done so because we think that it demonstrates and underlines equality while recognising difference. That is the sole point and purpose of his amendment.

To the noble Lord, Lord Alli, for whom I have developed a very real regard during these debates, I say that this concedes that we have given up the fight against using the word "marriage". However, we believe very strongly and very profoundly that there is an undeniable difference between the coming together of a man and a woman and the coming together of two men or two women. All we ask of those noble Lords who are enthusiastic about this Bill is in effect to meet us halfway. We have conceded on the word "marriage". That will go into the new dictionary with its various definitions. All we want is recognition on the face of the Bill that there is a distinction and a difference between different sorts of union, but there is a pervading equality. It is a very modest amendment, and a very simple one.

I very much hope that the House will support the amendment because I know, as do noble Lords on all sides of the House, that throughout this country there are many people with real concerns about the social change implicit in enacting this Bill. None of us can prove what the majority view is, and we have already rehearsed that argument. Many people say that it is a generational thing; I do not know. What I do know is that my sons and daughters-in-law take the same line as I do on this, and assure me that most of their friends do likewise. That is anecdotal, and it proves absolutely nothing save to underline the fact that there are concerns. Let us meet those concerns with this extremely modest proposal.

Lord Alli: My Lords, I fear that my response will disappoint the noble Lord, but let me try to explain why. The amendment seeks to create two classes of marriage. It is conceived from the notion, as the noble and learned Lord said, that what same-sex couples want is use of the word "marriage". It simply misses the point. What same-sex couples want is marriage itself. They want to share with opposite-sex couples the joy of married life, and to be treated equally by the state and by society. They do not want to be "married (same sex couples)", and I suspect that opposite-sex couples do not want their union bracketed, either.

The noble and learned Lord has gone to a huge amount of trouble to identify and draft amendments to ensure that the brackets are in the right places and the sexual orientation identifiers placed at any and all opportunities. The question that perplexes me is: why is that necessary? Why does the noble and learned Lord want to pick out gay couples in such a public and conspicuous way? I understand that those opposed to same-sex marriage, having lost the vote at Second Reading, now want a second—and, judging by the Marshalled List, a third, fourth, fifth and sixth—bite

of the cherry. “Give them marriage”, says the noble and learned Lord, “but not the name. Call it something else: ‘traditional marriage’ and ‘marriage (same sex couples)’—anything but marriage itself”. That is a new battle; in that way we can preserve the inequality between same-sex and opposite-sex marriage.

If we do that, what of international recognition? This amendment would allow other countries to treat same-sex couples differently from opposite-sex couples. Those countries will say, “We recognise only marriage (opposite sex couples)”. We will draw in statute a difference for others to exploit. That is a bad idea. The word “marriage” should be able to be used by couples regardless of their sexual orientation.

I have a great deal of respect and admiration for the noble and learned Lord and agree with much of what he says on many occasions, but I find myself diametrically opposed to his view on this matter. I do not think that the noble and learned Lord or other noble Lords who have spoken in support of this amendment will ever see this Bill as I do. The amendment that the noble and learned Lord has crafted is a means of dividing us, not uniting us. It pours salts on to wounds at a time when we should be healing. It will allow others—not noble Lords in this place—to create mischief where none was intended. It will be argued that Parliament made the distinction so must have had a purpose in doing so. There the discrimination begins.

We have an obligation in this House to make good and to rebuild once this Bill is passed. This amendment would leave a scar on the Bill for another day, and another battle to be fought. For those reasons, and many more, I hope that this amendment will be defeated. Two classes of marriage, however well disguised, is the very opposite of what this Bill is designed to do. Giving us the use of the word “marriage” with one hand and taking back its exclusivity with the other would be a fatal blow to the intentions of the Bill. Just to be clear, I do not find the amendment acceptable in any shape or form. I hope for the reasons that I have tried to express that the noble and learned Lord will understand why I do not share his view.

Lord Skelmersdale: Is the logic of the noble Lord’s position that this Bill should not be called the Marriage (Same Sex Couples) Bill but the Marriage (Amendment) Bill? Would he be interested in putting down an amendment, if it is not too late, to that effect?

Lord Alli: My Lords, I will resist the temptation of adding a single additional amendment to the 135 on the Marshalled List. Perhaps I will look at that again at the end of the second day of Report.

Lord Deben: My Lords, it is always with very great care that one clashes with the noble and learned Lord, Lord Mackay, particularly when one has to suggest to him that there is an illogicality in the argument that he has put forward. He said, on the one hand, that there is a whole range of differences between same-sex marriage and opposite-sex marriage. In that, he is not only right but obviously right. He then attached to that the reason for making this distinction in the Bill, but it is a distinction that does not need to be in the

Bill because, as he says, it is universally recognised. Therefore, making the distinction in the Bill must be for a different purpose.

As we have heard the debate continue, we have moved from the careful language of the noble and learned Lord to expositions which explain the purpose of the amendments. When they are referred to as modest amendments, I think only of the modest proposal which, in Dean Swift’s writing, went rather further than that title suggested. This modest amendment is here for a purpose. It is to say now what has so far not been able to be said more directly, which is, “Wait a moment, it is not quite what you say”. We will have made sure that in the Bill, and therefore in the Act, we make a distinction that can be referred to and used not only internationally, as the noble Lord, Lord Alli, said, but at home.

I think that Christians should be even more strongly opposed to this than others because the Bill is specifically designed to give us an absolute right to maintain our view about marriage. It does so on the basis that it gives the state an absolute right to maintain its view about marriage. That was, after all, something that was started back in the days of Henry VIII, when the state said that it could make its own decisions about what marriage meant, even though that meant disagreeing with the highest powers in the church.

I am not suggesting that the state should go any further in its relationships with the church than Henry VIII did, but I am suggesting that this is an historic decision and one that we should respect. The church, under the quadruple lock, is absolutely able both to perform and to give its teaching about marriage. That is a teaching which I wholly support. As a convert, I have to, otherwise I would not have made that decision and choice. However, I also believe that parliamentarians have a duty to the whole nation, and those in the whole nation who seek marriage do not seek marriage followed by brackets. Indeed, I think that opposite-sex couples ought to object to this. Why should they have marriage so defined?

I turn to the second argument, which is that in the very clear words quoted by the noble Lord, Lord Lester, there is now a different way of looking at marriage from the historic one. That was rapidly picked up by those who want to support the amendment. I hope that we will think carefully about this. Differentiating between same-sex marriage and opposite-sex marriage because you think that the one is about a new view of marriage and the other is about an old view is of course not correct. If you wanted to distinguish between the new view and the old view of marriage, you would have to have more brackets. You would have to have “(traditional) marriage” for opposite-sex marriage and “(new) marriage” for opposite-sex marriage. No one in this House would suggest that as one approaches the registry office or the smart hotel, one should go up with a list of alternatives, asking, “Am I going in for marriage-light or marriage-heavy? Am I taking marriage in this way or that way?”. From much of my experience of some 35 years in surgeries as a Member of Parliament—more, if you take in the period of candidacy—I do not think that anybody would understand having to fill in a form on that basis.

4 pm

We come back to the reason, which is very simple. People want to say on the face of the Bill that they do not accept that this is marriage, and they want to find the nicest way of doing so. I give that to them but in my view the noble Lord, Lord Cormack, gave it away. What he said was, “We tried here and we did not get that, so we tried at another point and we did not get that. We tried at another point again and we did not get that, so we have a new wheeze, which is here and has moved farther towards it”. I beg the House to realise that if we accept the proposal that the noble and learned Lord, Lord Mackay of Clashfern, put forward so elegantly and with such absolute honesty, we are actually undermining the whole purpose of the Bill. In that sense, and not in any other, it is a wrecking amendment because it would mean that what we have sought to do would be undermined.

I want to say one last thing. I hope that those who are thinking of supporting this amendment will just remember what they are having to live down. This country has a terrible history of the way it has treated gay people. There are other countries which have a terrible present in the way they treat gay people. If you think that we are going too far, then put that down to making up for not getting there much earlier. Put it down to all those years in which gay people were subject to punishment of a criminal kind. Put it down to all those years of the jokes at school and university which so hurt gay people. Put it down to what we have done in the past to gay people and, if we go a bit further than you would like this time, then say, “I really have a lot to make up for”.

The Earl of Listowel: My Lords, before the noble Lord sits down, he has made many important points but in his first point I think he was saying that there is no risk of confusion in the public mind and no need for this differentiation because it is all clear. However, is there not a risk in terms of raising children? There is a real question in the public mind about having children raised by, for instance, two men or two women and about children being raised without a father. I must not go on, of course, and this is a simple question. However, there is confusion, and is not the benefit of this amendment that there would be less confusion?

Lord Deben: I very much thank the noble Earl for that question. It would be germane if we were in France and debating the French changes, because France changed the law about adoption. The whole system was changed. We, of course, are not changing the law, as that provision is already there and is not altered at all. If that was where we were and what we were doing, there would be a different argument because I have to tell the House that I have a huge problem with the creation of babies in a world in which there are so many babies waiting for adoption. I have not yet come to believe that there is enough evidence to say that same-sex adoption is the same as or equal to opposite-sex adoption, but none of those issues is before us today. If they were, we would have a different argument. Because they are not, the proposed change is naked and unashamed. It is not about children or

any of those things. It is about two different sorts of marriage and the difference will be upheld by those of ill will and by some of those of ignorant will, and we should not have it.

Lord Fowler: My Lords, I have had great respect for my noble and learned friend Lord Mackay of Clashfern ever since we sat in Cabinet together, but on this proposition I am afraid I cannot support him. He seems essentially to be making a division between one group and another when the whole aim of the Bill is to eliminate divisions and to seek to create some equality. To that extent, the amendment goes against the spirit of the Bill, which both Houses of Parliament have given massive majorities, and I think there is a limit to the number of times that we can debate the Second Reading in this House.

I have been told by, among others, my noble friends Lord Waddington and Lord Cormack that we must listen to what is being said outside this House. I agree, but that is an argument that goes both ways. We should also take into account what gay and lesbian people feel about the way that they have been treated and whether this is yet another attempt to create an underlying division between them and the rest of society. The reason they will feel that—and this is a point that my noble friend Lord Deben referred to in his excellent speech—is the discrimination and prejudice that they have faced over the years in this country. Of course it is true that homosexuality is no longer an offence in the United Kingdom, but let no one believe for a moment that the prejudice has vanished with it. It is true that it is not so bad here as in some notoriously homophobic countries overseas. I have just returned from Russia, where I have been looking at exactly these kinds of issues and where a new law has been passed to stop gay issues being discussed, making gays and lesbians subject to attack.

However, we still have a mountain of prejudice to overcome here in this country. A few days ago I was listening to a much respected figure in the HIV world who said that if he was walking down the road in this country arm-in-arm with his male partner, he could not be sure that he would not be verbally or even physically abused. That is Britain as it stands today, viewed from his eyes. I listened to the gay footballer Robbie Rogers—a committed Christian, incidentally—who came out only after he had left British football. One cannot speculate too much about the reason for that or about the reaction that he would have received had he done so before.

We can listen to the YouGov survey on behalf of Stonewall, which showed that over the past five years 2.5 million people of working age have witnessed verbal homophobic bullying at work, 800,000 people of working age have witnessed physical homophobic bullying at work and two-thirds of people aged 18 to 29 say that there was homophobic bullying in their school. That is not a record that this country can be remotely proud of. It is that sort of thing that underlies my opposition to my noble friend’s amendment.

The overriding goal of policy today should not be to underline differences but to underline the goal of equality of treatment. That intention was overwhelmingly backed by the votes of both Houses of Parliament,

and I certainly do not believe that we should try now to unpick the votes of the two Houses at Second Reading in this amendment.

Lord Richard: My Lords, I have an enormous respect for the noble and learned Lord, Lord Mackay, as he knows, but as a long-standing judge he also knows that when one says, “With the greatest respect”, one knows precisely what the phrase means. I have great respect for him and his argument but I am afraid that, on this, he is wrong. He is wrong because the reintroduction of a distinction that the Bill takes out is dangerous, destructive, divisive and debilitating.

I listened to this debate with great care and, with great respect to the noble Lord, Lord Cormack, he let the cat out of the bag when he stood there and said, “We have given you marriage, now give us the distinction”. That is a contradiction in relation to the Bill; the whole point of the Bill is that there is no distinction in relation to marriage. Marriage is something that will be available to gay couples in the same way that it is available to non-gay couples.

As I say, I have listened to this debate and it has gone round and round, but I have little doubt which way I shall vote if a vote takes place.

Baroness Kramer: My Lords, I have not spoken before in this debate; it has taken an exercise of will power, but I have been conscious that time is an issue, and that is true for many of my colleagues on these Benches. I moved the first civil partnership motion at my party’s conference in 2001, having turned to my noble friend Lord Lester for legal advice. I am happy and honoured that that process played a role in bringing us to the incredibly important civil rights legislation that we have in front of us today. I did so motivated by close family and friends who are bisexual, gay and straight but who believe that these changes are extremely important.

What drove me to speak today on the amendment moved by the noble and learned Lord, Lord Mackay, were the comments of the mother of a good lesbian friend who said to me, “Why is it so important to those people”—she means the noble and learned Lord, Lord Mackay, and others, and she means no disrespect—“to mark out my daughter as different and to mark out her relationships as different?”. There are many differences, and others have described them. Every marriage is different and many of us fall into a variety of different categories. However, there are those we choose to mark out, and it is a choice—there is nothing inevitable about marking out a difference. That choice that says something about the values of the society of which we are a part and something about ourselves. I have struggled today to understand why creating and reinforcing that sense of us and other is so important, and it seems to me to lie behind those amendments.

I promised that I would be brief. I spent some years, as noble Lords will know, in the United States, so perhaps I come to some of these issues of civil rights with a slightly different perspective. I am conscious of the dissenting view of Justice John Marshall Harlan in 1896 in *Plessy v Ferguson*. It was that Supreme Court ruling that created the basis for separate and equal. I thought I would read noble Lords one of his sentences, slightly paraphrasing. He said, “The thin disguise of

equal”, and have we not heard today that these changes still permit equal? However, he said, “The thin disguise of equal will not mislead anyone”, and I believe that the changes proposed today will not mislead anyone. They are not a mechanism for recognising the common institution of marriage, which unites every adult engaging in a committed, loving and public relationship and who chooses to express that through marriage, whether it is with a person of the same sex or a person of the opposite sex. I ask that this House recognises that the thin disguise of equal is not where we should be on this crucial piece of civil rights legislation.

4.15 pm

Lord Elystan-Morgan: My Lords, I respectfully disagree with the noble Lord, Lord Deben, who made an excellent speech. Although I agree with his basic submission, I disagree with his argument that this is a wrecking amendment. It is not a wrecking amendment, but it is an amendment that, if carried, could defeat the whole purpose and objective of this legislation. It is on that basis that we should look at it this afternoon.

The issue is important but simple: whether you elongate the institution of marriage to include same-sex marriage as one indivisible institution, or draw a dividing line through it—a frontier line that will create two categories of marriage, one a gold standard and one a standard of baser metal. That is the issue.

There are three arguments that can be put very briefly in favour of opposing the amendment and accepting the elongated institution argument. First, marriage has passed through many different phases, definitions and concepts in the past 200 years. Before the 1836 legislation, all people who wanted to get lawfully married had to be married in the Church of England. Many, like my forebears, found that extremely distasteful but that was it—it was a *fait accompli*. Before the Married Women’s Property Act 1882, a married woman could not hold property; it became her husband’s upon marriage. All that she could cling to was what was called her paraphernalia. That changed everything. Before 1991, where two persons were married and no separation order had been made by the courts, a man could rape his wife and she would have no redress. Do you think that did not change the institution immensely? One may point to a number of other phenomena that have in total, and in many cases individually, changed the situation fundamentally. That is the first argument: there have been changes in the law that have fundamentally metamorphosed the whole concept of marriage.

Secondly—I say this with very great diffidence as a Welsh Presbyterian—there have been changes in the spiritual world as well. The *Book of Common Prayer* justifies marriage in three ways: first, for the procreation of children; secondly, so that the temptations of adultery and fornication should be removed; and thirdly, so that there should be a lifelong, devoted, loving partnership between two people. As far as the first is concerned, you might say that people who are beyond child-bearing age are logically in breach of that precept, but nobody in his or her senses would argue that. However, I know many young people who, for professional reasons, have married on the basis that they will not have children. That is the clearest understanding and agreement

[LORD ELYSTAN-MORGAN]

between them. Do you say that their marriage should be placed in some hermetically sealed compartment on that account? I would not argue that. Essentially, is one not justified, to a large extent, in saying that the essence of marriage today for so many people is that lifelong commitment of love, affection and loyalty? If that be the case, one can say, yes, in the spiritual world, too, there have been massive changes that have been accepted by society.

There is a third justification. Many Peers have already spoken of the days before 1967, when homosexuality was a very grave offence. I remember well over 60 years ago, when I was a young law student, going along to the assizes and seeing the local vicar, the nonconformist minister, the accountant, the solicitor and many similar people of high standing in society, all being sent to prison for four or five years for what we would today call “lavatory cases”. I remember thinking, “There must be some better way of dealing with this problem”.

I have argued with myself a great deal over the past few weeks as to where I stand in relation to this matter. I have asked myself whether this change—the concept of single-sex marriage, which is of course a massive change—of such magnitude as to demean and in some way unsettle and undermine the concept of marriage. I have asked myself whether it any way demeans or changes my own marriage. I was supremely happily married for 48 years to a very splendid lady, who died six years ago. I am sure that if she were alive today, she would say to me, “Yes, there is a third argument: the argument of reasonableness and tolerance”.

As a community we have treated these people abominably, in a way that is a disgrace to our religion and to so many things that we believed we stood for as a community. Now we have a chance to make up for that, and we will do exactly that by elongating and not dividing.

Lord Phillips of Sudbury: My Lords, I apologise to my noble and learned friend Lord Mackay of Clashfern. British Rail prevented me from being here when he opened this debate. However, I have had the advantage of long discussion with him concerning his reasons for putting forward the amendment and I support it.

This is not an easy debate. I am sure that there are many in the House now who sway this way and that. The issues are highly complex and diverse and we have heard some outstanding speeches today. However, I disagree totally with one of the things that my noble friend Lord Fowler said when he put it to the House that if we passed this amendment it would add directly to homophobia in this country. If I was even a little in agreement with him on that, I would not be standing and speaking here. However difficult it is to assess the reactions of the great people of this country to matters such as this, far from increasing homophobia, Amendment 1 could ease the passage and consequences of this profoundly important measure for the millions of our decent, not prejudiced and not homophobic countrymen who currently believe that we may be foisting on them what they would call an untruth—they might call it dishonest or a public relations exercise.

Whether we like it or not, millions of our decent fellow-citizens will agree totally about same-sex couples having the same esteem, love and life-long commitment, and so on, but, as has been said many times, and so one need not elaborate on it, they believe that unions between same-sex couples and opposite-sex couples are different and that they have profoundly different potential consequences. To say that many opposite-sex couples are disabled, too old or disinclined to procreate is not an answer to the fundamental factual and real difference. That is where, I repeat, millions of our countrymen sit at this time. The noble Lord, Lord Pannick, talked about an inferior status, but they do not want to create anything of the sort. Nobody is interested in belittling the commitments made by homosexuals; there are a few, but, I maintain, not many. However, what they do say is, “Why are we pretending that it is exactly the same when it is profoundly different in one particular?” Why not use the word “marriage”, since that is the important thing, and then have the qualification? It is not even as though the qualification is very novel: it is in the Title of the Bill as we sit here. I believe that in time—and I do not think that it will be a long time—people will concentrate on the word “marriage” and the bracketed bit, frankly, will fade into lesser and lesser significance as the public mind progresses.

One might ask, “Why have that wording?” I actually believe—this is the nub of it—that we will ease the passage of this important measure if we put Amendment 1 in the Bill. We will salve the present discontent that so many people feel about the Bill as it stands. That is why I shall vote for Amendment 1.

Baroness Howarth of Breckland: Before the noble Lord sits down, does he not think that that has already been achieved by the lock? I am always interested when the right reverend Prelates join in the debate. The only other intervention I have made in these debates was to ask the most reverend Primate the Archbishop of York whether, if the Bill goes through, the Church of England will marry gay couples. We know the answer to that. Those people who object already have a huge lock—I am not sure that I am happy about that in itself—and that holds enough.

Lord Phillips of Sudbury: The noble Baroness raises an interesting point. The quadruple lock is important to people of religious faith. However, I am not talking just about people of religious faith. The current objection goes way beyond that category.

Lord Winston: Is the noble Lord aware of the research on children who are being raised by people who are gay—either lesbian or male homosexual? There is now a large and incontrovertible body of research evidence—particularly from Professor Golombok of the University of Cambridge—which shows that on average such children do better than children who are born in the normal way of current marriage. That is an important point as several noble Lords have raised the issue of procreation. We have to understand that there is no evidence at all that children are worse off as a result of having parents who are in a gay partnership.

Baroness Northover: I remind noble Lords that we are at Report stage and that interventions, if they must happen, should be very brief—namely, a quick question of clarification rather than, in effect, another speech. I also remind my noble friend that those who speak in each debate should be here at the beginning. I realise that there are problems with trains. Nevertheless, there are a lot of noble Lords seeking to get in.

Lord Phillips of Sudbury: If I may answer briefly the noble Lord, Lord Winston—

Noble Lords: No.

Lord Davies of Coity: My Lords, Amendment 1 is very simple and I give it whole-hearted support. Some things have been said during the debate on which I want to comment. The noble Lord, Lord Fowler, talked about prejudice. Yes, there is prejudice. For example, there is prejudice about capital punishment and there is prejudice about the European Union. We do not ban them. In fact, we might be having referendums on them shortly. Nevertheless, there is prejudice.

This amendment is a simple one. It distinguishes between natural relationships between men and women on the one hand and relationships between men and women on the other. That is fine. However, everyone has a vested interest in this debate. I have one, for example, and the noble Lord, Lord Alli, has one as well.

I have been married to my wife for 53 years and have four daughters. My second daughter wanted a second child and tried IVF nine times before she succeeded in having one. When I went to the IVF clinic, I saw the faces of women who wanted nothing else but to have children. This amendment protects those children as well as giving members of the gay community the opportunity to marry. They want to have that opportunity and they will get it. However, a marriage between a man and a woman has to be identified because it is natural and should exist separately in the way that this amendment provides for.

4.30 pm

Lord Elton: My Lords, my father told me that when this House was evacuated from this Chamber to let the House of Commons sit here, the Lords moved to the Robing Room. The space there was limited by the voting lobbies on either side, the rails below the Throne and the Bar at the bottom of the House. He said that the result was not really a Chamber but a rather comfortable drawing room, in which one could not have oratory but only talk to each other. He thought it was a great pity that the Lords returned to this Chamber. We have heard a lot of oratory today and I think sometimes it moves people to go a little further than they intended. For instance, my noble friend Lord Deben said that anyone who opposed the amendment did so out of ignorance or something—

Lord Deben: I am sorry. If that was said, it was a mistake. I said that, were we to pass this amendment, some people outside, either through ignorance or bad will, would use it in a way which would be damaging and divisive.

Lord Elton: I am delighted. I can move swiftly on to my other small, brief point, which is simply that after a battle the battlefield is covered with broken lances, some of which are worth picking up and mending. We have to distinguish between “equal” and “the same” and difference has to be understood. Underlying this there is an assumption that if something is different it cannot be equal. I ask your Lordships to look at other noble Lords around the Chamber for a moment or two and remember that this is a House of Peers. We are all equal and, by gum, we are all different.

Lord West of Spithead: My Lords, in the mid-1990s I was the Naval Secretary with responsibility for naval personnel and the Special Investigation Branch. On taking up that post, I discovered the degrading treatment that was meted out to people suspected of being gay, who had anonymous phone calls made about them. It was still illegal to be gay in the services. I was shocked and appalled at how gay people were treated. I stopped that behaviour immediately and then pushed very hard to allow them to be accepted in the Armed Forces. Thank goodness, that happened because it worked brilliantly and it is a good thing to have done. We have a terrible baggage from how we have treated homosexuals and lesbians in this country, as was said by the noble Lords, Lord Deben and Lord Fowler, and others. I am afraid that this is a wrecking amendment. When I came into the Chamber, I did not know how I would vote on the amendment. However, having listened to the arguments put forward, I fear that this is a wrecking amendment. The noble Lord, Lord Pannick, is absolutely right: every marriage is different. Will this demean my marriage? It will not do so at all. I believe that the people we are discussing should have the opportunity.

Baroness Howarth of Breckland: My Lords, I have not made a speech in this debate, just two short interventions, and I wish to speak briefly now. Having talked to dozens of gay people recently and to my ordinary friends who wanted to discuss the Bill, it is clear that the only thing gay and lesbian people want is to be treated as ordinary people. They do not want to be (extraordinary) people. People who are on the receiving end of prejudice, particularly when they are practising Christians and live profoundly Christian lives, know what those brackets mean. They mean that you are different; you are not ordinary. Being ordinary means living in your community and bringing up children—maybe lots of children. It means going to church regularly and being accepted on the same basis as every other Christian in your community. It means sharing with your fellows on an equal basis. Gay and lesbian people do not want brackets as they make them different and will make them even more different as they travel across the world. I beg your Lordships, in common decency, to give gay people what they want: simply to be ordinary.

Baroness Thornton: My Lords, I ask your Lordships not to be seduced by the honeyed words and assurances of the noble and learned Lord, Lord Mackay of Clashfern, of whom we are all extremely fond and for whom we have the most enormous respect. However, assertions about consummation

[BARONESS THORNTON]

and children, for which there is really no evidence, are nothing to do with this Bill. The effects of these amendments are the same as those introduced in Committee at the beginning: that one form of marriage is different and therefore probably inferior to another. This completely flies in the face of the Bill's purpose.

We are all much aware of the noble and learned Lord's concern about family and children, because he has spoken about them many times in this Chamber. However, with respect, these are not the issues being discussed in this Bill. I agree with many noble Lords who said that this will probably be known as the "brackets" amendment. We do not want or need brackets in this Bill, because its very purpose is to provide for the state to recognise equally the relationships of couples who wish to make a loving and lifelong commitment to each other, regardless of whether they are between members of the same sex or of the opposite sex.

I accept that this purpose moves the statutory concept of marriage beyond that which proponents of traditional marriage agree. This amendment is about creating two classes of marriage. I congratulate my noble friend Lord Anderson, who spoke of celebrating his special wedding anniversary, but I hope that I will live long enough to celebrate silver wedding anniversaries of same-sex marriages which will take place next summer. My noble friends Lord Alli and Lord Richard, and the noble Lords, Lord Fowler, Lord Deben, Lord Pannick and Lord Lester, put the case powerfully and well.

I am surprised by the opposition to equality of marriage from the noble Earl, Lord Listowel, given his work with children, for which he is famous in this House. If he had discussed this with young people, as I have, he may find that in most cases they really do not understand what the fuss is about or what the problem is here. I do not think that the problems faced by the types of young people the noble Earl helps and supports are a result of, for instance, the proposal for same-sex marriage. That cannot be the case.

I would say to the noble Lord, Lord Waddington, that I have not seen any hostility to the church during the course of these discussions. My noble friend Lady Royall and I have met both the Church of England and the Roman Catholic Church on several occasions throughout the course of this Bill. They were friendly exchanges and friendly discussion. We disagree with each other on some of this Bill, but I have not seen any unfriendliness, nor do I think that the dismal picture that the noble Lord paints will come to pass.

I do not think that the word "wife" will be abolished. As a wife, I certainly do not think so and I hope that nobody will put any ideas into my husband's head. We wives are probably very safe with the passage of this Bill. My noble friend Lord Alli asked the question, "Why do same-sex couples have to have bracketed marriages?". I agree with him that it is a bad idea. We should defeat this amendment.

Baroness Stowell of Beeston: My Lords, I am grateful to my noble and learned friend for introducing his amendment and for all the contributions to the debate. One or two noble Lords referred to this issue as being complex. I disagree with them. What is before us is

very simple. There is one institution of marriage, it is one of the most important institutions that we have, and we want gay and lesbian couples to be a part of it in exactly the same way as any other couples who wish to be married. These amendments create two separate, potentially legal institutions and, therefore, undermine the fundamental purpose of the Bill, as other noble Lords, including the noble Lords, Lord Pannick, Lord Alli, Lord Deben and Lord Richard, have said.

Every time that we have introduced a change in support of gay rights, it has been hard-fought for and not always been easy to progress. None the less, it has made it easier to take the next step. Each step makes it easier for gay men and women to live their lives in the same way as straight men and women. I noted what the noble Baroness, Lady Howarth, said about gay men and women wanting to live ordinary lives. The more that we allow them to do so, and to see them doing so, the more it leads us to believe that we should remove from them any barriers to being able to do just that.

The creation of civil partnerships was a massive step forward. Through them, we gave gay couples equal rights. I was not in Parliament at the time, but I guessed that Parliament decided that the difference between us justified keeping gay men and women out of the institution of marriage. However, over the past eight or nine years, as we witnessed civil partnerships taking place and have become familiar with couples in civil partnerships, we as a society have realised that the exclusion of gay men and women from marriage is not justified.

My noble friend Lord Cormack said that he wanted us to reach a compromise and that the amendment represented that. I say to him and to all noble Lords who support him and these amendments that the time for compromise is over. We now understand that serious relationships between gay men and between gay women are no different from serious relationships between straight men and women. I have said many times during the passage of the Bill that gay couples want to settle down for exactly the same reasons as all other couples do. They are two people who love each other, want to commit to each other, want to provide security and stability for each other, and want to be a team, a partnership and to support each other. Like straight people, that is what leads gay people to want to marry. There is no difference there between us.

My noble and learned friend Lord Mackay pointed to differences and raised the issue of procreation and children to illustrate his argument. The Bill as it stands distinguishes between same-sex couples and opposite-sex couples only as far as is necessary to achieve a practical result. My noble and learned friend talked at length about children. In response, I should make just a few points. The first, which is really important, is that if we enact the Bill, the children of same-sex couples will be able to enjoy the same status as other children. That is a fantastic thing to be able to achieve. It will mean that children at school will not be treated differently, as their parents will be married in the same way as other parents may be.

4.45 pm

My second point is that the Bill does nothing to change the parental status and responsibility for children born to a woman married to a woman or a child adopted by two men. I set out this in great detail in a letter to the right reverend Prelate the Bishop of Guildford after the debate on parental responsibility in Committee. The paragraph in Schedule 4 to the Bill which refers to parental responsibility does only one thing—it makes clear a statement of biological fact. A child born to a woman married to a woman is not biologically linked to both spouses. However, it is important to stress that, through this Bill, everything that already exists in law about parental responsibility for children—whether they are children born through IVF or adopted—or any other measure that safeguards their future, which is important, will not change; we are not changing anything in that regard.

The noble Earl, Lord Listowel, referred to the importance of both parents of a child being able to provide support to that child and the child succeeding. He questioned whether there was any evidence about how a child thrives in the family of a same-sex couple. I should say to the noble Earl and to all noble Lords that there is clear evidence that the children of same-sex couples do very well indeed. Research shows that they do better than children of opposite-sex couples. So there is evidence there. There is no evidence to suggest that a child who is part of a family where the parents are a same-sex couple should give any cause for concern.

My noble friend Lord Waddington said that we have rejected the view that marriage can only be between a man and a woman and that it was only right, therefore, that we consider these amendments because we were not taking that belief into account. I disagree with that. As I said at Second Reading, this Bill is as much about protecting religious freedom and the belief that people should be absolutely free to hold and express the view that marriage should be between a man and a woman. However, for all the reasons expressed by many noble Lords during today's debate, we are not going to legislate in a way that creates two separate types of marriage.

The key point I want to make is that gay men and women want to marry because they support the institution of marriage and want the stability and security it offers. They do not want to change it. They want society to recognise their commitment to each other in exactly the same way as it does for every other couple.

The Government want to make that happen. As I said at the beginning, there is one institution of marriage and we are opening the door to it. We do not want to open a separate door marked "same-sex couples". There will be only one door and all couples will be invited to walk through it.

The Earl of Listowel: I thank the noble Baroness for her reply to my question about research into outcomes for children of same-sex couples. It is encouraging and reassuring, to some extent, that there is positive research about the experiences of two women bringing up a child. However, is she aware that it is still early days in terms of research? We have not, for instance, looked very deeply at what happens to children being brought up by two men. We have not looked at issues around

lower income couples and the outcomes for them. Surely we need to keep in mind, and be critical about, all the research because we know, for instance, about poor outcomes for boys who grow up without fathers. We need to look at the research critically because it is still early days.

Baroness Stowell of Beeston: I would disagree with the noble Earl's suggestion that there is a difference in outcomes for children of same-sex couples, but that is a debate for another day. That argument, and the points he makes are not relevant to the amendments before us, which are about creating two different types of marriage. We are saying that there is only one institution of marriage, and both gay and straight couples who want to get married should be able to be part of that one institution on equal terms.

Lord Mackay of Clashfern: My Lords, I am obliged to all those who have taken part in this debate, whether supporting or opposing my amendment. It is interesting to hear what people have to say. I quite understand that the noble Lord, Lord Alli, does not like the brackets, but they have been put in by Government in the Bill's Title. I thought, what else can I do but accept the Government's guidance on the matter? However, I think perhaps that that is not the noble Lord's most important point.

My noble friend Lord Deben, in a characteristic speech, said that the distinction between the two types of marriage was universally recognised, so why should it be recognised in the Bill? If it is universally recognised, surely it would be right to recognise it in the Bill because it is founded on the absolute fact of what occurs. The two are distinct. I do not try to separate them; I just distinguish because they are distinct in fact, and nobody can alter that. The idea that I am trying to wreck the Bill is not correct, I am sorry to say—well, perhaps I am not sorry; I should be glad to say that it is certainly not correct. I want to recognise in the Bill a distinction which, according to my noble friend Lord Deben—and who higher an authority?—is universally recognised. It damages the Bill in the eyes of ordinary people when it is not seen that that is recognised.

My noble friend said that I went on at length about children. I am sorry if I went on too long, but it is a very important factor. Children are very much at the centre of the institution of marriage as it was—and is until the Bill is passed. They are very much at the centre, and indeed, as your Lordships know, in relation to divorce and all that, elaborate provisions were made for children. Children are very important to marriage. There is a statement about children in the Bill which I regard as very important. Paragraph 2(1) of Part 2 of Schedule 4 states:

"Section 11 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband ... Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child's parents are".

Therefore, the situation is that when two women are married under the Bill, and one of them has a child, that child has the same status as if the woman were single. If that is not a distinction—it should be recognised at some point, whether in brackets or otherwise—I do

[LORD MACKAY OF CLASHFERN]

not know what an important distinction can be. If the Government want to improve on the brackets, I shall be happy that they should do so, but I believe that there is a universally recognised distinction between the marriage of two men or two women on the one hand and the marriage of a man and a woman on the other. These are facts that depend on something outside, and impossible to move, or remove by this legislation. The Bill would be improved by people realising what it does and recognising this universally understood distinction.

My noble friend Lord Lester quoted from the dissenting judgment of one of the Justices of the Supreme Court of the United States. He distinguished between the two types of marriage: the one slightly older and the more recent one. I want to include in the Bill recognition of that distinction. The quotation of the noble Lord, Lord Lester, seemed to imply the necessity for some form of sexual relationship in both types of marriage. I pointed out, and I think it has been accepted so far, that same-sex marriage is not gay marriage—it is quite wrong to describe it thus. It includes gay marriage, of course, but it is wider because it involves same-sex couples, whether gay or not. Platonic relationships are perfectly possible under the Bill.

Lord Lester of Herne Hill: I am grateful to the noble and learned Lord. The reason I was quoting Justice Alito was simply to say, as he did, that the choice is for the legislature, and that we have in the Bill protected both kinds of marriage. That is why I did so.

Lord Mackay of Clashfern: Exactly, the choice exists. We have chosen—I want to make it clear that we have chosen—to embrace both in our definition of marriage because that is what I am doing. The idea that my noble friend Lord Lester suggested, that I preferred one to the other or said that one was superior to the other, is quite unfounded so far as these amendments are concerned. There are later amendments that may go further, but this amendment strikes me as the absolute minimum to recognise the distinction that exists in fact. I moved the amendment and I would like to seek the opinion of the House.

4.57 pm

Division on Amendment 1

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5.13 pm

Amendment 2

Tabled by Lord Mackay of Clashfern

2: Clause 1, page 1, line 6, leave out "The marriage of a same sex couple" and insert "A marriage (same sex couple)"

Lord Mackay of Clashfern: My Lords, I give notice that, following that vote, I will not move a large number of other amendments in my name.

Amendment 2 not moved.

Amendment 3

Moved by Baroness Cumberlege

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

“(6) Any duty of a person employed as a registrar of marriages on the date this Act comes into force (“relevant registrar”) to solemnize marriages is not extended by this Act to marriages of same sex couples if the relevant registrar has a conscientious objection to doing so.

(7) Nothing in subsection (6) shall affect the duty of a relevant registrar to carry out any other duties and responsibilities of his employment.

(8) The conscientious objection, under subsection (6), must be based on a sincerely held religious or other belief concerning only the marriage of same sex couples and in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.”

Baroness Cumberlege: My Lords, in Committee, I introduced an amendment that allowed civic registrars to exercise a right to conscientiously object to conducting same-sex marriages. Although there was some support for that amendment—in fact, there was quite a bit—I sensed there would be much more support for a transitional amendment that would protect only registrars in office now; they would be protected only once the Bill becomes law. These men and women are already in post and were, in effect, exempt when the law on civil partnerships was introduced in 2004. I am very grateful to the noble Lords who have put their names to this much narrower and more focused amendment, and to those who wished to put their names down. They were restricted by the fact that only four names are allowed.

We understand the nervousness about allowing future registrars to object conscientiously, but why not take those who are in office now? Without protection, those registrars will be faced with an impossible position: resign and face possible unemployment, given how difficult it is to find a job in today’s labour market; or stay and act against their conscience. The lack of protection is unfair and inconsistent with other areas of law, and it will unduly limit the freedom of thought, conscience and religion.

We need to be fair to all. We need to ensure that those who wish to can exercise a conscience clause and that those who want a same-sex marriage can marry. Nothing in the amendment would prevent couples of the same sex marrying. In the spirit of tolerance and respect, we have considered and dealt with almost every concern put to us in this House and the other place. The noble Baroness, Lady Thornton, asked whether a previous amendment would open the door to registrars conscientiously to object to other things, such as mixed-race marriages. That was never our intention, and this amendment makes it clear beyond doubt that registrars will be able to object conscientiously only to same-sex marriages. We have done so by making it absolutely clear in proposed new subsection (6) that the conscientious objection applies only to the solemnisation of marriages. That is reinforced by proposed new subsection (8), which states that the religious or other belief on which the conscientious objection must be sincerely held must concern only the marriage of same-sex couples. Any other conscientious objection to marriage will not be covered by our amendment, so it will not allow registrars to object to conducting marriages for any other reasons.

The noble Baroness, Lady Barker, seemed concerned about the scope of our previous amendment. She was under the impression that it would allow registrars conscientiously to object to more than the conducting of marriage. She was concerned that a registrar could, for example, sit in a register office at interview and refuse to assist any same-sex couple. Again, that is not what we intended. Therefore, our amendment has been revised to make it abundantly clear in proposed new subsection (6) that a registrar may conscientiously object only to conducting a same-sex marriage. Proposed new subsection (7) puts that beyond doubt by stating that any other activities will not be covered. Our amendment will not allow registrars to treat same-sex couples differently; it will merely allow them to refrain from solemnising their marriages.

I stress that our amendment is not unprecedented; it is nothing new. My noble friend, replying to the debate in Committee, attempted to draw a distinction between our conscience clause and others found in English law. I drew the attention of the House to numerous other cases, such as a doctor’s right to refuse to give contraceptive advice, a person’s right not to participate in work involving the treatment and development of human embryos, and the right of a Sikh not to wear a motor cycle helmet or a safety helmet.

Although the protection for teachers is not explicitly framed as a conscience clause, such as in our amendment, it operates like one nevertheless, because it also allows atheist teachers to refuse to conduct religious education without suffering any detriment. That operates at voluntary-aided faith schools and, interestingly, at non-faith schools. I am not saying that the registrar scenario is like that of a doctor not giving contraceptive advice or a teacher refusing to teach religious education.

Those conscience clauses and others—of which there are many—are all different, and they all allow a person to refrain from undertaking different activities. The difference did not prevent conscience clauses in those cases, so why does it in this case? What makes registrars are so different as to warrant their forcible registration? Is the belief about marriage not as valuable as a belief about contraception? Is the belief about marriage not as worthy of protection as a teacher’s conscientious objection to teaching religious education? It is not, with the greatest respect, an answer to say that they perform a civil or a public function because doctors, medical professionals, teachers and so on, all of whom have the right to object conscientiously to some activities, also perform public functions for civil society. Not only is it therefore not fair to force all registrars currently in employment to conduct same-sex marriages if they conscientiously object to them, it is also unnecessary.

I am grateful to my noble friend for copying to noble Lords a letter from the chairman of the national panel for registration, but it takes us no further. Jackie Bugeja, with whom I had a very interesting and long conversation, does not tell us in her letter, when referring to three consultation meetings, how many registrars attended each meeting. Only one or two registrars could have turned up, for all we know. Were the

registrars who were not present asked for their opinion? For those who were, was there a general discussion or a confidential questionnaire? What was the format? In conversation, Jackie could not tell me how many registrars were canvassed for their views. She said that it was left to local discretion within a local authority and that there was no follow-up by the panel.

We have not been able to find the minutes of the meeting of 2 June 2012. If there was no confidential questionnaire, registrars could have been reluctant to voice opinions. They could have risked disciplinary action being taken against them or being dismissed, as experienced by the unfortunate Miss Ladele. The second meeting was simply for 10 managers, whom we know are fearful that a conscience clause might cause them managerial inconvenience. Who attended the most recent regional meetings, held last month? Was it again just the managers, and how and where were those meetings held? What was the format and where are the minutes published for such an important issue?

The letter makes a series of unsupported statements, including that for the past 176 years registrars have been carrying out their duties and have never wanted a conscience clause. Of course they have not; they have never needed one. Local authorities up and down the country were able to accommodate their registrars' conscientious objections. When an authority did not, it was taken to the European Court of Human Rights. The Joint Committee on Human Rights recognised the argument that registrars currently in office would not be free to hold to their beliefs if they were automatically designated as same-sex registrars. I welcome this conclusion and I urge noble Lords to support and accommodate the registrars currently in office. It is the right and the fair thing to do. In the spirit of tolerance and freedom of the individual, which is the hallmark of this House, let us together protect the registrars' freedom of thought, conscience and religion. With this very modest but important amendment, we seek to do that. I beg to move.

Baroness Williams of Crosby: My Lords, I am a signatory to this amendment. I realise that the time is going by and I shall make my remarks in support of my noble friend Lady Cumberlege brief ones. Interestingly, there is a real dilemma here about both equality and liberty. Although the amendment is brief and limits itself to a modest request, it has considerably greater implications than may at first be realised.

A registrar is the first step towards a career in public life for a great many people. It is a job which they do for the community and one in which they reflect their community's interests and concerns. It is a crucial step on the path towards the integration of different minorities, regardless of religion, language or earlier origin. It is therefore all the more important in communities where a large minority is present—let us say Muslims, or other religious groups—to make it possible for them to become registrars. To my regret, this amendment is limited quite deliberately to those already in office. I personally think that it would be better if it applied to anyone applying for this job, which, I repeat, in my view at least is the very first rung of a professional career in public life.

I shall take this one step further. There are some religions that, for deeply held principles, very strongly cannot accept the idea of single-sex marriage. That includes most of the Muslim faith and those who are supporters of Orthodox Jewry. It seems only right that registrars who hold those faiths, and who have done their job properly and intend to go on doing it well, should not be excluded from entry into that profession or, even worse, forced out of it when they have already been in it for several years and have performed satisfactorily. I can think of almost nothing crueller than to announce that after two or three years a registrar who has been behaving himself or herself in an upright and proper manner should be compelled to leave their job, often at a time when they have children and other responsibilities, because of this legislation. I cannot for the life of me believe that most people in this Chamber who believe in equality and human rights would want to see that happen.

Frankly, I do not understand why this relatively limited change could not be made easily to permit people to make this decision on conscientious grounds—for example, as my noble friend said, in cases of giving advice on contraception or taking part in abortion. This very limited right, linked to one particular thing, would allow their conscience to be exercised.

I have two important points to add on this. The numbers concerned would be relatively small. I have recently looked at the record following the passage of gay rights in Spain, and one is talking of a few score people every year. That means that any decent register office could easily, by dint of rotation or of acceptance, treat this rather in the way that they do, quite properly, in the case of a registrar or an assistant registrar who becomes pregnant, covering for them in their enforced absence. That happens to all of us virtually every day of the week in existing forms of employment. It happens to civil servants, lawyers, teachers and doctors, and there is no reason on earth why it could not happen to registrars.

I have to say to the Minister that I find this insistence on such people not being able to have a conscientious objection puzzling, given that we know in advance that certain religions will find this very hard to accept. On the kinds of grounds that my noble friend has already talked about, it would seem sensible to make this exception in such cases.

I believe that this is genuinely a conflict about equality and liberty. I personally believe very strongly that opening the doors of becoming a registrar to people of all races and religions of this country is an important tool in advancing the integration of our communities. I point particularly to those communities in the Pennines and other parts of the country where there may be a very substantial minority, or even sometimes a majority, of Muslim British citizens, and we should ensure that they, too, are treated in an absolutely equal way.

I strongly commend my noble friend's amendment. I add one thing to what she said about attempting to discover the opinions of registrars. It is always a mistake to ask the opinions of managers about the views of the people they manage, unless you have a proper method of discovering what they are. Surely we

know from the sad history of Mid Staffs that one of the things you should not do if you smell difficulties is to talk to the top management and assume that they truly reflect what the ordinary, everyday workforce thinks, because often they have a very strong in-built desire to avoid any problems of managerial difficulty, which they always see as too big an obstacle. I strongly support my noble friend's amendment.

5.30 pm

Baroness Butler-Sloss: My Lords, I too have put my name to this amendment. It is a narrow and transitional amendment and does not in any way affect the fundamental underlying purpose of this Bill. Marriage registrars carry out a particularly attractive job. On the number of occasions where I have been to a civil ceremony, I have watched, with mounting enthusiasm, the way in which the registrar has made the marriage ceremony a really important occasion. I assume—and, indeed, I hope, since this Bill will become law—that the majority of registrars will give the same enthusiasm and pleasure to the single-sex couple as I have seen them do in those services. I am about to go to yet another great-nephew's wedding, which will be a civil ceremony.

However, when a number of registrars took the job, the idea that marriage would be between single-sex couples was not even a blink on the horizon. I can understand perfectly well that those who come in in future will take a job in which they recognise that they will marry everybody, whether that is two males, two females or a male and a female. For those already in the post, for the reasons that the noble Baronesses, Lady Cumberlege and Lady Williams of Crosby, have both put forward, this is a small and special group. It would be particularly sad if, having given to the minority in this country the right to marry in the same way as the majority, that we cannot recognise that there remains a minority who cannot take it. Are we to say that that minority, those who came into post before one ever thought there would be same-sex marriages, is not to be recognised at all?

As has already been said by the noble Baroness, Lady Cumberlege, what will these people do if they cannot marry but are ordered to do so? If this Bill will not permit them by the amendment to say no, will they have to resign? Will they get a job in this time of stringency and austerity in which we now live, when the job market is difficult? I ask the House to think about a small minority who would have had no idea that this would happen, and whose Christian beliefs would not permit them to marry the couples who will be able to marry by this Bill.

Lord Lester of Herne Hill: Will the noble Baroness explain why, when we brought in the race and gender discrimination and other controversial legislation, we never made transitional provision for those public officers to be able to discriminate, as they had been before, that we should now do so with this form of discrimination?

Baroness Butler-Sloss: It happened with abortion but, if I may say so, it was not a marriage. We all know how special marriage is; for goodness' sake we would

not all be here, voting in different ways, if we did not think that marriage mattered in a special way. It is for that reason, despite what the noble Lord, Lord Lester, says.

Lord Anderson of Swansea: Is the distinction not this: that there is no mainstream church, be it a Christian church or a Muslim group, in this country which believes in the principles of racist intolerance, whereas there are many mainstream people, Muslim and Christian, who do believe in traditional marriage? It is quite a simple distinction, which perhaps the noble Lord will consider.

Lord Pannick: My Lords, I—

Baroness Butler-Sloss: I had just about finished, but I had not actually sat down. I just want to say that I think this is a rather special, entirely transitional and narrow matter which I ask the House to treat with some degree of sympathy. It is rather different from the last vote that we had, which was on an important and fundamental point. There is nothing fundamental about this; it is a matter of helping a small minority.

Lord Mackay of Clashfern: My Lords, I put my name to this amendment too. I do not think that the fact that it is a public office is a distinction that is important. The important thing is that the law is changed after somebody has taken a job, and that law affects the conscientious view that that person has of the job. The nearest thing that came to my mind, in my own experience and connection with this, was when Sunday trading was introduced, again on a free vote. Those who were employed were given terms in relation to that. It seems to me that some such allowance is only fair, and fairness should apply in public offices as well as in private offices.

Lord Pannick: I apologise to the noble and learned Baroness. For my part, I cannot accept that a public official is entitled to protection against the requirement to perform his or her basic obligations in relation to the official duties which they are contracted to perform. As was pointed out in Committee, a judge or a magistrate who administers the law of the land cannot refuse to administer laws to which he or she objects. The law may well be clarified after that judge or magistrate has been appointed. No doubt some registrars have a conscientious objection to marrying divorced couples; I cannot see that a conscientious objection to same-sex marriage is any different.

Of course, as has been pointed out, the law does allow, in various contexts, for conscientious objections, including doctors and abortion and teachers and religious education. Sunday trading was mentioned by the noble and learned Lord, Lord Mackay of Clashfern. The difference, as I see it, is that the registrar is performing the function of the state, and the function of the state in this respect is to marry people. The law, not the registrar, determines who is eligible to marry. It is unfortunate if registrars take the view that they cannot continue to perform this role, but no one is asking them to approve of or bless same-sex marriage; all that they will be required to do is to perform the official function that they have contracted to undertake.

Lord Elton: Before the noble Lord sits down, I wonder if he could enlighten me; I am only an ignorant layman. Am I right or wrong in believing that judges can in fact pass a case to another judge if they have difficulties with it, such as we have been talking about?

Lord Pannick: I am not aware that judges have an ability to refuse to hear and determine cases on the basis that they disapprove of the particular law of the land that they are charged with the duty to enforce. They accept as part of the job that their job is to apply the law; the law is made by Parliament.

Lord Deben: I believe that on this occasion we should remember what we have just done. We have just asked those who disagree with the view that I and others have taken, to understand why it is that marriage has to be the same for both single-sex and opposite-sex couples. Those of us who have done that have now got to think carefully about opposing this amendment. I support this amendment because I think generosity ought to be at the heart of everything that we do. I do not understand why it is unreasonable to say that those people, who took on a job with particular rules and very clear circumstances, should now be unable to carry through that job in the context of wider views and beliefs. It seems to me a very small thing indeed, but it is crucial to say this about the society we live in.

I remember the disgraceful behaviour in a previous Bill because of which many children have not had the opportunity of being adopted because we did not allow those for whom this was a matter of belief to continue to run adoption agencies unless they were prepared to offer for adoption children from same-sex marriages. As all those agencies always passed people on to those adoption agencies that did do that, there was no reason to do it, except that sometimes we mistake toleration for agreement. In other words, what we mean by toleration is that we should tolerate those things with which we agree. I think toleration is about being prepared to tolerate those things with which we do not agree.

I cannot see the comparison between the judge and the registrar. The job of the judge is consistently and continuously to interpret the law. He or she knows from the moment when they accept being a judge that that is what their job will be. They know that in future there may well be laws with which they do not agree, so it is perfectly proper to insist that they should use their technical ability to impose sentences for things which perhaps they feel ought not to be crimes or, the other way, to be less strict on things which they think ought to have been much better assessed by Parliament. But that is not true of registrars who are now registrars. There must be many who never thought that this change would take place. It has been a remarkable change in human society. It is one I wholly approve of, but I cannot pretend that it has not been very rapid.

Therefore, I ask this House to accept this in the same spirit that we who have sought to get this Bill through have asked others to accept something that is so different from the way in which they have previously thought. I hope that we will be magnanimous and generous enough to say that this is, after all, something that could properly be done, because it will not be for

ever; it is merely referring to those people who are now in place. I would have much more difficulty were it not doing that. It seems to me that we ought to be a society capable of including this because, if we are not, we give to those who do not want the changes here every reason to believe that we have put intolerance in the place of a liberal approach.

I hold it to be one of the great achievements that we have reached this way of looking at our fellow citizens. We ought also to think of those who through no fault or choice of their own were unable to imagine that they would now be asked to do this. After all, it is a terribly simple matter. We are just making sure that, when such a thing arises in a registrar's office, Mrs Jones or Mr Smith is not asked to perform that particular ceremony. If this House cannot see that that is the same spirit as the spirit that puts this Bill through, we must be much mistaken.

Baroness Richardson of Calow: My Lords, I recognise what the noble Baroness said about how important it is for a marriage to be conducted in a very proper way. Sometimes the presence of a registrar can make a marriage very special, but the registrar is invited to register a marriage, not to make it or to bless it. If he or she does not register it, someone else will have to. It is not going to make a difference to whether that marriage takes place. We need to have concern for smaller registry offices that do not have a huge number of registrars and which would have to make a rota that took into account people's sensitivities. This is going a step too far.

Lord Alli: My Lords, we debated at Second Reading and in Committee the rights of this group of employees not to conduct same-sex marriages. I understand that it might seem unfair to some that registrars who do not approve of gay marriage should have their jobs put at risk if they refuse to marry same-sex couples. Registration is the core of what those public employees do. It is not an add-on. It is their refusal to do a substantial part of their job that creates the issue, not their religious belief. We divide church and state, and I think it is dangerous to let church bleed into state functions. I believe that every citizen of this country has a right, regardless of colour, creed, background, religion or, indeed, sexual orientation to have equal access to the goods and services offered by the state. We all pay for them.

5.45 pm

Lord Deben: That would be a reasonable argument and one that I would support for people in future, but does the noble Lord accept that there ought to be some generosity towards those who have chosen this profession and for whom the matter of registration—and it is that—stretches their beliefs to a degree that means that they cannot do it? It is not for us to decide what is a proper belief; that is one result of a division between church and state. We ought to be able to allow the small number of those for whom this is true to continue in their jobs until they move on.

Lord Alli: I do not believe that it should be up to public servants to pick and choose which laws they will and will not implement. This is not a religious ceremony.

Baroness Williams of Crosby: Would the noble Lord, Lord Alli, consider looking at other countries and at what has happened in cases where public servants have questioned the conscience of the state in asking them to do things that they believed to be deeply wrong? How much we all feel in debt to those brave people who stood up in countries such as Germany in the 1930s, and elsewhere, because they believed they had a conscientious objection to what the state was ordering them to do.

Lord Alli: I understand the point the noble Baroness, Lady Williams of Crosby, is making, but it undermines her argument when she and the noble Baroness, Lady Cumberlege, seek to rubbish the national panel for registration and the opinions it gave and question the core of what registrars are saying. They are saying that they do not want this.

In Committee, I said that we have to divide church and state, and this is the other side of the coin. If the noble Baroness, Lady Williams of Crosby, wants me to accept what she just said, would she accept that the church has made very clear that it wants an absolute opt-out? It has insisted, quite rightly, and I am happy that it has done so, that any individual priest or cleric, no matter how strong their belief in same-sex marriage, should not be allowed to opt in until the religious organisation has agreed. There is a blanket exemption, so if I were a priest—the Bishop of Salisbury—and I deeply believed that I should be allowed to marry gay couples, why could I not opt in? There is a blanket ban from the churches. Individual opt-in and opt-out are not on the table. The churches themselves ruled it out at the beginning of this process. No priest can opt in; no registrar can opt out. If we accept the case for religious organisations barring individuals from opting in, we, too, must accept the case for civil registrars not being able to opt out. We have discussed this issue at length; we need to resolve it today.

Lord Lester of Herne Hill: My Lords, I cannot remember whether the Race Relations Act 1976 had already come into force when I got married 41 years ago in the Brixton register office. However, suppose that that Act had not come into force at that time. In Brixton, there are a lot of black people. If I had wanted to marry a black person and we turned up at the Brixton register office, where the registrar looked at us and said, “I’m very sorry, but I have a conscientious objection to mixed marriages. I don’t wish in any way to undermine you, but I just can’t do this”, that would be impermissible. A public servant who is performing statutory duties must not discriminate on any forbidden grounds.

Lord Cormack: Will my noble friend concede that there is a difference between racism, which is bigotry, and a deeply held belief?

Lord Lester of Herne Hill: My Lords, I understand the difference. Bigots normally have deeply held beliefs. My point is not about the sincerity of the belief but the discriminatory conduct of a public officer. We have never before, in the various phases of introducing and enacting—

Baroness O’Loan: The noble Lord said that that would have been possible only in cases where one is lawfully permitted to say, “I cannot marry you”. The noble Lord said that it was for Parliament to decide. If that is the case, what we are trying to decide here is: what does Parliament want to decide? We cannot make a decision until we have decided it, so the question must be open. We have situations in which Parliament has decided that it is perfectly legitimate for someone to exercise their freedom of conscience—

A noble Lord: Ask the question.

Baroness O’Loan: I am asking the noble Lord the question. Surely the noble Lord will agree that there is an exception in that situation in which Parliament has decided. We could make another exception.

Baroness Northover: My Lords, before the noble Lord answers, I remind the House that noble Lords can be interrupted with a brief question for clarification. Noble Lords have an opportunity to make a speech—one speech.

Lord Lester of Herne Hill: My Lords, of course Parliament may decide to create an exception through this amendment. I am explaining why I could not support it. The first reason is that it would legitimise discrimination by public officers who are performing their statutory duties. My noble friend Lord Deben says, “Let’s show a bit of generosity”. I reply, yes, let us show a bit of generosity to those who would be the victims of this practice, who would find that they could not have a civil marriage registered by a public official—that is all it is—because of his or her conscientious objection.

Lord Deben: I am sorry, but surely that cannot be true, because the case would never get to that. You would know that if a same-sex marriage had been offered, there would be a registrar who would be willing to do that. It would be privately arranged; there would be no victim in this. That is clearly different from what my noble friend says.

Baroness Northover: My Lords, I apologise, but we are moving away from brief questions of clarification and on to debate, which is permitted in Committee, but we are now on Report. Noble Lords will have a chance to speak if they have not already done so.

Lord Lester of Herne Hill: My Lords, my last point is simply that this is a very old story. In the case of Ladele, which was one of the cases that went to the Strasbourg court, our courts decided that a registrar could not exercise conscientious objection in relation to civil partnerships. The Strasbourg court upheld our domestic courts’ judgment to that effect. My noble and learned friend Lord Mackay of Clashfern took objection to it and we debated it at the time. The current position is that, under Strasbourg law as well as domestic law, there is no right to conscientious objection in this context, and nor should there be.

Baroness Knight of Collingtree: My Lords, in the first debate on the Bill, I warned that we were losing the right to have and live by a conscientious objection all the time. I gave a number of instances, one of which has been referred to today, which was the simple and widely known fact that all Catholic adoption agencies have had to close because they are not happy about putting a child in a home where there are two men or two ladies. I agree completely with what was said in the earlier debate about the monstrous way that we in this country and, I am afraid, other countries have treated homosexuals in the past. However, those who point out how wrong that was are saying, “But it’s only wrong up to a point. We can demand that other rules are made that aren’t fair”. More and more I come to the conclusion is that one person’s human rights are the denial of another person’s human rights.

We agreed years ago—I think the first well known example occurred during the First World War—that people were able to have a conscientious objection to fighting. They were given other jobs, which were extremely important in the war effort, and that happened in the last war, too. We must guard and guide that trend. It is woefully and obviously wrong to say today that it is right that conscientious objections shall, in certain circumstances, be smothered. It has to be wrong. We must stand and defend those conscientious objections.

I am also very concerned about what the noble Baroness, Lady Williams, said. She pointed out, unless I misheard, that being a registrar was the first step to a whole career. The fact that apparently we can do nothing about these future circumstances must mean that many people will not be able to go into the career that perhaps they have planned for many years. I urge noble Lords to recognise that it is very dangerous for a free country to deny a person’s right to live by their conscience. We may not agree—it is not important at all—but everybody has a right to their conscience and to live by what it tells them. It is only fair to say that we must try to give the same human rights to everyone.

I know that the noble Lord, Lord Alli, is a fair man. I think that when he considers again his suggestion that just because you have a certain job you should be forced to act against your conscience, he will see that that is the wrong road to take. I support, with many congratulations, those noble Lords who put their names to this amendment, the aim of it and what will happen. I am quite sure that plenty of other registrars who do not hold the same view will be available, and couples who wish to be married will easily be able to be married by them.

Lord Higgins: My Lords, the crucial point is that we have to take account of the fact that some individuals may be affected. What representations have been made on their behalf is not the point. We need to allow for the fact that some such individuals may have serious grounds of conscience. I turn to the point made by the noble Lord, Lord Pannick. He says that these people have a contract, as registrars, to carry out marriages. However, the crucial point is that the marriage that they are now asked to carry out is not what they understood marriage to mean when they signed the contract. We have to take account of the fact that we

are changing the rules after they have accepted the job. On a purely transitional basis, there is an overwhelming case for us to agree this amendment.

Lord Wills: Before the noble Lord sits down, is he saying that it is completely unreasonable to expect a registrar, in this modern day and age, not to have foreseen that the current measure would come before Parliament at some point in the foreseeable future? Does he think that that is an unreasonable proposition?

6 pm

Lord Higgins: I had already sat down. However, it seems to me that there is no reason to suppose that anyone would have anticipated this. When I led from the opposition Front Bench on same-sex partnerships, no one envisaged this; indeed, a number of people said that it was not going to happen.

The Lord Bishop of Chester: My Lords, the vision of the noble Lord, Lord Alli, as a bishop of the Church of England being constrained by the church not to conduct same-sex marriages has stimulated me briefly to rise to my feet. I suppose that I should declare an interest, given that I am a sort of registrar. Perhaps I am the only one here, as a bishop of the Church of England.

This is a modest amendment, as has been pointed out, but it has a certain symbolic importance. A lot turns on the status of the issues that we talk about, and that has dogged our debates throughout. The noble Lord, Lord Lester, asked why there is an exception in this case. However, the law does make exceptions in relation to the strongly held beliefs of a significant number of members of a religious body in relation to sexual orientation. The law allows religious bodies to have single-gender priesthoods or whatever. We have agreed exceptions in that area that we have not agreed in other areas, such as divorce. That is why the parallel between same-sex marriage and divorce—I think that the noble Lord, Lord Pannick, raised that point—does not quite follow. It depends on what one regards as the status of the different issues. For example, as I pointed out at Second Reading, historically the canons of the Church of England have never banned clergy from remarrying divorced people. A different status applies in this instance.

One of the problems is that a lot of people here—and I understand why—feel that this whole issue is a no-brainer, and that anyone who is opposed to same-sex marriage is almost de facto and de jure homophobic. That rather destroys the concept of reasonable debate. I find that that happens in the Church of England over the issue of women bishops: if you are opposed to that, somehow a glaze goes over people’s eyes and they cannot speak to you at all. As the noble Lord, Lord Deben, said, it is about having tolerance in the democracy in which we live. The issue is a small one.

As I understand it—though I speak as a fool in the presence of so many lawyers—the principle in this country is that we do not legislate retrospectively unless there is a compelling reason to do so. I do not think that a compelling reason to force existing registrars

to conduct same-sex marriages has been demonstrated in our debate. In that spirit, I hope that we can accept the amendment.

Lord Anderson of Swansea: My Lords, the question has been posed whether it was reasonable for an existing registrar to have anticipated that at some date unspecified in the future the law in respect of same-sex marriage might be altered.

Let us consider a registrar who is now, perhaps, 45. Almost 10 years ago we had the Civil Partnership Act. During the passage of that Bill through this House the noble and learned Baroness on our Front Bench said in terms that there would be no relevance for marriage. That was said clearly in terms. If that same registrar—who might have been put off by the possibility of same-sex marriage—had looked at the manifestos of the different parties at the last election, not one of which mentioned same-sex marriage, should he nevertheless have anticipated that there was a faint possibility of that happening? Of course not. It is wholly unreasonable, even in the light of the recent past and the stampede over the past years, to imagine that someone would have anticipated that the situation would change.

Effectively, we are talking about tolerance, generosity and whether the way of the majority—the 3:1 balance we had in the last vote—will be juggernaut-like and we will go on nevertheless.

The noble Lord, Lord Lester, talked about victims. He talked about the victimhood, if I can repeat that word, of the couple who are not married because the registrar has an objection. However, what is certain is that a registrar will be a victim because—given the identikit of the person I have mentioned, who is perhaps in mid-life, has been a registrar for a number of years and did not anticipate the change—his job will go. Being a registrar does not provide specific training for anything else. He will face the fact that the terms and conditions of his employment, on which he embarked some years ago, have been fundamentally altered. However, there is no reasonable prospect of victimhood for the gay couple who quite properly ask to be married, because there can be a reasonable accommodation. There will be a team or group of registrars in a particular district, and the couple can avoid the one individual who has a conscientious objection and, without any fuss, move their case to someone else. After all, I suspect that, after the initial surge of gay people who want to get married, there will be very few cases and relatively few registrars involved. If the district is very small, an arrangement can be made with an adjoining district—as in other areas of local government administration—for the relatively small number of cases that occur.

The noble Lord, Lord Pannick, took a fairly absolutist view, in my judgment. Public officials enforce the law; the registrar is a public official; he enforces the law or he takes the consequences. However, I think that there are other public officials for whom accommodations are found in statute. Doctors, given our National Health Service, are also public officials in the broad definition of the term, and so are teachers. Given that teachers overwhelmingly receive their salaries from the state, their terms and conditions of employment come from the state, yet we find exception for them.

In effect, the number of registrars likely to be involved is small. This is a transitional arrangement. For me, this is a test case of the absolutism, tolerance and generosity of the Government. Equally, it is a test case for the Opposition, who are currently cheerleaders—although perhaps I should refrain from using that word—for the Government. The proud tradition of my party over the centuries has been looking after the small person, the “village-Hampden” or the person with a conscientious objection who might be hurt by changes. I hope that we shall not abandon that proud tradition and will accept this small, transitional and quite proper amendment.

Baroness Berridge: My Lords, I rise to support this amendment, which is recommended in the report of the Joint Committee on Human Rights in relation to the Bill. I serve on that Joint Committee.

In Committee, your Lordships heard emotional exchanges about what was or could be the experience for gay couples seeking a civil marriage if there was any form of conscientious objection. Those scenarios were upsetting. The argument that public services should be available to all service-users is compelling but I do not believe that it is unassailable. A number of individual registrars who are currently in post did, indeed, contact their MPs to say that they would consider resigning their posts should they not be allowed to object, on the basis of conscientious objection, to performing these ceremonies. I asked Simon Hughes MP, who serves on the committee, specifically about that question, as no Select Committee of this House should make recommendations that are unsupported by evidence.

I believe that the distinction between choice and conscience is important here, in that if people say that their conscience does not permit them to do this, that means that it does not allow them even to enter a process of choice. They are not expressing a mere preference. Neither time nor expertise allows me to go into that issue in any greater depth. I am sad that the noble Baroness, Lady O'Neill, is not in her place on the Cross Benches; I am sure that she could elucidate that point more eloquently than I can. However, there is a difference between choice and conscience.

I believe that it is this Chamber's role to reach an accommodation that will enable same-sex couples to marry under the new law without causing the possible dismissal of a small number of public servants. I should be grateful if my noble friend the Minister would clarify whether the role of the registrar is limited just to the action of registration, as this matter caused some confusion in Committee when your Lordships considered the role of authorised persons. As regards Ms Ladele, I believe there is an arrangement in the Civil Partnership Act whereby certain personnel do not have to conduct civil partnership ceremonies if their local authority permits them not to do so. I leave it to the Front Bench, with its expertise, to clarify those two matters.

Given that the parameters of culture are changing so rapidly, I believe this amendment to be a suitable compromise between two different groups of our citizens, each with deeply held convictions. The ability of all citizens to access public services is not violated by

certain public servants having a limited exemption. Having heard the arguments and circumstances outlined in Committee, I repeat that the exemption must be applied carefully and sensitively. It is not a perfect solution for either side but it is a sensible and reasonable compromise in the circumstances.

Lord Mawhinney: My Lords, I commend my noble friend Lady Cumberlege for moving this amendment. I was equally impressed by the supportive speech made by the noble Baroness, Lady Williams of Crosby. While she was speaking, I was reminded of something which my noble friend Lady Stowell of Beeston said at Second Reading, and I will limit my comments to this one issue. I interrupted her when she said that she had great respect for those of us who had religious and conscientious views on the principle and substance of the Bill. I, perhaps ungraciously—if that is so, I apologise—and perhaps mischievously, said words to the effect that I wished I had a tenner for every time in the past 35 years I had heard a Minister say at the Dispatch Box how much he respected views with which he did not agree and then promptly ignored them. I remind my noble friend of that exchange because it seems to me that this is an excellent opportunity for her to demonstrate that she really does respect those whose views and consciences differ from those held by the majority in this House. An acid test of that respect would be to accept this amendment.

Lord Peston: My Lords—

Baroness O’Loan: My Lords—

Lord Peston: The noble Baroness has spoken.

Baroness O’Loan: No, I asked the noble Lord, Lord Lester, a question. I will speak briefly as this is a modest amendment. The question has been asked as to why registrars should be exempt. Three years ago, the leader of the Government said that there would be no legislation for same-sex marriage. Therefore, it is not inconceivable that the people employed in registry offices might have formed a legitimate expectation that that would be the case. We have to accept that a consequence of this legislation will be to exclude from being employed as registrars people in the Islamic, Sikh, Orthodox Jewish and Christian communities who have profound beliefs. We simply have to accept that consequence. It is for Parliament to legislate and if Parliament makes that decision, that is proper. However, we have to bear in mind that there is a significant problem for Islamic women who get married in a religious wedding, think they are married and then find that, because there has been no civil marriage, they are not married and can be set aside.

Marriage is a foundation stone for what stability remains in our society. We must do all we can to enable existing registrars, who may be members of those religions and who will be excluded from being employed as registrars—Muslims, Sikhs, Orthodox Jews and certain Christians—to continue to do their job. That spirit of generosity of which so many Members have spoken is very much part of the tradition of this House. I support this amendment because of its significance for those communities and because of the need to care for all the communities in our great country.

6.15 pm

Lord Vinson: The noble Lord, Lord Lester, gave the impression that registrars who were not happy with same-sex marriage would make their feelings known. It would be much more sensible to allow registrars with deep religious convictions who feel that they cannot conduct same-sex marriages to say quietly when the roster of registrars is being sorted out, “Do you mind if I am off with a cold on Tuesday?” as everybody will understand why that is being done. We are talking about a very small exception here. The converse is to make such people conduct these ceremonies. We are told—it is true—that registrars conduct ceremonies with spirit and feeling. If ever I married again—God forbid—I would not want a registrar to conduct the ceremony through gritted teeth because he did not like doing it. This is a thoroughly sensible amendment. I remind all those who are against it of the very moving words attributed, I believe, to Christopher Fry about the downtrodden not treading down.

Lord Peston: My Lords, I reluctantly totally oppose this amendment. Those who are totally opposed to same-sex marriage have day in and day out taken up an enormous amount of your Lordships’ time in making their case. This is the dying embers of their attempts to go on making their case. It has nothing to do with tolerance. No one is remotely asking those registrars who oppose same-sex marriage suddenly to say that they are now in favour of it, as happened under the old Stalinist rules. No one is remotely asking them to do that. They can say what they truly believe for as long as they like and where they like. The noble Lord, Lord Pannick, made the central point—I would have thought that was enough to end the debate—when he said that all we are asking them to do is the job they are paid to do. That is the beginning and end of the story. There is nothing more to be said. This has nothing to do with tolerance. When I think of some of the things I have had to tolerate with which I do not agree, I shudder, but one does one’s job. As the noble Lord, Lord Pannick, so excellently said, we are not asking these people to change their minds. They can keep their views but they must do the job they are paid for.

Baroness Howarth of Breckland: I apologise to the noble Lord for interrupting but I am anxious to ask a simple question. I have been a public servant for many years and have had to make difficult assessments and understand the nature of different staff and what they bring to the job. The arguments about generosity and inclusiveness are extremely attractive, but how does a manager decide who has a genuine conscientious objection and who has not? Unless you have criteria and people have previously said something about where they stand on the issue, it will be very difficult to make that decision. Unless there is absolute clarity about the matter, some people will choose not to perform a ceremony because they do not want to do it as opposed to having a conscientious objection to doing it. What about all the other conscientious objections that people may have? Should they not be able to object to marrying people who have a serious criminal history? What if they discover that one of the marriage partners has been a paedophile? Do they have the right to voice a

[BARONESS HOWARTH OF BRECKLAND]
conscientious objection to marrying them? This argument could get us into enormous difficulties if we carry it through.

Lord Elton: My Lords, the noble Lord, Lord Peston, is right in one respect: we are making a meal of a very small issue. At Second Reading, the House agreed to swallow a camel. We are now straining at a gnat, if I may use an image which the right reverend Prelate will understand. The noble Lord, Lord Lester, quoted the Ladele case at Strasbourg. That case proved that there are registrars with conscientious objections and that if the law is not amended they will lose their case and their job.

It also proves that if there was one registrar who was able to go all the way to Strasbourg, then there must be at least a few dozen others who were not able to afford it. It is that handful that we are talking about. If you doubt that it is a handful, then listen to the national panel, who assure us that there is none, which means there can be only very few. This amendment is concerned only with seeing that for the remaining part of their careers those people do not suffer for what, in their eyes and certainly in mine as well, is an unavoidable injustice.

If we are all to be as generous and big-hearted as we say we want to be and get closer together, can your Lordships not find it within yourselves to look at these few people? We are looking for justice, not vengeance. Surely we can find in ourselves the guarantee that these people will not lose their jobs and their pensions because they have a belief that was valid for their job when they took it on and the job then changed.

Lord Walton of Detchant: My Lords, this may by no means be exact, but when the Abortion Act became law many years ago, it was quickly recognised that doctors, particularly obstetricians, who were of a particular religious faith, might well have a serious objection to carrying out abortion on ethical grounds. That was even if, on complete medical advice and investigation, patients had been shown to have fulfilled all the criteria established by law. Some could have argued that those refusing to conduct abortions were not fulfilling their terms and conditions of service within the National Health Service. That argument was not widely used, but on the other hand it was quickly recognised by the doctors' regulatory authority, the General Medical Council, that it was proper for doctors of that particular religious persuasion, who had an immensely powerful objection to carrying out abortion, to be able to refuse to do so on religious and ethical grounds. However, they were advised that in those circumstances they should do their best to see that the individual in question who had fulfilled all the conditions set down by law should be referred to another consultant who might be willing to carry out that procedure.

To the best of my knowledge, registrars who are public servants do not have a regulatory authority. It may be argued that those who refuse to carry out and register a single-sex marriage on religious or conscientious grounds do not fulfil their existing terms and conditions of service. This is a simple amendment. It protects those registrars at present in post who object to carrying

out single-sex marriages on powerful conscientious grounds. Once they have retired, the issue will no longer be with us. All registrars appointed in future will recognise that the terms of this law on single-sex marriage apply to them and they will not have the right to object on grounds of conscience. This amendment protects the ones who are at present in post and we should strongly support it.

Baroness Noakes: My Lords, it is distasteful to equate what happened in the Abortion Act with what we are dealing with here, which is two people coming together to formalise their loving relationship under law. We are talking about two completely different things. We are accustomed in this House to legislating on the basis of evidence. We have heard no evidence that this amendment is needed. I am sure that if registrars out there wanted this amendment they would have been flushed out by now. We have heard evidence to the contrary. The National Panel for Registration thinks that this is neither necessary nor desirable. This is another attempt to undermine the status of marriage being created by this Bill and which I support.

Lord Deben: I really do think that my noble friend has to withdraw that. I have fought in favour of same-sex marriage the whole way through. I am not trying to undermine it. I am standing up for toleration. Toleration, even if it is for two people, is worth while.

Baroness Noakes: I accept what my noble friend says about his position, but I do not think it is the position of those who put forward the amendment.

Baroness Barker: My Lords, I want to draw to the attention of the House something which has not been mentioned so far in all these debates. I listened with great care when the noble Baroness, Lady Cumberlege, introduced the amendment. She drew the attention of the House to subsection (7) of the amendment:

"Nothing in subsection (6) shall affect the duty of a relevant registrar to carry out any other duties and responsibilities of his employment".

Registrars do not just officiate at weddings. They register births and deaths. If this amendment were passed, it would mean that for a generation we would continue to have acting as registrars people who could not bring themselves to extend the full respect and dignity to same-sex relationships that they do to others.

It may be the case that it is wrong to ask them to perform what is, in the end, not a religious ceremony in any way but a public ceremony. However, to me it is utterly intolerable that a gay person going to register the death of their partner in life should have to do so in the presence of somebody who cannot bring themselves to extend the respect to them that they would to anybody else.

Lord Touhig: My Lords, I had not expected to speak in this debate, although I have listened throughout. My mind goes back to 1967, when a dear friend of mine—and a friend for more than 40 years afterwards—introduced a Bill in the other House to decriminalise same-sex acts. Leo Abse was denounced and vilified, he had human excrement pushed through his letterbox, and it was an intolerable time for him and his family.

I have too much respect and affection for Leo Abse to presume to say what his view would be today. I rather think he would support this Bill, but I know one thing. When he announced his retirement and spoke to a meeting of the Pontypool Constituency Labour Party, he said: “I have only one bit of advice for my successor. Tolerate everyone, tolerate everything, but do not tolerate the intolerant”. As I have witnessed this debate today, I have sensed a degree of intolerance. Wherever we stand on this issue, it is right and important that the majority tolerates the minority. I hope the House will recognise that as we bring this debate to a conclusion.

Baroness Thornton: The arguments of the noble Baronesses, Lady Cumberlege and Lady Williams and the other movers have not convinced these Benches that the conscience clause amendment is a good idea, any more than we thought in Committee. Notwithstanding the appeal about registrars from the noble Lord, Lord Deben, I really am puzzled why he supports this amendment. I am not inviting him to explain again, but we need to be clear that this is not about tolerance and generosity.

In this House we have shown enormous tolerance and generosity to each other. Those of us who support this Bill have also shown huge tolerance and generosity—sometimes enormous generosity—to views that have been expressed which, if not offensive to people who are homosexual, are certainly hurtful to them. We have shown huge tolerance and generosity all the way through the debate. I draw to the right reverend Prelate’s attention that I have probably sat through every single moment of the discussion about this Bill. Nobody used the word “homophobic” until the right reverend Prelate used it today. That has not been mentioned in this Chamber—and that is right, because it is not appropriate that it should be mentioned at all.

6.30 pm

The noble Lord, Lord Elton, was right to say that we are having a long debate about this issue. But it is remarkable because the organisation that is responsible for the welfare of registrars—not just for their organisation but their professionalism and welfare—is not asking for this conscience clause in the Bill. It does not want it, and that is very significant. A noble Lord said, “If there was a registrar somewhere who really wanted to exercise conscience, do we not think that they would have showed themselves by now?”. It is significant that that is not the case.

I say to the noble Baroness, Lady Berridge, who mentioned the Joint Committee on Human Rights, that the supporters of the amendment, including the noble Baroness, have tried to rubbish what the National Panel for Registration has said in representing its members. I should point out that one could also say that whoever attends and speaks at the noble Baroness’s joint committee also influences what its reports say. However, I have not said and I am not going to.

Our position on these Benches is that freedom of belief is a hallmark of democracy. We agree that individuals should be able reasonably to express views that relate to same-sex marriage, and no one is disputing that at all. However, registrars are public servants and

have a duty to dispense their responsibilities and deliver services without discrimination. They have not previously been able to opt out of performing same-sex civil partnerships—they already perform them—interfaith marriages or remarrying divorced couples, even on the grounds of profoundly held belief. The amendment is not acceptable because it could open the doors to allowing registrars to conscientiously object to performing civil marriages on a range of issues.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I thank my noble friend Lady Cumberlege for moving the amendment, which has undoubtedly generated a good debate. Amendments 3 and 11 would provide a conscience clause for marriage registrars regarding their duty to conduct or participate in marriages of same-sex couples on the basis of a religious or other belief about such marriages. Specifically, Amendment 3 would amend Clause 1 to provide that for registrars who are already in post once this Bill comes into force the duty to solemnise marriages is not extended to same-sex couples. Amendment 11 removes “registrar” from the definition of “person” in subsection (4) of Clause 2 to protect registrars from being compelled to be present at religious same-sex marriage ceremonies, no doubt in circumstances where a particular religion has opted in. The amendment would apply only to registrars participating in religious ceremonies, not to the Registrar General or superintendent registrars.

This issue was much debated in Committee. Since then, I have had the opportunity, along with my noble friend Lady Stowell, to meet my noble friends Lady Cumberlege, Lord Elton, and Lady Williams, and the noble and learned Lord, Lord Lloyd of Berwick, to discuss these issues. As we indicated in our response to the Joint Committee on Human Rights, it is important to say that it did not come to a final conclusion on this issue, although it recommended that the Government reconsider the issue with a view to bringing forward amendments in your Lordships’ House to put in a transitional arrangement to deal with the concerns of those in post as marriage registrars. We have considered this position but, as I shall set out, we do not see a need for amendments to provide a conscience clause for marriage registrars, even on a transitional basis.

I therefore wish to reassure your Lordships’ House that the points made in the debate, particularly those made by my noble friend Lady Williams of Crosby about the impact on particular religions, have been considered. I admit that I felt slightly uncomfortable because the strongest support for the Government’s position perhaps came from two eminent lawyers, my noble friend Lord Lester and the noble Lord, Lord Pannick, and I wondered whether I was being too lawyerly about this issue. I tried to take on board the comments of my noble friend Lord Deben about being charitable and thinking generously but, at the end of the day, even with charity, there is an important matter of principle here. Marriage registrars are public servants performing statutory duties on behalf of the state. They should be expected to perform their duties in accordance with the law, without discrimination. An important distinction can be made between the conscience clauses with regard to

[LORD WALLACE OF TANKERNESS]

abortion and circumstances in which we are asking people to perform duties on behalf of the state, without discrimination.

In extending marriage to same-sex couples, the Government have made it clear throughout that the Bill should protect and promote religious freedom. A substantial amount in the Bill does that. As the noble Lord, Lord Peston, said, registrars of whatever hue will still be able to express their views on same-sex marriage, but the right to freedom of religious expression has to be balanced with the need to protect others from discrimination. The recent judgment of the European Court of Human Rights in the case of Lillian Ladele, referred to by my noble friend Lord Lester, supports this view and the balanced position that we have taken.

Acceptance of the amendment would allow registrars to discriminate against people because of their sexual orientation. Functions performed by marriage registrars are entirely civil and secular in nature and they should not be allowed to pick and choose the members of the public to whom they provide that service. Treating members of the public less favourably than others because of their sexual orientation is fundamentally wrong, in the same way that it would be wrong to discriminate against them because of their race, religion or belief.

On the face of it, some powerful points were made, not least about doctors in relation to abortion. One should think about it for a moment—and perhaps I may put it in the following way. Let us imagine that a doctor were to say, “As a matter of conscience and belief, I am not going to perform an abortion on this person because of their race or ethnicity, but I will perform an abortion on another”. Perhaps that demonstrates the point that we are trying to make. It would not be the question of conscience about performing the act of solemnising a marriage that is at issue; it is the question of discrimination that is at the heart of this issue, and that is why the Government do not support the amendment.

I have been asked, “Where do you draw the line?”. I appreciate what my noble friend Lady Cumberlege said about the amendment being restricted to the solemnisation or belief that it is wrong to have a marriage of same-sex couples. There are other subjects—and I bow to the right reverend Prelate the Bishop of Chester, who said that divorce was not an issue in the canon law of the Anglican Church. However, it is my understanding that, until relatively recently, the Anglican Church did not marry people who had been divorced on grounds of adultery or other reasons, if a person’s original spouse was still alive. I think that that is now possible with the permission of the bishop. In those circumstances, if the Anglican Church was not going to perform a marriage and the person had to go down the road of a civil marriage if they wished to contract a second marriage, where would we have been if the registrar had said, “I have profound beliefs against marrying divorcees, particularly if one of the grounds for divorce has been adultery”?

The Lord Bishop of Chester: I wish purely to clarify the matter. I know that I am speaking to a distinguished lawyer but the law of the Church has never prevented

clergy from remarrying divorced people, and for the past 30 years of my ministry I have done so. It is true that 30 years ago I was in a minority and that there is now much greater encouragement, but in legal terms there never was a blanket ban on clergy remarrying because statute law permitted divorce.

Lord Wallace of Tankerness: I am grateful to the right reverend Prelate for clarifying that, but he said that 30 years ago he was in a minority and he may agree that some high-profile marriages of divorcees have taken place in the Church of Scotland because of the apparent rules of the Anglican Church. The point remains that there may have been people with profound religious views on why they should not remarry a divorcee who was divorced on the grounds of adultery, but if the route of a civil registry marriage had been cut off, they would have found life to be very difficult indeed.

Equally, I have heard what has been said about the National Panel for Registration. Concerns were expressed in Committee about the consultation that it had undertaken, and that is why my right honourable friend the Secretary of State sought further—

Baroness O’Loan: The Minister said that it would have been profoundly difficult if that route had been cut off. Does he think that this amendment would cut off the possibility of people of the same sex marrying?

Lord Wallace of Tankerness: I was making the point that there are a number of grounds on which one might say one had a religious belief. Are we to have a hierarchy of religious beliefs, some of which will allow a registrar to exercise a conscience clause and some of which will not? However, as the noble Baroness, Lady Richardson, said, there might be some areas of the country with a small number of register office staff where it could be difficult to find a registrar who would marry them.

We sought further information from the National Panel of Registration and its letter has been placed in the Library of your Lordships’ House. As my noble friend Lady Noakes indicated, there has not been a huge demand for this amendment, quite the contrary. It would be easy to dismiss this letter but very often the House calls for the views of bodies which represent particular organisations. The letter states:

“The objection to a conscience clause is based on Registrars being local authority employees who are expected (and willing) to carry out all the functions that their role covers. On a daily basis, Registrars deal with many scenarios that for those with strong beliefs (religious or otherwise) would possibly not be able to carry out. Examples include: registering the birth of a child from a same-sex couple; undertaking marriages for previously divorced persons; or carrying out civil ceremonies and registrations. Registration Services and, in particular, the Registrars, are passionate and proud about the services they deliver and the customers they work with. For the past 176 years, Registrars have been carrying out their duties and have never wanted a conscience clause, and do not see the need for one now ... The beliefs we bring to work are respect and tolerance and we would wish that to continue”.

Lord Elton: Could my noble friend read on? Does it not say that, “we leave beliefs at home”? Does that not say a great deal about this?

Lord Wallace of Tankerness: It does say that. It states:

“In the Registration Service we leave beliefs at home and deliver neutrally”.

That is the point made by the noble Lord, Lord Peston. The registrars are free to express their beliefs. There is nothing in this legislation that curbs their ability to hold these beliefs and to express them. However, in the performance of the duties they do on behalf of the state, we are saying that they should not be able to do that in a way that discriminates. It would not be appropriate for us to put on the statute book legislation in which the state legitimises discrimination.

Lord Higgins: If it is true, as the Minister says, that the Panel of Registration says there are no registrars who want this, we will pass the amendment and it will have no effect. The question is whether there are some who we do not know about who would wish to exercise their views as far as conscience is concerned.

On the other point, that they have taken on a job and they then find that it has changed, surely, on a transitional basis—and I stress that—they ought to be able to say, “We are perfectly happy to go on with the original contract”.

Baroness Farrington of Ribbleton: Perhaps I may I remind noble Lords that this is Report. People should ask very brief factual questions and no one should speak after the Minister has spoken except the mover.

Lord Wallace of Tankerness: My Lords, in response to my noble friend Lord Higgins, the national panel has made it clear that it is not seeking this. He said that if no one wants this, it does not matter. However, I believe that it does matter.

The points made by my noble friend Lady Williams are very challenging to someone who has natural liberal instincts about the individual but, at the end of the day, after a great deal of careful thought and examination, the principle that persuades me that we are right in this is that when someone performs a function on behalf of the state we should not put into legislation something which allows them to act in a discriminating manner. I ask my noble friend to withdraw the amendment.

Lord Lester of Herne Hill: Would I be right in saying that if this amendment goes through, there will be detriment to people seeking to marry?

Lord Wallace of Tankerness: I did not hear that.

Lord Lester of Herne Hill: Would I be right in saying that if this amendment goes through the result will be detriment suffered by some who are seeking civil marriage?

Lord Wallace of Tankerness: My Lords, that might be a possibility, particularly in areas where there are very few registrars, as the noble Baroness, Lady Richardson, pointed out.

6.45 pm

Baroness Cumberlege: My Lords, I sense that the House will want me to be very quick, so I shall be. I thank all noble Lords who have taken part in this very interesting debate, albeit, I accept, on a very narrow subject. I particularly thank my noble friend Lady Williams for her powerful support of the amendment, and I thank my noble friend Lord Deben. The tenor of the amendment is about a bit of tolerance and generosity. This is the moment when perhaps we ought to be giving a little bit to some people who have a conscience clause.

I want to say something very briefly about marriage and about what the noble and learned Baroness, Lady Butler-Sloss, and the noble Lord, Lord Peston, said. To me, marriage is very important. I married when I was 17 and have to say that it was the best decision of my life. I love him to bits and he is great. I can remember every moment of that service. I even remember that the priest, very sadly, forgot to give me my passport. We were going on honeymoon and had to go back to collect it. Marriage is terribly important; we would not be having this Bill or these debates if people did not think it was very important. The people who conduct the marriage are equally important. I very much accept what my noble friend Lord Vinson said. If there is somebody who does not believe in it or who thinks that it is just something you have to go through, it is not the same as someone who really believes in it and wants to see a couple happily married and continuing in later life.

For those people who have a conscience clause, it is much fairer to the same-sex couples who are getting married to have somebody who believes in what they are doing and who rejoices with them in this very special event in their lives. I would love to go through all the arguments, but I will not do so. The managerial arguments are bogus because any good manager knows how to manage a workforce. There are women who inconveniently get pregnant and there are people who are ill, but you still have to manage your workforce, so I do not agree with some of those concerns.

It has been a very interesting debate. I am extremely disappointed by my colleagues on the Front Bench and my noble friends whom I hoped would give a little tonight. I hoped that we could have some accommodation in the spirit of generosity, but that is clearly not the case. Therefore, I want to test the opinion of the House.

6.48 pm

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7.02 pm

Amendment 4

Moved by **Lord Dear**

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

“Belief in traditional marriage

Nothing in this Act shall contradict the principle that a belief that marriage is the voluntary union of one man and one woman for life to the exclusion of all others is a belief worthy of respect in a democratic society.”

Lord Dear: My Lords, in moving Amendment 4, I draw attention to the fact that this is a more tightly drawn version of the two amendments that I spoke to in Committee—when I had a voice—on 17 June, which were then Amendments 7 and 8. Instead of getting into the detail, which I did then, on how employers or public sector bodies treat individuals, this amendment is simply a declaration that the belief in traditional marriage is worthy of respect in a democratic society. It makes it clear that it is vital for individuals claiming protection under human rights or discrimination law who are not card-carrying members of any particular religion, but it would be helpful to people who are religious as well.

There are basically two sets of words in this very short amendment. The first refers to the,

“belief that marriage is the voluntary union of one man and one woman for life to the exclusion of all others”,

and the second refers to,

“a belief worthy of respect in a democratic society”.

The first set of words is the existing legal definition of marriage as,

“the voluntary union of one man and one woman for life, to the exclusion of all others”.

That is the definition found in case law as far back as 1866 in the case of *Hyde v Hyde and Woodmansee*, and was given by Lord Penzance in that leading case. Until now, every couple at the point of marriage declares that they are entering into marriage as defined by English law, which is, as I have said, a voluntary, lifelong and exclusive union. We know that things can go wrong in marriage and there is, of course, legal provision for divorce. Throughout history and across cultures, the definition of marriage has been understood in the terms that I have just repeated.

Even before the Bill becomes law, people who support traditional marriage are now often accused of discrimination. It is said—I cannot vouch for it, but it was sprayed all over the newspapers recently—that in a draft version of a speech by the Deputy Prime Minister some were described as bigots. They have certainly been likened in the House of Commons to racists and advocates of the salve trade. However, it is generally accepted that, no matter how one looks at the opinion polls and so on, a great many people in the UK do not accept the new gender-neutral definition of marriage proposed by the Bill. They may accept the Bill, and many do, but they object to the gender-neutral definition, which embraces them as well. I contend that they cannot be expected to jettison their deeply held beliefs overnight; nor, I suggest, is it the proper role of law to seek to coerce people to do so.

I was much impressed and heartened by the comments of the noble Lord, Lord Deben, who talked about generosity. I made a note of that at the time. It seems that those words have been played into. The word “generosity” and, later, the words used by the noble Lord, Lord Elystan-Morgan, “reasonableness” and “tolerance”, have been much in vogue over the past half hour or so in your Lordships’ House. I applaud that. What we are looking at is recognising the traditional view of marriage as held by many people, who still cling to that as the ideal. That takes care, very briefly, of the first part of my amendment.

I turn to the words,

“worthy of respect in a democratic society”.

That concept—those words—is the key test in human rights law. Case law from the European Court of Human Rights and, indeed, the highest courts in the UK, also hold that for a belief to be protected in law it must pass this legal threshold. Stating in the Bill that the belief in traditional marriage meets this test would provide very valuable help to everyone who holds that belief. It is particularly important for individuals who are not, as one may say, card-carrying members of any particular religion.

A great many people in this country have a deeply held belief in marriage that is not, to them, part of an overall religious or ethical belief system. The belief is more likely to be recognised and protected in law where it flows from an underlying, religious belief system. It is less likely to be afforded protection where a person holds a belief that could be written off as

[LORD DEAR]

mere opinion. The case law on that I quoted extensively in Committee. I will not go through it again. The references can be found in *Hansard*, when I quoted from *Grainger plc & others v Nicholson* and the *Williamson* case.

The words,

“worthy of respect in a democratic society”,

are the acid test. The Minister said in Committee:

“A belief that marriage should be between a man and a woman is undoubtedly worthy of respect in a democratic society”.—
[*Official Report*, 17/6/2013; col. 75.]

There can be no objection, she said, to putting this in the Bill. The enacting of the Bill should make it abundantly clear that a belief in same-sex marriage is worthy of respect. Millions of people who hold to a traditional belief in marriage are left unsure today by what is going on in this House and in another place as to whether their belief is similarly worthy of respect. I contend that it is necessary and that it takes absolutely nothing away from the Bill, or what the Bill seeks to set out, to include the amendment.

The noble Lord, Lord Phillips of Sudbury, who is not in his place at the moment, spoke very powerfully about the millions of decent people who, as he put it, are not homophobic, who are concerned and confused by what the Bill will mean for them. They show a great deal of tolerance and understanding about why the Bill is coming in and in many ways support the general thrust. However, at the same time, the noble Lord talked about avoiding discontent in that very large number—my words, not his. What he was really saying was, “Don’t damage the purpose of the Bill in the eyes of the general public”.

The Bill will pass. That was evident from Second Reading and from today in the two votes that have taken place already. The Bill will pass, but it should be enacted in a climate of acceptance. With some people that will be a grudging acceptance, although not in my case, and with others a warm acceptance. However, it should come in in an atmosphere of acceptance and those words of tolerance and generosity that we have heard much play made of today. It should not come in in a climate where no concessions are allowed at all for those who seek to understand those millions of people outside who are confused and who look for some sort of reassurance—a safety net if you like—that they can quite properly express a view and a belief and not be punished for it. I beg to move.

Amendment 5 (to Amendment 4)

Moved by **Lord Cormack**

5: After Clause 1, line 4, leave out “for life to the exclusion of all others”

Lord Cormack: My Lords, I will not detain the House long. I do not disagree with what the noble Lord, Lord Dear, said, but I seek to sharpen up his amendment for two reasons. First, I have been approached by many people during the passage of the Bill through your Lordships’ House who believe very firmly that marriage is between a man and a woman and wish to

see that recognised at all appropriate points, but have themselves not been able necessarily to sustain marriage for life.

It is a fact of life—the noble Lord, Lord Dear, briefly alluded to it—that many marriages do not stay the course. There are many in your Lordships’ House who have been married more than once. That does not in any sense weaken or invalidate the marriage, or make those noble Lords who have had more than one marriage believe less in marriage as an institution. But we live in a very different world from that of 1866 cited by the noble Lord, Lord Dear. Even within the clergy, I have many good friends, some highly placed within the Church of England, who have had a marriage that has come to grief. Some have remarried and some have not. In that spirit of tolerance, understanding and generosity, to quote my noble friend Lord Deben in a previous debate, it would be more inclusive just to omit those words. That does not in any sense weaken the thrust of the amendment of the noble Lord, Lord Dear; it merely brings it up to date and recognises the world in which we live.

My second amendment is slightly more playful in that I would take away the words “in a democratic society” because this belief is worthy of respect in all societies, democratic or not. We recognise that. It is certainly not an amendment to an amendment that I would press. However, I must say to your Lordships’ House that those of us who believe in traditional marriage but are not in any way opposed to equality—one must repeat that, as one has many times during these debates—feel that including something along these lines in the Bill could not do any harm and could be of some reassurance to many people outside this House. They are the sort of people referred to by the noble Lord, Lord Dear, and by the noble Lord, Lord Phillips of Sudbury, in what I thought was a very moving speech in an earlier debate this afternoon. I beg to move the amendment to the amendment.

Lord Pannick: My Lords, nothing in the Bill prevents the noble Lords, Lord Dear and Lord Cormack, believing and expressing a belief in so-called traditional marriage. Contrary to the speech of the noble Lord, Lord Dear, there is nothing in the Bill that “coerces” people to “jettison”—the noble Lord’s words—their beliefs in any of these respects. This has repeatedly been explained by noble Lords and to noble Lords during our debates on the Bill. If, as the noble Lord, Lord Dear, suggests, millions of decent people have concerns, they are completely unfounded and it does no service to them whatever to give credence to such basic misunderstandings.

7.15 pm

Lord Deben: As has been mentioned on several occasions, I want to expand on why I think this is a really dreadful amendment. It is dreadful for the reasons that my noble friend Lord Cormack has explained. He has amended the comments of the noble Lord, Lord Dear, because nobody really knows what people mean by traditional marriage. That is one of the difficulties. The amendment is a blunderbuss.

My problem is that if we put this into the Bill, that would suggest that somebody actually thinks it might

need to be in the Bill. However, there is no reason for that. The noble Lord, Lord Pannick, is absolutely right about that. If we have to put this in, what other definitions of marriage will we have to put in? Do we say, “Nothing in this Act shall counteract the opinion that some people believe X, Y and Z”? All Acts would be interminable and intolerable if we added all the things that they did not have a reference to, but that is exactly what the noble Lord, Lord Dear, has put forward.

However, the problem is much more basic than that. There is a fundamental difference, although it is not something that is shared across every side, in arguing that in all circumstances we should be wary of not having a conscience clause. I am always in favour of conscience clauses because I never know when they will come for me. That is my honest view about conscience clauses. Therefore, I always want to lean over backwards towards people who are in a position—not one that they have chosen—where they may feel that their conscience prevents something. That is why I take that view. However, I do not believe that you can reasonably undermine the value of a Bill by putting into it a phrase that is designed to say, “Look, we’ve had to pass this Bill but a lot of us don’t really think like that. We’re not really on that side and we just want to—nudge, nudge—put this in to make sure that you realise that we weren’t really on that side”. That is a game to deny the reality of the Bill.

The Bill is a generous one and if it is too generous, it makes up for the exact opposite way in which we have acted until now. Please, do not allow the Bill to be undermined by an addition of this kind, which is already a matter of disagreements between the two people who are proposing it and which, after all, could be expanded to any lengths you like to include anybody who might feel that they had not had their particular views heard. It is not a sensible amendment and we should refuse it.

Lord Lester of Herne Hill: My Lords, the law on traditional marriage is contained in the Marriage Act 1949. Nothing in the Bill affects the rights and duties under the Marriage Act 1949 of what is called traditional marriage. If it did so, the amendment might have some kind of purpose, but it does not. If it does not undermine the ability to marry under the Marriage Act, does it create any sort of belief that that form of marriage is in some way undesirable? No, it does not. Nothing in the Bill suggests anything wrong with the traditional view of marriage. What it does do is to create another form of marriage and treat it as part of the concept of marriage. That does not undermine traditional marriage unless you take the view, as some do, that we should not have the Bill at all.

Baroness Royall of Blaisdon: My Lords, the noble Lord, Lord Dear, spoke of traditional marriage being worthy of respect. Indeed, traditional marriage, in his words, is worthy of respect. But, the great thing is that after the passing of this Bill, same-sex marriage will be equally worthy of respect. That will be a matter for celebration. This is because at the moment marriage is a voluntary union of one man and one woman, but with the passing of this Bill I am delighted that

marriage will be extended to the voluntary union of one man and one man, and one woman and one woman. I think that we are really motoring along.

No one is asking people to abandon their beliefs. The Bill does not suggest in any way that they should or that they must, as has been said so many times in the debates thus far. The reality is that it is absolutely clear that alongside the protections in the Human Rights Act, the common law protection of freedom of speech and the existing protections in the Equality Act 2010, religion or belief will continue to ensure that it is unlawful for an employer, service provider, public body or anybody else to discriminate. There is absolute freedom of speech. The Minister could not have been clearer when she said in Committee that:

“The Bill absolutely makes it lawful, and continues to make it lawful, for people to believe that marriage should be only between a man and a woman”.—[*Official Report*, 17/6/13; col. 72.]

That is clear.

Baroness Knight of Collingtree: I am most grateful. I ask a very quick question, in the light of the fact that the noble Baroness just told the House that nobody will be forced to act against their conscience. Have we not recently passed an amendment which will make it very likely that a number of registrars will be forced to do so?

Baroness Royall of Blaisdon: My Lords, the issue pertaining to registrars is not to do with conscience but with the fact that registrars are public servants, and they are upholding the law. In being a registrar they are doing their duty as public servants. Their beliefs are nothing to do with their work as a registrar. This amendment is completely different. It is to do with freedom of belief and freedom of expression, which I believe are a hallmark of democracy. Individuals must be able to reasonably express their views on these issues, as indeed they are.

The amendment put forward by noble Lord, Lord Dear, and the amendment to that amendment put forward by the noble Lord, Lord Cormack, are not only unnecessary, but they could dovetail into some concerns expressed earlier by the noble Lord, Lord Elystan-Morgan. He was concerned about having a sort of gold hallmark of marriage, and then a sort of tarnished, baser metal marriage for same-sex couples. We want marriage for same-sex couples and heterosexual couples to have equality of esteem. They must have this. I am therefore against the amendment.

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Lord, Lord Dear. In introducing his amendment he reminded us again that we should try to ensure that we are tolerant, generous and courteous, not only in our debates in this House but also in the legislation that we are bringing forward. I argue that we are doing just that. The noble Baroness, Lady Royall, just quoted something I said at an earlier stage. The Government are very clear that the Bill does not only allow same-sex couples to marry; it also protects religious freedom and ensures that no belief that anyone holds now is affected by the introduction of this Bill. As I said at earlier stages, we are clear that the belief that marriage should be of one man with one woman

[BARONESS STOWELL OF BEESTON]
is protected under the Equality Act 2010. It meets the established criteria set out in case law.

The noble Lord, Lord Dear, referred to the case of *Grainger plc v Nicholson*, which specifically included beliefs worthy of respect in a democratic society. Equally, Article 9 of the European Convention on Human Rights guarantees that everyone has the right to freedom of thought, conscience and religion. This means that everyone has an absolute right to hold any belief. However, of course the right to manifest one's belief is qualified, and the state can regulate that in certain circumstances where that is necessary for the protection of the rights and freedoms of others. As I have made clear, it is perfectly possible for somebody to not only have that legitimate belief but also to be free to express that belief. To follow up on the exchange that just took place between my noble friend, Baroness Knight, and the noble Baroness, Lady Royall, the difference is that what is not possible is for somebody to withhold their services because of the belief they hold. There is nothing to stop them from having that belief. The amendment is therefore unnecessary. It states something that is entirely true—that the Bill does nothing to undermine the principle that a belief that marriage is,

“union of one man and one woman for life to the exclusion of all others is a belief worthy of respect in a democratic society”.

Of course it is, and this Bill raises no doubt about it.

As has been pointed out, the view that a marriage of a same-sex couple, like the marriage of an opposite-sex couple, is a valid marriage is also a belief worthy of respect in a democratic society. As was said by the noble Baroness, Lady Royall, and my noble friend Lord Deben, if we are going to state that the one belief is worthy of respect, we ought to state that both are worthy of respect. As it stands, this amendment suggests that a belief of the kind it covers, concerning marriage between a man and a woman, is in some way superior to a belief that marriage of a same-sex couple exclusively and for life is to be welcomed as an equally valid relationship. Therefore the amendment goes against the entire point of the Bill.

I also caution the House on a further point of principle. We risk getting into rather dangerous territory if we start to set out in statute which beliefs are worthy of respect or protection in law. It may seem easy here, where there is absolutely no doubt that the belief concerned is mainstream and uncontroversial, but it would not be wise for legislation to list beliefs, just as we do not list religions. Otherwise we get into the arena of state-sponsored religions and beliefs. It would also be an impossible task to list all religions and beliefs that are protected, which would cast doubt about whether unlisted beliefs are protected. That point was made in this debate by some noble Lords who are lawyers.

I now touch on Amendments 5 and 6, put forward by my noble friend Lord Cormack. I will go not into detail, because they do not affect the fundamental point I am making, which is that these amendments are unnecessary. They risk creating the suggestion that a belief in the validity of the marriage of same-sex couples is to some extent less worthy than a belief that

marriage should be of one man with one woman. As I have explained, it would be most unwise to seek to legislate for what is or is not a belief worthy of respect.

All that said, and just to be absolutely clear, of course none of that means that it is not absolutely legitimate for people to hold the view that a marriage should be between a man and a woman, and for them to be able to express that view. I have stated that many times and I will continue to do so, because it is such an important part of what we are ensuring will remain the case when, as we hope, the Bill becomes an Act of Parliament.

Finally, in response to the noble Lord, Lord Dear—

Lord Butler of Brockwell: My Lords, it would greatly reassure me if the Minister were to give an absolute assurance that somebody who says that they believe that marriage is the voluntary union of one man and one woman for life to the exclusion of all others is not in any danger of being charged with making a homophobic remark.

Baroness Stowell of Beeston: I can give your Lordships absolute, categorical reassurance that anybody who expresses that view is being absolutely lawful. What I cannot give the noble Lord categorical assurance on, which is something that we debated at length at earlier stages of the Bill, is that there may not be somebody out there who decides to try to take action against them. If they were to do that, the law would protect them, because the view that the noble Lord has just expressed is absolutely lawful. It is legitimate, and they can hold that belief and express it. Clearly, as noble friends who are lawyers have reminded me before, whenever a judge hears a case he has to take in all manner of different contexts in order to consider the way in which those words are expressed. But I believe that I can give the noble Lord the reassurance that he is looking for on that point.

Lord Elton: My Lords, on that point, could my noble friend tell me whether she had a letter from a Mr Tony Miano, which is relevant to this. If not, may I pass it to her to read before Third Reading?

Baroness Stowell of Beeston: If the gentleman that my noble friend refers to has written to me, the letter has not reached me, but I have seen a copy because I know it has been circulated widely. I am aware of it. What his experience tells us is the point that I just made, if I understand that experience rightly and it was as has been reported in the media. I was not there and do not have the full details of the event. If he expressed views as I have just explained, he was being absolutely lawful. I understand, according to news reports, that he was arrested, but no charges were brought against him because the law is clearly on his side.

My noble friend has just given me the opportunity to remind noble Lords of something. I was going to make this point in any case to the noble Lord, Lord Dear, because he said we are not making any concessions in this area. It is important to remind him and the House that we have amended the Public Order Act to make it absolutely clear in the provision that already

exists in that Act that it is absolutely lawful for people in public discourse to express this view. We were happy to make that amendment to a section that already exists. That change has been made. On a general basis, I also point out to the noble Lord and the House that later we will debate an amendment we are moving in the context of greater clarity for the protection of religious freedom around the meaning of the word “compel”. We are listening and we are making changes where we think it is right to do so and no harm will be done. In that context, the proposal that the noble Lord has put forward is not necessary for all the reasons I have explained. I hope that he feels able to withdraw his amendment.

Lord Dear: My Lords, I am much reassured by what the Minister said. She mentioned the Public Order Act. Of course, that allows me to parade, after a defeat here, a success in removing the word “insulting” from Section 5 of the Public Order Act shortly before Christmas with a fairly substantial majority. That was taking the word “insulting” out but leaving in “threatening” or “abusive” words or behaviour in a public place. Amendment 4 is really aimed much more at comments made in private, not in a public place, as defined by the Public Order Act, which the noble Baroness alluded to.

I remained concerned. I mentioned before, as did others today, the large number of people who are concerned about a change to life as they see it, to put it in those terms. Certainly, from my own personal point of view, I would not withhold the words “worthy of respect” from same-sex marriage if this Bill becomes law. Undoubtedly, it will do. The moment it becomes law, I shall accord that respect, undauntedly, to those who are in a same-sex relationship as I do to those in a traditional relationship. I hope, too, that that will go for the vast majority of people in this country.

I am much reassured by the response given to the question posed by my noble friend Lord Butler of Brockwell because I was going to make the same point. He saved me from posing that question again and perhaps losing my voice in the process. I hope that, in future, we will find that this short debate has been unnecessary and that in fact the holding of a belief and espousing that belief into some sort of fairly anodyne comment—one not meant to insult, a simple “I believe X”—will not get those people into trouble. The Minister has been so fulsome in the way she responded to that question that I have great pleasure in withdrawing the amendment.

Lord Elton: Before the noble Lord does that, can I just remind him that we are actually debating the amendment to his amendment? The last word on that has not yet been said.

Lord Cormack: My Lords, I am most grateful for the generosity and courtesy of my noble friend Lord Elton. I will not detain your Lordships. I wish to withdraw the amendment to the amendment. Having understood that that desire is similar to that of the noble Lord, Lord Dear, we appear to be in accord.

Amendment 5 (to Amendment 4) withdrawn.

Amendment 6 (to Amendment 4) not moved.

Amendment 4 withdrawn.

Consideration on Report adjourned until not before 8.35 pm.

Added Tribunals (Employment Tribunals and Employment Appeal Tribunal) Order 2013

Motion to Approve

7.35 pm

Moved by Lord McNally

That the draft order laid before the House on 24 April be approved.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

The Minister of State, Ministry of Justice (Lord McNally): My Lords, I shall also speak to the draft Employment Tribunals and Employment Appeal Tribunal Fees Order 2013. The purpose of these orders is to make provision for fees to be paid by those who present claims or make appeals to employment tribunals and the Employment Appeal Tribunal. They also make provision for fees to be remitted or waived in full or in part if the person cannot afford to pay using the existing civil courts remission scheme.

Bringing a claim or an appeal to employment tribunals and the Employment Appeal Tribunal is currently free of charge. In 2012-13, the cost of running the employment tribunals system was £74.4 million. That cost was entirely met by the taxpayer. While the Government are committed to providing a fair system for those who need an independent tribunal to settle an employment dispute, we also believe that it is perfectly reasonable that those using the tribunals should contribute to their cost, where they can afford to do so. It is important that noble Lords understand that introducing fees into these tribunals is not an attempt to deter individuals from bringing claims—vexatious or otherwise—and given the mitigations in place we do not believe the provisions of this order will do so.

Employment tribunals were originally intended as the option of last resort in disputes when all other resolution services had failed. Over time that status has eroded and claims are now often launched prematurely, without exploring alternative options for resolving disputes. The introduction of fees can support a necessary change in the mindset of users and help to reset the system by encouraging individuals to stop and think about whether a dispute can be settled without recourse to a tribunal, and whether it is really necessary to submit a claim. Complementing that aim, mandatory early conciliation will be introduced in 2014, meaning parties will not be able to bring a claim to the tribunal without first having sought a conciliated resolution via ACAS.

The Government are also implementing a brand new simplified set of rules and regulations governing procedure in employment tribunals. The simplified rules attempt to roll back and reset unnecessary complexity in tribunal rules, creating increased clarity and

[LORD McNALLY]

understanding for the lay person. This ought to reduce claimants' reliance on legal representation and help return employment tribunals to the role envisaged when they were first set up.

Responsibility for the wider employment law, including the rules, lies with the Department for Business, Innovation and Skills. Should issues arise in this debate that are beyond my remit I will ask my colleague, my noble friend Lord Younger, to respond in writing should it be necessary. I am confident that noble Lords will see that these proposals are not an attack on employment rights or on people with low incomes. They simply reset the system that this Government inherited and reduce the taxpayer subsidy of employment tribunals by transferring some of the cost to those who use the service, while protecting access to justice for all. Assuming parliamentary approval, the instrument is due to come into force on the day after it is signed and made. We are confident that, subject to that approval, fees will come into effect on 29 July this year.

I turn now to the provisions of each order. Parliament has already made provision for fees to be charged in tribunals under Section 42 of the Tribunals, Courts and Enforcement Act 2007. The added tribunals order provides for employment tribunals and the Employment Appeal Tribunal to fall within the provisions of Section 42 as added tribunals allowing the Lord Chancellor to prescribe fees by order for anything dealt with by them.

The fee structure provided in the fees order reflects the decisions made and announced after the Government's consultation paper, *Charging Fees in Employment Tribunals and the Employment Appeal Tribunal*. We considered the views expressed by those who responded to the consultation, and settled on a final structure taking proper and full account of those views.

Part 2 of the order provides for claimants to pay an "issue fee" covering a contribution to the pre-hearing costs, and then a "hearing fee", payable 3 or 4 weeks before a hearing, should that stage in proceedings be reached. It also outlines a number of application fees, payable by the party making the application, and a fee for judicial mediation, payable by the respondent.

Sections 5 to 10 provide the fees payable. Two levels of the issue and hearing fees are proposed, and are defined in the order as type A and B claims. Claims are allocated to type A or B depending on the nature of the complaints described in the claim form. Type A claims are those which are simpler for the tribunal to deal with and so cost less for a claimant to bring—namely, £160 at issue and £230 before the hearing. Type B claims are more complicated, requiring more tribunal time and resources to determine. Therefore they attract higher fees of £250 at issue and £950 at hearing. Where there is a mixture of type A and B claims within the same claim form, the higher fee will be paid.

Sometimes in the employment tribunal two or more claimants present their claims on the same form. The order defines this as a fee group, and the number of people in the fee group also affects the fee due to be paid. There are three bands of fees, increasing on a sliding scale depending on the number of individuals named within a form. If claimants present their claims in this way, the fee payable per person will usually be

much lower—and will never exceed—the amount that they would have paid if they had sent their claim separately.

In certain circumstances, Article 12 provides a safeguard ensuring that no one in a fee group will have their claim struck out because of the failure of others in their group to arrange a group payment if they themselves are willing to pay the single fee.

Part 3 of the order provides for fees in the Employment Appeal Tribunal. A flat fee regardless of claim or appeal type will be required on instituting an appeal. A further flat fee will be required ahead of the full hearing of the appeal. Part 4 of the fees order provides for transitional arrangements and remissions. Fees will be charged from the date of the order, so that those who have commenced their claims or lodged their appeals before this date will not pay any fees. Schedule 3 of the fees order makes provision for a range of remissions or fee waivers based on the existing HMCTS civil courts scheme. This scheme will ensure that access to justice is protected by reducing or remitting fees for individuals who provide evidence of being in receipt of particular qualifying benefits, or that their income is below certain thresholds.

The Government are fully committed to ensuring that tribunals remain accessible and continue to provide an effective service which is responsive to users. This measure provides for the users of the Employment Appeal Tribunal to make a contribution towards the provision of that service and to better balance the cost of providing access to justice between the user and the taxpayer without restricting that access.

I therefore commend the orders to the House and hope that noble Lords agree that the measures which I have proposed today should proceed.

7.45 pm

Lord Beecham: My Lords, we live in a world where failed bankers and departing BBC executives are awarded compensation for their loss of employment running into millions or hundreds of thousands of pounds, often at the taxpayer's expense. We seem to be about to live in a world where employees, often low paid, not only no longer receive legal advice or legal aid to pursue a claim arising out of their employment problems but will have to pay significant sums to have their case dealt with by an employment tribunal. It costs only between £35 and £70 to issue a money claim of up to £1,000 in the civil courts but, as the Minister confirmed, it will cost £160 to issue a type A claim—for example, for wage theft, withheld holiday pay or all manner of modest claims—in the employment tribunal, and a further £230 for a hearing, with higher fees where a number of claimants seek the same remedy.

In the more serious type B cases, to which the Minister referred—for example, for unfair dismissal, discrimination or equal pay—the fees rise to £250 to issue a claim and £950 for a hearing. The result is that it costs more for a type B hearing at an employment tribunal than it does to lodge an appeal in the Supreme Court, which costs £1,000, and even with a hearing the total Supreme Court costs are only £1,600—£350 more than for a hearing in the employment tribunal.

The Government are anxious to market our courts to the likes of libel tourists or Russian oligarchs but evidently loath to facilitate access to justice for our own citizens seeking redress in the form of modest payments, frequently amounting to only a few hundred pounds, and often less than £100.

The Government's own impact assessment demonstrates that 22% of employment tribunal claimants are disabled, with 40% of those claiming discrimination in that category. There is a rising number of claims stemming from pregnancy and maternity issues. Those are particularly vulnerable groups of people who will have to put up the money, disproportionate to any other form of civil litigation, to have their case heard.

In any case, the number of claims has fallen over the past two or three years, and the impact assessment shows a saving of only £12 million. The Minister is right when he refers to the overall cost being about £70 million, but the result of these measures will be, only if people pay the sums, to gather in only £12 million.

The proposed fees for multiple claims to which the Minister referred—for example, in relation to equal pay—compound the injustice. For example, seven supermarket workers claiming for an improper shortfall in their pay amounting to only, in one case, £313.90 between them will have to pay £320 to issue the claim and £460 for a hearing. Given the uncertainties, many people will simply be deterred from bringing a case, not least because the money has to be paid up-front, and in the absence of legal advice potential claimants will not have a ready notion of their prospects of success.

The response to the Government's consultation paper on the issue contains an interesting passage which I quote in full:

"Employment Judges in Scotland consider that there is a significant risk that if a claim is for a small amount of money then a claimant will be discouraged from pursuing that claim, even although they are legally entitled to the sums due. For example, say an individual is entitled to one week's wages in respect of holiday pay and the individual is paid just above the threshold which would allow them to qualify for remission. That person may decide that they will not pursue the sum due. This could have the consequence of encouraging a less than fair employer to routinely deprive employees of small sums of money to which they are entitled on the basis that the risk of them pursuing a claim will be small".

The Government airily dismiss this response and disingenuously aver that claimants will not be deterred from lodging claims. What steps will they take and how soon to ascertain the actual impact of these changes? What do they propose to do about the startling fact revealed by the Ministry of Justice's own study in 2009, which showed that 40% of awards in England and Wales are not paid at all and that fewer than 50% are paid in full?

In relation to concerns raised by Money Advice Group about the situation of claimants whose employers have ceased trading, and against whom claimants have to lodge a claim to access any payment from the National Insurance Fund, the Government said that they would explore the issue further. I invite the Minister to say whether they have reached a conclusion and, if so, what it is. If he is not in a position to do that

tonight—and of course I understand that he may not be—no doubt he will write to me and place the answer in the Library.

Of course, not all claims are for monetary compensation. For example, for a claim under Section 12 of the ERA 1996 to determine the particulars of employment there is simply no monetary component, yet the fee, which will be significant for a number of claimants, will still have to be paid. It should also be noted that there are problems with the timescales—for example, in relation to the payment of the fee or in applying for remission of fees. As the Minister said, there is a remission scheme but this pitches the threshold very low. For example, no fee is payable if the disposable monthly income of the applicant and any partner is £50 or less, with a graduated cap beyond that. That is a very low threshold. Crucially, there will also be a capital limit of £3,000. Ironically, a claimant who, shortly before bringing a case because he is being dismissed, receives a redundancy payment—the claim may not necessarily be related to the dismissal but may relate to other matters—will have that payment counted towards the capital limit.

With a matter of only weeks to go before the new system becomes operational, I understand that there has been no user-testing of it, nor any detailed guidance published about how to apply for remission or appeal against refusal of remission. I do not know whether the noble Lord can enlighten us as to whether and when such testing has taken place or will take place, or when the guidance will be issued.

To be fair, there may be cases, usually affecting large claims, where respondent employers feel that it may be more economic to settle a claim even though it may be without merit. Recent changes in procedure initiated by Mr Justice Underhill may well mitigate this problem, and streamline and improve the management of cases, but in any event the fees for that type of case are unlikely to deter claimants who seek substantial sums from hoping to secure a settlement, while at the same time making it difficult for genuine claimants of moderate means and with more modest claims to pursue their remedy. For a settlement of £50,000, somebody may be prepared to gamble £1,200 or £1,500. Somebody seeking a payment of £50 or even £500 would be much less likely to stake a fee which is close to, or even exceeds, the amount claimed. It should also be stressed that the Gibbons report of 2007 made it clear that only a very small minority of claims could be described as vexatious.

My noble friend Lady Donaghy, with her long experience of ACAS, will no doubt comment on how the role of that organisation might be deployed to improve the working of the system, with or without the proposals in the regulations.

There would be little objection, perhaps, to a modest fee being levied that was much more proportionate to the amount claimed, as occurs in other jurisdictions. However, the Government's proposal seems to be another in a long series of changes favouring defendants and making access to justice more difficult for ordinary people with meritorious claims. As such, it is deeply regrettable.

Baroness Turner of Camden: My Lords, we have seen a series of government proposals over the past year, all designed to reduce employment rights and all apparently in the belief that this will promote employment. So a supine, disposable workforce is expected to result in increased employment. This is entirely wrong. We have legislation now making it more difficult for a dismissed worker to claim unfair dismissal. Already, a worker must be in the job for two years before any such claim can be made. Then a series of steps has to be taken before the case can get to a tribunal. The Government have admitted that they want to make access more difficult, and their policies certainly have done so. Now, the Government want to charge and a complicated system is being proposed.

Level A claims for unpaid wages, and smaller claims under category A, are to have an issue fee of £160 followed by a hearing fee of £230. For unfair dismissal, the charges are much greater, being £250 and then £950. We are told that vulnerable and poorer people will not have to pay but the TUC research indicates that a significant number of people on the national minimum wage and living wage rates will have to pay. It is clear that the Government are moving in the direction of the Beecroft proposals, which were widely condemned even by employers. The Government are trying to do that without seeming to do so. The scheme by which employees give up employment rights in return for shares in the employing company, which incidentally was voted down in this House when first proposed, is not meeting with much success even though the Government managed to get it through the Commons.

The latest proposal about charging for tribunal access is part of the same mindset. An employee seeking access to a tribunal following what he or she deems unfair may have been in the job for a number of years. Losing the job could have a distressing effect not only on the employee but the family, leading perhaps to further benefit claims as well as the illness of the dismissed employee. An appeal to an ET before a judge sitting alone will cost more money, and lay members, who bring experience and knowledge of workplaces, are being dispensed with. The Government are clearly expecting that the whole process will seem too complicated and costly for most employees and that there will be very few claims as a result—with no legal aid, of course, in employment cases. Furthermore, employers will be less inclined to seek resolution internally, as they will understand well enough that the complex procedures and costs awaiting employees claiming unfair dismissal will put off any but the most determined.

Do the Government really think that a frightened, submissive workforce is going to assist us in our present economic difficulties? Of course it will not. Growth requires a committed and enthusiastic workforce. These latest government proposals are completely and utterly unfair. They should be withdrawn.

Baroness Donaghy: My Lords, I am grateful to my noble friend Lord Beecham for raising these issues, and I will not cover the ground that he has already covered. During Committee on the Enterprise and Regulatory Reform Bill, I congratulated the noble Lord, Lord Marland, who was then taking the Bill

through this House, on the fact that the proposals regarding ACAS were right. They laid emphasis on mediation and settlement, and aimed to enhance ACAS's role. I said that this was the right thing to do and I still think that. Both sides would receive a reality check and be in a much better position to take appropriate action after the ACAS procedures—that is, until these proposals came along.

Unfortunately, alongside the much needed reform that came up in the hands of the noble Lord, Lord Marland, there come these punitive measures for applicants to employment tribunals. It is a classic result of two government departments approaching a problem and coming up with contradictory results. What kind of mood will the client and the employer be in when they get to ACAS? The employer will hold his ground in the hope that the entry fee to the employment tribunal will be sufficient to put the applicant off. The applicant will feel that the cards are stacked against him or her and will be in no mood for conciliation. That is how to sabotage a perfectly good reform.

Today, I spoke to John Cridland, the director-general of the CBI, about these proposals because I knew his views when we were on the ACAS Council together. The CBI agrees with charging for employment tribunals but wanted a lower fee of around £100 and rules that apply more generally to each applicant, rather than all the exemptions and ceilings.

The CBI view is that the high fee is unhelpful. The exemptions defeat the purpose of the exercise and the proposals are confusing. It believes that the Ministry of Justice has concerned itself with recouping charges for its own cost base rather than as a deterrent for vexatious claims. The Ministry of Justice is not focused on how to influence culture, and John Cridland expressed frustration at the poor implementation that he fears, as do I, will get in the way of conciliation. My view is that this apparent deregulation and cut in public expenditure will set up a whole complicated bureaucracy because of the complexity of the scheme, and applicants will not know to which category they belong. This is more red tape, not less.

8 pm

My noble friend Lord Sugar is unable to be here today. He has quite firm views about employment tribunals, and I undertook to give a flavour. My noble friend is concerned that there should be a real deterrent to vexatious claims but doubts whether the proposed figure will make any difference. He sees the need for reform in the area of case management—a clearer steer from the chairman of the employment tribunal about weak cases and unnecessary delays. My noble friend's view is that a claim for tens of thousands of pounds will not be headed off by this proposal. He supports more conciliation and would not wish to discriminate against applicants with very small claims. I hope that I have reflected his view accurately.

This complicated and misguided proposal will not deter the headline-seekers or those who are sure that their employer will pay them off to the tune of £2,000 simply to avoid an ET. It will not deter a member of a trade union if they have trade union support. It may well deter the applicant whose claim is

relatively small or who is relatively poor so that they cannot put up the money, or they think twice about it. So, it is the weaker who will pay the Ministry of Justice tax. At best this proposal is inept, and at worst it is a petty con trick.

Baroness Drake: My Lords, on any reading this order raises the barriers to an effective remedy to enforce employment rights for ordinary people. Yes, some employees will bring cases without merit but in my experience, from 27 years as first an ET member and then an EAT wing member, most claimants have a genuine belief that they have experienced a wrong in the workplace and been treated unfairly. Similarly, some employers behave badly—not all are models of paternalistic virtues facing difficult employees.

Employment tribunals used to be viewed as the last-resort mechanism, but the structural shift in the UK economy has also seen a corresponding decline in collective representation throughout the private sector. People no longer have access to a network of union representatives to help them pursue their workplace dispute. The tribunal system is often the only route open to them.

The order is concerned less with protecting access to justice and more with reducing the number of ET cases by pricing workers out of the system. In the order we see the obstacles to access. The language in the Explanatory Memorandum reduces the enforcement of employment rights to a commercial transaction. Paragraph 4.19 of those notes observes that if some users' expected costs of bringing a claim now exceed their expected benefits of doing so, the total volume of cases brought to the ET might reduce. Concepts such as "consumer surplus", "level of utility" and "price elasticity of demand" are deployed to give a monetary value to claimants' loss of satisfaction so that they will no longer choose to bring cases, thus reducing enforcing an employment right to something akin to purchasing a washing machine or an insurance policy.

The Explanatory Memorandum made depressing reading. It showed insensitivity to what drives some claimants. The motive is not always compensation. They can often feel frustrated and humiliated at the way they have been treated, and it becomes important to have a public record that they were badly treated. They may bring a case for unfair dismissal because they know that unless they can win that claim they cannot get a decent reference or a comparable job, and their "utility", as the memorandum puts it, may be far greater than the financial value of any remedy if they win, the median value of which is only around £4,600.

For those on low incomes, filling in an ET1 application form to register their claim is a complex procedure, notwithstanding the proposed simplifications. A remission form has been added that has to be submitted with the claim, which itself has to be submitted within a statutory deadline. Add limited literary skills, English as a second language and a lack of confidence, and we can see how the very process itself will work against precisely the vulnerable people who are most likely to be taken advantage of in the workplace.

An employment tribunal claimant is more likely to be male and working full-time or unemployed, confirming

that women in low-paid and part-time jobs are less likely to use the tribunal system to enforce their rights. This order will simply reinforce that.

For some types of cases, proportionality is lost. For claims on annual leave entitlements, unpaid wages, statutory redundancy payments or non-payment of the national minimum wage, the fees being set could be greater than the remedy being sought—even more so if you are a part-time employee.

The remission system will mean that significant numbers of individuals in couples earning national minimum wage rates will still have to pay fees to enforce their workplace rights, as will others on modest incomes. When it comes to equivalence, as other noble Lords have said, the proposed fees are higher than fees payable in the civil courts. For some, an appeal to the EAT will simply be out of their league, particularly when the cumulative effect of an issue fee, hearing fee, ET review fee, EAT lodge and hearing fees and their own legal costs are taken into account. That is deeply unfair. Appeals from employers could begin to dominate the EAT. Appeals to the EAT are on points of law, which require legal help and support to put forward.

Add the uncertainty that the claimant may not get their money back for the fees paid if they win their case. Yes, it will be open to the ET to order an unsuccessful party to pay an amount up to the value of the fees—or less, the criteria are unclear—then add the possibility that the employer may not pay up on such a fees order, or even on any other element of the remedy, and the scales of justice start heavily to tilt against the claimant.

The Government are already facing two legal challenges, one from a trade union, the other from a firm of Scottish solicitors. The order could affect women disproportionately, particularly in multi-claimant equal pay cases. Take the level of fees, the way in which the fee group may operate and the fact that solicitors operating on a no-win-no-fee basis may be unwilling to pay fees up front because they become too expensive, and again, before the claimant can get their foot in the door of the tribunal, we see those doors slowly closing.

The Government want to encourage parties to settle at an early stage, but the fees could produce perverse incentives and negative behaviour, as my noble friend Lady Donaghy explained. Some employers could become less likely to agree a resolution. They may want to see the claimant's money submitted first by registering the case, knowing that the claimant has to come up with the money. The worst employers may be emboldened to treat their employees badly, knowing that they may have to come up with significant amounts of money to pursue their case.

As for the vexatious employee, who seems to dominate this debate, employment tribunals already have case management powers, and can make orders for deposits and costs where a party is deemed to have acted vexatiously, abusively, disruptively or otherwise unreasonably or where the bringing of proceedings has been misconceived—that is a long list—and they are increasingly using those powers. Of course there is scope for improving the efficiency of the tribunal system—I sit in it, and could suggest several—and

[BARONESS DRAKE]

there are arguments for strengthening the judge's case management powers. Parties should be encouraged to settle whenever possible, but employment judges already often encourage them to do so. However, the order will introduce unfairness and raise the barriers for ordinary people to get an effective remedy. It will not raise the barriers for the well paid executive, but it will raise them for the ordinary person.

Lord Monks: My Lords, we know that the Ministry of Justice is constrained by some very tight budgets and needs to save money. However, it is clear from these orders that it is proposing to save money very much at the expense of the low-paid and the most vulnerable in our society. The argument that was made by my noble friend Lord Beecham about the comparison with the fees at the Supreme Court tells its own story. The fees at the Supreme Court are disproportionately low compared to what will be the position in the tribunals. Therefore, I do not see the Minister's argument that saving money has to be at the expense of those in the lower income parts of our society compared to those who are much better off and will be taking cases in the higher courts. The burden is in the wrong place.

Secondly, it is clear that this is all about deterring applicants. My noble friend Lord Young will remember debates on another regulation about raising the qualifying period for unfair dismissal. That took 3 million people out of the unfair dismissals scope virtually at a stroke. Now we have got this as well. As people have said, it is not going to deter the well paid executive who can see a crock of gold at the end of the case. Nor will it deter the union member because we already know that unions are preparing to support their members in appropriate cases by covering the fees. It will be those who are on their own, probably low paid and vulnerable, and who will not find it easy to get a comparable job. They are being told to go away quietly. I think that is a green light to the heartless, careless, poor employer that they can now get away with it when previously they would have had to be more circumspect.

I do not put too much weight on the remissions scheme. The idea that if one has a £3,000 household investment income or savings certainly seems to be unfair because it lumps the household together for those calculations. I think it is still very much an attack on the low-paid, and the remissions scheme is nowhere near adequate to cover that. This is Beecroft by the backdoor. I know the Minister's party colleague has been very strong in his condemnation of Beecroft, but why is it that these particular measures keep appearing, under a different guise for sure, and we keep seeing these attacks on employment rights in exactly the same spirit that Beecroft meant them in his original report.

I, too, add my voice to that of my noble friend Lady Turner in asking for these regulations to be withdrawn.

Baroness Whitaker: My Lords, I just want to speak briefly because I sat on employment tribunals for several years and I do not remember any vexation claims. Although some were poorly argued, they would actually have done better with a lawyer. Of course

conciliation is desirable where it can be arranged, but where it is not, I fear that these regulations will curtail access to justice. I am uneasy about the implication that assertion of rights is an unnecessary burden on business and therefore needs to be disincentivised.

There is exploitation and ill-treatment; I saw plenty of evidence of people sacked when pregnant or being sexually harassed. They were not glamorous bankers in the way that we read about them in the newspapers but, for instance, three cleaners whose lives were made a misery every day and people who were dismissed without a proper reason. The cases we found proved were brought by ordinary poor people who had lost their jobs. How could they afford to bring such cases under these regulations? I cannot imagine that they serve justice or provide that desirable balance between the interests of the employer and those of the employee; they distort it.

8.15 pm

Lord Lea of Crodall: My Lords, it seems that after 13 years of improving the quality of the contract of employment, and I mean everything from holidays and maternity rights through to the quality of access to justice, we have been going backwards since 2010. A more unequal society is the same as a less just society; a society which protects the strong at the expense of the weak. Of course, this can all be reversed; we hope that it will be in a couple of years with the election of a Labour Government, and on this side of the House, that is obviously the constitutional remedy to which we look forward.

I will make another point about the culture within which these proposals keep coming forward, whether it comes from the Department for Business or the Ministry of Justice makes no difference. We have lost the culture of the department for employment where people understand what creates some sort of balance in the labour market. We are, after all, looking for a labour market in which the quality of employment and jobs go along with the quality of the contract of employment. One cannot have satisfying, quality work without this being looked at in a holistic fashion.

I take this opportunity to put on record that, despite the fact that the Minister personally has a great commitment to some of these matters, the Ministry of Justice is the wrong culture within which to have a sensible picture of where we need to be going so far as the quality of the contract of employment are concerned.

Lord Young of Norwood Green: My Lords, my noble friends have made the key points, but I want to emphasise a couple of issues. The Government wanted to do something really positive and constructive, as my noble friend Lady Donaghy said, and they started to do it by enhancing the role of ACAS and encouraging mediation. We support that wholeheartedly. It is the right way forward. It is positive, it is constructive, it does not discriminate against people regardless of their income and it does not swing the pendulum towards employers, as I firmly believe the current proposals do.

As regards reducing the number of claims or the claims that the Government believe should not be taken, it is interesting that the statistics demonstrate that the number of cases is coming down in any event. My noble friend Lady Drake brings a wealth of experience of employment tribunals and employment appeal tribunals. She pointed out that judges already have significant powers in dealing with vexatious claims, so that part of the problem could and should have been dealt with. In our view, this is an unfortunate piece of legislation that, as one of my noble friends said, does not reduce red tape. It adds complexity and tilts the balance against workers. I agree with my noble friends that this order ought to be withdrawn.

Lord McNally: My Lords, I thank all noble Lords who have taken part in this debate, many of whom I know have spoken from a wealth of experience of tribunals, ACAS and the trade union movement. It has been helpful to identify and address concerns. Doing so has enabled me to set on record why the Government have decided to introduce fees in the employment tribunal system and, crucially, what has been put in place to ensure that fees are not a barrier to those wanting to access the justice system.

In speaking to his amendment to the Motion on the fees order, the noble Lord, Lord Beecham, expressed regret that its provisions do not effectively protect access to justice, that some claimants will be deterred from bringing claims and that the remission system is inadequate. Neither I nor my government colleagues accept those arguments. We believe that the mitigations we have put in place will properly protect access to justice for those seeking to bring claims. The remission scheme will ensure that those on low incomes can apply to have their fee reduced or waived entirely and, given the importance of the issues at stake, the Government believe it is unlikely that fees alone will deter those with a strong case bringing a claim. These factors, together with the power for the tribunal to order reimbursement of fees paid, will help to ensure that access to justice is maintained for those who wish to bring a claim.

As I have mentioned, we hope that fees will encourage potential claimants seriously to consider options to resolve disputes outside the tribunal system. From 2014, mandatory early conciliation will mean parties cannot bring a claim to the tribunal without first having sought a conciliated resolution via ACAS. Any decrease in claims after the introduction of fees does not mean that claims are being deterred. It is more likely that disputes are being resolved without the need to use the tribunal, which benefits everyone.

The noble Lord, Lord Beecham, raised a number of issues. He asked whether fees should be charged for someone seeking a small amount. All claimants, irrespective of appeal or claim type should make a contribution to the cost where they can afford to do so, and everyone should also think carefully about entering into litigation irrespective of the remedy sought. Claimants should bear the cost of fees where they make an allegation in a claim and fail to pursue it or where the employer is judged to have acted lawfully.

The noble Lord said that the employment tribunal is more expensive than the civil courts. The civil courts do not offer a reasonable comparator in this instance as they charge at up to five points in the court process and fees are set to recover the full cost. Civil courts process significantly higher volumes of claims and therefore have lower unit costs. In the civil courts, parties open themselves to much wider cost powers so there are different issues to consider.

The noble Lord asked about the changes to the process for the enforcement of awards when fees are introduced. The enforcement of employment tribunal awards is fast-tracked through the civil courts. There are no plans to make any changes as part of the introduction of fees. However, separately the Government have commissioned new research covering England and Wales and Scotland, and the findings are due to be published next year.

The noble Lord asked whether there will be guidance for those paying fees. We will ensure that all users are clear on the obligation to pay fees or to apply for a remission. Existing HMCTS guidance for employment tribunals will be updated to highlight the stages at which fees are payable. There will be fees and remission leaflets to explain the fees payable, how to pay and where to apply for remission.

Lord Beecham: Can the noble Lord say whether they will be in force by 29 July? Will they be available by that date?

Lord McNally: If they are not, I will write and tell the noble Lord. The noble Lord also raised the question of whether the Government know what the impact will be. It is difficult to predict the impact that the introduction of fees will have on behaviour. It may be reasonable to assume that if people who are thinking about bringing a claim have to pay to do so, they will more carefully consider whether they wish to do so and their chances of success than they would if the process was free. If this is a valid assumption, we would expect the number of speculative claims—and therefore the number of claims overall—to fall. We will review the impact post-implementation to ensure that the remissions system acts to ensure that only those who can afford to pay fees do so. To ensure that the fee-charging process is simple to understand and administer, we will examine impacts on equality groups in the light of experience and will verify the amount of fee income raised.

The noble Lord asked how we will review fees. Fees will be kept under review as part of an ongoing review of fees across the justice system. The review will seek to ensure that the remission system acts to ensure that only those who can afford to pay do so. The noble Lord, Lord Beecham, asked if redundancy payments will be taken into account in a remission of application. No, this is considered a capital payment under the current scheme. We are considering whether to change this as part of our recent consultation on remissions.

The noble Baroness, Lady Turner, raised a number of matters. Let me make it clear: we do not want a frightened or submissive workforce, as she implied. We want a highly skilled, adaptable, highly productive workforce that can compete in the world. It is important that the noble Baroness understands that introducing

[LORD McNALLY]

fees into these tribunals is not an attempt to deter individuals from bringing claims, and we do not believe that the provisions in the order will do so. Given the importance of the issues at stake, we believe, as I said, that it is unlikely that fees alone—

Lord Lea of Crondall: The Minister says that it is not likely to deter people. However, the memorandum states that that is the intention.

Lord McNally: We will not play with words. Of course, numbers will fall, so in that sense it will deter people. It will enable people to make better-informed decisions about what they are doing.

I pay tribute again to the vast experience the noble Baroness, Lady Donaghy, has of ACAS. I believe that making ACAS a first stop is a step forward and one to be much welcomed. Like all Members of the House I always regret when we are not able to receive the wisdom of the noble Lord, Lord Sugar, in person, but I note that he is in favour of more conciliation. The noble Baroness asked if the introduction of fees undermines the aims of early conciliation. We do not believe so. Fees can encourage parties to resolve their disputes as early as possible. In addition, respondents will be aware of the financial implications of losing a claim, including the ability of tribunals to order them to reimburse a claimant's fee. Therefore, if a respondent waits to see if the claimant pays the fee, it could increase the respondent's own cost. The noble Baroness also asked if this is designed to prevent weak and vexatious claims. We do not intend fees to prevent claimants bringing forward claims they believe to be genuine. We intend only that users who can afford to do so should contribute to the cost. If fees were to discourage those bringing speculative claims from doing so, this would be a positive consequence.

The noble Baroness, Lady Drake, acknowledged that this is a simplified scheme, and that is to be welcomed. It neither tilts the balance against workers nor closes the tribunal door. The noble Baroness also made the point that it was particularly disadvantageous to vulnerable people. Our initial analysis suggests that BME groups, women, younger people and disabled people are more likely to fall into the lower income bracket, so these groups are more likely to qualify for partial or full fee remission. The Government believe that it is right and fair that users of the Employment Appeal Tribunal, as with the employment tribunals, make a contribution towards the cost of their case when they can afford to do so. There are clear public policy reasons not to place the full burden on the taxpayer to subsidise fully a user who has already had the benefit of a previous judicial decision.

The noble Baroness, Lady Drake, also asked how fees will incentivise business to settle if only the claimant pays fees. Businesses will be conscious of the financial implications of losing a case, as well as the wider power of the employment tribunal judiciary to impose financial penalties on businesses that act unreasonably. Businesses will also be aware of the power of the tribunal to order them to reimburse the fees paid by the successful claimant.

The noble Lord, Lord Monks, intervened to tell us that, quite rightly, unions will support their members. I think that he was unfair in dismissing the impact of the remissions scheme. He asked whether we are trying to introduce Beecroft by the back door. No, we are not.

Is the court remissions scheme suitable to be used in employment tribunals? Yes, the remissions scheme is based on an individual's ability to pay and the principles are the same as those that arise in the civil courts.

I fully acknowledge the point made by the noble Baroness, Lady Whitaker, that discrimination occurs in the workplace. That is why we need employment tribunals. There is a danger in overstating the impact of the decisions that we are taking tonight. I take on board the comments that have been made; however, as the noble Lord, Lord Young, said, this will enhance the role of ACAS. The truth is that people who wish to resolve an employment dispute have access to an independent tribunal, which is part of a justice system that is highly respected throughout the world. However, proceedings before the tribunals are costly and the Government believe that it is unfair that taxpayers have to shoulder all of that cost. To share the burden, we are proposing to charge fees to cover about a third of the cost of the tribunal. That, it seems to us, is both reasonable and right.

Those who can afford to will pay a fee dependent on the claim type they are bringing. Because of the remissions scheme, we will put in place, no one should be denied access to the tribunal because they cannot afford it. The fees and the safeguards that we have built in represent a fairer way to share the costs of tribunals while fully preserving the principle of access to justice. I commend these orders to the House.

Motion agreed.

Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013

Motion to Approve

8.32 pm

Moved by Lord McNally

That the draft order laid before the House on 24 April be approved.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments.

The Minister of State, Ministry of Justice (Lord McNally): I beg to move.

Amendment to the Motion

Tabled by Lord Beecham

At end to insert "but that this House regrets that the introduction of the draft order will limit access to justice and deter meritorious claims from people who have been wronged in the workplace; and will also create an inadequate remission system for low-paid and vulnerable claimants."

Amendment not moved.

Motion agreed.

8.33 pm

Sitting suspended.

Marriage (Same Sex Couples) Bill

Report (1st Day) (Continued)

8.35 pm

Amendment 7

Moved by **Baroness Meacher**

7: After Clause 1, insert the following new Clause—
“Regulations

(1) The Secretary of State may by regulations make provision for the Registrar General to approve and permit organisations that are registered charities principally concerned with advancing or practising a non-religious belief to solemnise marriages according to their usages on the authority of a superintendent registrar’s certificate, and for related purposes.

(2) The regulations shall specify that such marriages may not take place in register offices, but may in particular—

- (a) define minimum requirements any such organisation must meet before it may be considered for such approval;
- (b) define the procedures for the appointment of registering officers by such organisations, for the issue and custody of marriage register books, for the solemnisation and registering of marriages, and for related matters, and in these matters the regulations shall follow where convenient the several precedents to be found in the Marriage Act 1949;
- (c) create criminal offences of a kind similar to, and with the same maximum penalties as, offences under Part IV of the Marriage Act 1949;
- (d) include incidental or consequential provisions (which may include provisions amending an enactment);
- (e) include transitional provision.

(3) The regulations under subsection (2)(a) must include provisions concerning whether an organisation—

- (a) is a registered charity principally concerned with advancing or practising a non-religious belief;
- (b) has been in continuous existence for at least 10 years;
- (c) has been performing celebrations of marriage and other ceremonies for its members for at least five years, such ceremonies being rooted in its belief system;
- (d) has in place written procedures for the selection, training and accreditation of persons to conduct solemnisations of marriages; and
- (e) appears to the Registrar General to be of good repute.

(4) The regulations shall extend to England and Wales.

(5) The regulations—

- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(6) The Secretary of State must lay these regulations before Parliament within six months of this Act coming into force.”

Baroness Meacher: My Lords, the purpose of this amendment is to provide for humanist and other belief-based marriages to have legal recognition in England and Wales, which they have had in Scotland since 2005. I apologise to the Minister and your Lordships for the fact that I have been in five different countries over the past few weeks and have been unable to attend any of the previous sessions on the Bill. I pay tribute to the noble Lord, Lord Harrison, and the noble Baroness, Lady Massey, who tabled a similar amendment in Committee. I also convey the apologies

of the noble Lord, Lord Garel-Jones, who is in hospital, I am sad to say. We were very keen to have his name on the amendment in view of the powerful speech he made in Committee.

It is gratifying that the humanist amendments have been supported on all sides of both Houses by people of religion and of no religion. Indeed, I hope the Minister will not mind if I quote her. She said that,

“of course everybody would support humanist marriages”.—[*Official Report*, 19/6/2013; col. 311.]

That, for me, is a tremendously valuable endorsement.

I applaud the Minister for tabling the government amendment, which takes a historic step towards eliminating the inequity in our system regarding humanist and other non-religious belief organisations. I offer the noble Baroness, Lady Thornton, my personal thanks for having worked very hard to ensure that belief-based marriages are given legal status. It is appropriate and helpful that the noble Baronesses, Lady Thornton and Lady Brinton, and the noble Lord, Lord Alli, have included their names on the government amendment, illustrating the strong support from all sides of the House for the key principle of our amendment, while acknowledging, probably very fairly, the Government’s commitment to a consultation on the issue.

Noble Lords may ask why I am moving this amendment, bearing in mind the fact that we have the government amendment. The answer is that the government amendment does not actually guarantee that humanist marriages will have legal status in England and Wales. The noble Lord, Lord Garel-Jones, said that,

“we in the humanist movement ‘will not cease from mental fight’ until we have achieved full recognition in the law for humanist marriage”.—[*Official Report*, 19/6/2013; col. 298.]

I feel a great duty to carry the torch for our dear colleague while he lies in hospital. It is very much in that context that I need to put some points on the record and seek some assurances from the Minister. In so doing, I seek to avoid a rerun of the Committee stage, albeit I was not here to listen to it, although noble Lords will be glad to hear that I have read it.

Religious marriages reflect the deepest beliefs and values of religious couples, but humanist beliefs and values are of equal importance to humanist couples. In an increasingly secular society, it is important that we do all we can to promote and recognise good values. Registry office marriages now account for two-thirds of marriages in this country. Those marriages may not involve the couple committing themselves in a ceremony to the all-important beliefs and associated values that they will need in times of trouble. If we want marriages to survive, we must nurture beliefs and values which will help couples to sort out their problems. There is also the equity issue. In the case of humanists, despite the cost and inconvenience, some have two marriage ceremonies to achieve the things they want: a meaningful wedding and one that has legal status. I hope that the Government accept that the inequity cannot continue beyond a short period to allow for a review and consultation.

Humanist marriage is well tried and tested. Scotland gave legal status to humanist marriages eight years ago and has some 3,000 such marriages each year.

[BARONESS MEACHER]

Humanist marriages account for 58% of the increase in marriages in Scotland in the last three years. All of them, of course, are belief and value-based marriages, and I am sure that noble Lords value that fact. Every year in England, the number of humanist marriages exceeds the number of Quaker or Unitarian marriages. Yet humanist marriages have no legal recognition, while these smaller minorities do have it. Legally recognised humanist marriages have strong support from the public, according to a YouGov poll—this is another important issue for the Government—with 53% in favour and only 12% opposed. Few policies, I suggest, have such a ringing public endorsement.

No one has any reason to fear the legal recognition of humanist and other belief-based marriages, again another important point. In particular, I do not believe that churches have anything to fear. Religious ceremonies already have the intrinsic characteristic of what, for me, is a good ceremony: a focus on important beliefs and values. I understand that the Church of England is relaxed about this amendment and I welcome that fact. I hope this also applies to the other great religions.

The professionalism of celebrants of humanist marriages and funerals is to be congratulated. Anyone who has attended a humanist marriage or funeral will attest that they are of the highest quality of ceremony that one could have. I have attended only two humanist funerals. They were professionally conducted, moving and memorable. Those who have been to other ceremonies have said the same to me.

Registrars suggest that this amendment represents a fundamental legislative change, but it is absolutely not. It builds organically on the existing law of the Marriage Act 1949. It is based upon the provisions that allow the Society of Friends to solemnise marriages, but adds some tighter controls which I would think the Government—and certainly I—welcome.

Let me refer to the Government's objections to the earlier amendment. All these concerns have been fully addressed in this amendment. I believe that the Government accept that fact. The draft has been vetted and cleared by a number of marriage law experts, and we know from the opinion of Matrix Chambers that the amendment is compatible with the European convention. So there is no reason to reject the content of this amendment. We hope that regulations will reflect the essential points so carefully drafted for our Amendment 7. However, we understand the Government's wish to undertake a consultation before introducing regulations to give legal status to humanist and other belief-based marriages.

I now turn to the Government's amendment and hope the Minister can give us just four assurances. First, will she repeat in this House her officials' assurances that they expect to complete the review, consultation and report well ahead of the end of 2014, which of course is the date given in the government amendment? Most importantly, can the Minister assure the House that regulations will be laid before the next general election? With eight years of experience of such marriages in Scotland and many decades of experience of analogous Quaker and Jewish marriages, I trust that this is not too much to ask. The important point here is that the

amendment should not be kicked into touch. Can the Minister assure the House that the considerable and unique experience and expertise of the British Humanist Association will be fully taken on board in the review and consultation, and that the criteria set out in the amendment will be considered as a basic guide for the future regulations when the review is being undertaken? No one has criticised those principles and points in our amendment, and they would provide a good basis for future regulations. Finally, can the Minister confirm that it is not her intention that commercial organisations will be able to profit from the regulations on belief-based marriages?

In conclusion, I express my sincere thanks to the Minister for her support for humanist marriages and for ensuring that the Government take this matter forward. I beg to move.

8.45 pm

Baroness Stowell of Beeston: With the leave of the House, perhaps noble Lords will allow me to speak to my amendment now for the convenience of this debate and respond to any questions raised at the end.

The noble Lords, Lord Lester, Lord Pannick, and the noble Baroness, Lady Thornton, have also put their names to Government's amendment. I welcome back the noble Baroness, Lady Meacher. I am sorry that she was unable to be here for the debates in Committee. I echo her good wishes for a speedy recovery to my noble friend Lord Garel-Jones who we are sad to be missing this evening.

When I responded to the debate on this issue in Committee, I undertook to have further discussions with colleagues about what the Government could do about the proposals put forward by the noble Lord, Lord Harrison. I recognised the strength of feeling in that debate and am pleased to bring forward on behalf of the Government amendments that provide for a statutory review, including a full public consultation, on whether belief organisations should solemnise marriage and, if so, what such a provision would look like. Crucially, the new clause provides the means to make any future changes by providing an order-making power that may amend any England and Wales legislation, both primary and secondary. In taking this approach, the Government's amendment reflects the solution proposed by my noble friend Lord Lester in Committee, supported by the noble Lord, Lord Alli, among others. Since then, I have had the opportunity to speak to some Members of your Lordships' House with an interest in this matter. My officials have also met the British Humanist Association and the noble Baroness, Lady Meacher. I am grateful to all noble Lords who have given up some of their time to engage in discussion with the Government, and to the British Humanist Association for its constructive approach to finding a way forward on this matter.

Perhaps I may say a little more about the government amendments and why they offer the best way forward in resolving this important issue. The arrangements for the review, which will be a statutory requirement, must provide for a full public consultation, and the Secretary of State must arrange for a report on the outcome of the review to be published by 1 January 2015.

The new clause gives the Secretary of State power to make provision by order permitting marriages according to the usages of belief organisations. Our amendment defines a belief organisation as an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality and ethics. I note what the noble Baroness, Lady Meacher, said about the importance of belief organisations and their purpose.

Such an order may amend any England and Wales legislation, both primary and secondary, and may make provision for the charging of fees. The point about fees is a technical one: it merely enables the Registrar General to charge a fee, as she does currently, to cover her costs in administering the service.

An order must provide that no religious service may be used at any marriage solemnised under the provisions of the order. This is because it has been a principle since their introduction that civil marriage ceremonies should be clearly distinct from religious marriage ceremonies. We do not want this review to open up the system by which religious organisations carry out marriages which has been in place for years, and this Bill has been drafted on those foundations. The intention is to maintain the distinction so that no religious elements should be used in a marriage according to the usages of belief organisations. Any order made under this clause will be subject to the affirmative procedure. So, were the Secretary of State to take advantage of the order-making clause, both Houses of Parliament would have an opportunity to debate it and the order would be subject to the affirmative procedure.

Although the Government maintain that this Bill is not the right place to make broader changes to marriage law, as I have said already, it would be wrong not to recognise the strength of feeling in support of the humanists. A statutory consultation as a means to effect any change is the right way forward in responding to the support for humanists, ensuring that the wider public are able to contribute to the debate, and securing that arrangements for belief-based marriages are made on a sound footing and that any implications of them are fully understood.

The noble Baroness, Lady Meacher, referred to what is already in place in Ireland and Scotland. There the law has been changed to allow for humanist and other belief marriages, but they operate a different system to what we have in England and Wales. None the less, in both those countries the changes were subject to extensive dialogue over a period of time with interested parties to develop a solution that fits with their marriage law. It must be right that, if we are to change the law in England and Wales, we should do so only after proper consideration, as it has already been given in Scotland and Ireland, and therefore after a proper public consultation.

In addition to a public consultation, we also need to give consideration to the impact of the changes on the voluntary, private and local government sectors and on religious organisations, although, as the noble Baroness, Lady Meacher, said, we have not received any suggestion from the churches that they object to the amendment we are bringing forward in order to achieve proper consideration. Likewise, consideration

must be given to what safeguards may be required and how these should be established and, in particular, how we ensure that the significant legal commitment made through marriage is properly regulated and recorded. Such fundamental public policy changes would normally be subject to these considerations and a review and consultation will allow us to do this.

Furthermore, we need to consider whether there are other belief organisations in addition to humanists which may wish to solemnise marriage, and therefore draw up criteria accordingly. I note what the noble Baroness said about the criteria in the amendment in her name. While we will, of course, have due regard to the proposals put forward by the BHA, we need to make sure that the criteria are set in a way that would allow belief organisations other than the BHA to conduct marriages should they wish to do so.

Let me now respond to some of the specific questions put to me by the noble Baroness. She asked me about commercial organisations. I can confirm that it is not our intention to allow commercial organisations to solemnise marriage. Marriage is an important institution and marriage for profit risks undermining key safeguards—for example, it could increase the instances of forced and sham marriages—if the emphasis is simply on increasing the numbers of couples going down the aisle, as it were, as opposed to undertaking proper checks on the couples. I hope I am able to reassure her on that point. She asked me about taking account of the expertise and experience of the British Humanist Association. I can certainly give her an assurance that we would want to give due weight to the expertise of humanist celebrants during the design of the review and consultation. We will also look carefully at the criteria set out in the amendment tabled by the noble Baroness as part of our work on this.

The noble Baroness sought further assurance about future timings. As I have said already, the clause states that the outcome of the review must be published by 1 January 2015. I stress that this is a final date for publication. I am confident that we will be able to provide a response before that time. Over and above that, it would be premature at this time to give a commitment to implementing the regulations. We must consult openly. Ministers will consider the results of the consultation and will, of course, have regard to the debates in both Houses during the passage of the Bill. It is clear that Ministers will have the power to make these changes. That is power that they do not have now, so the power will be there to make the change.

I am very grateful for the constructive approach that has been taken by all noble Lords with an interest in this matter. I believe that the Government's proposed approach offers the best way to address this issue. When it comes to the right point on the Marshalled List, I hope to move the amendments then, and I shall commend them to the House. As I say, I will be happy to respond to any further points that are made in debate.

Lord Alli: My Lords, I have added my name to Amendment 7. I have made my strong support for the legalisation of humanist marriages clear and said in Committee that the ball is well and truly in our court.

[LORD ALLI]

In our discussions in Committee, the noble Lord, Lord Lester of Herne Hill, like the lone ranger, and not for the first time in this Bill, rode over the hill to our rescue and gave us this formulation. I am more than delighted that the Government have tabled the amendment, bearing the names of the noble Lord, Lord Lester of Herne Hill, and my noble friend Lady Thornton. I pay tribute to the noble Baroness, Lady Stowell, for all her efforts in securing the change in policy. I know that she spent many hours negotiating with many different interests, and it is to her credit that we have this amendment.

I also pay tribute to my noble friend on the Front Bench, Lady Thornton. I know that it is a personal mission for her and I believe that many of us in Committee were moved by her interventions on this subject. I hope that my noble friend's sister is as proud of her today as we are on these Benches. I urge all those who support humanist marriage to support the amendment.

Baroness Brinton: My Lords, I, too, added my name to Amendment 7, and attempted to put my name to some of the government amendments but was pipped to the post by others. I, too, offer my thanks to Julian Huppert MP who started the process in another place, to the noble Baroness, Lady Thornton, and to my noble friend Lord Lester for the work they have done in conjunction with the Minister. We are extremely grateful for the progress that has been made in the short time since Committee. The only point I would reiterate from the debate in Committee is that this Bill is very much about equality. So far the equality has been based on same-sex and heterosexual marriage. This issue is vital for people who do not follow a religion or faith to be able to celebrate their marriages in the way they wish. It is long overdue and I am delighted that the government amendments pave the way. I look forward to the first humanist-celebrant wedding that I will be able to attend.

9 pm

Lord Lester of Herne Hill: My Lords, I just wish to add that the process here has been admirable. Had we simply stuck with forcing through an amendment to do the trick, it would not have held in the other place. There would have been ping pong and no public consultation. Including sexual orientation discrimination in the 2006 Act and caste discrimination in the 2010 Act by regulation and consultation seemed to be the best way forward. I am extremely glad that that approach, which is in the amendment of the noble Baroness, Lady Meacher, and now reflected in the government amendment, does the trick.

The Minister has not mentioned Amendment 135, grouped here, which amends the Long Title. Although this sounds like me being a lawyer, I am very glad that it is there because I raised the point in the previous debate that, on the face of it, this was out of order. Once we amend the Long Title, it is in order and it means, in Amendment 135, that the Bill will also be for,

“permitting marriages according to the usages of belief organisations”,

and so on. I have one—not exactly caveat—point, which is that there are belief organisations and belief organisations. A line has to be drawn because there are some belief organisations that have no proper structure and may be in favour of witchcraft, paganism or matters of that kind. It will be necessary using the test of the European human rights convention or the Human Rights Act to make sure that the Government draw the line properly. A consultation is important to be sure of that. However, I congratulate the Government on doing this and the way in which it has been done. I think we will remember it in the future.

Lord Birt: My Lords, I, too, thank the Government for bringing forward the amendment, and all those who worked on all sides to make that possible. The amendment offers the possibility but—as the noble Baroness, Lady Meacher, makes clear—not yet a guarantee that humanists, and perhaps in due course other groups, will be able to conduct lawful marriages. As we have heard, that already happens in a fast-growing number of countries. Humanism is a movement. It is not bound together by belief in a supreme being or a formal body of doctrine, but by ethical conviction, a belief in rationality and the virtues of science, respect for nature and a commitment to optimise the sum total of human happiness here on earth.

The noble Baroness, Lady Meacher, mentioned this. Anyone who has ever attended a humanist ceremony of any kind will attest to its spiritual power, to the sense that it viscerally captures and conveys a strong sense of community feeling and the wonder of human existence. The noble Lord, Lord Norton, who I see in his place, spoke most eloquently—in one of the most powerful of many powerful speeches at Second Reading—explaining why overall he supported the Marriage (Same Sex Couples) Bill, emphasising that it extended freedom, the freedom of gays to marry. This amendment, it is hoped, paves the way for a further extension of freedom for humanists to marry as they would wish. Like everyone else, I congratulate the Government, and I look forward to the first gay humanist wedding.

Lord Harrison: My Lords, as mover of the original amendment in Committee, along with my noble friend Lady Massey, I rise not to detain the House but, first, to thank the noble Baroness, Lady Meacher, for so cogently presenting the case this evening. For all those who spoke in Committee, I think we have universal support. I reserve my particular thanks for the Minister for working so hard behind the scenes to bring to fruition today the amendment that she moved this evening. I thank her on behalf of all humanists.

The Lord Bishop of Chester: My Lords, I add a few words from my own perspective and possibly from the perspective of these Benches, which may not be exactly the same. The Church of England was caught on the hop slightly by this issue in the Commons. A lot of time was given to an amendment on this matter, whereas all our energies had been around the quadruple lock and associated issues.

A couple of years ago, in your Lordships' House, I made clear my own commitment in principle to humanist marriage. It might have been one of my periodic jousts

with the noble Lord, Lord Alli. I cannot remember the precise details of it, but I made it clear. The honourable Member for the Rhondda immediately said that I was completely in favour of his amendment in the House of Commons. This then goaded the Second Church Estates Commissioner to state that the Church of England was actually opposed to humanist marriage. It was all rather on the hop. In Committee, the right reverend Prelate the Bishop of Guildford said here in your Lordships' House that he was, in principle, open to this development. Speaking for myself—I cannot speak more widely than that—it would make eminent sense for this consultation to take place.

There has been quite a lot of discussion of the Bill as if the objection to same-sex marriage was because of a particular religious understanding of marriage. I understand why that perception has been raised. However, it is important to say that, in Christian terms, marriage is not a possession of the church. It has always been seen as part of the creative order and for the good of creation as a whole. That has always been the position of the churches. I see no reason at all why the consultation should not lead to permission for humanist marriage and indeed for other belief organisations that meet the necessary criteria for doing this.

The Government's amendment is important because it allows for time for consultation. One of our complaints has been that this process has been rather telescoped in relation to same-sex marriage. We need time to think through some of the implications. I said at Second Reading—I will not repeat my points—that many of the issues before us would be resolved if we went towards a more continental separation of a civil preliminary and then had other organisations celebrate marriage in this dual way. That would iron out a lot of our problems. That may not be part of the consultation, but at least it would give us time to think through some of the issues.

I would rather regret it if humanists were forced to register all sorts of premises, which is one solution that may arise because at the moment we have a premises-based system in England and Wales. In Scotland, there is a celebrant-based process. That needs some careful thought because there may be some hybrid. However, I welcome the consultation. Certainly for my own part, and I believe more generally from these Benches, I very much welcome the Government's amendment because it gives time for a proper process of consultation.

Lord Cormack: As a lay man who is glad and proud to be a Christian, I should like to associate myself with most if not all of the right reverend Prelate's remarks. I am not sure about those that touched on establishment because I am a strong believer in the established church and I wish it to retain its position as far as marriage is concerned. However, this is clearly a fair and sensible amendment and I am glad to give it my support.

Lord Anderson of Swansea: I support the concession. I support the review. My only question for the Minister is that there would clearly be potential problems with sham marriages. What is the nature of the protections that she thinks should be built into this welcome amendment to protect against that?

Baroness Thornton: My Lords, I join other noble Lords in congratulating everybody, really. This is one of those occasions. I congratulate the noble Baroness, Lady Meacher, the noble Lord, Lord Garel-Jones, who I hope will be back with us soon, my noble friends Lord Harrison, Lady Massey and Lord Alli, the noble Lord, Lord Lester, and the noble Baroness, Lady Brinton. Of course, I also sincerely congratulate the Minister and the very talented team who worked with her on this. Late on Thursday, when we were trying to get the amendment down, get my name on it and do all the clearances, I was in an LSE governors' meeting. I texted the Minister to say that I thought we both needed a gin and tonic. I did not get one, but I hope she did.

I also congratulate the British Humanist Association, Andrew Copson its chief executive and his team who consistently jumped through hoops that had been set for them all the way through this process. They have sought all along the line to accommodate all the questions that have been asked. Noble Lords may remember that I said that my children would not be able to be married by a humanist celebrant in this country. I will now have to tell them that if they intend to get married they will probably have to have quite a long engagement. However, this is the House doing its job by doing good.

Baroness Stowell of Beeston: My Lords, I am very grateful to the noble Baroness, Lady Thornton, for reminding the House that I am part of a team. While I am very taken by the kind tributes made by the noble Lord, Lord Harrison, in particular, and the noble Lord, Lord Alli, it is important to stress that we have worked as a team in Government to be able to come forward with this amendment. We are very pleased to do so. I echo all the tributes just made by the noble Baroness, Lady Thornton. If it were possible in Lords-speak, I would say "Right back atcha", as they might say somewhere else.

If I may, I will respond to some of the serious points that have been made. My noble friend, Lord Lester, is right that we are amending the Long Title of the Bill to ensure that this amendment is properly reflected in what will become an Act. I note his points about that. I also note his point about there being belief organisations and belief organisations, and the need for safeguards. I note the questions of the noble Lord, Lord Anderson, about what people call, in shorthand, sham marriages. I also note what the right reverend Prelate the Bishop of Chester said about various points of detail. All of these contributions have emphasised why this is important, and why we think it is the right approach to have this review and consultation and make sure that all of these matters are properly considered. That is what we will do. As I said earlier to the noble Baroness, Lady Meacher, it is in the Bill that we have to do that before 1 January 2015, so we will certainly make sure that it happens.

Baroness Meacher: My Lords, I must apologise to the House. I should have welcomed the noble Lords, Lord Lester and Lord Pannick, and the noble Baroness, Lady Thornton, for having their names on the Government amendment. I am very grateful to all

[BARONESS MEACHER]

those who have spoken in this short debate. They have been very coherent and succinct, and quite excellent. I am perhaps particularly grateful to the right reverend Prelate the Bishop of Chester for clarifying the position of the Church of England, and also giving his personal support to the principle behind this amendment. That is very valuable to all of us. I am very grateful to the Minister for her helpful remarks and the assurances that she was able to give us.

I was obviously disappointed that the Minister could not reassure us about the timing of the laying of regulations. I am not at all surprised, but of course it is a disappointment. The Minister will know that all of us, including the noble Lord, Lord Garel-Jones, will be on her tail to ensure that the strength of feeling in this House and the other place is followed through to regulations after the consultation, to ensure that in future humanist marriages will have legal recognition. I say a last thank you to the British Humanist Association, without which I could not have done this. I arrived back from elsewhere and its support for me has been fantastic. I am very willing and happy to withdraw the amendment.

Amendment 7 withdrawn.

Amendment 8 not moved.

Clause 2: Marriage according to religious rites: no compulsion to solemnize etc

Amendment 9

Moved by Lord Wallace of Tankerness

9: Clause 2, page 2, line 10, after “compelled” insert “by any means (including by the enforcement of a contract or a statutory or other legal requirement)”

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I think it might help your Lordships’ House, and the progress of debate, if I do not say anything at this time on the other amendments, and respond to these in light of the debate that takes place. That will probably mean that I do not repeat myself.

Government Amendments 9 and 10 clarify the meaning of “compelled” in Clause 2, which provides important protections for religious organisations and their representatives from participating in religious solemnisation of marriages of same-sex couples. They have been tabled in response to concerns raised in your Lordships’ House and in the other place that the protection from compulsion set out in Clause 2 may be narrow because the meaning of compulsion is not clear. A number of noble Lords have raised that concern, not least the noble Baroness, Lady O’Loan, my noble friend Lady Berridge and the noble Lord, Lord Hylton.

9.15 pm

As the Government have made clear throughout the passage of this Bill, and as I explained when this issue was debated in Committee, the meaning of “compelled” in Clause 2 is broad and clear. In the

Committee discussions on 19 June I made it clear that the protection from compulsion is broad, and it may be helpful if I repeat now some of what I said then as some have asked for that reassurance. The protections from compulsion in Clause 2 include, but are not limited to,

“attempts to use criminal or civil law, contractual provisions or the imposition of any detriment to force a person to carry out the activities protected in Clause 2. The clause provides no specific remedy, but makes clear that no attempt at such compulsion would be upheld.

Less favourable treatment by a public authority of a person or organisation who does something which the Bill makes clear they are legally entitled to do would, in itself, clearly be unlawful and open to judicial review. The imposition of any penalties—civil or criminal—on a religious organisation or representative in order to compel them to opt in, or to participate in, religious solemnisation of same-sex marriages is clearly unlawful under the Bill.

Clause 2 will clearly prevent criminal or civil action being taken against any religious organisation or representatives merely for refusing to undertake acts protected under this clause. This includes, but is not limited to, disciplinary or other action taken in the employment context. In all circumstances a person who has suffered a detriment simply because they have not done one of the acts specified in Clause 2 will be able to rely on the protections in that clause to show that such conduct is unlawful and to obtain a remedy within the context of the particular claim”.—[*Official Report*, 19/6/13, cols. 281-2.]

That is the case.

However, we have listened. We agreed to consider carefully the concerns raised in your Lordships’ House that the meaning of “compelled” could be made clearer. We have consistently made clear our commitment to ensuring that the religious protections are strong and effective, and to making this clearer where to do so would have no harmful unintended consequences. In line with that commitment, government Amendments 9 and 10 make clear on the face of the Bill that compulsion has the broad meaning we have explained it has. The amendments simply make clear, as I have said, that a person is not to be compelled by any means to undertake an opt-in activity, or to refrain from undertaking an opt-out activity, or to participate in the religious solemnisation of the marriage of a same-sex couple. They use similar wording to that contained in Section 4 of the Abortion Act 1967, which has already been referenced in the course of our debates on Report. That section ensures that nobody can be forced to participate in treatment under that Act to which he or she has a conscientious objection.

I hope the noble Baroness, Lady O’Loan, will agree that the Government’s amendments serve the same purpose as her own Amendment 23. We believe that our amendments provide a little more clarity and I hope she will feel able to accept them. Other amendments are grouped here, but I will respond to those when I wind up the debate in the light of what is said in response to the government amendments and to those others. I beg to move.

Baroness Berridge: My Lords, I speak to Amendments 15, 16, 17, 21 and 22, in my name. I thank the Minister for tabling government Amendments 9 and 10. I thank the Government and the Bill team for listening to the concerns raised in Committee. Amendments 9 and 10 clarify the protections given to religious groups under the Bill. The groups, whose concerns had previously

not been allayed, were some of those that perform marriages recognised under UK law, where their religious official also performs the function of the registrar. Unlike weddings that noble Lords may have attended at hotels where the registrar comes to do the ceremony, no registrar goes, for instance, to the Catholic Church: the priest is known as the authorised person and so relieves the local registrar from the need to officiate.

There are tens of thousands of authorised people in England and Wales, within many religious organisations, some of whom felt vulnerable to challenge under judicial review, the Equality Act and the Human Rights Act, such that they might have considered handing back their registration as authorised persons if the Bill had not been amended in the manner that the Government outlined this evening. This would of course have been unfortunate and a further financial challenge to local authorities, which would have had to employ more registrars to officiate at such weddings.

I am very grateful to the Government for the amendments, which mean that authorised persons are protected from the risk of challenge and that I will be able to assure those who have contacted me that, as far as is possible in legislation—there can be no cast-iron guarantee—their and their organisations' decision whether or not to opt in is not amenable to challenge.

I am grateful for this clever amendment, which not only deals with the definition of compulsion but covers issues relating to the public function that is arguably exercised by authorised persons. In the light of my noble friend's assurances, I will be pleased not to pursue my amendments.

Baroness O'Loan: My Lords, I shall speak to Amendments 22 and 23 and 19 and 18—I shall take them in reverse order in the light of the comments made by the Minister. First, I express my gratitude to the Government for tabling Amendments 9 and 10 on the meaning of the word “compel”. They make it clear that compulsion by any means will not be allowed under the Bill. Therefore, any detrimental or unfavourable treatment of a person—whether an individual or an organisation—because that person has not performed, has decided not to perform or has refused to perform, a Clause 2(1) or (2) activity will be absolutely prohibited. That is in line with the Minister's statement during Committee on 19 June at col. 281, and I am content that the protection that was promised is now provided by those amendments.

Another of our concerns was that the word “compelled” did not make it clear that less favourable treatment by a public authority of a person who does not perform, decides not to perform or refuses to perform, a Clause 2(1) or (2) activity would be prohibited. A public authority could, for example, have used Section 149 of the Equality Act to treat a person less fairly. The amendments, however, again in line with the Minister's assurances during Committee on 19 June, make it clear that such treatment would be unlawful.

My amendment uses the words, “the imposition of any criminal or civil penalty”.

However, I am satisfied that the government amendments make it clear as expressed that any criminal or civil penalty—or indeed, any civil or legal action—against a person in those circumstances will be prohibited. A

person is protected, therefore, when deciding not to perform or refusing to perform a Clause 2(1) or (2) activity from challenges under the Human Rights Act or the Equality Act, by way of judicial review or by any other legal challenge. That is made apparent in the government amendments.

Although I recognise that the Government never considered, and still do not consider, that the decision of whether to opt in under Clause 2(1) is a public function, I am content that the wording of the amendment alleviates the risk as I perceived it for the purposes of the Human Rights Act, the Equality Act and judicial review. The bracketed wording,

“including by the enforcement of a contract or a statutory or other legal requirement”,

which provides a non-exhaustive list of examples, is helpful in that regard. Again, the protection is in line with the Minister's assurance during Committee, and we are content that that assurance is covered by the wording of the Government's amendments.

I am most grateful to the Government for listening to our concerns and for allaying them so effectively. We are now satisfied that the Government's lock is comprehensive and will protect persons, whether they be individuals or organisations, in the context of Clause 2(1) and (2).

I move to Amendments 18 and 19. Amendment 18 is designed to protect persons as designated in the Bill from unfavourable treatment following an expression of opinion or belief about same-sex marriage. I am aware that this issue has been debated to some extent under other amendments. Under Section 149 of the Equality Act, a public authority must always have regard to the need to provide all persons with equal opportunities, whether they be black, white, male, female, gay, lesbian, straight or whatever. In particular, public authorities must also be mindful of any disadvantage that is or could be suffered by any person with a protected characteristic, and the need to remove or minimise that disadvantage. Those protected characteristics have been well rehearsed in this House during this debate. They include age, sex, sexual orientation, religious or other belief and pregnancy.

Section 149 gives public authorities a lot of discretion in deciding whether to pursue a course of action. A public authority could decide to use its powers, for example, to try to eliminate or minimise disadvantages suffered by those in the LGBT community. That is a laudable aim but it could do so in a way which unnecessarily disadvantages those with religious or other beliefs about marriage. Section 149 does not force them to do so but it allows them to do so by giving them discretion. That discretion has expanded significantly over the years and the courts have interpreted it as a duty to further equality of opportunity, rather than a duty to avoid discrimination. The positive rather than negative duty has encouraged public authorities to pursue broad equality aims. Public authorities have, for example, denied public contracts to organisations which the public authority regarded as unsuitable to be associated with, for example on grounds of race, and the courts appear to have deemed this entirely lawful.

[BARONESS O'LOAN]

If a public authority decides to pursue equality of opportunity for the LGBT community, and if this is done in a way which unnecessarily disadvantages those of religious or other beliefs, the courts are unlikely to overturn such an action because of their general reluctance to second-guess public authorities in exercising their discretion. The protection from compulsion under Clause 2 gives protections only from actions arising or relating to the solemnisation of same-sex marriages. It is not at all clear from the Bill whether individuals employed by public authorities will be protected if they express an opinion or belief that marriage should only be between a man and a woman. At this point, I should say that I heard the noble and learned Lord, Lord Wallace of Tankerness, refer to something in relation to disciplinary authority. He was speaking quite quickly but it was something about disciplinary proceedings. Perhaps he could reassure me on that point when he sums up.

At the moment, it is unclear whether a teacher would be able to teach that marriage should only be between a man and woman, if that is their belief, because some pupils, parents and other teachers could find such teaching grossly offensive. It is not clear whether a school would be able positively to promote opposite-sex marriage unless it promoted same-sex marriage equally. It could be argued that such an expression would be contrary to the duty on public authorities to further equality of opportunity for the LGBT community and to foster good relations between people with different protected characteristics.

This is not based on hypothesis alone. A judgment was handed down just two weeks ago in which the public sector equality duty was one of the reasons used to dismiss Dr Hans-Christian Raabe from a position on the Advisory Council on the Misuse of Drugs, which he had been given some 17 days earlier by the Home department. He received a letter from the Parliamentary Under-Secretary of State for Crime Prevention, Mr James Brokenshire, telling him that his authority was being revoked because it had been discovered that some eight years ago, he had co-authored an article, *Gay Marriage and Homosexuality: Some Medical Comments*. He lost that judicial review; the judgment was in June 2013. That case shows very clearly that public authorities, MPs and Treasury solicitors are already relying upon the public sector equality duty to protect the LGBT community in a way which noble Lords stated during Committee it would be wrong for public authorities to do.

The Minister and others have relied on Article 9 and the fact that religion and belief is also a protected characteristic for the purpose of the public sector equality duty. They do that in order to suggest that this amendment is not necessary but it is in fact unclear whether expression of belief would be protected as a manifestation of religion or belief, following the case of Dr Raabe. It was asserted in that case that Article 9 of the European Convention guarantees only absolute entitlement to hold religious views. It does not guarantee absolute protection for their manifestation.

It was also asserted that there is a difference between acts that are a manifestation of religious belief and acts that are motivated by it. Again, if an expression

or a belief is protected as a manifestation of religion or belief—for example, when someone reasonably expresses a view in favour of traditional marriage—it will not necessarily protect individuals because the public authority has to strike a balance somewhere between that characteristic and the other protective characteristic, which is sexual orientation. Effectively, the public authority has to choose between religion and sexual orientation.

It is not clear that the court would strike down a decision arrived at by a public authority in those circumstances that ranked the need to ensure equality of opportunity with regard to sexual orientation more highly than the rights of religion. The case of Ms Ladele is an example of that.

9.30 pm

I know that guidance issued by the Equality and Human Rights Commission will be helpful, and the Government have committed to a process of engaging with the commission on that issue, but that would not provide adequate or necessary protection because public authorities need only to have regard to guidance; it is not generally binding on them. Without an amendment, the issue will therefore have to be resolved in the courts, and that will result in expense and uncertainty until it is resolved. That will have chilling effects on freedom of speech and public debate. During the earlier debates, the noble Lord, Lord Elton, referred to a letter that a number of Members of the House have received from a man who was arrested on the basis that he had been speaking in public about the need for sexual chastity—the need to remain faithful to one person rather than engaging with multiple partners, and things like that. He was arrested, his DNA and photograph were taken and he was held in a cell for seven hours, although he was subsequently released without charge.

The Government have repeatedly declared their intention to legislate as clearly as possible to prevent such a scenario. If they agree that less favourable treatment on the grounds of reasonably expressed belief or opinion should be *ultra vires*, the appropriate approach is to make that clear in the Bill in order to avoid unnecessary litigation. I am not altogether clear why the Government do not think that such a narrowly tailored amendment would resolve the problem without adverse consequences for the public sector duty more generally. It is better to eliminate that uncertainty now by making this amendment than to leave uncertainty that is likely to be litigated on.

I turn to Amendment 19, the second amendment on the public sector duty that is in my name. It is broader than Amendment 18. It has two limbs. The second one is the same as Amendment 18, so I do not need to rehearse the arguments in relation to that. The first limb protects persons, whether they are individuals or organisations, from unfavourable treatment following a decision not to,

“opt-in, conduct, be present at, carry out, participate in, or consent to the taking place”,

of a same-sex marriage. It is our view now that the Government's Amendments 9 and 10 would protect persons from unfavourable treatment of the kind covered in the first limb of Amendment 19. If we are correct in

interpreting the Government's amendment in this way, I shall be content to withdraw Amendment 19 following an assurance from the Minister to that effect. I beg to move.

Lord Brennan: My Lords, the purpose of the legislature in this particular legislation is to achieve clarity, in so far as it can, so that its application in public life in this country will not produce dissension or disturbance. Therefore, when we look at the provisions of the Act, we should have in mind a saying of the American Supreme Court: "It is not for the courts to protect the people from the consequences of their political choices. It is for Parliament to legislate with clarity".

I took part at Second Reading but not in Committee. That was to achieve two objectives. The first was some professional self-discipline; there is nothing less productive than lawyers telling the House what they think the law is or should be. Reserve is the order of the day when interpretation arises. Secondly, Committee was an opportunity for the Government to take the time that they said they would to consider concerns and produce remedies that they thought to be reasonable, in so far as remedies were required.

Government Amendments 9 and 10, I commend. They deal with the word "compel" and the concern about public function, and they deal with those matters comprehensively. I do not invite correction from my professional colleagues, but personally I cannot remember seeing in a statute—certainly not in one of this kind—the words "by any means". That is an all-embracing, protective phrase and I commend the Government doubly for such a courageous use of language to achieve one of the protections that they said they wanted to achieve: institutional independence.

The phrase "by any means" is followed by some words in brackets. My noble friend Lord Alli has consigned the bracket to statutory ignominy. I prefer a comma; it is just as good. A comma relates to the effect of the legislation on compulsion on ordinary people in their everyday employment, and I invite the Minister to confirm that it is an example, not a definitive, sole exception. Therefore, Amendments 22 and 23, to which I put my name, I no longer consider to be necessary.

This generosity of spirit and this legislative wisdom should not stop here. The Government's amendment to Schedule 7, dealing with the Public Order Act, remedies the concerns that those who express a public disagreement with same-sex marriage might be prosecuted under the Public Order Act, allowing for the expression of their views to be reasonable and not contrary to the Act. The amendments thus far have not involved the Equality Act, and the concern of many is not just Speakers' Corner—homosexuality is a sin and so is adultery between opposite-sex people, or whatever it might be. The concern is that, when in the workplace, the expression of a genuine belief, whatever it might be—and let us not be distracted by the homosexual context of this—should not result in detriment to that person in their workplace or their ordinary life.

The Government said that the existing law can address these concerns. Indeed, on the third day of Committee on 24 June, the noble Baroness, Lady Stowell, said that, to avoid misapplication or

misinterpretation of the equality law in this area, the Government, with the co-operation of the Equality and Human Rights Commission—I underline "and Human Rights"—will provide guidance to,

"provide adequate protections for religious organisations and individuals",

and to say,

"why the equality duty cannot be used to penalise those who do not agree with same-sex marriage".—[*Official Report*, 24/6/13; col. 603.]

I welcome that.

The Minister said that she would write to the noble Baroness, Lady O'Loan, which she has done, but without detail. There is time yet; Third Reading is next Monday. This topic must have been considered at some length. It is not complicated because the law appears to be straightforward, and so does the Government's view, so let us have this guidance, at least in outline, in public by Third Reading. That will achieve two things. The outline will prevent further debate on this issue and will reassure all of us that the Equality Act will not be a secondary vehicle for public dissatisfaction and dissent on either side. I encourage the Government to take that action.

I have said nothing about the principle of this Bill. I have been talking about freedoms which we share: the homosexual right to freedom of certain kinds and the religious believer's right to freedoms of certain kinds. This is a question of balance. I invite the Government to ensure that this Bill becomes law very soon with democratic balance, at least in the area of freedoms.

Lord Lester of Herne Hill: My Lords, like the noble Baronesses, Lady O'Loan and Lady Berridge, I am a member of the Joint Committee on Human Rights. Unlike them, I took the view, and take the view today, that the Bill is perfectly clear, even clearer with Amendments 9 and 10 for anyone who doubted it.

The Government responded to the Joint Committee on Human Rights report today. I do not know whether either noble Baroness has read the response but it has not been referred to so far. I have read it, and I am satisfied that it deals quite sufficiently with the doubts that were raised by the Catholic church through Aidan O'Neill QC and Professor Chris McCrudden, who is a member of my Chambers. I felt that the view expressed by the other side—by Robin Allen QC on behalf of the Equality and Human Rights Commission—was correct, but it became apparent that nothing would satisfy the noble Baronesses, Lady O'Loan and Lady Berridge, that there might not be issues that would still be raised. That is their view, and I respect it. I think the views that have been expressed raise fears that cannot be satisfied by language because, whatever we say in the Bill, I am sure that Members of the House will still raise question after question.

I entirely agree with the Government's legal advice as expressed in the response to the Joint Committee on Human Rights, and I suggest that that response is placed in the Library so that people other than the Joint Committee on Human Rights can see what is said before Third Reading. No doubt it will also be repeated by the Minister in reply today, but it is helpful to have it as a matter of record.

[LORD LESTER OF HERNE HILL]

I have been on that Joint Committee for 10 years and I am the last person standing out of the original members. In those 10 years, I have never known a situation like the one we were confronted with. We were deeply split and the only way in which we could produce a report was either by taking votes, as we used to do, which would have shown the differences, or by papering over the differences, which is what we did. Your Lordships should know that we were deeply split. The views expressed in the Chamber today reflect the ways in which we were split. I see that the noble Lord, Lord Faulks, is in his place. He, too, took an active part in those debates.

The Government have responded, and I congratulate them on the speed with which they have done so. I believe that what they have said is correct and that their citing of the law is also perfectly correct. I am glad that Amendments 9 and 10 have been moved. They are a bit verbose. I would have just said “by any means” without having to put words in brackets, but that is because I believe that at this time of night one should speak briefly and write briefly, if possible.

Baroness Butler-Sloss: My Lords, I have also put my name to the amendments in the name of the noble Baroness, Lady O’Loan. I share her view and the view of others and join in the congratulation of the Government on Amendments 9 and 10, which go a very long way and certainly meet Amendments 22 and 23. However, there is potentially a gap, shown by Amendments 18 and 19. I share the view of the noble Lord, Lord Brennan, and support his proposal that the guidance offered by the Government should be available. The gap that the noble Baroness, Lady O’Loan, has identified in Amendments 18 and 19 may well be met by that guidance, so it would be helpful for the Government to do that. I personally would wait to see that guidance before wishing to take Amendments 18 and 19 any further, although it is clearly not a matter for me but for the mover. However, the Government need to recognise that something needs to be said on paper to be sure that these points are met. To that extent, I differ from the noble Lord, Lord Lester.

9.45 pm

Baroness Royall of Blaisdon: My Lords, I will briefly also congratulate the Government. With their Amendments 9 and 10 they have clearly assuaged the majority of people’s fears. My noble friend Lord Brennan said that they comprehensively assuaged fears, which must be a good thing. The proposal from my noble friend about guidance sounds entirely correct, but I know from long experience that sometimes guidance takes rather longer to draft than we might like. However, discussions about the guidance, even if it is not fully drafted, might be a way forward in this particular little logjam. I am very happy to support the amendments.

Lord Wallace of Tankerness: My Lords, I thank noble Lords who have spoken and who have welcomed the Government’s amendments. I am pleased that the amendments have given the reassurances that the noble Baroness, Lady O’Loan, spoke about, as did my noble friend Lady Berridge, and the noble Lord, Lord Brennan.

Certainly, that was our intention, because we were conscious of the concerns that have been raised. I noticed that on the basis of that my noble friend Lady Berridge did not speak to Amendments 15 to 17. I also thank my noble friend Lord Lester for welcoming the Government’s response to the legislative report on the Bill from the Joint Committee on Human Rights. I can assure him that it has been placed in the Library, but I believe that the response is also available in the Printed Paper Office. I am glad that he welcomes these amendments and believes that the legal structure is in place to give the reassurances that have been sought. We have said on many occasions and from all parts of your Lordships’ House, not least from this Dispatch Box, that the security and protection of religious freedom that we wish to give to religious institutions is very much an important part of the architecture of the Bill. I hope that these amendments help to give that reassurance and to reinforce that protection.

Amendments 18 and 19, which the noble Baroness, Lady O’Loan, spoke to and the noble and learned Baroness, Lady Butler-Sloss, referred to, were rehearsed in Committee and I readily recognise the noble Baroness’s wish to explore the same ground again today. The intention of the amendments appears to be to ensure that any religious organisation or individual is not penalised by a public authority simply because they have expressed the view that marriage should be only between a man and a woman, or because they have decided not to participate in a religious solemnisation of marriages of same-sex couples.

It is important to remind ourselves that Section 149 of the Equality Act 2010 places a duty on public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who hold and do not hold particular protected characteristics. It applies to the protected characteristic of religion or belief, not just to sexual orientation, and, as we have already made clear, the belief that marriage should be of one man with one woman is a protected belief. Let me also make it clear that the equality duty is a duty to think, not to act or to produce a particular outcome; it does not require any particular outcome. If, for example, a public authority withdrew its facilities from an organisation or treated an employee less favourably, simply because of the expression of a belief about the marriage of same-sex couples, it would be acting unlawfully, both in failing to apply the duty properly and potentially committing an act of unlawful discrimination under the Equality Act.

Members of your Lordships’ House may recall that when we debated this in Committee, I referred to the decision of the Judicial Committee of your Lordship’s House in the case of *Wheeler v Leicester City Council* in 1985. That was a case in which the council banned a rugby club from using its ground after some of its members attended a tour of South Africa. The council was using a predecessor of a public sector duty to justify its actions. In that case, the House of Lords held that the decision was irrational; it also found that the decision was procedurally unfair and that therefore there was an improper purpose, which resulted in the council’s decision being quashed. I believe that the same reasoning would apply here.

The noble Baroness, Lady O’Loan, asked me about something that I said during my opening, when I moved the amendment. I am happy to repeat it. Clause 2 will clearly prevent criminal or civil action being taken against any religious organisation or representatives merely for refusing to undertake acts protected under this clause. That includes, but is not limited to—this picks up the point made by the noble Lord, Lord Brennan, that the words in brackets in the amendment are not exhaustive—disciplinary or other action taken in the employment context. In all circumstances, a person who has suffered a detriment simply because they have not done one of the acts specified in Clause 2 will be able to rely on the protections in that clause to show that such conduct is unlawful and to obtain a remedy within the context of the particular claim.

Furthermore, if a public authority is prevented, as Amendments 18 and 19 suggest, from having any regard to an individual’s or an organisation’s beliefs about the marriage of same-sex couples, it would be unable to consider how its own decisions could potentially discriminate against or otherwise disadvantage people who do believe that marriage should only be between a man and a woman. In fact, therefore, it could have the absolute opposite effect from that which I am sure that the noble Baroness seeks to achieve. I believe that that would be an unintended and harmful consequence of the amendment as drafted.

It is our view that an amendment of this kind would be unhelpful and unnecessary and that, rather than amending the legislation, the best way is to ensure that the equality duty is properly understood in the way that it is applied. We will seek to improve the guidance on its use; although, in all honesty, I cannot say that that will be made available before Third Reading. We are currently discussing with the Equality and Human Rights Commission how best to take forward our commitment to review the relevant guidance so as to include clear and helpful guidance for employers and public bodies in the context of this Bill when it is enacted. We will take that work forward as quickly as possible as part of the implementation of the Bill if enacted, although no timetable has yet been agreed. I believe that that is a sensible way to move forward.

Lord Brennan: I am grateful to the Minister for giving way. In the absence of the detail of the guidance, can he give the House a general assurance that the government guidance will make it clear to those responsible for applying the Equality Act that to do so in a way that raises the concerns that we are dealing with would be to act irrationally?

Lord Wallace of Tankerness: My Lords, it is very dangerous to try to draft guidance on the hoof, as it were. I think that I have expressed, both today and in Committee stage, in response to the amendments tabled by the noble Baroness—and, indeed, in a very detailed letter that I sent to those who had taken part in a similar debate in Committee and which is in the Library—the points that the Government believe are important and which provide the necessary protections. As my noble friend, Lord Lester, said in Committee, there is always the possibility of someone acting in an idiotic way. What we seek to do with the guidance most

fundamentally is to try to eliminate—or to reduce to an absolute minimum—the number of times that anyone would act in an idiotic way.

I have one further point. I think that the noble Baroness, Lady O’Loan, raised the issue of the judgment in the case of Hans-Christian Raabe. I will quote from the High Court decision of Mr Justice Stadlen in order to allay, again, concerns that the duty is being misused.

In paragraph 256 of the judgment, his Lordship said:

“As I have said, there is in my judgment nothing to suggest that if Dr Raabe had expressed his opposition to same sex marriage and set out any religious basis for that opposition, that would have been considered by the Defendant or Mr Brokenshire to be a reason for revoking his appointment. In fact he did not set out any religious basis for the views expressed in the 2005 Paper and there is no reason to suppose that the revocation of his appointment would inhibit or deter any person who opposes same sex marriage on religious grounds from publicly expressing such views for fear of being rejected for a similar appointment in the future. Mr de la Mare pointed out the most obviously offensive features of the Paper did not form part of any religious belief”.

Therefore, it is very clear from his Lordship’s judgment that the concern which has been expressed did not form any part of that decision. In those circumstances, I again commend the government amendments to the House and hope that the noble Baroness, Lady O’Loan, will not pursue her amendments.

Baroness O’Loan: My Lords, I want to say something about the nature of the debate on the Bill in the House today and on previous occasions, as it is has been very acrimonious.

Baroness Stowell of Beeston: I am sorry to interrupt the noble Baroness. We are discussing government Amendment 9. Indeed, we have concluded our debate on it.

Amendment 9 agreed.

Amendment 10

Moved by Lord Wallace of Tankerness

10: Clause 2, page 2, line 13, after “compelled” insert “by any means (including by the enforcement of a contract or a statutory or other legal requirement)”

Amendment 10 agreed.

Amendments 11 to 17 not moved.

Amendment 18

Moved by Baroness O’Loan

18: Clause 2, page 4, line 11, at end insert—

“() For the purposes of section 149 of the Equality Act 2010, no regard may be had by any public authority to the expression by a person of the opinion or belief that marriage is the union of one man with one woman.”

Baroness O’Loan: I thank the Minister and the noble Baroness for all that they have said and done and for their work in creating these comprehensive amendments. I will not move these amendments which do not seek to wreck the Bill or cause homophobia but are simply designed to reassure a huge range of churches beyond the established church in England and Wales. I

[BARONESS O'LOAN]

hope that the Government will continue to keep your Lordships' House informed about their work with the Equality and Human Rights Commission on guidance, as that is clearly vital. On that basis, Amendments 18, 19, 22 and 23 are not moved.

The Deputy Speaker (Lord Skelmersdale): I am afraid that the rules do not allow me to do that. Is it your Lordships' pleasure that Amendment 18 be withdrawn?

Amendment 18 withdrawn.

Amendments 19 to 23 not moved.

Clause 3 : Marriage for which no opt-in necessary

Amendments 24 to 30 not moved.

Clause 4 : Opt-in: marriage in places of worship

Amendments 31 to 33 not moved.

Schedule 1 : Registration of buildings etc

Amendments 34 to 36 not moved.

Amendment 37

Moved by **Baroness Northover**

37: Schedule 1, page 19, line 11, leave out from beginning to end of line 32 and insert—

“(1) The Secretary of State may by statutory instrument make regulations about the procedures to be followed and the fees payable—

- (a) on registration applications;
- (b) in relation to section 43B authorisations;
- (c) on cancellation applications.

(2) The Secretary of State may by statutory instrument make—

- (a) regulations modifying the application of section 41 or 43 in relation to buildings that are already registered under section 43A;
- (b) regulations about cases where a person makes applications under sections 41 and 43A, or gives or certifies authorisations under sections 43 and 43B, in respect of the same building at the same time (including provision modifying any requirement imposed by any of those sections or by regulations under subsection (1) of this section).

(3) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section—

“cancellation application” means an application under section 43C for the cancellation of the registration of a building;

“registration application” means an application under section 43A for the registration of a building;

“section 43B authorisation” means the authorisation of a person under section 43B to be present at the solemnization of marriages in a building registered under section 43A.”

Baroness Northover: My Lords, in moving Amendment 37, I shall speak also to Amendments 41, 54, 56 to 59, 91, 92, 108 to 110, 113 to 118 and 123 which together comprise the government amendments brought forward in response to the Delegated Powers and Regulatory Reform Committee's fourth report which addressed this Bill's approach to the exercise of powers. I start by thanking the committee for its scrutiny of the Bill. As always, the report was thorough and made sound recommendations, the vast majority of which the Government have accepted in whole or in part. I will explain the amendments broadly in clause order.

Amendments 37 and 41 will clarify the powers to make regulations in relation to the registration of places of worship for the solemnisation of marriages of same-sex couples and the arrangements for some shared buildings. Amendment 37 responds to the committee's recommendation that powers of the Secretary of State in new Section 43D of the Marriage Act 1949—to make regulations about the registration of buildings which are registered as places of worship to solemnise same-sex marriages under the provisions of the Bill—should be subject to the affirmative procedure.

10 pm

The amendment clarifies the circumstances in which the power would be used, by providing that the Secretary of State may make regulations about the procedures to be followed and fees payable on matters such as the registration applications and the appointment of authorised persons to attend ceremonies. It makes more explicit the extent of the powers that can be exercised under the section. Amendment 41 responds to the committee's concerns that the scope of the powers regarding shared buildings which are not shared under the Sharing of Church Buildings Act 1969 appeared to extend beyond religious buildings, and whether this was an appropriate use of the powers. The amendment clarifies the Secretary of State's powers to make regulations about the registration of registered places of worship not subject to an agreement under the 1969 Act. The amendment makes it clear that the powers apply to buildings which have been registered as places of worship and not to any other buildings.

I turn now to Amendments 54 to 59, 108 to 110, 116 and 117, which collectively address the committee's recommendations on Clause 9, relating to the conversion of civil partnerships. The committee was concerned that not all regulations made under Clause 9 would be purely administrative and that some were of sufficient significance to warrant the regulations being made by the Secretary of State rather than the Registrar General.

Although most regulations made under Clause 9 are likely to relate to administrative matters—and hence were not originally subject to any parliamentary procedure—we welcome the committee's remarks and recognise that the first set of regulations will set out more important issues, such as where conversions can take place, the processes involved and whether couples will be given a choice of alternatives on such matters. We therefore agree with the committee's recommendation that the Secretary of State, rather than the Registrar General as currently provided, should make regulations

under Clause 9 and that the first set of such regulations should be fully debated by Parliament by being subject to the affirmative procedure.

In Amendment 123, we propose enabling the Secretary of State to empower the Registrar General to make administrative regulations. However, thanks to the committee's rapid and helpful input, it has come to our attention that the drafting of Amendment 123 means that its effect may be broader than we intended. We are considering this urgently and, if required, we will withdraw Amendment 123, when we reach it, and table a revised amendment as soon as possible, which will have a narrower effect, in response to the committee's input and our original intentions.

Amendments 113, 114 and 118 respond to two committee recommendations. The committee felt that, when the Government seek by order under paragraph 1 or 2 of Schedule 2 to vary the general rule that marriages of same-sex couples in England and Wales are to be treated as civil partnerships in other parts of the United Kingdom, this should be subject to greater parliamentary control.

We accept this, but emphasise that already the Government can do nothing under this power without the consent of the Scottish Parliament or the Northern Ireland Assembly, as appropriate, where any such order contains provision within the legislative competence of either of the devolved Administrations. In the case of paragraph 27 of Schedule 4, we are again happy to accept the committee's recommendation that any disapplication of the general rule that marriages of same-sex couples are to be treated under English and Welsh law in the same way as marriage between opposite-sex couples should be subject to the affirmative procedure. We welcome these observations and accordingly propose to introduce the affirmative procedure when the Secretary of State makes an order under paragraph 1(2) or paragraph 2 to Schedule 2 or paragraph 27 to Schedule 4.

I turn now to Schedule 6 and Amendment 91, which responds to the committee's concern that aspects of these powers were not consistent with the quadruple-lock protections for the Church of England and the Church in Wales. This amendment clarifies the provision for Orders in Council in relation to the solemnisation through religious ceremonies of marriages of same-sex couples on Armed Forces bases overseas. This amendment clarifies that an Order in Council to make provision for the marriage of same-sex couples on Armed Forces bases overseas explicitly prohibits solemnisation of marriage according to the rites of the Church of England or the Church in Wales, in line with the religious protections elsewhere in the Bill. This amendment also provides that the Order in Council must, rather than may, make provision to secure that such a marriage under other religious rites and usages may not be solemnised unless the relevant governing authority has given written consent to marriages of same-sex couples.

I will now briefly cover Amendment 92, which does not derive from the recommendations of the committee. This amendment clarifies that, should the Church in Wales decide that the law of England and Wales be changed to allow the marriage of couples according to

the rites of the Church in Wales, the Lord Chancellor is permitted to make relevant amending provision. This will include amending provision to include Orders in Council for marriages overseas. Given the relatively technical nature of this amendment and, for administrative convenience, it is thought appropriate for the Lord Chancellor, as opposed to the Secretary of State, to make the order, even though it is related to the Armed Forces.

We thank the Delegated Powers Committee for its careful work and hope that it will be pleased with our response. I therefore commend these amendments to the House. I beg to move.

Baroness Thornton: My Lords, from these Benches we are very content.

Amendment 37 agreed.

Amendments 38 and 39 had been withdrawn from the Marshalled List.

Amendment 40 not moved.

Amendment 41

Moved by Baroness Stowell of Beeston

41: Schedule 1, page 21, line 14, leave out from “” to end of line 24 and insert “shared places of worship: registration and cancellation

(1) The Secretary of State may by statutory instrument make regulations about—

- (a) registration applications relating to other shared places of worship;
- (b) cancellation applications relating to other shared places of worship;
- (c) the sharing churches' use of other shared places of worship (in cases where those places are registered under section 43A) for the solemnization of marriages of same sex couples.

(2) The provision that may be made under subsection (1)(a) or (b) includes provision about the procedures to be followed on registration applications or cancellation applications.

(3) In this section “other shared place of worship” means a shared building—

- (a) which has been certified as required by law as a place of religious worship, but
- (b) to which sections 44A and 44B do not apply because the building is neither—
 - (i) subject to a sharing agreement, nor
 - (ii) used as mentioned in section 6(4) of the 1969 Act.”

Amendment 41 agreed.

Clause 5 : Opt-in: other religious ceremonies

Amendment 42 not moved.

Clause 6 : Armed forces chapels

Amendments 43 and 44 not moved.

Clause 7 : Opt-in: “deathbed marriages”

Amendment 45 not moved.

Amendment 46

Moved by **Lord Dear**

46: After Clause 7, insert the following new Clause—
“Protection of teachers

(1) For the avoidance of doubt, nothing under or in consequence of this Act shall—

(a) affect the right of teachers to express their personal views about marriage in an appropriate way, or

(b) mean that any teacher will be under any obligation to endorse a particular view of marriage.

(2) Subsection (1) does not apply to a school designated as having a religious character by an order made by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998.”

Lord Dear: My Lords, in moving the amendment, which seeks to protect the rights to conscientious exclusion for schoolteachers, I draw attention to the fact that teachers who have a conscientious objection to same-sex marriage are prevented from endorsing same-sex marriage, just as they are not required to give religious education or attend religious worship.

A ComRes poll conducted in January this year found that a quarter, 26%, of teachers said that they would either probably refuse to teach children about the importance of same-sex marriage or do so only reluctantly. More than half, 56%, were concerned that colleagues who expressed support for traditional marriage could harm their career prospects. The Government’s response to concerns expressed in this House about teachers’ concerns in this regard has so far been somewhat less than enthusiastic, despite being encouraged by the Joint Committee on Human Rights to,

“to consider whether specific protections are required for faith schools and for individual teachers who hold a religious belief about same sex marriage”.

The Minister, the noble Baroness, Lady Stowell of Beeston, said in Committee that,

“no teacher is under any obligation to endorse a particular view of marriage or would be in the future as a result of the Bill. Teachers are and will continue to be free to express their personal views”.—[*Official Report*, 19/6/13; col. 351.]

Amendment 46 simply seeks to place those promises in the Bill.

It is vital that teachers know that their freedom is protected. They are particularly concerned that they may be asked by senior staff or head teachers to promote same-sex marriage against their conscience. As Mr John Bowers QC, a leading counsel in this field of law, has indicated, a refusal to obey a lawful instruction could, in his opinion, be grounds for dismissal of that member of staff.

In Committee, I referred to a current case, the circumstances of which were set out briefly in *Hansard* on 19 June at column 336, in which a long-serving teacher at a girls’ school in south London is facing disciplinary proceedings for refusing to teach a presentation which stated, in effect, that any disagreement with same-sex marriage is homophobia. The Government have said:

“There is a significant difference between expecting a teacher to explain something and expecting them to endorse it”.—[*Official Report*, 19/6/13; col. 351.]

I ask Members of your Lordships’ House to put themselves into the position where a classroom of 13 year-olds are being taught about same-sex marriage and ask whether the line can be drawn between endorsement on the one hand and a pure explanation on the other. It is easy to imagine that class of 13 year-olds pressing their teacher to give his or her personal opinion.

That is particularly the case when the issue of same-sex marriage arises in contexts which are outside sex education. For example, should a primary school teacher with a conscientious objection to same-sex marriage be expected to read a book such as *King and King*, which is well known and endorsed and published by Stonewall, about two princes who get married? The teacher could well consider such a book to be an endorsement of same-sex marriage. She should have the freedom to decline to read the book without suffering detriment, a freedom that has already been denied to one such teacher who stopped reading a book about two male penguins raising a chick because she felt it conflicted with her beliefs. She was subsequently restricted from having her own class.

The amendment does not apply to schools designated as having a religious character in order to ensure respect for the values that underpin those schools. Schools with a religious ethos may well want to endorse the particular view of marriage upheld by the tenets of that relevant religion and should be left free to do so.

A further related issue is how the Bill, once enacted, will interact with sex education. Under the Education Act 1996, pupils are taught that the importance of marriage and family life should be encouraged. That is set down in Section 403. It applies to all state schools, both with and without a religious character. Church schools have a special protection but there are concerns for teachers and pupils across the state system. Clause 11 of the Bill redefines marriage for the purposes of all legislation, as we know, so teaching about the importance of same-sex marriage will be inherent in Section 403. As John Bowers QC stated in a legal opinion on Section 403 that the section,

“provides no exception for conscientious beliefs. Unless this were amended I envisage that there will be a duty on the teacher to promote marriage as newly defined”.

He went on to say:

“If the *Marriage Bill* becomes law, schools could lawfully discipline a teacher who refused to teach materials endorsing same sex marriage”.

He added:

“The stark position in my view is that a Christian teacher (or indeed any teacher with a conscientious objection) may have to teach about (and positively portray) a notion of marriage (and its importance for family life) which they may find deeply offensive”.

He goes on:

“Section 403(1A) of the Education Act would also in my view provide a legitimate basis for schools or LEAs which wish to promote a particular vision of equality to require all teachers to teach materials which endorse same sex marriage. The position of teachers who manifest a conscientious objection to doing so is not enviable”.

10.15 pm

We had a debate earlier about registrars. It was said, and I have a good deal of sympathy for the views expressed, that registrars are required to perform a

public duty because the registration of marriage is an integral part of that particular function. It is integral to the job and essential to it. I ask your Lordships to try to distinguish, as I have, that example on the one hand and the position of teachers when sex education and certainly education about marriage is not an essential element of the job. Parallels were drawn about obstetricians and nurses on questions of abortion.

Finally, I should say, as perhaps a blinding glimpse of the obvious: it is surely better for the school to have a willing teacher—somebody willing to teach the subject of same-sex marriage—than to press a man or woman, against their will, to try to promote something when their heart is not in it. The end product would be less than desirable. I believe that the amendment will do everything to protect those teachers whom the ComRes poll has identified as representing a quarter of our teaching staff in this country. They will either refuse or will have great reluctance to teach the subject. We need to protect them, and I move the amendment accordingly.

Lord Eden of Winton: My Lords, I thank the noble Lord, Lord Dear, for moving his amendment and I support what he said. I have one point to make, which I regard as important. In the real world, the teacher in a classroom often finds him or herself in a somewhat isolated position. It is not always easy to control a class of up to about 30 children. It can be difficult for the teacher to establish fully the nature of what he or she wants to get across. A side example, which appears more regularly than one would wish, is when a teacher has tried to discipline someone in the class. The net result can be—I have recent practical examples of this—that the father of the child takes the opportunity to address the teacher in an abusive and threatening manner. One does not want to see that extended into this realm.

It is most important that the guidance given to the teaching profession is clear on this matter and, more especially, that the guidance is given to the heads of the schools. There are associations in which head teachers are fully represented, and I should like an assurance from the Minister that the guidance will go to all those associations, making it abundantly clear that any teacher who feels as strongly as was indicated by the noble Lord, Lord Dear, and who wishes to refrain from teaching matters with which they are unhappy will be fully protected. I hope to have that assurance from the Minister in her reply.

Baroness Royall of Blaisdon: My Lords, we have debated this issue several times throughout the passage of the Bill. I believe it is absolutely clear that while teachers will be under a legal duty, as is right and proper, to teach the law of the land—that gay couples will be able to marry—that does not mean that teachers are going to be able to advocate this as the best form of marriage, and nor are they going to be asked to promote same-sex marriage. These are very different things. It is right and proper that teachers in our country should be expected to teach the law of the land—not to promote or advocate but just to teach.

The noble Lord mentioned conscience. I think that he was talking about opt-outs. It would be totally inappropriate for a teacher to opt out of teaching the law of the land. The noble Lord also mentioned a classroom of 13 year-olds and asked whether the line could be drawn between endorsement and explanation. I have utmost confidence in the ability of teachers to do this. They already do so in many circumstances and I see absolutely no reason why they cannot do this with same-sex marriage. I am utterly opposed to the amendment.

The Earl of Listowel: My Lords, my noble friend raises a very interesting question about how teachers will work with this legislation. At Second Reading, the noble Baroness, Lady Stowell, made it very clear that this is a Bill about same-sex marriage. The Government have no intention of dealing with any other issue; this is just about same-sex marriage. However, from our debates this afternoon, I think it is also clear that we agree that for many years marriage has been understood to be the stepping stone to starting a family. For many people, it is the basis for going on to have children. Therefore, it does not seem too far-fetched to think that if a Government bring forward a Bill to introduce same-sex marriage, they may by implication be saying, “We have looked at all the research about the outcomes for same-sex marriage and the outcomes for children growing up with two women or two men as parents, and we are sanguine about the results. We are quite confident now that there are no concerns at all about that fashion of bringing up children”. Clearly, from what the noble Baroness said at Second Reading, that is not the Government’s intention, but I can see that this may be a difficulty—that there may be a popular misunderstanding of the Government’s intention in this Bill. Therefore, we need to make the guidance very clear for teachers. My noble friend cited two concerning cases about teachers coming under pressure because they had a different view from that of their head teachers about what should be taught in this area. A lot of work needs to be done in ensuring that the best guidance possible is offered to teachers.

I reiterate that there are strong feelings on both sides of this issue. Some people feel very strongly that with same-sex parenting there is no difference in terms of outcomes for children, and there are others who are very strongly against it. The science so far does not prove the case either way, but both sides want to twist or bend it to a certain degree to make that conclusion. Therefore, this matter requires a lot of attention. There is a need to think really carefully about the evidence involved and to use it in advising teachers and other childcare professionals about the best framework for the best outcomes for children.

Baroness Barker: My Lords, it is deeply regrettable that the noble Lord, Lord Dear, chose to speak about the promotion of same-sex relationships. That brings an echo of some very bad policy from times past for some of us.

I have great admiration for teachers. One of the great things they do is to manage classrooms of 13 year-olds, who are extremely challenging. Teachers already face issues of this kind in their daily life. They

[BARONESS BARKER]

already have guidance to which they refer in order to help them to do their jobs. I simply want to ask the Minister whether there is anything in this legislation that changes the existing position regarding the teaching of the subject of personal and sexual health education to children—a topic on which there have been endless debates, not least in your Lordships' House, in great detail.

Baroness Massey of Darwen: I commend what the noble Baroness has just said about existing policies. I want to make one quick point. Teachers in schools do not usually teach in isolation. Behind them there is a school ethos and school policies developed by the staff and the governors and very often by the pupils themselves involving parents. That is the context in which teachers are teaching. The existing law will apply and I do not see any problem at all. I agree that the word “promote” in relation to these issues is a very unfortunate one. Teachers do not promote; they educate.

Lord Deben: We are in great danger of thinking about only this subject. Teachers constantly have to face this issue. I remember going to a Protestant school and being taught about transubstantiation. The teacher had a duty to explain that honestly and straightforwardly. He also had a duty to explain what he himself thought about it. I did not agree with what he thought about it. On the other hand, I was extremely well informed by how he explained it. That is what teachers are doing constantly, in all sorts of areas. That is all that is being asked.

It is right that the teacher should explain what the law is. It is right that the teacher should have to explain the arguments that led to the law being as it is. It is also perfectly reasonable—and 13 year-olds would certainly demand it—for the pupils to say, “Well what do you think about it?”. It is perfectly right for the teacher to say what he or she thinks about it, but with the proper politeness and courtesy that teaching implies.

We are making a great deal too much of this because this is the sort of thing that all teachers face all the time. The law is not being changed to make a special arrangement for this, because it is already covered. I really do not think that we should get hung up about this, because it will have to be dealt with immediately we change the law, whatever we do. That is what teachers are there for: to try to make people understand that this is what the law is and that there are arguments. Let us get the class to argue and discuss the issues. The only people who do not want that are the people who want teachers to promote one side or the other. Promotion of things does not have much place in the classroom.

Lord Curry of Kirkharle: My Lords, I support the amendment of the noble Lord, Lord Dear. Deep concerns were expressed at Second Reading on this issue. We all have huge respect for the role of teachers and admiration for what they do, but many are deeply concerned about the impact of the Bill. Indeed, in the Government's response to the Joint Committee on Human Rights, the door was left partially open in that the Government said that they would continue to engage with religious organisations and others to explore

whether there was a case for further clarification in this area. I suggest that there is a case for further clarification. Rather than just rejecting this amendment, the Government ought to consider how they can respond to give greater clarity on the subject.

Lord Framlingham: My Lords, the noble Lord, Lord Deben, divided the issue into two—that teachers will have to explain the situation as it is and then, if asked, give their opinion. I am afraid that if we are not careful in this House, we are in grave danger of pretending things that will not happen. Anyone who has stood in front of a class knows that children are very cute. They want to know the truth and you have to be very honest. Teachers are teaching pupils about the ordinary, normal married state and same-sex marriage at the same time in as honest and fair a way as they possibly can. Then the pupils who are listening very carefully say, “But what do you really think Miss?” or “What do you really think about it Sir?” As the noble Lord, Lord Deben, said, teachers then have to give their opinions. If a teacher who does not believe in same-sex marriage and who has explained the situation factually is then forced into a corner and says, “I think same-sex marriage is an awful idea. I am sad that it ever happened and it is dreadful that it has gone through”, what then happens to that teacher?

10.30 pm

Baroness Stowell of Beeston: I am grateful to the noble Lord, Lord Dear, for moving Amendment 46. This amendment obviously reflects the concerns he expressed about the potential effect of the Bill on teachers' ability to express personal views about marriage, their employment rights and how they are expected to approach this topic in class. Noble Lords who have followed the passage of the Bill will know that these issues have been discussed at length in Committee, not only in this House but also in another place.

Before I respond to those three separate issues, I make the point that the way in which some contributions have been made to the debate this evening suggests that we are starting to confuse these three issues. I think it is important to see them as separate points. I start by addressing the point about freedom of expression generally. On this point I can be absolutely clear in response to my noble friend Baroness Barker, who asked about whether anything had changed in this Bill. Teachers are and will continue to be free to express a personal view about marriage or any other matter, provided they do so in a balanced and sensitive way. There is nothing in the Bill which will restrict anyone's right to express the view that marriage should be between a man and a woman.

Amendment 46, put forward by the noble Lord, Lord Dear, aims to offer additional protections in this regard. This is unnecessary for exactly the same reasons that I spelled out in response to debates earlier this evening. I will not repeat them, but I just signpost for noble Lords Article 9 of the European Convention on Human Rights and the Equality Act 2010. Everything I have said previously applies here. People, including teachers, have the right to believe whatever they wish to believe, and nothing about this is changed.

The noble Lord, Lord Dear, referred to the specific case of a teacher whom he said had been told that it is homophobic to disagree with the belief that same-sex couples should be able to marry. Obviously I do not know the details of that case, but I can be absolutely clear, because of everything that is in the Bill and what we are legislating to bring about, that it is absolutely legitimate to have a belief that marriage should only be between a man and a woman. I can say categorically that, if somebody holds that belief, it is not homophobic.

I move on to how the Bill affects teachers' employment rights. Like any other employee, teachers are protected from being discriminated against or harassed because of their religion or belief. Discriminating against someone because they hold or express a belief about marriage is unlawful under the Equality Act. I add that the noble Lord's amendment risks casting doubt on that existing protection by discriminating against a teacher applying for a job in a non-faith school, because his or his belief about marriage would already be unlawful under the Equality Act. The point, which I have made in other debates, is that, if we start being specific on the face of the Bill about such things, we dilute the protections to which teachers, as indeed any other employee, have the right, and we put them at risk.

Subsection (2) of the noble Lord's amendment would also cast doubt on the ability of teachers in faith schools who are not covered by this provision to express their personal views about marriage in an appropriate way. I am sure that he would agree that such an outcome would be undesirable, and harmful to the ability of teachers in faith schools to present their own views in an appropriate manner and in the broader context of that school's faith ethos.

The noble Lord, Lord Curry of Kirkharle, referred to the Government's response to the Joint Committee on Human Rights, and the point it makes about considering an amendment which relates directly to faith schools. I point out to the noble Lord that that is very different to the amendments we are discussing right now. That particular amendment, which the Government refer to in their response to the Joint Committee on Human Rights, is a very specific one, which we will debate on Wednesday. It is not this amendment.

Then we move on to the issue of the requirements and demands on teachers in the classroom and the content of their lessons. First, I must remind the House again that, although I know that this is not just related specifically to sex and relationship education, none the less sex and relationship education is not compulsory for primary schools. It is compulsory only for secondary schools. When the noble Lord referred to particular materials and the effect they may have on younger children, there is no demand or requirement on primary schools to teach sex and relationship education.

No teacher is under any obligation to endorse a particular view of marriage, or would be as a result of the Bill once it is in force. The noble Lord, Lord Dear, quoted me from earlier stages of the Bill. I will repeat myself briefly again because I am afraid there is no other way for me to make this point. I said:

"There is a significant difference between expecting a teacher to explain something and expecting them to endorse it".

Those are two separate things, and by expecting a teacher to explain something, there is no requirement for them to say that what is the law of the land is something they personally support. They are at liberty to have their own personal views. As I said—and as the noble Baroness, Lady Farrington, made clear in her contribution in Committee and as my noble friend Lord Deben said in his contribution tonight—teachers, "are required to explain the world around them in a way that is appropriate to the age and level of understanding of their pupils. This includes explaining some things which may be controversial and with which they may not necessarily agree"—

such as divorce and contraception. Teachers,

"are already very experienced in dealing with such issues and do so admirably and professionally".—[*Official Report*, 19/6/13; col. 351.]

We would expect them to be able to handle this kind of change in the law as they already have done in the past with changes, for instance, that allowed civil partnerships.

The noble Lord, Lord Dear, referred to some specific material. I make the point to him that the Government do not specify the materials that any school should use to support teaching. The main point I make is that schools are required to maintain a policy on their approach to sex and relationship education and to make that available to parents because it is important that they consult with parents about their approach to education in this context.

The noble Lord, Lord Dear, and my noble friend Lord Eden, asked about guidance. The Equality and Human Rights Commission guidance that we have talked about in the context of other debates includes technical guidance for schools in England dealing with the areas of the Equality Act 2010 which deal with the provision of education in schools. That will be reviewed as part of the work that the EHRC has committed to do to review its guidance in the context of this Bill when enacted. We are working with the EHRC to agree the plans and timetable for this work.

I understand the concerns behind the noble Lord's amendment and the strength of his feeling in this area. I can only reassure him as clearly as I can that the protections are there for teachers in the context of both their own employment rights, their own personal beliefs and their ability to express them, and also the requirement for them to teach the law of the land: they are under no obligation to promote or endorse anything that they do not agree with. As we have said at earlier stages in the passage of the Bill, to achieve the kind of tolerance, courtesy and generosity that we all talk about as being so important, it is incumbent upon teachers to be able to explain very clearly that there are many types of families and that same-sex couples will be able to marry in future. We want our children to be able to learn about the whole difference of views that there are in this country so that they can themselves ensure that we have the kind of society that we all feel strongly and passionately about. I hope that on that basis, the noble Lord feels able to withdraw his amendment. If he decides to press it to a Division, I will of course be voting not-Content.

Lord Dear: My Lords, first, I thank the Members of your Lordships' House who have spoken in favour of the amendment. I must say that I am a little confused by the statements made by the Minister.

[LORD DEAR]

I beg your Lordships' indulgence to read very quickly what the amendment sets out. It states that,

"nothing under or in consequence of this Act shall ... affect the right of teachers to express their personal views about marriage ... or ... mean that any teacher will be under any obligation to endorse a particular view of marriage".

That sets out exactly what the Minister said in Committee. She also said:

"Teachers are and will continue to be free to express their personal views".—[*Official Report*, 19/6/13; col. 351.]

That is fine, but 40,000 of them—more than 10% in the ComRes poll, when extrapolated, means 40,000 teachers in this country—have said that they would probably refuse to teach children about same-sex marriage, and 56% have said that they fear that this will lead to teachers being disciplined if they find themselves in that position.

I also beg the indulgence of the House in drawing attention to the fact that I have quoted extensively from John Bowers QC, leading counsel. I repeat:

"If the Marriage Bill becomes law, schools could lawfully discipline a teacher who refused to teach materials endorsing same sex marriage".

That is from leading counsel eminent in this field. His view has not been challenged by either of the noble Lords, Lord Lester of Herne Hill or Lord Pannick, so I take it—

Lord Pannick: I made a speech in Committee. I have not repeated the points I made in Committee because I did not think that it would help the House.

Lord Dear: I am grateful for that.

The fact is that there is a division of opinion between leading counsel—the noble Lord, Lord Pannick, on the one hand and John Bowers QC on the other.

Baroness Farrington of Ribbleton: My Lords, I have not repeated any of the comments that I made in Committee, but I am concerned whether leading counsel was asked whether teachers would be against endorsing same-sex marriage, because that has not been the tenor of any of the contributions, including those from the Minister. We are not talking about endorsement, we are talking about teaching the facts. I have been in politics a long time, and I have to tell the noble Lord, Lord Dear, that I know how to phrase a question to get the answer that I want.

Lord Dear: With the greatest of respect, I am not too sure what that point is set out to achieve.

The amendment states in paragraph (a) that nothing affects,

"the right of teachers to express their personal views about marriage in an appropriate way".

That means that, if the amendment were carried, teachers can say what they like. The noble Lord, Lord Framlingham, made very much the same point: teachers, when pressed, can say "I do" or "I do not" endorse it under that protection. Under the clause, if teachers say, "I do not agree with it", according to the opinion by John Bowers QC and others, they lay themselves open to disciplinary action or disadvantage. He continues:

"The stark position in my view is that a Christian teacher (or indeed any teacher with a conscientious objection) may have to teach about (and positively portray) a notion of marriage (and its importance for family life) which they may find deeply offensive".

I am not going to weary the House by speaking any longer. However, if one believes the ComRes poll, 10% of teachers, which if extrapolated is 40,000 teachers in this country, are deeply concerned about this and have said that they will either refuse to teach it or find to do so abhorrent—that is my word, not theirs. It seems that there is so much doubt in that 10% of the teaching staff that we need to cover this. All that we are asking is simply to take the words that the Minister expressed on 19 June:

"Teachers are and will continue to be free to express their personal views".—[*Official Report*, 19/6/13; col. 351.]

At the moment, it seems to John Bowers QC and others that if they express their own personal views on this, they are open to discipline and action. I therefore beg leave to seek the opinion of the House.

Amendments 47 and 48, as amendments to Amendment 46, not moved.

10.45 pm

Division on Amendment 46

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Amendment 46 disagreed.

Division No. 3

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(1) After section 47F of the Employment Rights Act 1996 insert—

“47G Beliefs about the definition of marriage

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the employee believes or expresses a belief that marriage should only take place between a man and a woman, provided that belief is expressed in a reasonable manner.

(2) This section is without prejudice to any rights which an employer may have under Schedule 9 to the Equality Act 2010.”

(2) In section 48 of the Employment Rights Act 1996, at the end of subsection (1) insert “or 47G”.”

Lord Anderson of Swansea: My Lords, I think I now have the message that the night is late and that I should be as succinct as I can be in moving Amendment 49. It, again, relates to employer-employee relationships and the adequate protections which, in my judgment, should be given to employees who are, of course, in a more vulnerable position as a result. Essentially, Amendment 49 seeks to protect the free speech of those who believe in, what I call in shorthand, traditional marriage. It provides protection, particularly in the workplace, for those who hold that view.

The amendment would insert proposed new Section 47G into the Employment Rights Act 1996 to prevent employers subjecting their employees to detriment for holding or expressing their belief. It is qualified only in that it protects the expression of belief in traditional marriage, and states that that belief must be expressed in a reasonable manner. Therefore, it is no protection to zealots who choose to travel well beyond the bounds of respect for the dignity of same-sex couples. The amendment is further qualified in that it does not affect employers such as gay charities and religious charities, which are allowed, under Schedule 9 to the Equality Act, to select job applicants on the grounds of sexual orientation and belief where there is a genuine occupational requirement for the job.

I should like to think that noble Lords will feel that all this is eminently reasonable. I look forward with interest to the Minister’s response and I hope that she will accept that this is a serious matter that deserves a serious reply. We are dealing with a view of marriage that was the orthodox view, and one that was accepted by the mainstream and, indeed, by all parties until some time after the 2010 election. Suddenly, there was pressure for change which gathered pace and the tide has swept on. There is a danger that supporters of traditional marriage will be left somewhat vulnerable on a sandbank unless there are adequate protections. These people are not bigots, as the Deputy Prime Minister called them, but ordinary people, many of whom are perhaps either in a majority or close to being in one. The question that we now have to ask ourselves is whether we should maintain space in the public square for those people to hold and express their views.

If an employer accepts the analysis that to be critical of traditional marriage is equivalent to being critical of black people and saying that they are not fully human, that may justify detrimental action. I hope that we can be assured that employers who take that view will not prevail.

10.56 pm

Amendment 49

Moved by **Lord Anderson of Swansea**

49: After Clause 7, insert the following new Clause—
 “Employment protection

11 pm

I pass on as speedily as I can. It is in many cases an important belief that would be impervious to change, and the question we now face is whether we want people who subscribe to the traditional view of marriage to be treated in the same way that we would treat racists. Of course, it is not a problem for us in Parliament because we benefit from privilege, but lest anyone should think that I am making too much of this, we have several examples of where people have been disadvantaged even before the law comes into effect. I shall not go into details, but Adrian Smith's position in the Trafford Housing Trust and the Reverend Willie Ross, who was dispensed with as a volunteer police chaplain, are cases in point.

I know that the Government have been alive to the fact that the Bill raises concerns about religious liberty and have sought to respond, but their understanding of religious liberty is very limited. The protections they have provided—the quadruple lock—relate narrowly to the conduct of religious services. Faith values go well beyond religious worship. In Wales, they relate not just to faith-based welfare provision but to respect for the integrity of mainstream religion and conscience generally. Therefore, the views of such people need to be respected not only in their church, because they are in church for only a short time in the week, but in their employment.

The free speech clause introduced by the Government, rather belatedly, in Committee, was welcome but does not tackle the main point of this amendment. The government amendment applies only to the criminal law and to only a very narrow section of that law. It protects people from being convicted under the law against inciting homophobic hatred. The law applies only to extreme speech and is not therefore relevant to this case in the employment sphere. We spend a great deal of time at work, and it is here that people are perhaps most vulnerable. My judgment is that we should introduce proper protections for beliefs about marriage into the Bill, even when the new definition of marriage takes place, well aware that there were very sad cases of people who were discriminated against before this Bill will come into effect. It need not happen if we really believe in equality and diversity. We must surely apply the law in a way that does not deny space for those who genuinely hold often deeply religious views for deeply religious reasons.

Over the years, the traditional role of your Lordships' House has been to protect minorities and freedom of speech. Unless the Bill is amended to give employment law protections to those who hold to traditional marriage, it will become the source of very real civil liberty problems. This is clearly not a wrecking amendment. Same-sex marriages would still happen if the amendment were accepted, but the amendment affords protection for those who hold what has until recently been the mainstream view. I therefore urge Members of the House to support it, both those who support the redefinition of marriage proposed by the Bill and those who do not. If we pass the amendment today, we will make plain that there is indeed a place in the public square for those who believe in same-sex marriage and for those who do not. We will protect key civil liberties

and protect our own identity as a democracy that believes in protecting our identity, minorities and civil liberties where there is a genuine space for difference. I beg to move.

Baroness Thornton: My Lords, I know that my noble friend is very concerned because cultural change is always difficult and sometimes painful, and I understand that. We have discussed these issues in some detail in Committee. I say to my noble friend that although the safeguards to protect people's freedom of speech exist, we also have the safeguards under the Equality Act, which is a carefully considered piece of legislation. They set the boundaries and characteristics that allow religion and belief as a protected characteristic, so we have the safeguards that ensure that this amendment is not necessary. As several noble Lords have already said during this debate and in Committee, one cannot legislate against idiots taking silly cases. Although in some of the cases that my noble friends have mentioned people won those vexatious, silly cases, that does not mean that you change the fundamental laws and freedoms that we already have. We will be opposing my noble friend's amendment.

Baroness Stowell of Beeston: My Lords, I will begin by saying a couple of things to the noble Lord, Lord Anderson. He is absolutely right that we feel very strongly about the need to protect the freedom of speech, which is what we are doing through this legislation. He also talked about this being a serious amendment, and that he wishes the Government to take it seriously. I can assure him that not only do we take this amendment seriously but that we have taken seriously all amendments that have been tabled, both in Committee and on Report, and will continue to do so.

The noble Lord mentioned various examples to illustrate his argument that employees need additional protection. I responded to all of them at various stages of the Bill, so I will not do so again now. However, he said that people feel concerned that once the Bill becomes an Act—and we hope that it will become an Act—they will not be able to maintain what he described as a mainstream view. I understand that concern; however, not only will it be possible for people to maintain and express their belief, we recognise that that belief is a mainstream opinion. We are not trying to say that it is a sidelined opinion—it is an important belief that many people hold, and we would not want to say anything to undermine people who hold that belief, as we respect them.

On the noble Lord's amendment and proposal to amend the Employment Act 1996, we are not convinced that it is necessary, or desirable, to provide additional protection for employees in this way who express a belief that marriage should be only between a man and a woman. Discriminating against an employee because of this belief would already be unlawful under the Equality Act, as the noble Baroness, Lady Thornton, said. That existing protection strikes the right balance in providing protection for the employee, while also protecting other employees and customers from discrimination and harassment. It is important to understand that the Equality Act is there to strike a balance. Employers must have the right to ask their staff to do what is necessary to run

their business, provided that it is reasonable and lawful. Therefore, if an employer does not think it right that an employee should express personal views on this or any other subject to customers, for example in a restaurant or hotel, he should be able to ensure that his employees perform their jobs in the appropriate way. To be clear, that does not mean that an employee has no right to hold the opinion or belief that they do.

Furthermore, if we are to pick out this particular belief for protection in the Employment Rights Act, what is the justification for stopping there? Other beliefs are equally worthy of protection, including the belief that marriage can be enjoyed equally by same-sex couples. The principle applies to an enormous range of beliefs which are entirely legitimate, although the expression of them might impede the performance of the job in question.

Employees are already protected under discrimination law. The Equality Act already provides comprehensive protection against unlawful discrimination—both direct and indirect—harassment and victimisation. It would be a matter of fact whether conduct of an employer constitutes a detriment and whether it is imposed because of the employee's belief that marriage should be of one man with one woman. If there is direct discrimination, it would not be capable of justification and would be unlawful.

We believe that these amendments are unnecessary and potentially damaging to the balanced way in which the Equality Act protects people from discrimination and harassment. There is no need for further protection to be added to the Employment Rights Act. I hope, therefore, that the noble Lord feels able to withdraw his amendment.

Lord Anderson of Swansea: I hear the Minister and my noble friend Lady Thornton. I remind them that the law is not being introduced into a vacuum, but into an atmosphere where there is already active hostility to those who hold a traditional view of marriage. There is a very active lobby that would seek to take to court, or bring pressure upon, employers in that respect: that is a fact of life.

My noble friend says that we cannot legislate against idiots—I think that that was her phrase—and, of course, we cannot do that. However, the problem is that if points are raised by individuals against employees or if employers act in a way of which we do not approve, that still raises fears and is still expensive for those who are the object of that.

My noble friend also said that some of those cases have been won. For example, Mr Adrian Smith won a contract action against his employers, thanks to some good legal advice. However, that was a Pyrrhic victory, given that he lost his job. As a result he had minimal compensation; so it is not quite as simple as the Minister has said. I hear her, though I am not wholly convinced by her assurances. In the circumstances, I think that it is appropriate to withdraw the proposed amendment.

Amendment 49 withdrawn.

Amendment 50 not moved.

Clause 8 : Power to allow for marriage of same sex couples in Church in Wales

Amendments 51 and 52 not moved.

Amendment 53

Moved by Lord Anderson of Swansea

53: After Clause 8, insert the following new Clause—
“Reasonable accommodation

(1) An employer has a duty to take such steps as are reasonably practical to accommodate an employee who has a conscientious belief that marriage is the union of one man to one woman for life to the exclusion of all others.

(2) The duty in subsection (1) applies where an employee would otherwise be required to act in a way which is contrary to their conscientious belief about marriage.

(3) For the purposes of subsection (1), an employee is as defined in section 230 of the Employment Rights Act 1996 but does not include a registrar, a superintendent registrar, the Registrar General or any person holding or exercising judicial office.

(4) This section is without prejudice to any rights which an employer has under Schedule 9 to the Equality Act 2010.”

Lord Anderson of Swansea: My Lords, this amendment is broadly in the same category as the previous ones and uses the phrase “reasonable accommodation”, which is well known in law. The purpose of this amendment is to protect employees from being compelled to act against their belief in traditional marriage, based on their conscientious objection.

For many centuries there has been a clear consensus throughout the United Kingdom, and indeed Europe and the Western world, that marriage is the union of one man and one woman. Until very recently—that is, until the galloping pace of the last year or two—that consensus went unchallenged. I assume that many doctoral students might find that an interesting example of pressure group activity.

Some have pointed to polls in an attempt to argue that there is now a consensus in support of same-sex marriage. The polls go in both directions, but at least we can conclude that there is a very substantial body of opinion—a very high proportion of the population—that remains in favour of traditional marriage. We therefore face the prospect of many of those people being unable in good conscience to embrace the new definition of marriage. How are we to respond to them? Freedom of speech is vital to everyone who subscribes to a traditional view, or where employment involves people being connected or intimately involved with marriage ceremonies.

I give the current Government credit for that. They have gone some way in an attempt to protect faith groups that are persuaded that marriage can only be between a man and a woman. In committee, the Minister emphasised that specific protections are in place to,

“ensure that religious organisations and their representatives who do not want to participate in same-sex marriage ceremonies cannot be compelled to do so”.—[*Official Report*, 17/6/13; col. 73.]

That was further elaborated today. The Minister added that,

“there are circumstances in which individuals need strong and effective protection in order for religious freedom to be safeguarded”.—[*Official Report*, 17/6/13; col. 74.]

[LORD ANDERSON OF SWANSEA]

Amen to that. However, with the exception of faith representatives who do not wish to solemnise same-sex marriages, the Bill currently contains no protection for other individuals; that is, individuals outside the ambit of the faith organisations. Therefore, for example, while a priest, minister, rabbi or imam is free to say that he does not believe in same-sex marriage and wants nothing to do with the ceremony, the Bill provides no protection at all for the chauffeur, seamstress, printer, photographer, caterer or marriage counsellor who may be no less committed to the principle of traditional marriage. Obviously, the normal legal principles would have to prevail—that is, that the relationship should not be too remote. This amendment therefore is based on the premise that not only church and faith leaders require strong and effective protection. In addition, a whole host of ordinary people will face crises of conscience. It is the job of this House and Parliament to protect minorities—sometimes difficult minorities, in my judgment.

11.15 pm

The Government have already proposed an amendment to the Public Order Act to confirm that the reasonable expression of the view that marriage should be between a man and a woman does not constitute incitement of hatred on the ground of sexual orientation. That is welcome but, as the Minister has acknowledged, it applies only to the criminal law. There is nothing in the amendment that would prevent a same-sex couple getting married. All it would do would be to place on an employer a duty to accommodate an employee who has a conscientious belief that marriage is, “the union of one man to one woman for life”.

In practice, this would mean taking steps to ensure that an employee is not put under any pressure to assist with making arrangements for a same-sex wedding when to do so would go against his or her conscience. I recognise, of course, that there could be real problems in small firms, but this all has to be interpreted in a reasonable way. In Committee, the Minister cited the case of a chauffeur who objects to same-sex weddings. Yet, surely it would be wrong for a company employing, for example, 10 chauffeurs to pick on the one driver who in good conscience does not feel able to assist with a same-sex wedding. Surely, we must protect those in a minority position.

Reasonable accommodation has a long pedigree in other parts of the world. There is much case law on this in the United States. Title VII of the American Civil Rights Act 1964 requires that employers reasonably accommodate the sincerely held religious belief of employees unless doing so would impose an undue hardship on the operation of the employer's business. This protection extends to manifestations of those beliefs. That is the interpretation of “accommodation” in the US. Are we to be less protective in this case than the US, which is also a common law jurisdiction? Without the protection contained in the amendment, employees will be faced with a stark choice of being forced to act against their conscience or losing their job. Surely, in a free and democratic society we would not want to see anyone placed in this position simply on account of their conscientious belief that only a

man and a woman can contract to a marriage. This, after all, is a view of marriage which until very recently was the orthodox mainstream view held almost universally by Members of your Lordships' House and by the population at large, and is still embraced by most other countries. If there is a chance of reasonable accommodation, it is surely not unreasonable to ask an employer in those circumstances to take fully into account the views of individual employees and, so far as is practicable in all the circumstances, to make provision for that employee. I beg to move.

Lord Lester of Herne Hill: My Lords, in my judgment this amendment suffers from the following problems among others. First, it imposes completely unnecessary burdens on employers; secondly, the burdens it imposes are unworkable; and, thirdly, it is discriminatory.

Lord Deben: My Lords, we have complained about many people suing, but this is an absolute opening for anybody to sue. I find it incredibly peculiar to say that an employer should organise his business so that somebody who objects to same-sex marriages could say that it was unreasonable to drive two people from one place to another. There is a limit to what can be reasonably considered a conscientious objection.

I voted for the case of registrars because I felt it was one end of the limit. I have to say that this really is ridiculous. It will open up the opportunity for people to sue the other way round on the basis of the most trivial issues. If a cook was able to say, “I am afraid that my petit fours cannot be used for the reception at a same-sex marriage”, we are making a laughing stock of the law. This is not just a bridge too far, it is a whole highway beyond where we should go.

Baroness Thornton: My Lords, the noble Lords, Lord Deben and Lord Lester, have put this very well indeed. I would add just one other matter. I find my noble friend's view of the future rather depressing. I do not believe that people will argue and fight with each other about the existence of same-sex marriage. I simply do not believe that this is what will happen. Apart from the fact that in most cases this is a private matter between two people of the same sex or opposite sex, it is not the kind of issue that will raise the problems that my noble friend has suggested. I hope that, as the Bill moves forward in the next year, my noble friend will start to take a more optimistic view of it.

Baroness Stowell of Beeston: My Lords, I am grateful to all noble Lords who have contributed to this debate. I shall try to avoid repeating myself, because a lot of this amendment would lead me to do so. I will avoid doing that, if the noble Lord, Lord Anderson, will forgive me, and go directly to the central point of his amendment.

My first point is that an employer should have the right to ask his employees to do their job. Equally, he may not impose a requirement on them that would discriminate against them because of their religion or belief. Of course, it is open to private sector employers to make any adjustment they wish for their staff. It is quite possible, and perfectly lawful, for an employer to

allow staff not to be involved in any activity that is objectionable to them—if the employer wishes. In this regard, private sector employers are not in the same position as public sector employers. As the noble Lord made clear, he does not include the likes of registrars in this debate in any case.

However, imposing a duty on employers to provide reasonable accommodation in respect of religion or belief would be a new concept in English law, as the noble Lord has already acknowledged, although he mentioned that it was common practice in the US. We would need to consider in detail how that duty would work in conjunction with the rules on indirect discrimination, and whether all other religious and philosophical beliefs should be equally protected—not just the belief that marriage should be of one man with one woman. That is not a task to be undertaken in this Bill, and I note the comments from my noble friends Lord Lester and Lord Deben about their view of this concept.

To pass this amendment would add a new burden on employers, who would have to work out what it means in their own particular context. It is probably worth pointing out that in his evidence to the Joint Committee on Human Rights, Robin Allen QC, on behalf of the Equality and Human Rights Commission, made clear that the existing legal protections contained within employment and equality law would be suitable to deal with any issues that may arise. He advised against including additional safeguards, such as a reasonable accommodation provision in this Bill.

So the current provision in legislation, which prohibits discrimination because of religion or belief, is fit for purpose. To impose a whole new duty of reasonable accommodation in this Bill is unnecessary. It could also be damaging to the balanced way in which the Equality Act operates, create uncertainty and add a new burden on employers who would have to make sense of it. I therefore ask the noble Lord to consider withdrawing his amendment.

Lord Anderson of Swansea: My Lords, if we truly believe in liberty of conscience, we can hardly be against an attempt to ensure that an employer seeks to accommodate, wherever reasonable, the views of an employee. I hear the noble Lord, Lord Deben, who tried to reduce to an absurdity the point that I was trying to make, but does he or does he not believe in the principle of seeking to accommodate, wherever practicable? Clearly, in many firms such an accommodation would not be practicable because of the number of individuals concerned but in the example of a car firm with perhaps 10 drivers, it is surely not unreasonable to ask an employer to ensure that the individual who has expressed such a view is not the one called upon to drive.

The noble Lord, Lord Lester, prayed in aid US precedence during a number of earlier debates on this matter. He quoted *Brown v the Board of Education of Topeka*. He or someone else mentioned *Plessy v Ferguson*, the separate but equal case in relation to the railroad. There were a number of other cases to the same effect but the noble Lord is less willing to quote US precedent when it does not happen to suit his purpose. Under the 1964 Civil Rights Act in the US, there is such a

provision for reasonable accommodation. It has worked there successfully since that time and I have no reason to doubt that if we were to put such a measure into law today, it would work equally effectively in England and Wales and other common-law jurisdictions.

Lord Lester of Herne Hill: The Equality Act 2010 is the best civil rights legislation in the world and is vastly superior to United States civil rights legislation.

Lord Anderson of Swansea: The noble Lord cites US precedent when it happens to suit his case. He is less ready to cite it when it does not, such as when considering the effect of the Civil Rights Act. However, I hear what has been said. Clearly, the proof of the pudding will be in the eating. We shall see how the Bill will affect others but I still think it is not unreasonable to ask employers to seek such a reasonable accommodation, wherever practicable. However, this time, I beg leave to withdraw the amendment.

Amendment 53 withdrawn.

Clause 9 : Conversion of civil partnership into marriage

Amendment 54

Moved by Baroness Stowell of Beeston

54: Clause 9, page 10, line 18, leave out “Registrar General” and insert “Secretary of State”

Amendment 54 agreed.

Amendment 55

Moved by Lord Elton

55: Clause 9, page 10, line 28, at end insert—

“(3A) Regulations under subsections (1) and (2) shall in particular provide that the conversion of a civil partnership to a marriage shall take place in a registered building with open doors in the presence of two or more witnesses and in the presence of either—

- (a) a registrar of the registration district in which the registered building is situated, or
- (b) an authorised person whose name and address have been certified in accordance with the regulations by the trustees or governing body of that registered building or of some other registered building in the same registration district.

(3B) Where the conversion of a civil partnership to a marriage takes place in a registered building each of the parties to the civil partnership shall, in some part of the ceremony and in the presence of the witnesses and the registrar or authorised person, make the following declaration—

(none) “I do solemnly declare that I know not of any lawful impediment why I, AB, may not be joined in matrimony to CD.”

and each of them shall say to the other—

(none) “I call upon these persons here present to witness that I, AB, do take thee, CD, to be my lawful wedded wife (or husband)”.

(3C) As an alternative to the declaration set out in subsection (3B) the persons contracting the marriage may make the requisite declaration either—

[LORD ELTON]

- (a) by saying “I declare that I know of no legal reason why I (name) may not be joined in marriage to (name)”; or
- (b) by replying “I am” to the question put to them successively “Are you (name) free lawfully to marry (name)?”;
- and as an alternative to the words of contract set out in that subsection the persons to be married may say to each other “I () take you (thee) to be my wedded wife (husband)”.

Lord Elton: My Lords, the lateness of the hour and my fatigue make it certain that I shall not take as much of your Lordships’ time as I should like to because I regard this as an important amendment. My intention is simply to strengthen the Bill, which may come as a surprise to noble Lords opposite who have the feeling that anything that comes from people like me is bound to be in some way sinister. How exaggerated are the head shakes that I see, but they are welcome none the less.

The Bill addresses an acknowledged evil. It is a rift in our society that needs to be mended. The tragedy is that the way in which it has been introduced has made it much harder to implement. However, that makes me keener for the Bill to do the job effectively. When the civil partnership legislation was introduced, it was generally understood that civil partnerships were to be taken as the equivalent of marriage and conferred equal status. However, that did not happen. The Bill needs to produce a status that is the equivalent of marriage. Given that it can be done no other way, some of us have reluctantly come to the view that the status must also be marriage.

11.30 pm

We have mostly been considering same-sex people who are at present single but who wish to become united. However, the biggest and most obvious injustice has been done to those who have been in civil partnerships for the past 10 years and have not gained thereby what was sold to them—that is, equal status. There is a difference between the two that is clear in the statute. In Clause 9, we therefore have the arrangements by which a civil partnership can be converted into a marriage. One would think that would be a momentous occasion and should be attended with some ceremony. I am well aware, from the volume of letters I have received, of the need for a measure of this kind and I am particularly taken by letters that have said, “We want to be united in exactly the same way as people who are married”.

The defining element of a marriage in the 1949 Act is the vows that are exchanged. All we have in Clause 9 is a regulating power. I looked at the arrangements for civil partnerships and the vows that are exchanged. I found that registrars would offer forms of vows which people could choose between and, if they did not like them, they could have their own words but they would have to be cleared by the registrar. I rang up the local registrar’s services association to find out what guidance was given to registrars on what would be suitable. The only advice registrars receive, I understand, is that there must be no religious words in the vows; otherwise they can be as people wish.

If the Bill is genuinely to become an Act that elevates same-sex couples who are in a partnership into what is seen as the higher status of marriage, and if many of those couples want it to be exactly the same, the amendment would do it for them. All I have done is to take the wording from subsections (2), (3) and (3A) of Section 44 of the Marriage Act 1949 and import it into the Bill. All I am trying to do is to strengthen civil partnership on its importation into marriage so that the two are the same. Not only would the same-sex couple be able to look at the opposite-sex couple and say, “We have got something as good as you have got”, but the opposite-sex couple could look at them and say, “You have got what we have got and each is as good as the other”.

That is the object of the Bill. If the Government reject the amendment on grounds of drafting, I ask them to put the drafting right. If they reject it on the grounds that it is unnecessary, I honestly think that I have demonstrated that it is not. If there is no difference between a civil partnership and a marriage, what on earth is the Bill for? I wait with bated breath. I trust that your Lordships will be friendly to this because it is a friendly offer.

The Lord Bishop of Chester: My Lords, I support the principle of the amendment. No doubt the detailed wording will be subject to criticism.

When civil partnerships were introduced, there was always an ambiguity. It was stated very strongly that it is not marriage and yet every provision on the statute book relating to marriage was trawled and reproduced in the Civil Partnership Act, which is a great big thick Act as a result. That ambiguity is what we are confronting at this point. Is a couple in a civil partnership almost essentially married? The language of marriage has been used in popular terms for civil partnerships in recent years—I acknowledge that—but we must remember that when the civil partnership legislation was put in place the view expressed was, “This is not marriage”.

Marriage is a commitment of two people to each other. That is the centre of the same-sex marriage Bill, but marriage is also a public and social institution. I am not suggesting that people around the Chamber who are in favour of the Bill deny that at all. As we go forward, measures that strengthen that sense of the social institution of marriage will be good for marriage in every sense. Vows that are essentially strong promises made between the couple are a vital part of creating that institution.

I have never been to a civil partnership; I have never been to a civil wedding. I have led a sheltered life, no doubt. However, the making of vows to one another in a personal way in the presence of representatives of the wider community is an essential part of the dynamic. When regulations for converting civil partnerships to marriage are drawn up, while we should not make any onerous requirements, I hope that we take matters seriously and reflect the social institution that must be at the heart of marriage.

Lord Alli: I understand the motivation behind the noble Lord, Lord Elton’s amendment, and I did not view it with huge suspicion. I understand that a conversion

of civil partnership to a marriage should be marked by a ceremony to convey the solemnity of the occasion. I completely accept that. In other circumstances, I would be with him on this amendment, but I am afraid that the past is the past and the future is the future. We have to start the journey from where we are. Many same-sex couples will have already had big celebrations when they entered their civil partnerships. They will have had family and friends witness their civil partnerships, and they will have made vows and speeches. For them, I suspect, it was the nearest they probably thought they would get to a marriage and they would not wish to repeat that whole process. There will be others who simply went to the registry office and had a small civil partnership in the expectation that one day they would be able to marry. For them, this would provide the opportunity to recommit their vows in the way in which the noble Lord, Lord Elton, wants them to do. There may indeed be others who wish to wait until the right reverend Prelate, and his colleagues, sanction same-sex marriage, or even permit civil partnerships in their churches, mosques and temples.

I am afraid that I do not think it is up to us to place an unnecessary hurdle in the conversion of civil partnerships in the way in which the noble Lord suggests. There is a further point. We should remember that many of those ceremonies are for the young, and we should also respect the financial burdens that another ceremony might place on those who are just starting off in life. While it is a lovely idea, I do not believe that it is necessary or that in the end will help those in civil partnerships who want to convert their civil partnerships into weddings. I am sorry, as I wanted to agree with the noble Lord, Lord Elton, and I am sure that we will find a way of doing so in future. However, I cannot support the amendment, although I commend the sentiments behind it.

Baroness Cumberlege: My Lords, I support my noble friend on this one. I had a ray of hope when I heard the noble Lord, Lord Alli, start to speak. I thought that at last we would unite the House. My noble friend's arguments are unassailable. It is absolutely right that we should be strengthening marriage, and this is a marvellous way to do it. I think of the weddings I have been to. I have been to a same-sex wedding, a pagan wedding, and what I consider to be normal weddings—Christian weddings. When I go to weddings the most moving part for me is when the vows are exchanged. There is always a hush in the town hall, church or the venue wherever it is taking place because people recognise that this is the very heart of the ceremony. It is the total commitment of two people to each other. I so agree with the right reverend Prelate that it is a public and social institution. It is something that you should make very public—what you are doing, why you are doing it and what you hope for the future. I am afraid I do not agree with any of the arguments of the noble Lord, Lord Alli. I think this is equity, fairness and what we should be doing.

Baroness Butler-Sloss: My Lords, I also agree with amendment of the noble Lord, Lord Elton. One point made by the noble Lord, Lord Alli, I thought was really quite unnecessary. One does not have to spend much money on a civil ceremony. I have a number of

friends, indeed members of my own family, who have got married with just two witnesses. In one case, they asked two people from the street, would they go in and be the witnesses. That was the cheapest possible wedding one could have. I would also like to support marriage in the Bill, at the point which we have now reached. There is a danger of demoting marriage among those who are civil partners. That would be the worst of all worlds. That would be very sad indeed. We should be strengthening every sort of marriage. We have got to that stage. Therefore, the amendment of the noble Lord, Lord Elton, would be entirely appropriate.

Baroness Royall of Blaisdon: My Lords, I warmly welcome the fact that the noble Lord, Lord Elton, wants to strengthen the Bill. Like him, I am very much in favour of strengthening marriage, and celebrating marriage at every opportunity. Therefore, I certainly agree with the sentiment of the amendment. Public commitment, made in the presence of friends and family, is an expression of that commitment and of the seriousness of the union that the two people are entering into. However, couples choosing to convert their civil partnerships into marriage, which of course they will not have to do, will already have gone through a very similar process. It is not the same and not with the vows, which I think are extremely important, although not everybody would agree; but they have made a public commitment in the presence of a registrar and witnesses.

Many of the couples who have done that, as the noble Lord himself said, might have wished to marry, but at that time they were not able to so they went through the civil partnership. Like my noble friend Lord Alli, I think that couples should not be required to have a ceremony to convert their civil partnership into marriage. However, for those couples that wish to embark upon marriage then, of course, it is absolutely right and proper. I am sure that when the guidance comes out, when the Government publish whatever they are going to publish in relation to the conversion of civil partnerships into marriage, should a couple wish to exchange vows and marry they will be able to do so. It is just that not every couple will be required to do so. It is the difference between requiring and enabling a couple to do so. I am afraid I cannot agree with the amendment, but I am fully behind the sentiment.

Baroness Northover: My Lords, I thank all noble Lords who participated in this mini debate. I particularly thank my noble friend Lord Elton for concerning himself so positively in looking at the conversion from civil partnerships to marriage. I think that the right reverend Prelate may have invited himself to some civil partnership ceremonies now that he has mentioned that he has not yet had such an invitation.

We have previously debated Clause 9 in Committee and the nature of the process that will apply for couples in a civil partnership to convert that partnership to a marriage. I was very grateful to my noble friend Lord Elton for agreeing to withdraw a similar amendment to this in Committee on the basis that it was appropriate to await the Government's response to the recommendations of the Delegated Powers and Regulatory Reform Committee. I hope that he is pleased with the Government's decision, which I explained

[BARONESS NORTHOVER]

earlier this evening, to accept the Committee's recommendation on Clause 9, so that the regulations under this clause would be made by the Secretary of State, rather than the Registrar General, and that the first such regulations would be subject to the affirmative procedure, and subsequent regulations subject to the negative procedure. Therefore, we will be debating this further.

11.45 pm

Clause 9 includes the power to make regulations on the detailed process of conversions, which it would not be appropriate to set out on the face of the Bill. This will follow discussions with interested parties, which have already started. I note the noble Lord's sympathy for those who may be affected by this, as well as that of the right reverend Prelate and my noble friend Lady Cumberlege. I assure them that their views and those of others will be fed in.

However, it would not be appropriate to go into further detail at this point, other than to reiterate that we do not envisage conversion to be akin to a marriage ceremony, nor that it must take place in registered places of worship as this amendment seems to envisage. We must remember, as the noble Lord, Lord Alli, and the noble Baroness, Lady Royall, pointed out, that couples in a civil partnership have already made a public commitment to each other and formed a legal relationship with equivalent rights and responsibilities to those of marriage. They may not want another ceremony or the costs associated with a more complicated procedure. Of course, we envisage that couples should have the ability to opt for a ceremony, as noble Lords have pointed out, if that is what they wish.

We have had a very sympathetic discussion in this debate as we look forward to the conversions to marriage. That is very encouraging. I hope that my noble friend will be willing to withdraw his amendment in the light of the government amendments that we agreed earlier and that he will be pleased that Parliament will have the opportunity to consider the detail of the process in due course. I am sure that we will have interesting debates at that time. I therefore hope that my noble friend will be content to withdraw his amendment.

Lord Elton: My Lords, my noble friend leaves me in a quandary. I think I am right in saying that the consultation will not bear fruit until after the Bill has passed through Parliament. If I can address the arguments that have been made, my feeling is that the noble and learned Baroness, Lady Butler-Sloss, dealt fairly effectively with the noble Lord, Lord Alli—or rather with his arguments, not necessarily with him. The costs can be minimal.

Too much has been made of the barrier. It is not a barrier: it is an escalator. It is something very easy to get on to that gets you where you want to be. That is what the Bill is for: to open up marriage to people who want it and who could not get it until now. If that is what we are committed to, we must have some means of doing it. We could leave it to the Secretary of State. I am glad that it will not be the Registrar General and

I am glad that it will be subject to the affirmative procedure. But I think as a matter of principle that the vows should be the same in both instances.

I know what enormous irritation one goes home with if the Chief Whip has kept both sides in the House for so long and then there is no vote. All things considered, I would like to take the opinion of the House.

11.48 pm

Division on Amendment 55

Contents 15; Not-Contents 84.

Amendment 55 disagreed.

Division No. 4

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11.55 pm

Amendments 56 to 59

Moved by **Baroness Stowell of Beeston**

56: Clause 9, page 10, line 38, leave out from beginning to “provision” in line 42

57: Clause 9, page 11, line 4, leave out “(e) or”

58: Clause 9, page 11, line 6, leave out “(e) or”

59: Clause 9, page 11, line 12, leave out subsection (6)

Amendments 56 to 59 agreed.

Clause 10 : Extra-territorial matters

Amendments 60 to 62 not moved.

Schedule 2 : Extra-territorial matters

Amendments 63 to 68 not moved.

Clause 11 : Effect of extension of marriage

Amendment 69 not moved.

Amendment 70

Moved by **Lord Wallace of Tankerness**

70: Clause 11, page 12, line 15, at end insert—

“(4A) For provision about limitations on the effects of subsections (1) and (2) and Schedule 3, see Part 7 of Schedule 4.”

Lord Wallace of Tankerness: My Lords, the amendment is a response to the concerns expressed by my noble and learned friend Lord Mackay of Clashfern that Clause 11 as drafted is potentially misleading and would benefit from further clarity. Clause 11(1) provides that marriage, in the law of England and Wales,

“has the same effect in relation to same sex couples as it has in relation to opposite sex couples”.

Under my noble and learned friend’s Amendment 33, which we debated in Committee, he argued that the clause will be clearer if it stated that the provision is subject to the later provisions—namely, the provisions in Schedules 3 and 4. Following the debate, my noble friend Lady Stowell and I considered carefully the points that my noble and learned friend made. They have been discussed with parliamentary counsel, and we have agreed that it would do no harm to provide a signpost to those provisions in Clause 11. That is what the amendment is intended to do, and I believe that it provides the clarity which my noble and learned friend sought. I hope that he is satisfied that we have sought to address his concerns, and I beg to move.

Lord Mackay of Clashfern: Yes, I certainly am. This is a correct elucidation of the situation and I am very grateful to the Government for accepting the point that something required to be done.

Amendment 70 agreed.

Amendment 71

Tabled by **Lord Armstrong of Ilminster**

71: Clause 11, page 12, line 23, at end insert—

“(d) an order under section (Legislative definitions) (1)(d)”

Lord Armstrong of Ilminster: My Lords, I am in something of a dilemma, because Amendment 71 is consequential on Amendment 85, which is the substantive amendment, but it has been agreed between the usual channels that Amendment 85 will be for debate on Wednesday afternoon. If it is for the convenience of the House that we should not be too late—much too late—rising tonight, I will be content not to move Amendment 71 tonight but come back to it when we discuss Amendment 85. If Amendment 85 falls, Amendment 71 will not be required; if Amendment 85 is maintained, we will need an amendment of this kind either at Report or on Third Reading.

Amendment 71 not moved.

Amendments 72 to 74 not moved.

Schedule 4: Effect of extension of marriage: further provision

Amendment 75

Moved by **Baroness Butler-Sloss**

75: Schedule 4, page 28, line 6, leave out sub-paragraph (2) and insert—

“(2) In subsection (2)(a) after “that the respondent has committed adultery” insert “or a sexual act with a person of the same sex similar to adultery”.”

Baroness Butler-Sloss: My Lords, in Committee, I spoke to a similar but not identical amendment at midnight. Today, I start two or three minutes later. It makes me wonder whether it is a ploy of the government Front-Bench to make sure that I speak to an amendment on this subject after 9 pm. The noble Baroness, Lady Stowell, made that suggestion in Committee. In Committee, I spoke at some length, despite the hour, about the importance of trust between those who enter into matrimony, so today I shall be very brief. Trust can be destroyed if one spouse has a relationship outside marriage and breaks the concept of faithfulness. That extramarital relationship strikes at the root of the marriage bond and can be devastating. It seems to me that the behaviour of the erring spouse should be identified as adultery, as it is in the Matrimonial Causes Act. I do not see why the injured spouse should petition for unreasonable behaviour, which is a wholly different matrimonial offence.

I have made changes to the amendment to refer to a sexual act similar to adultery. I do not consider that it would be very difficult for judges to decide what the amendment means, but it is most unlikely that a judge will ever have to do so. There are almost no defended divorces today. A divorce is a very easy process when it is undefended.

This amendment will apply to existing marriages between opposite-sex couples where one spouse enters into a same-sex relationship outside their marriage, so it is broader than the marriages of same-sex couples and would right a broader wrong. Unlike the perception of many in this House that amendments today are in effect wrecking amendments, this amendment, like the previous amendment by the noble Lord, Lord Elton, is intended to be helpful. It is of a wholly different type and is intended to help faithful spouses to deal

with this devastating blow to their marriage by treating it as a failure of fidelity, rather than a matter of what used to be called cruelty. I beg to move.

Lord Alli: The noble and learned Baroness will recall that I also spoke in Committee on her amendment. The issue we wrestled with then is the same that we are wrestling with now, which was that definition of adultery and the sexual act that defines it. I see that the noble and learned Baroness has said that a judge could interpret that but in every instance bar that of a lesbian relationship, we could find an accommodation. The issue of how you define adultery between two lesbians is something we have tackled over and over again from the Civil Partnership Act onwards. I do not believe that the noble and learned Baroness's amendment deals with that. I have huge sympathy regarding the issue that she raises but I do not feel that the amendment is drawn in a way which will make it clear. Given that there are grounds of unreasonable behaviour, it is probably unnecessary.

Lord Pannick: My Lords, I, too, cannot support this amendment. Under existing law, if a married man has a sexual relationship with another man his wife cannot sue for divorce on the ground of adultery. She can sue for divorce on the ground of unreasonable behaviour, based on sexual infidelity. As I understand it, the Bill adopts the same approach in relation to same-sex marriage and sexual infidelity with another same-sex partner. This seems to be consistent with existing legal principle. It involves no detriment whatever to the other party to the marriage, who can obtain a divorce on the basis of unreasonable behaviour. I, too, am concerned about the uncertainty inherent in the noble and learned Baroness's amendment. What is, "a sexual act ... similar to adultery", in the case of lesbians?

Lord Deben: My Lords, my mother was always rather diffident about what she referred to as "things down there" and I rather feel that the noble and learned Baroness has attempted to recreate my mother's views in what she has tried to say here. I find it hard to believe that a definition of a sexual act similar to adultery is one which is precise enough, even for the most learned of Lords. I feel that it does not achieve anything. We have another way of dealing with these things and, if I may say so, a rather more all-embracing and less detailed way of doing so. I am not ashamed to understand that Ministers have discussed this and have come to the conclusion that none of them want to produce anything more precise than has been produced. I have sympathy with them; we all should have.

Lord Mackay of Clashfern: My Lords, some provisions which appear fairly late in the Sexual Offences Act would have sufficed as a definition, but there is a point to be made about the distinction between the grounds in same-sex marriage and those in opposite-sex marriage. Adultery is mentioned in particular in relation to unreasonable behaviour in opposite-sex marriage. This is an imbalance between the two, which are supposed to be absolutely the same. It seems an unnecessary difference and the noble and learned Baroness has put her finger on an important point so far as this is concerned.

Baroness Berridge: My Lords, I, too, wish to speak to this amendment. While the law retains adultery as a ground for divorce, I believe that it should be applied equally. I think that I am right in recalling that perhaps this could have been short-circuited, as I believe there remains on our statute books, although it is not in force, a whole provision in relation to no-fault divorce. However, until we are in the position where people do not use fault as a ground for divorce, it is my submission that it should be applied to all situations.

There is inequality here. It is as unjust to gay couples as it is to heterosexual couples, as neither of them can ask for divorce on the grounds of adultery with someone of the same sex. Although I appreciate any humour that we can inject into this debate, as my noble friend Lord Deben just did, this is a serious point. One has only to look at some of the support group websites that exist. The one that I have come across is for wives who subsequently discover that their husband is in a relationship with a man. The support group website that I looked at this evening talks about pain, loss, betrayal, confusion, loss of self-esteem and feelings of isolation. To be told that if your husband leaves you for another man it is just unreasonable behaviour, but if he were to leave you for another woman you could petition for divorce on the grounds of adultery, is, I believe, unjust.

Bizarrely, that means that the only couples in either of our marriages—heterosexual or same-sex—who are in a just situation are those to whom my noble and learned friend Lord Mackay referred: platonic friends who take advantage of this legislation. After all, as a sexual relationship was not the basis of their marriage, they cannot complain that adultery is not available to them. I think that we have left the law in not just a muddled state but an unjust one, and it is important to recognise that.

I accept that the noble Lord, Lord Pannick, says that this is the existing law, but if we are saying that culture is changing and we are changing the law on marriage, surely the same argument exists in relation to the grounds for divorce—that we must change. However difficult the definition of problems can be, there is a good case for saying that we have to change these grounds at the same time as we change marriage law.

Baroness Thornton: My Lords, I confess that I had trouble with the wording of this amendment, along the same sort of lines as the noble Lord, Lord Deben. It says,

"or a sexual act with a person of the same sex similar to adultery".

I was wondering how similar and at what proximity, and whether you would want a judge to take that sort of decision. We can probably agree that the amendment does not serve even the purpose that the noble and learned Baroness wishes it to. We agree with the Government that it is unnecessary to replicate the requirement.

There have been several times in the course of today when noble Lords have referred to platonic relationships. Actually, there is no requirement to consummate a marriage; you can have a platonic

marriage as a same-sex marriage or an opposite-sex marriage, so I am not quite sure what point noble Lords have been making there.

We also believe that it is unnecessary to legislate for dissolution on the grounds of adultery. It is sufficiently provided for, and I think that the Government got it right in consultation that the grounds of unreasonable behaviour exist. Indeed, since the commencement of the Civil Partnership Act in 2005, this has proved to be entirely unproblematic and I think we should just leave it as it is.

12.15 am

Baroness Stowell of Beeston: My Lords, I am grateful to the noble and learned Baroness, Lady Butler-Sloss, for introducing her amendment and for ensuring that we are, again, post-watershed. I did not design it this way but, as someone who used to work at the BBC, I am always so much happier when I know that we are compliant with broadcasting regulations.

I will start by addressing one angle that underpins this amendment and the debate associated with it, and that is about fidelity. It was something to which my noble and learned friend Lord Mackay referred. I want to be absolutely clear that the Government recognise the importance that couples, whether opposite-sex or same-sex, attach to fidelity in their relationships. The seriousness and the intention of same-sex couples wishing to make a commitment to each other are no less serious than that of opposite-sex couples. There is no difference in the intensity of the commitment and fidelity is every bit as important for same-sex couples who wish to marry as it is for opposite-sex couples.

The provisions in the Bill do not, in any way, imply that fidelity will be less important in marriages of same-sex couples than it is in marriages of opposite-sex couples. It is important to make that point, not so much in relation to what the noble and learned Baroness said today, but certainly following up on the debate that we had in Committee, and the comments of my noble and learned friend Lord Mackay, lead me to make that clear.

It is important to remember that betrayal in close relationships can, unfortunately, take many forms. A partner can be unfaithful by sharing confidences and not necessarily by sharing a bed. I make that point because I think that the noble and learned Baroness, Lady Butler-Sloss, said in Committee, when she was moving her amendment, that for her the opposite of fidelity was adultery. However, I would argue that the opposite of fidelity is infidelity, and infidelity takes many forms; it is not necessarily about adultery via a sexual act. Her amendment, as we have heard, seeks to create a new fact for divorce to sit alongside the current fact of adultery in the Matrimonial Causes Act 1973. This new fact would apply to sexual activity, similar to adultery, of a married person with someone of the same sex outside the marriage, and it would apply to all marriages, whether of same-sex or opposite-sex couples.

The effect of this definition is not clear as we do not know what sexual acts would be covered by the amendment. That point was made by the noble Lord, Lord Pannick. It is worth reminding ourselves that the

definition of adultery that exists in law now took decades to be defined through case law; it was not something that was established overnight. If we are to introduce something called “similar to adultery”, as the noble Lord, Lord Pannick, has said, this lack of clarity would mean that all married couples, whether same-sex or opposite-sex, would not be clear about the grounds on which they could obtain a divorce. Neither same-sex nor opposite-sex couples would benefit from the extended facts to constitute adultery inserted by this amendment.

The provisions of the Bill on adultery provide that the same long-standing definition of adultery, set out in case law, will apply to both opposite-sex and same-sex married couples. I would argue against what my noble friend Lady Berridge and others said, that actually the Bill creates some inequality by keeping the definition as it is. We are not introducing a new inequality; we are continuing as we are now.

Without getting too graphic, the definition of adultery is very specific and relates to a sexual act between a man and a woman which is not physically possible between two men or two women. That act has been established by case law over decades, and because of that, it is not something that can apply to relations between people of the same sex.

I was going to offer some explanation as to how the law on adultery works. Noble Lords have covered this very well in the contributions that have already been made, but if the House will indulge me, I think it is worth being specific about this because after we had the previous debate I talked to one of the policemen as I was leaving the building. He had been very amused by our debate that evening and seemed to think that off the back of it adultery would not necessarily apply any more and that people would not be able to divorce each other on those grounds. I explained to him how adultery works. As he found that so interesting, I thought I might do it for the benefit of noble Lords.

As the law stands, if I was married to George Clooney and he was to have a sexual affair with, say, the noble Baroness, Lady Thornton, that would be adultery. If I was married to George Clooney and Mr Clooney had sexual relations with the noble Lord, Lord Alli, that would not be adultery because he would not be able to do the sexual act which is very specifically defined in law. Should I wish to divorce Mr Clooney on those grounds, I would do so on the grounds of unreasonable behaviour. In future, if the noble Lord, Lord Alli, was to marry Mr Clooney, and Mr Clooney was to have an affair with me—and who would blame him in those circumstances?—that would be adultery and the noble Lord, Lord Alli, should he choose to, would be able to divorce Mr Clooney on those grounds. If the noble Lord, Lord Alli, were married to Mr Clooney and Mr Clooney had an affair with, say, my noble friend Lord Black of Brentwood—

Lord Black of Brentwood: Hear, hear!

Baroness Stowell of Beeston: That would not be adultery, but the noble Lord, Lord Alli, would be able to divorce Mr Clooney, should he choose to, on the grounds of unreasonable behaviour. The point I am

making is that the arrangements relating to how adultery works will remain the same in the future as they are now.

When a marriage breaks down, it is a very serious matter and of huge regret. The number of divorces on the grounds of adultery is falling. The latest figures show that 18% of divorces are on the grounds of adultery. The figure has fallen quite rapidly over the past 10 years. Adultery is not the grounds on which most people seek to divorce one another. We hope that all marriages, whether they are between a couple of opposite sexes or the same sex will continue, and that they will be faithful and remain happy and contented. If that is not the case, we believe that the existing provisions are perfectly adequate for divorce to take place, and I therefore hope that the noble and learned Baroness will feel able to withdraw her amendment.

Baroness Butler-Sloss: I thank all noble Lords for their contributions, particularly the noble Baroness, Lady Berridge, who put very well indeed the points that I put previously and did not put today. The particular point she made was about injustice. As the noble and learned Lord, Lord Mackay of Clashfern, said, inequality comes from this Bill. That is perhaps the most important reason for raising it.

I say to the noble Lord, Lord Deben, that it is not a funny matter, whatever his mother might think. I am talking about a really serious issue, although it was very attractively put by the Minister in her excellent exposition of the existing law, which I could not fault. The fact is that everyone thinks it is rather funny. There is the policeman saying it is rather funny, but we are dealing with a truly serious matter. One of the causes of the breakdown of marriages is the way in which one of the spouses goes off and prefers another

person, male or female, to the person to whom he or she is married. That is the basis of the reason that I raised it.

Despite what the Minister and the noble Lord, Lord Pannick, said, no one is ever going to challenge this. All these divorces are undefended. They all go through in three months because almost never is there a defended divorce. I would be astonished if there was a line of case law on this unless somebody took it up, although that is very unlikely.

However, the alternative, which the Minister might just take back, even to the Law Commission, is to ask: as marriage is now for everyone, is it appropriate that we have adultery at all? Would it perhaps be better to have an equality whereby adultery was removed, and all relationships, whatever they may be, were dealt with by irremediable breakdown of marriage and unreasonable behaviour? However, if adultery is to remain, it remains an inequality and an injustice. Like other noble Lords, I have received the most heartrending letters by e-mail from women who describe how they have been treated by a man who has gone off with somebody—with another man. The purpose of this amendment was to broaden the issue beyond same-sex marriage to heterosexual marriages in which one partner goes away with another man or another woman.

However, it is perfectly obvious, at 12.25 am, on the last amendment of the evening, that I would not put noble Lords through the burden of having an ineffective vote which I could not win, so I beg leave to withdraw the amendment.

Amendment 75 withdrawn.

Amendments 76 to 83 not moved.

House adjourned at 12.26 am.

Grand Committee

Monday, 8 July 2013.

3.30 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): Good afternoon, my Lords. I remind the Committee that, in the event of a Division in the Chamber, the Committee will adjourn for 10 minutes from the sound of the Division Bell.

Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013

Considered in Grand Committee

3.31 pm

Moved by Lord Gardiner of Kimble

That the Grand Committee do report to the House that it has considered the Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013.

Relevant documents: 2nd Report from the Secondary Legislation Scrutiny Committee, 2nd Report from the Joint Committee on Statutory Instruments.

Lord Gardiner of Kimble: My Lords, the Government are proposing to use the powers in the Public Bodies Act 2011 to abolish the registrar and transfer its public lending right functions to the British Library. Both the registrar and the British Library are non-departmental public bodies of the Department for Culture, Media and Sport.

The Public Bodies Act 2011, which received Royal Assent in December of that year, is the legislative vehicle resulting from a 2010 government-wide review of all public bodies. Its overriding aims are to increase transparency and accountability, cut out duplication of activity and discontinue unnecessary activities. In conducting individual reviews of their own public bodies, departments were asked first to address the overarching question of whether a body needed to exist and whether its functions needed to be carried out at all and, following from this, whether it met specific tests that would justify its retention.

The department was of the view that the public lending right functions must be maintained as they are required by law, but that it was not necessary for the registrar to be retained as a stand-alone public body in order to carry out those functions. Therefore, options for a suitable, and more efficient and economical, home were explored.

Perhaps I may give some brief background on the public lending right scheme and the public body managing it, formally known as the Registrar of Public Lending Right. The position of registrar was established by the Public Lending Right Act 1979, which gave authors a legal right to receive payment for the free lending of their books by public libraries. Under the 1979 Act, funding is provided by central government, and payments are made to eligible authors and other rights holders

in accordance with how often their books are lent out from a sample of UK public libraries. The registrar is a corporation sole and is appointed by the Secretary of State for Culture, Media and Sport to maintain a register of eligible rights holders and books, and to supervise the administration of the scheme. Around 23,000 rights holders receive a public lending right payment each year, up to a maximum of £6,600.

The registrar receives grant in aid from the department to fund both the administration costs and the payments to authors. Given the current economic climate, the decision was taken in October 2010 to reduce the resource grant-in-aid budget for public lending right by 15% in real terms over the spending period from April 2011 to April 2015, and the proportion of grant in aid used to administer the scheme was capped at £756,000 a year. With the registrar currently operating at near maximum efficiency, and given the limitations in efficiency savings that a body of its kind could make, this necessitated some radical thinking in order for the public lending right scheme to operate within its new budget while minimising the effect of the reduction in funding on authors.

Transfer of the public lending right functions to the British Library emerged as the preferred option because it fulfils the Government's aims of maximising the efficiency, economy and effectiveness of the public lending right scheme and reducing the number of public bodies. The transfer offers greater efficiency savings than are achievable by a stand-alone body the size of the PLR. The transfer is expected to save £750,000 in real terms over 10 years and therefore maximises the proportion of available grant in aid which could be allocated to authors.

This low-risk transfer will retain the operation and workforce in Stockton-on-Tees, which is working well at present and is highly valued by respondents to the consultation, and the increased efficiency and economy of the scheme will benefit PLR rights holders. Furthermore, the transfer would not only ensure continuity of efficient systems and processes but would develop a more solid infrastructure, which the larger organisation enables.

Subject to the approval of Parliament, it is expected that the abolition of the registrar and transfer to the British Library will take effect on 1 October 2013. The current registrar will be contracted by the British Library from the transfer date for an appropriate period of time, likely to be until March 2015, to ensure a smooth transition and successful transfer of knowledge.

I turn now to the scrutiny given to this order, which was laid before Parliament on 9 May. Orders under the Public Bodies Act have a minimum 40-day scrutiny period, with a committee of either House able to extend this to 60 days if that is felt necessary. This order has been scrutinised by several Select Committees: in your Lordships' House by the Secondary Legislation Scrutiny Committee; in another place by the Culture, Media and Sport Select Committee; and collectively by the Joint Committee on Statutory Instruments. None of these triggered the optional 60-day extended scrutiny period.

[LORD GARDINER OF KIMBLE]

The Secondary Legislation Scrutiny Committee reported on this order on 23 May. The committee was satisfied that the order met the four tests set out in the Public Bodies Act, noting in particular the strong case of increasing economy. The Act states that a Minister may make an order,

“only if the Minister considers that the order serves the purpose of improving the exercise of public functions”,

having regard to: securing accountability to Ministers, which the order achieves by amending the British Library Act 1972 to stipulate that its annual report must include a report on the PLR scheme; efficiency, which the order achieves by enabling the more efficient running of the PLR scheme through a larger non-departmental public body, with all the advantages of shared back-office services and economies of scale; effectiveness, which will be maintained as authors will continue to receive the same high-quality service already provided by the PLR office; and economy, with the savings in running costs to maximise the proportion of grant in aid available for distribution as PLR payments.

The committee recommended that the department should carry out a review of the effectiveness of the post-transfer arrangements in spring 2016; that is, within a year of the end of the transition period. The department acknowledges the conclusions of the committee and has taken on board the views expressed; in particular, it agrees with the recommendation to review the transfer in 2016.

The department remains committed to the public lending right scheme, which is a source of income for many authors and other rights holders. The value that the Government place on the PLR scheme was evident in the recent announcement that the scheme will be extended to cover on-site loans of e-books and audiobooks, with effect for loans from July 2014. PLR will continue to evolve in line with technological advances in public libraries, and the department is committed to ensuring that the scheme continues to be managed as efficiently and economically as possible, for the benefit of authors.

In challenging economic circumstances, the transfer offers the best means of safeguarding the future of the scheme and maximising the proportion of available grant in aid to be distributed to authors, thereby supporting and rewarding their creativity at the same time as offering better value for money to the taxpayer. Therefore, it is right that the functions should be transferred to the British Library, and I commend this draft order to the Committee.

Lord Stevenson of Balmacara: My Lords, I want to start where the Minister finished, by welcoming the extension of the PLR to e-books and audiobooks on-site. This was subject to much discussion in the Chamber a few weeks ago, when the Minister was not able to give us an assurance one way or another, but, since then, other events have intervened. The Chancellor’s announcement in the recent spending review was very welcome. However, I note that this applies only to e-books and audiobooks borrowed

on-site. It still leaves open the question of how the PLR is to be extended—if, indeed, it is to be extended—to those borrowed through the web or alternative ways yet to be discovered. Given the way in which the technology is moving, e-books will not be requested in terms of their physical presence in the library. Perhaps the Minister could respond to that when he sums up this debate.

I would also like to praise the way in which the department has gone about this operation. It has been a long time since I have read such a good consultation exercise. I am constantly coming up against them in secondary legislation debates, where they are sometimes somewhat perfunctory in approach. This seemed to be a genuine consultation which offered real alternatives and suggested possibilities available for those who wished to consult. It is a model of its type. The department should be very pleased that it has been bold enough to try to take this all the way out and to take responsibility for the answers that came back.

The problem with a consultation as open as this is that it might get answers back that, perhaps, the department was not looking for. It is therefore not altogether surprising to discover that nearly 95%, I think, of those who responded were against what the department was proposing. Given that the department consulted authors and others interested in the written word, the responses were somewhat well written, rather redolent of deeper and other worries, and must have made rather uncomfortable box reading for the Minister when he came to review them. Not surprisingly, the department has found a way of eliding any real criticism from approaching its proposed solution. It will not take account of the consultation or, indeed, the very singular report that came in from those who were consulted. I am sorry about that. It is quite clear that this measure does not command support among those who were consulted.

That raises the question of why this is being done. Is it because the department wants to reduce the number of its bodies? I find that rather surprising because it was clear throughout both the consultation exercise and, indeed, the reports of the various committees of your Lordships’ House and the other place that have looked at this, that the registrar does a good job and has done it with considerable economy. There are no apparent suggestions that the registrar is at fault in any of the ways in which it is going about its job. The registrar is regarded as a friend of the authors and seems to have good relationships also with the public libraries that have to come up with the funding as a result of the lending and to work with a very small staff and a very inexpensive foundation in Stockport. The registrar seems to be doing a very good job indeed.

It is relevant that the jobs have been located to a relatively poor area of the country, and it is good that there are jobs of this high calibre there involved in such good activity. It is therefore a bit surprising that the department does not recognise that, by making this change, we are also introducing some risk about whether those jobs will continue. The real essence of what is requested at the heart of this proposal is that costs be reduced rather than that the number of bodies

be reduced, because the transfer is actually being made to the British Library. Although it looks as though we are losing one body and simply absorbing it into another, it is clearly a different function which must be added on to the existing work of the British Library. To some extent, therefore, there is not really a reduction in its activity or the management spread in which it will be involved.

On the cost argument, which I presume has been part of this, there will also be costs in the British Library. The change seems to be financed by the reduction of one post—that is, the loss of the registrar post. Indeed, the whole operation seems to revolve around the fact that the cost of that post will no longer be counted against departmental spend. Of course, when the Minister introduced this, he made clear that it was now unlikely to result in savings until March 2015, which perhaps cuts into the overall savings that have been requested. Several respondents and both committees which have looked at this have pointed out that the existing provision in the registrar's office is extremely efficient. When the House of Commons reviewed this in May, it said:

“So far the office of the Registrar has been successful in keeping its operating costs below the budget cap of £756,000 per annum which was set at the last comprehensive spending review. Operating costs in 2011/12 represented 11.6% of the PLR payments ... made to authors”.

It goes on to say:

“The Registrar has identified savings that will bring annual running costs down further ... from 2014/15 onwards”,

which seems to be well within the 15% real-terms reduction that was requested by the department.

3.45 pm

If it is not really about reducing the number of bodies, because the work is effectively continuing, and is not about the cost, then why are we doing this? The effect of the change is to transfer to an existing non-departmental body, the British Library, a function which is in some ways at variance with the activities that it has to have. It introduces the rather unwelcome thought that the British Library—which in some sense prides itself on its independence and is, as it should be, at arm's length from the Government—is now also an agent of the department in terms of its operation under the statute for the provision of payments to authors. That is, in a sense, mixing up apples and pears and is not very good.

The remote management point that is stressed in the department's proposals suggests that an officer of the British Library based in Boston Spa will have responsibility for supervising the work of the existing or continuing staff after the registrar retires in Stockport. Can the Minister give us some sense of whether he believes that that will be a permanent arrangement or whether it might change? Again, that would mean a loss of jobs, as I have mentioned before.

I am pleased to hear from the Minister that he has accepted the suggestion of your Lordships' Secondary Legislation Scrutiny Committee to review this proposal in spring 2016, which is sensible. I am certainly not going to use this opportunity to delay the order—which,

in a sense, I regret, but I understand that it is not an issue which will catch much attention. I think the arguments are a bit thin, and I worry that the implications of what is happening here are that we will lose a small but valuable outpost of activity in Stockport, which has the confidence of authors and writers and has worked well with local authorities. Its incorporation with the British Library, although not unreasonable, is not in accordance with the majority of respondents. With that, I look forward to hearing the Minister's comments.

Lord Gardiner of Kimble: My Lords, first, I thank the noble Lord for his generous opening remarks. I have studied a number of the consultation replies and, indeed, it has been a thorough piece of work. The noble Lord asked a number of questions with which I would like to deal.

On the extension of the PLR to remote loans of e-books, to put that in some sort of context, in 2011-12 almost 9 million audiobooks were borrowed, compared with 850,000 e-books. For the moment, therefore, audiobooks will be an important advantage for authors, although we absolutely need to ensure that, as technological changes emerge and increase, we recognise that there may need to be some further consideration. One of the main issues with which we would need to wrestle if there were to be consideration of extending PLR to remote loans is that any amendment we would seek to pursue to extend that right to incorporate remote lending would be subject to consideration of whether it would be compatible with the copyright directive. We would need to look into those matters. However, I am alive to the fact that this is very much an issue.

For the record, the registrar is based in Stockton-on-Tees, not Stockport. As the noble Lord says, the British Library is in Boston Spa, so they are two northern locations. It is fair to say that the department was very conscious of the responses, which is why, among other things, the British Library is retaining the current office in Stockton-on-Tees and authors will continue to receive that same service. As I have also mentioned, I want to acknowledge Dr Parker, the registrar, who will continue until 2015. That continuity is important to reassure authors and public lending right holders.

The other point is that the transfer is expected to save £0.75 million in running costs, in real terms, over 10 years. Minimising the cost of running the scheme maximises the proportion of grant in aid that will be available to be distributed as public lending right payments. We are trying to calibrate it so that the authors get as much as possible. The British Library is a larger non-departmental public body, which will help provide a solid infrastructure for the work that we think is very important to safeguarding the future of the scheme.

I can give categorical reassurances that there is a considerable desire to ensure continuity and that authors and public lending right holders are safeguarded. There is also the good news that we will extend, from next year, the loans of audiobooks and e-books on-site

[LORD GARDINER OF KIMBLE]
from public libraries. It is an advance, at least. The department is right in safeguarding the scheme but also maximising the available proportion of grant in aid. I commend the draft order to the Committee.

Motion agreed.

Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2013

Considered in Grand Committee

3.52 pm

Moved by Lord De Mauley

That the Grand Committee do report to the House that it has considered the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2013.

Relevant document: 5th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):

My Lords, this instrument seeks to correct an error in the 2012 regulations. The error concerns the formula used for calculating the glass remelt recycling target for producers of glass packaging. The consequence is that the proportion of producers' glass obligations that have to be met by evidence from remelt applications is inadvertently higher than the intended 63% for 2013-15. This instrument corrects that mistake by substituting an amended formula which ensures that the 63% glass remelt target is correctly applied to a producer's glass recycling obligation for 2013-15 and 64% for 2016-17. My officials have worked with the Environment Agency to correct the error and to check that no further changes are needed to the 2012 regulations.

Prior to the 2012 regulations coming into force, Defra carried out a written consultation, with officials engaging with a broad range of representatives from industry, regulators and other interested parties. The consultation included the correct target of 63% but the draft regulations accompanying the consultation contained the error, which went unnoticed at the time. To correct it, we recently completed a public consultation on this revised draft instrument. We invited views on the plans to correct the error and there were no responses.

In practical terms the error has had no impact on business, with UK environment agencies using a correct version of the formula and enforcing against the intended 63% target. This instrument does not impose any new burden on any business. However, I apologise unreservedly for the error and hope that I have adequately explained that this instrument is intended to do no more than correct a mistake. I commend the draft regulations to the Committee.

Lord Knight of Weymouth: My Lords, I am grateful to the Minister for introducing these regulations, and in particular for his apology. He will not be surprised,

and may be relieved, to know that I do not oppose them since obviously it is appropriate to correct the error. Indeed, when I first looked at the regulations I naively did what people do, and that is simply to look at them. Of course, there is no mention of the error. I looked at the impact assessment, where again there is no mention of the error. My first question to the Minister, therefore, is what has been the impact of the error? What has been the cost to the taxpayer of getting this wrong and having to reconult, even though there were no responses to the consultation?

The Explanatory Memorandum is perfectly clear: the instrument corrects an error in the formula for calculating the glass remelt recycling target for producers of glass packaging. He is not yet on his feet in the other place, but we anticipate from the media that the Secretary of State for Education will shortly be announcing changes to the national curriculum, among which will be that primary school children will have to learn their fractions. It is worth asking when Ministers will learn theirs too, so that we do not make these errors in the future.

The regulations are fine and they do a perfectly good job. I note in passing that these are regulations which the Government support—and that occasionally the Government support regulation. These are also regulations from Europe—and occasionally the Government support regulations from Europe. These are also regulations that gold-plate EU regulations, so there are times when the Government support the gold-plating of EU regulations. As I say, that should just be noted in passing. Having dealt with these regulations around a year ago, we are here because an error was made, so my only question of any substance for the Minister is: how much is it costing us?

Lord De Mauley: My Lords, as always, I am most grateful to the noble Lord for his comments. Before I address them, perhaps I could say that the target we are talking about offers both economic and environmental benefits for the United Kingdom. As valuable resources for our industries become scarcer and more expensive, we need processes in place to recycle and recover them in order to retain as much of their value as we can in the economy. Indeed, the Government want the United Kingdom to move towards a zero waste economy; that is, an economy where resources are fully valued. We want to see material resources reused, recycled or recovered wherever possible, and only disposed of as a last resort. The targets in these regulations play an important part in achieving this ambition. They will help the UK to go further in recovering the value of discarded packaging materials and help to tackle the wasteful practice of burying these resources in landfill. Overall, we estimate that the whole package of targets will provide a net benefit of over £180 million to the UK economy over the period from 2013 to 2017. Over 95% of those benefits will come from revenue generated from recycled materials. We will also see greenhouse gas savings associated with diverting waste from landfill and energy savings from replacing virgin materials with recycled ones.

The Government recognise that the economic benefits will not be shared by all. These regulations will place an increased cost burden on the producers of packaging

materials. However, the recycling targets will help to support wider growth and the creation of jobs in the recycling sector. I am pleased to say that when we consulted on the regulations, most businesses, including the majority of those on which the increased costs will fall, supported our approach. As I said, I am sorry for the error made in the 2012 regulations and I thank the noble Lord for taking the time to debate this instrument today. It will permit producers to continue to meet their obligations under the correct glass remelt recycling target.

We have not calculated the cost of correcting the error. I do not anticipate that it will be material. It will consist basically of official time to check the regulations and prepare amended regulations. As I said in my opening speech, the effective cost of the correction is nil, because everybody has been operating on 63% anyway. The only other thing I would say to the noble Lord is that I always enjoy being ragged by him about my mathematics. With those comments, I commend the regulations.

Motion agreed.

Natural Resources Body for Wales (Consequential Provision) Order 2013

Considered in Grand Committee

4.01 pm

Moved by Baroness Randerson

That the Grand Committee do report to the House that it has considered the Natural Resources Body for Wales (Consequential Provision) Order 2013.

Relevant document: Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson): This order was laid before the House on 3 June 2013. First, I apologise to noble Lords for an error that appeared in paragraph 3.2 of the Explanatory Memorandum. The memorandum omitted to note that Part 7 of the draft order will apply retrospectively from 1 April 2013. Part 7 concerns transitional and savings provisions. This is in line with the provisions for Parts 1 to 5, and Articles 29 to 31. This administrative error has been amended, and corrected versions are now available.

The order is made under Section 150 of the Government of Wales Act 2006, which allows for consequential amendments to primary and secondary legislation in consequence of provisions made by an Assembly Act or subordinate legislation. The order is made as a consequence of the Natural Resources Body for Wales (Functions) Order 2013, brought forward by the Welsh Ministers, which was approved by the National Assembly on 19 March 2013. I shall refer to this as the functions order. The order transferred functions in relation to Wales from the Environment Agency and the Forestry Commission to the new body, Natural Resources Wales. It also abolished the

Countryside Council for Wales and transferred its functions to the new Natural Resources Body for Wales.

This consequential order provides for the completion of legal arrangements for the Environment Agency, the Forestry Commission and Natural Resources Wales to operate together in their respective areas in the most effective and efficient manner. For example, it makes provision to remove Welsh Ministers from the appointment and funding of the Environment Agency and the Forestry Commission. It also amends the Environment Act 1995 to ensure that the new Natural Resources Body for Wales can make appropriate charging schemes in relation to the EU Emissions Trading Scheme, and that the Environment Agency and the Natural Resources Body for Wales can make cross-border arrangements for cost recovery and charging for water abstracting licences.

In preparing this consequential order, the Wales Office worked closely with the Department for Environment, Food and Rural Affairs and other key UK government departments, as well as the Welsh Government. We are all agreed that the provisions in this order are necessary to ensure that Natural Resources Wales can exercise its functions to fulfil its remit and co-operate effectively with its counterpart organisations across the UK.

This order is also important to the UK. Without it, the Environment Agency and Forestry Commission in England will be unable to delegate their functions to the Natural Resources Body for Wales and similar bodies across the border, and would therefore be unable to fulfil their remit efficiently and cost-effectively. For example, in the event of a pollution incident in Wales that impacted on England, the Environment Agency in England would not be able to delegate the clean-up to the Natural Resources Body for Wales. This could result in unnecessary duplication of decision-making and deployment of staff, and a waste of Environment Agency resources. That is just one example of the importance of this order to both the UK and Welsh Governments.

This order demonstrates the UK Government's continued commitment to working with the Welsh Government to make the devolution settlement work. I hope that noble Lords will agree that this order is a sensible use of the powers in the Government of Wales Act 2006 and that the practical result is something to be welcomed. I commend this order to the Committee.

Lord Knight of Weymouth: My Lords, I am grateful to the noble Baroness for introducing these regulations so clearly. She will perhaps be relieved to know that I have not suddenly taken on shadow Welsh Office responsibilities but that in the comradely spirit of the Front Bench I am helping out and using my experience in shadowing Defra to have a look at these and make sure that everything is as it should be from our point of view.

I can say from the outset that we are supportive of these regulations. From my reading of the Explanatory Notes and the other documentation, it appears that all the consultations have been carried out well by the Welsh Office and the Government. Obviously, these

[LORD KNIGHT OF WEYMOUTH]

regulations are bringing forward measures that have come from the Welsh Assembly Government and we would not want to get in the way of their fine work.

Therefore, my only question to the Minister—and not wanting to delay the Committee—is that the merging of the devolved functions of the Environment Agency and the Forestry Commission with the Natural Resources Body for Wales will produce some interesting learning for the rest of the United Kingdom in terms of joined-up working in this area. Does the Minister know of any mechanisms that the Environment Agency, the Forestry Commission or indeed Defra will be putting in place to ensure that we can learn those lessons and see whether or not there are aspects of joint working that we could do better here as this new body proceeds in Wales? It is not always fashionable, I know, for us in England to learn from Wales—sometimes it is more likely for Ministers to be sent to New Zealand than across the Severn Bridge—but there are things that we could learn from our friends in the devolved Assembly and I would be interested in the Minister's response.

Baroness Randerson: I thank the noble Lord, Lord Knight, for his positive words in support of this order. Referring specifically to the noble Lord's question, it is very much the case that close and co-operative working will continue between the Environment Agency, the Forestry Commission and the new Natural Resources Body for Wales. It is essential that that close co-operation will continue, from the perspective of both England and Wales.

First, there will be training co-operation, which will greatly benefit the new body in Wales because it will be able to call upon training opportunities in England, where the numbers undertaking training are very much larger and therefore there is a wider range of opportunities. Close working is also very important because, of course, rivers do not follow national boundaries. The organisations concerned—the predecessor organisation in Wales and the continuing organisations in England—are used to working together and co-operatively in order to reduce costs. They work across border when there is agreement and it is essential that that kind of co-operation continue. I think that so long as there is co-operation, both in operational working and in training, there will be ample opportunities for the organisations which continue to exist in England to learn and to observe what is taking place in Wales.

Perhaps I may also briefly mention to the noble Lords that there was recently a triennial review of the Environment Agency and the Forestry Commission in England which looked at whether those bodies should continue in their current form, should be reformed or should be merged. That triennial review concluded that the bodies should continue but that there should be reforms. I think it is important that the lessons from that review be taken. By the time of the next triennial review, which will be in 2016, there will of course be ample opportunity to have learnt from the experience in Wales. With those comments, I commend the order to the House.

Motion agreed.

Education (Amendment of the Curriculum Requirements) (England) Order 2013

Considered in Grand Committee

4.12 pm

Moved by Lord Nash

That the Grand Committee do report to the House that it has considered the Education (Amendment of the Curriculum Requirements) (England) Order 2013.

Relevant document: 4th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State for Schools (Lord Nash): My Lords, I am grateful for the opportunity to debate the Government's proposals for replacing the national curriculum subject of information and communications technology with computing in schools in England.

As noble Lords will know, the study of information and communications technology—commonly referred to as ICT—is a compulsory national curriculum subject in maintained schools in England at key stages 1 to 4. In February, my right honourable friend the Secretary of State for Education announced his intention to replace the national curriculum subject of ICT with computing. The report on the consultation on this proposal, published on 3 May, showed significant support for such a change, with the largest single group of respondents being in favour. I will outline the reasons why we think that this change to the name of the subject is necessary.

In spite of the revolution in how we use digital technology in society and in work, decreasing numbers of young people are obtaining computer science qualifications beyond age 16. Between 2003 and 2012, the number of students taking A-level computer studies fell by 60% and is now fewer than 3,500 entrants per year. Similarly, the number of entrants to undergraduate computer science degrees fell by 23% between 2002-03 and 2010-11, at a time when undergraduate enrolments grew in all other STEM—science, technology, engineering and mathematics—areas.

This is a major problem, since the UK's long-term economic prosperity depends on our ability to be world leaders in developing digital technologies and understanding how they can transform all sectors of the economy. It is estimated that, over the next seven years, around 2 million new jobs will come from sectors that rely on technology, mathematics and science.

4.15 pm

We need to be at the forefront of innovation in the development of new digital technologies, drawing on an illustrious heritage that includes pioneers such as Ada Lovelace, Alan Turing and Tim Berners-Lee. However, we are facing a huge shortage in the number of people with the appropriate technology skills to fill these jobs and grow the high-tech, high-value industries in which the UK should—and must—be globally competitive. Clearly, something has to change. Two important recent reports—from the Royal Society on computing in schools, led by Professor Steve Furber,

and from Alex Hope and Ian Livingstone on the computer games and visual effects industries—both conclude that the ICT curriculum in schools has been a major part of the problem.

The existing ICT curriculum, which was last updated in 2007 for secondary schools and 1999 for primary schools, has led us away from teaching pupils to program computers and develop a deep understanding of how computer technology actually works. For too long, and for too many pupils, ICT lessons have focused on basic IT user skills and avoided the more challenging aspects of the subject, such as control technology and statistical process control. Experts contend that the existing ICT curriculum fails to prepare pupils for higher-level study. As Alex Hope and Ian Livingstone argue, this is weakening the flow of talented and appropriately skilled employees into the computer games and visual effects industries in which the UK has, until recently, been a global leader.

However, the potential loss is much broader, since virtually all sectors of the economy make extensive use of digital systems, and high-level computing skills are required to develop and maintain the hardware and software on which so many businesses depend. Beyond the economic arguments for reforming the ICT curriculum, we are letting young people down if we do not provide them with knowledge of how digital devices actually work or enable them to create their own digital artefacts through programming.

We have tackled the crisis in technology education in schools head-on; first, by withdrawing, or “disapplying”, the existing ICT curriculum last September. Subsequently, we worked with leading subject experts, convened by the British Computer Society and the Royal Academy of Engineering, on an ambitious and challenging new curriculum that places computer science and practical programming at its centre. From key stage 1 onwards, the new curriculum aims to develop pupils’ understanding of the fundamental principles and concepts of computer science and to enable them to write computer programs in several languages. Pupils will continue to develop skills in using a range of digital tools to carry out tasks, becoming digitally literate. For the first time, they will also be taught in primary school how to stay safe on the internet, keep personal information private and use technology respectfully and securely.

As we are overhauling the content of the curriculum, we are changing the name of the subject, from ICT to computing. There are good reasons for this. As the Royal Society report contends, the very title “ICT” is part of the problem, as it carries negative connotations of a dated and unchallenging curriculum that does not serve the needs and ambitions of pupils. Renaming the subject will encourage schools and teachers to develop fresh approaches to teaching the new curriculum content. We agree with the Royal Society and others that “computing” is an appropriate broad umbrella term, which covers the three principal elements of the subject included in the new curriculum—computer science, digital skills and information technology—but without being too strongly associated with any one of them.

We know that our proposals are ambitious and that many schools and teachers will be teaching computer science and programming for the very first time.

Fortunately, it has never been easier for schools and pupils to get started with programming, through using low-cost hardware such as the Raspberry Pi computer, which costs around £30, through free programming languages such as Scratch and through the support of grass-roots organisations such as Computing at School. Furthermore, we are taking steps to ensure that teachers have the skills needed to teach the new computer curriculum. Over the next two years, we are providing £2 million in funding for the British Computer Society’s Network of Teaching Excellence, which will enable our best computing teachers to train thousands more to teach computer science and programming to their pupils. We will also be signposting teachers to the best resources worldwide to use in teaching the new computer curriculum.

These proposals have wide support. They have been greeted positively by important organisations including Microsoft, Google, Facebook, the British Computer Society and the Royal Academy of Engineering. In the consultation, a majority were in favour of the change. Also, many of those who disagreed with or were unsure of the change in title were actually concerned about the content and the challenges for schools in teaching the new curriculum and there were relatively few concerns that related directly to the name of the subject in itself. This was also the case for the responses to the more recent one-month consultation on the draft order. We are considering these concerns in the course of finalising the new computing programmes of study. Having considered the evidence from the public consultations, we remain certain that replacing “ICT” with “computing” will improve the status of the subject in schools and encourage schools to develop fresh approaches to the way in which they teach this vital part of the national curriculum.

As the Committee may have heard today, the statutory consultation of the draft orders for the new national curriculum commences today and will be complete on 8 August. The Government will therefore be considering any further feedback on the content of the programmes of study for computing as well as the other subjects of the national curriculum over the summer. We then intend to publish the final version of the new programmes of study for computing in the autumn, to be taught for the first time in September 2014. Subject to the will of Parliament, those programmes of study will be confirmed in the autumn. I commend the order to the Committee.

Baroness Jones of Whitchurch: My Lords, I thank the Minister for his explanation of the proposed name change; indeed, the order is narrow in its intent. On the whole, we welcome the change and the need to revitalise the ICT curriculum. We take on board the concerns that were raised by Ofsted, that the curriculum and teaching approaches had not kept pace with the rapid technological developments outside the school environment. While we share the concerns of many of the respondents that the term “computing”, which is now being adopted, suggests too narrow a focus, we also recognise the need to send a signal that the content has been substantially modernised.

We are also aware that, of all the subjects in the national curriculum, this one will continue to have challenges in keeping up with the pace of change. For

[BARONESS JONES OF WHITCHURCH]

example, it is easy to foresee that what we are now celebrating as a new computing course will appear in a few years' time to be dumbed down and irrelevant to the demands of employers in the future. However, in the mean time, I have a few questions that I hope the Minister can address.

First, on professional development, the Minister made the point that some money was being made available for some of the professional development work. Does he feel that it will be sufficient? There is a serious issue about ongoing professional development throughout the system, starting at primary level, where updating computer skills will be part of a range of updated skills which all primary teachers will need to deliver the new curriculum. It is also an issue at secondary level, where it may not be easy but is possible to recruit specialist staff with up-to-date computing skills. However, if you are not careful, that knowledge and those skills can fall out of date very quickly.

Secondly, what more are the Government planning to do to attract new specialist computing staff to teach in schools? It is fairly obvious that there would be alternative, better paid jobs for high-class performers in computing. They may not necessarily rush into the teaching profession.

Thirdly, can the Minister confirm that the change in name does not represent a narrowing of the curriculum, and that pupils will be taught some of those broader skills such as internet use and safety, word processing and data processing, so that the subject will actually give people a range of knowledge and skills which the word "computing" does not necessarily encompass?

Fourthly, the teaching will be successful only if it is supported by sufficient funds to modernise IT facilities and to keep modernising them as technology changes. The noble Lord made reference to some low-cost initiatives in terms of facilities in schools. However, I have seen reference to 3D printers. That is fine, it is just one example, but 3D printers are very expensive. The fact is that, for children to have an up-to-date and relevant experience, you would need to keep providing not just low-cost but some quite expensive technological equipment in schools on an ongoing basis. Will sufficient funds be available to do that?

Finally, given that computing skills and the supporting equipment that would be needed are increasingly integral to the teaching of all subjects, not just computing, have the Government given sufficient thought to what computing skills should be taught within the confines of the computing curriculum and what computing skills need to be provided with all the other arts and science subjects that people will be studying, in all of which pupils will increasingly require computing skills to participate fully? Has that division of responsibilities been thought through? I look forward to the Minister's response.

Lord Knight of Weymouth: My Lords, I draw the attention of the Committee to my interests in this area. I am a trustee of the e-Learning Foundation and have various other interests, including working with the *Times Educational Supplement* and with smart technologies. I am also a trustee of Apps for Good.

I, too, attended the Bett conference at the beginning of last year, when the Secretary of State, Michael Gove, who is now on his feet in the other place talking about these issues, announced the disapplication of the programme of study for ICT. I broadly welcomed that announcement. It goes back to my dissatisfaction when I was Schools Minister with the ICT curriculum, particularly at key stages 3 and 4, and to how unengaging my son found the experience of doing the European Computer Driving Licence. My attempt to change things was to get Jim Rose's primary curriculum review to include ICT as a core subject alongside English and maths. It was a battle that I eventually won by subterfuge, and Jim's review included ICT at its core. I wanted young people starting secondary school to be plug-and-play ready to use ICT across the whole curriculum in their learning.

I was also informed, as I think the Minister was, and as he mentioned in his opening comments, by the changing nature of the labour market, which is essentially hollowing out due to globalisation and technological change. The growth in high-skill, high-wage work is at the higher end of the market and is very much informed by technology and people who are confident with it. Not all of it requires programming skill. Therefore, my first question is: how will the Minister ensure that digital skills remain across the whole curriculum and inform the way in which young people learn in all subjects, not just in the subject called computing?

I cannot see any occupation where we will not require people to be confident in using the internet and technology, and to have a basic understanding of how it works. I am chair of the Online Centres Foundation, which just today was renamed the Tinder Foundation. We are very active in digital inclusion, and we see people referred to us from jobcentres so that they can not just process a claim but apply for jobs, because 70% of employers require you to apply online. These are fundamental skills for every child to learn in order to be confident leaving school.

The issue of digital skills across the curriculum raises an additional question. It is a perhaps unfashionable question about pedagogy. As a Minister, I was always slightly reluctant to get involved in pedagogy because I am not a trained teacher. However, I regret that, and I have looked at the amount of investment that has gone into technology in schools over time and have seen that some of it was not spent well, because not every teacher was taught to be confident in using it, and to shift their pedagogy in order to use it well.

I have that worry about 3D printers, and I am specifically interested in finding out from the Minister whether, as 3D printers land in schools, they are not going to be used to prop doors open or get dusty in cupboards. Last Friday I was talking to teachers from the Isle of Portland Aldridge Community Academy down in Dorset following their being shortlisted for a TES Schools Award. Unfortunately the school did not manage to win an award, but it is worth noting that both the nominated projects involved 3D printers, so I can see that some fantastic pedagogy may emerge from this technology that encourages highly engaged teaching and learning.

4.30 pm

I am not persuaded that we have in place a system for scaling teaching innovation around how we use technology. It is the mistake that has always been made with new technologies in learning: we have no system for scaling proper, high-quality continuing professional development to ensure that teachers can design really engaging learning experiences using new technologies. To me, that is essential. We no longer have the British Educational Communications and Technology Agency. I understand the reasons for the Government's decision to get rid of it three years ago, but we have only one official in the whole of Sanctuary Buildings—the whole department—on ICT. She is a great official who does a fantastic job, but it is only part of her role. That seems inadequate to ensure that every school is procuring efficiently when buying this technology and that we are continuing to strike really good deals with the likes of Microsoft, thus saving huge amounts of public money in respect of licensing. Are we able to provide any kind of lead on how we teach when using this technology? As the Government acknowledge in wanting to bring forward these changes, and as the Secretary of State acknowledged in his Bett speech in January 2012, technology is an important tool in educating children because it is a huge part of the world in which they are growing up. However, we have only one official in the department, which does not make any sense to me.

I have one or two other questions for the Minister. He is right to point to Raspberry Pi and I pay an unfashionable tribute to Google for funding its provision in a number of schools so that it is even cheaper than the Minister has said. However, it is not just about Raspberry Pi. Does the department have a view on personal, one-to-one computing in schools, about bringing in your own device and whether that is a way forward in terms of it being affordable? Does he have a view on the use of the pupil premium for children from poorer homes so that they are able to access personal devices for homework as well as when they are at school? If he has the answers to these questions, they will be listened to carefully and very warmly received by a large community out there.

Finally, I have a question that relates to teacher training, which has already been mentioned by my noble friend Lady Jones. As I understand it from the British Computer Society and CAS, there has been some discussion with higher education institutions about how they could be at the heart of a network to deliver some of this teacher training. That is commendable at the geekier end, but the mistake would be to think about computing as computer science, a name that was conjured up at one point, and forget the wider application of computers and computing. In terms of teacher training, is the Minister looking at peer-to-peer learning and how we could use the model created in the specialist leaders of education scheme, which has been so successful in driving school improvement at relatively low cost, in order to identify the teachers who are driving forward really good pedagogy and practice around the teaching of computing, as it will now be called following this order? Having done that, will we be able

to scale that expertise in order to engage other people, and how can we motivate teachers to perform that good work for children in this country?

Lord Nash: I am grateful to the noble Baroness, Lady Jones, and the noble Lord, Lord Knight, for their excellent speeches and their broad support for the name change and the need to revitalise the ICT curriculum. The noble Baroness asked the very important question of what steps the Government are taking to ensure that the professional development of teachers keeps pace with the curriculum change. In addition to the points I mentioned in my opening speech, and to provide more detail on one of them, the National College for Teaching and Leadership has established an expert group to signpost schools, teachers and trainees towards existing high quality curriculum resources. We will consider the group's recommendations carefully as we prepare for the implementation of the new national curriculum from September 2014. The £2 million funding for the computer science CPD runs until 2015. By then, we will ensure that teachers in approximately 16,000 primary and secondary schools are capable of teaching computer science. We think that this number is very adequate.

Secondly, the noble Baroness asked what the Government are planning to ensure that we attract new specialist computer staff to teach in schools. We have made available bursaries of up to £9,000 for suitably qualified candidates to help ensure that computer science undergraduates consider teaching as a career option. Furthermore, there are up to 100 scholarships worth £20,000 each for exceptional applicants. Initial teacher training providers are also offering subject knowledge enhancement courses to graduates from non-computer science courses which have a significant technology component. These courses will provide candidates with the computer science knowledge they require to go on to study the computer science PGCE.

Thirdly, the noble Baroness, Lady Jones, asked me to confirm that the change in name does not represent a narrowing of the curriculum and that pupils will be taught e-safety. I can confirm that the name change represents a rebalancing rather than a narrowing of the curriculum. The purpose of the study statement for the new computing curriculum states that pupils should become digitally literate—as the noble Lord, Lord Knight, stated was so important—through this particular curriculum subject. There is content on digital skills at key stages 1 to 3. Keeping our children and young people safe on the internet is a top priority for this Government and the noble Lords know that it is an area in which we are doing a great deal of work. This is why for the first time children will be taught in primary school how to stay safe on the internet, to keep personal information private and to use technology respectfully and securely. We have also strengthened the requirements around e-safety at key stages 3 and 4. Throughout their schooling, pupils will be taught to recognise inappropriate contact and conduct as well as to know each appropriate way to report concerns. We have been advised on this by leading e-safety experts, including the Child Exploitation and Online Protection Centre, the UK Safer Internet Centre, the NSPCC and Professor Sonia Livingstone.

[LORD NASH]

Fourthly, the noble Baroness asked whether the teaching would be successful. It needs to be supported by sufficient funds to modernise ICT facilities and keep them current. Evidence from the British Educational Suppliers Association shows that school spending on digital technology, hardware, software and services is increasing annually. Schools are choosing to make this expenditure—there is no ring-fenced capital or revenue funding for digital technologies. I agree with the noble Lord, Lord Knight, that if it were true that there was only one official focusing on this in the department, that would be too few. I understand that there is one leading official who is supported by the STEM team. However, I undertake to investigate the position further so that we can consider whether we have enough support.

We will work with the Design and Technology Association, the Royal Academy of Engineering and others on support for the new design and technology curriculum, including 3D printers. We are working with teachers to identify the resources that schools can use to teach computing and design and technology. I was delighted to hear that the noble Lord, Lord Knight, recently visited the Isle of Portland Aldridge Community Academy and thereby celebrated the success of the sponsored academy programme initiated by the previous Government. The noble Lord asked about the pupil premium and whether it can be used for purchasing personal devices. I know that some schools provide iPads and I am sure that it will become a growing trend. It is a scenario that I would be grateful to discuss with him further because his expertise is clearly greater than mine and I would welcome the opportunity of doing so.

The noble Baroness, Lady Jones, asked whether, given that computing skills and equipment are increasingly integral to the teaching of all subjects, the Government have given sufficient thought to what computing skills should be taught. As she knows, this Government are keen to trust teachers to use their own discretion. Together with the training that we will be providing, it is up to schools to determine where and how they teach computing skills in the context of other curriculum subjects, although clearly some areas of the curriculum have strong affinities with the content of the computing programmes of study, most notably maths and design and technology. The noble Baroness pointed out that this subject will need to be refreshed constantly. I hope that this is the start of that process so that in future all Governments keep it constantly under review, which is so important in such a fast-moving world.

In addition to the publication today of the new curriculum for computing, I look forward to the implementation of the new national curriculum in its entirety and, in particular, a return to its intended purpose: a minimum national entitlement organised around subject disciplines across core and foundation subjects. The new national curriculum will provide schools with a set of expectations that match those in the highest-performing education jurisdictions in the world and will challenge them to realise the potential of all their pupils in an increasingly competitive global marketplace.

Motion agreed.

Armed Forces (Retrial for Serious Offences) Order 2013

Considered in Grand Committee

4.42 pm

Moved by Lord Astor of Hever

That the Grand Committee do report to the House that it has considered the Armed Forces (Retrial for Serious Offences) Order 2013.

Relevant document: 5th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, there are two instruments for consideration today, the Armed Forces (Retrial for Serious Offences) Order 2013 and the Armed Forces (Court Martial) (Amendment) Rules 2013. I shall say a few words on each, starting with the former. For your Lordships' convenience, I shall refer to it as the retrial order.

This instrument enables persons acquitted of certain very serious offences by a service court—for example, the court martial—to be retried in the service justice system. This may happen only if new and compelling evidence comes to light in relation to those offences and if it is in the interests of justice for a retrial to take place. These are high hurdles to clear.

Our purpose in making this order is to follow the same path as Part 10 of the Criminal Justice Act 2003, which reformed the law relating to double jeopardy. Before the 2003 Act, a person who had been acquitted of an offence could not be retried. The 2003 Act changed the law to permit retrials in respect of a number of very serious offences where new and compelling evidence has come to light, but separate provision is required to apply this to our service justice arrangements.

We are now filling that gap. I do not want to give the impression that this measure is driven by specific concerns about members of the Armed Forces who are evading justice because they cannot currently be retried. It is intended simply to bring the two systems of justice into line on this matter, extending the same principles from one to the other; nor would I want to give the impression that we are doing this now for any reason other than we want to have the legislation ready.

The Armed Forces (Retrial for Serious Offences) Order makes provision for the retrial of persons previously acquitted in the service justice system of a “qualifying” offence. Qualifying offences are set out in Schedule 1 to the order. They include a very limited number of criminal offences—such as murder, manslaughter and rape—and, because this legislation is for the services, a small number of disciplinary offences, such as assisting the enemy.

The order sets out the arrangements governing the investigation, charging and application for a retrial of an acquitted person for a qualifying offence. Retrial is a complex matter and there are, as I said, high hurdles to get over first. In broad terms, the order will enable the service police to reinvestigate the commission of a

qualifying offence by a person previously acquitted of the offence. Investigative measures may, in most cases, occur only if the Director of Service Prosecutions consents; and he may only give his consent if he is satisfied that it is in the public interest to proceed with an investigation and that there is either some new evidence that warrants an investigation or some evidence would come to light if the investigation takes place.

However, there is a power for service police to take investigative steps without the consent of the Director of Service Prosecutions if it is necessary to do so to prevent the investigation being prejudiced. Additionally, a person previously acquitted of a qualifying offence may be arrested only if a judge advocate has issued a warrant for their arrest. Where a person has been charged with a qualifying offence, and if the Director of Service Prosecution consents, a prosecuting officer may apply to the Court Martial Appeal Court for an order to retry the person. Where such an application is made, the court must make the order applied for if it is satisfied both that there is new and compelling evidence against the acquitted person and that it is in the interests of justice to do so. As the Committee will recognise, therefore, a strong set of safeguards has been built into the new procedures.

It is important to clarify the position of those who have left the Armed Forces. In most cases, there are strict limits in place that prevent former service personnel being charged with a service offence when they have been out of the Armed Forces for more than six months. However, this time limit can be waived if the Attorney-General consents. The time limit applies in relation to all former service personnel who are suspected of committing a service offence and not just to those who might face retrial. These provisions also apply to civilians subject to service discipline.

The order also makes provision for the production of evidence and attendance of witnesses at the hearing. It creates a right of appeal to the Supreme Court. There is provision for the Court Martial Appeal Court to make an order restricting the publication of material which might otherwise prejudice the administration of justice and, furthermore, it makes it an offence for a person or an organisation to breach an order prohibiting publication. It provides for the period of time in which certain arrangements for the retrial must be made and for the holding in custody, and release from custody, of a person, previously acquitted, who is charged with a qualifying offence. There are also a small number of supplementary provisions relating to the rules governing the service of documents and the exercise of functions of the Director of Service Prosecutions and the Court Martial Appeal Court.

I now turn to the second order, the Armed Forces (Court Martial) (Amendment) Rules 2013. The court martial was established by the Armed Forces Act 2006 as a standing permanent court that replaced the system of ad hoc courts martial that were convened by the services. The court martial may sit anywhere, within or outside the United Kingdom. It comprises a civilian judge, known as the judge advocate, and lay members—sometimes referred to as the board members—who are usually officers or warrant officers. Its rules of procedure are set out in the Armed Forces (Court

Martial) Rules 2009. I shall call these the 2009 rules. These broadly follow those that apply in the civilian system, but reflect the different make-up of the court martial. The main purpose of the second instrument before us today is to amend these rules, specifically Rule 29, to reduce, in certain circumstances, the number of lay members that sit on the panel of the court martial.

The court martial rules—in fact, the rules of all service courts—are kept under review by the Service Courts Rules Review Committee. This is a non-statutory body under the chairmanship of the Judge Advocate-General. Currently, Rule 29 of the 2009 rules provides that where court martial proceedings relate to a more serious offence, there shall be at least five lay members. The Service Courts Rules Review Committee considers that in cases where a defendant or co-defendants all enter a guilty plea before the trial begins, it is not necessary to have five lay members. It has therefore recommended an amendment to Rule 29 that reduces the minimum number of lay members required to sit in the court martial in these circumstances from five to three. The aim of this is to reduce delay and the cost of proceedings in the court martial, but it is not cutting corners. It is a sensible adaptation of the system to a particular set of circumstances.

The instrument does two further things. It prescribes a procedure for the court martial to certify to a civilian court, which has the power to commit for contempt, the failure of a person to comply with an order of a judge advocate to produce material to a service policeman or to give a service policeman access to it. It also removes a piece of legislation made obsolete by changes made in the Armed Forces Act 2011.

The Armed Forces Act 2006 gave Her Majesty's Armed Forces a service justice system that provides consistent and fair access to justice for all, whether they are in Aldershot or Afghanistan. We have faith in this system and, more importantly, our Armed Forces have faith in it. However, we continually look for ways to enhance our processes and to keep the service justice system in line with its civilian counterpart. The orders that we are considering today contribute to that effort.

Finally, I will say a few words about ECHR issues. It is the custom for Ministers commending instruments subject to the affirmative procedure to say whether they are satisfied that the legislation is compatible with the rights provided by the European Convention on Human Rights. I am happy to inform the Committee that I believe that the instruments we are considering today are indeed compatible with the convention rights.

Lord Trefgarne: My Lords, I am of course grateful to my noble friend for what he said but will make just a few remarks about the Armed Forces (Retrial for Serious Offences) Order. We need to be careful that we do not surround the activities of our Armed Forces, in particular our Special Forces, with such a panoply of legislation that they will have difficulty discharging their duties in the manner that we would wish. Of course the Armed Forces cannot be exempt from the law, but if they are at risk—or fear that they are at risk—of too zealous an application of the relevant legislation, there may be difficulties of a wider kind.

[LORD TREFGARNE]

I apologise for going back so far, but some of your Lordships may recall an incident in Gibraltar in 1987 when Special Forces were involved in an operation against IRA suspects. At the time, there was much initial discussion, although it did not go on for ever, as to whether they had complied with the law or not. It was a very finely balanced judgment and a question of whether they had complied with the rules of engagement, as they are called, laid down by Ministers in respect of the use of firearms in circumstances such as then prevailed. I was much involved in the discussion; indeed, there was a very important debate in your Lordships' House at that time, to which I replied. It was established that they had indeed complied with the required legal provisions and therefore that no question of any offence arose. However, there was a coroner's examination of the matter in Gibraltar. The outcome of that was not initially certain but eventually it was clear.

It is important that in general terms we do not surround our Armed Forces, and particularly our Special Forces, with such a panoply of rules and regulations that when the time comes for them to do maybe some pretty dreadful—but nonetheless necessary—things, they are inhibited by a possible fear of vexatious prosecution or perhaps a second prosecution, as provided for by this order. I need to be careful, as there is a particular case before the courts at present which must take its course. However, I hope my noble friend can assure me that nothing in this order will create a situation where the activities of our Armed Forces, including our Special Forces, are placed at risk or in greater difficulty.

Lord Rosser: My Lords, we have two orders which, on the face of it, go in slightly different directions. The second order, on the reduction in the number of lay members who sit in a court martial in sentencing proceedings for serious cases where a guilty plea has been entered, could be argued to be weakening the panel, at least as far as lay members are concerned.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): My Lords, the Division Bell is ringing. The Committee will adjourn for 10 minutes.

4.57 pm

Sitting suspended for a Division in the House.

5.07 pm

Lord Rosser: Perhaps I may resume my contribution, which I had hardly started. I should say again that the second instrument we are discussing, on the reduction in the number of lay members who sit in a court martial in sentencing proceedings where a guilty plea has been entered in serious cases, could be argued to be weakening the panel, at least as far as lay members are concerned. The first instrument we are considering seems to go in the other direction, since among other things it now provides for a panel to be able to hear a

case again if new and compelling evidence comes to light following a person or persons being acquitted of certain serious offences.

I understand what has driven the order; namely, bringing service proceedings into line with the civilian justice system. I had assumed that the terms of the order would apply only if the person or persons concerned in respect of whom new and compelling evidence had come to light were still members of the Armed Forces, but I think that the Minister referred to a six-month period that could possibly be waived. I am not sure whether that means that for a period of six months after someone has left the Armed Forces, in the circumstances set out in this order, they could still be recalled and retried through the court martial system. I would be grateful if he could clarify the situation when he responds. What would happen if there were two or more defendants, one or more of whom was still in the Armed Forces and one or more of whom was not? How would the reopened case be dealt with? Would it be dealt with within the court martial system?

As I say, I understand what is driving the order, but what is driving the second instrument is a little less clear. Paragraph 7.2 of the Explanatory Memorandum states that the change being proposed,

“is aimed at reducing both delay and the cost of proceedings”.

Reducing delay can certainly be in the interests of justice, but reducing the cost of proceedings sounds as though the instrument is, at least in part, financially rather than justice driven, or at least financially at least as much as justice driven. No figure is given for the reduction in the cost of proceedings, and, as far as I can see, the Explanatory Memorandum is also silent on what the reduction in delays would be, and on how such a reduction would be achieved as a result of the proposals set out in the rules.

Currently, at least five lay members are required to sit in court martial proceedings that relate to a more serious offence, as listed in Schedule 2 to the Armed Forces Act 2006. Under the new rules, the minimum five lay members would be reduced to a minimum of three and a maximum of five in cases relating to a more serious offence where the defendant or defendants entered a guilty plea before the trial began, and where sentence had to be passed. As the Minister said, this arises from a review and recommendation of the Services Courts Rules Review Committee. Is there to be any reduction in the number of non-lay members sitting in court martial proceedings? Are lay members represented on the Services Courts Rules Review Committee that carried out the review and made the recommendation in front of us today?

It would be helpful to know what the savings would be, since it is not immediately obvious that savings of any significance are likely to arise, unless reducing the number of lay members from five to three will be used as a reason for reducing the total number of lay members eligible to sit. To enable me—if nobody else—to get some feel for the impact that the proposed changes might have, perhaps the Minister will answer the following questions, if not today then at a later date. How many court martial proceedings with lay members were held in 2012? What was the total number of cases they heard? What was the total number of

days in aggregate for which the courts martial sat? Is the number of sitting days going up, going down or remaining static each year? What is the total number of lay members eligible in aggregate to sit in court martial proceedings? What is the average number of sitting days for a lay member each year?

Furthermore, in how many cases in 2012, if this statutory instrument had been in effect, would the number of lay members sitting on a panel have been reduced from five to three, and what percentage of cases where the sole defendant or co-defendants pleaded guilty before the commencement of the trial would that have represented? Does the change provided for in the statutory instrument have the support of the lay members currently eligible to sit?

Paragraph 8.1 of the Explanatory Memorandum states that the rules have been the subject of “rigorous consultation” with the various bodies and organisations to which it refers. I am not sure of the difference between “consultation” and “rigorous consultation”, and I suspect that the Minister is not, either. Therefore, I am not inviting him to answer the question. However, does one of those bodies and organisations listed in the Explanatory Memorandum as having been consulted represent or speak for the lay members whose numbers are going to be reduced under the terms of this statutory instrument?

I conclude by saying that while we have no intention of opposing the order and rules, I would be grateful if the Minister would respond, at some stage if not today, to the points I have made. Unless there is a corresponding reduction in non-lay members sitting in court martial proceedings, the statutory instrument alters the balance between lay members and non-lay members in sentencing for serious offences where a guilty plea has been entered. I am not clear of the justification for this, in the interests of justice. The decision on whether one is found guilty of an offence is a profoundly significant one for a defendant, and so, too, is the decision on sentence where lay membership involvement has been reduced where there has been a guilty plea, since that sentence—we are talking about serious offences—can take away an individual’s liberty for a considerable period of time.

5.15 pm

Lord Astor of Hever: My Lords, I am grateful for the support that both noble Lords gave to the two instruments that we have considered today. Taking the question from my noble friend Lord Trefgarne first, I agree with him that we should not surround our Armed Forces, particularly our Special Forces, with too much of a panoply of legislation. However, we feel that we have got this right. My noble friend mentioned the Special Forces, and in particular the Gibraltar case. He has raised a really important point, not just for Special Forces but for all members of the Armed Forces, and I am very grateful to him for that. My answer is that our Special Forces personnel are in the same position as regards the law as any other member of the services. I am sure that neither they nor the Committee would wish it to be any other way. However, I emphasise that there are a strong set of safeguards before any retrial can be set in motion. I stress that the

particular demands of service life and the requirements of operations are always in the minds of those investigating and prosecuting alleged offences.

I turn to the questions asked by the noble Lord, Lord Rosser, although I will not necessarily deal with them in the order that he asked them. First, he asked whether there are lay members on the Service Courts Rules Review Committee and whether the order has their support. The committee is chaired by the Judge Advocate General—the senior service judge—and includes the Director of Service Prosecutions and legal and policy representatives from the Ministry of Defence. The Association of Military Court Advocates is also represented. In its work, the committee consults the services, the Service Prosecuting Authority, the Association of Military Court Advocates and the Military Court Service. It does not make the rules itself but makes recommendations to the Secretary of State, who does make the rules, and any necessary changes, through the procedure being used today. As I explained, this order is the result of a recommendation from the committee.

The noble Lord asked how many court martial sittings there were last year with lay service members on the panel. Last year, I understand that 516 service personnel were court-martialled with lay members. How many cases were heard in a court martial is, in essence, the same question, and the answer is also 516. The court martial sat for 689 days in 2012. The noble Lord asked if the number of sitting days was going up, going down or staying the same. I am advised that it appears to be staying the same.

The noble Lord asked about the total number of lay members who are eligible to sit. In principle, all officers and warrant officers of the three services who are eligible and qualified in accordance with the Armed Forces Act 2006 may sit in the court martial. In some cases, certain civilians may also be eligible. Who is eligible in any given case depends on a wide range of factors specific to each case. I am aware that that may not fully answer the noble Lord’s question, and I will pad that out in a detailed answering letter.

The noble Lord asked whether it weakens the panel for a court martial if it is reduced from five lay members to three. We feel that it does not. In fact, most courts martial have a three-man lay panel for sentencing and for trial purposes. This change simply recognises that, where an accused is charged with a more serious offence and admits his guilt, there is no need for a five-man panel.

The noble Lord asked about the average number of sitting days per lay member per year. Again, we will have to do a bit of digging around to find out the answer to that. I shall write to the noble Lord.

Finally, the noble Lord asked what the difference is between “consultation” and “rigorous consultation”. “Rigorous consultation” is a shorthand way of referring to the fact that any proposals that we make for changes to the service justice system are based on a collaborative and open process between the Ministry of Defence and those who administer, and are subject to, the service justice system.

[LORD ASTOR OF HEVER]

I shall study the official record of the points that have been raised and will write if I have anything to add to our exchanges.

Motion agreed.

Armed Forces (Court Martial) (Amendment) Rules 2013

Considered in Grand Committee

5.20 pm

Moved by Lord Astor of Hever

That the Grand Committee do report to the House that it has considered the Armed Forces (Court Martial) (Amendment) Rules 2013.

Relevant document: 6th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013

Considered in Grand Committee

5.21 pm

Moved by Lord Freud

That the Grand Committee do report to the House that it has considered the Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013.

Relevant document: 5th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My Lords, I am pleased to introduce this instrument, which was laid before the House on 13 June 2013. I am satisfied that it is compatible with the European Convention on Human Rights.

The regulations provide for the introduction of the mandatory reconsideration process for vaccine damage payments, child support maintenance payments, mesothelioma lump sum payments and all social security benefits, save for universal credit and personal independence payment, which have been subject to mandatory reconsideration since April this year.

Currently, a claimant can ask for a decision to be reconsidered by a decision-maker, which may result in a revised decision. In practice, however, many people do not do so and instead make an appeal from the outset. This is more costly for the taxpayer, time-consuming, stressful for claimants and their families, and for a significant number of appellants unnecessary. I say this because the reason that the vast majority of decisions are overturned on appeal is because of new evidence presented at the tribunal.

I hope that noble Lords will agree that we need a process that enables this evidence to be seen or heard by the decision-maker at the earliest opportunity. It is accepted that this does not mean that all decisions will be changed and that appeals will be unnecessary, but we believe we should have a process that at least promotes this possibility. Mandatory reconsideration does just that.

Mandatory reconsideration will mean that applying for a revision will become a necessary step in the decision-making process before claimants decide whether they wish to appeal. Importantly, the intention is that another DWP decision-maker will review the original decision, requesting extra information or evidence as required via a telephone discussion, and, if appropriate, correct the decision. When this happens, there is no need for an appeal—an outcome that is better for the individual and better for the department.

I assure noble Lords that claimants will of course be able to appeal to Her Majesty's Courts and Tribunals Service if they still disagree with the decision. The means of doing this will be set out in a letter detailing the outcome of the reconsideration and the reasons for it. We would hope that because of the robust nature of the reconsideration and the improved communication, this new process will result either in decisions being changed or, where this does not happen, claimants deciding that they do not need to pursue an appeal.

We undertook a formal consultation before we introduced mandatory reconsideration for universal credit and personal independence payment. A number of respondents suggested that there should be a time limit on the reconsideration process and there have been further representations about this. While we understand the concerns, we are not making any statutory provision for it. Some cases are more complex and require additional time—particularly, for example, cases where extra medical evidence may need to be sought. Others will be completed in days. It will be a case of considering each case on its merits.

However, we are considering the scope for internal performance targets. While these will reflect the requirement to deal with applications quickly, it will not be at the expense of quality. The process will fail if clearance times become the driver. We will be back with unnecessary appeals and all that that entails. It is a balancing act which we must get right. We will monitor developments closely and adjust accordingly. We may in due course learn from the experience of UC and PIP but at this time we have had so few requests for mandatory reconsideration that we have not as yet learnt anything which will inform our future handling of these applications. We will of course continue to monitor the situation ahead of October.

I turn now to the payment of benefit pending reconsideration and appeal. This has caused a lot of concern, particularly in relation to employment and support allowance. First, I want to make the point that there is no change from the current policy. If someone is refused benefit under the existing provisions and they request a revision of that decision, benefit

will not be paid pending the consideration of that request. It will be the same for mandatory reconsideration. Secondly, there is no change in relation to appeals. If someone appeals a decision under the existing provisions, no benefit is paid pending the appeal being heard—save for ESA, which I will come to. This must be right. It would be perverse to pay benefit in circumstances where the Secretary of State has established that there is no entitlement to benefit.

I turn now to ESA. At the moment, if someone appeals a refusal of ESA, it can continue to be paid pending the appeal being heard. This is not changing. What is changing is that there can be no appeal until there has been a mandatory reconsideration. There could therefore be a gap in payment. However, during that period—and I repeat my message that applications will be dealt with quickly so that this is kept to a minimum—the claimant could claim jobseeker's allowance or universal credit. In other words, alternative sources of funds are available. The claimant may choose to wait for the outcome of his application and, if necessary, appeal and be paid ESA at that point. It is accepted that the move from stopping ESA to claiming and being paid jobseeker's allowance will not happen overnight, but provided that the claimant does not delay in making his claim, the wait for his first payment of jobseeker's allowance should be short.

Finally, another change to mention linked to the introduction of mandatory reconsideration is that all appeals will be made directly to HMCTS and not as now to this department. This change brings the DWP in line with other departments' appeals processes. This is a positive move as it will allow HMCTS to book hearing dates more quickly than is possible currently. The department believes that the regulations will result in a clearer, escalating dispute process that will deliver a fair and efficient system for people who dispute a decision. I commend this statutory instrument to the Committee.

Baroness Sherlock: My Lords, I thank the Minister for his explanation of these regulations, which will extend the provision of mandatory reconsideration to a range of benefits and payments administered by the DWP. I also thank the Minister for clarifying which benefits the regulations will apply to—I understood him to say that they would apply to all benefits administered by the DWP with the exception of universal credit and PIP. When he comes to respond, can the Minister clarify the way in which these regulations will apply specifically to JSA and ESA? I had thought that they were in some part addressed by earlier regulations. It is possible that only the direct lodgement elements of JSA and ESA are affected by these regulations, the commencement having been done by the previous set. Perhaps the Minister could clarify that when he comes to respond.

5.30 pm

The interim response to the consultation published by the Government in June 2012, to which the Minister referred, noted that the department had received 154 responses to the consultation. Although that was of

course about the earlier decisions around mandatory reconsideration, the principles are broadly the same. That interim response said:

“The responses have been analysed and the proposals reviewed in light of all the comments made. The Department does not propose to make any significant changes to the draft regulations”.

Can the Minister assure the Committee that the department took rather more notice of the content of those 154 responses than that paragraph might suggest? In fact, those responses raised some pretty big questions. Perhaps the Minister could take us through the reasoning behind the decision to which he referred in his opening remarks. I have looked at some of the comments made by outside organisations such as Citizens Advice, the Child Poverty Action Group and others. I will draw out one or two quite specific points.

First, as the Minister mentioned, a number of respondents proposed that there should be a time limit for the department to complete its reconsideration of disputed decisions. I take the point that a time limit would make it difficult to accommodate the huge variety in the nature of cases but can the Minister deal with the fact that, at the moment, if the department were—unimaginably, obviously—to drag its feet in response to an application, a claimant can move matters along by lodging an appeal? These regulations would preclude that possibility. Can the Minister tell the Committee how the interests of the claimant will be protected in these circumstances? After all, 39% of all social security and child support appeals to the First-tier Tribunal were successful in the period from January to March 2013, the last quarter for which statistics are available. Since there were 130,517 social security and child support cases determined in those three months, I make that over 50,000 people who had been denied benefits to which they were lawfully entitled. That, presumably, could be 200,000 in a 12-month period, were the pattern maintained. I presume that the Minister would accept that the Government owe a duty of care to those citizens to remedy these errors swiftly.

It is also worth noting that the Courts and Tribunals Service is facing a significant increase in its caseload, driven mainly, it reports, by the 37% increase in the number of social security and child support appeals in 2012-13 as against the previous year. The last statistical bulletin suggests that this was driven primarily by appeals in relation to ESA, which more than doubled between the final quarter of 2011-12 and the comparable period of 2012-13. In fact, those ESA claims accounted for more than 70% of all the social security and child support receipts in the final quarter of 2012-13. Does the outstanding caseload for social security and child support tribunal cases—which is now 41% higher at the end of 31 March 2013 than it was a year earlier—suggest that there will be a greater delay for claimants, not only in being allowed to lodge an appeal but then in the time it might take for that appeal to be heard?

Can the Minister tell the Committee what assessment the department has made of the likely change in the end-to-end elapsed time for a claimant wanting to challenge a decision to secure a successful appeal? We could, for example, see them being delayed from making an application for reconsideration, so that there are more reconsiderations, which take longer. There would be a delay, therefore, before they are allowed to appeal

[BARONESS SHERLOCK]

and potentially a delay in having any appeal heard, as a result of the increasing caseload faced by the Courts and Tribunals Service.

This matter was raised by the Social Security Advisory Committee in response to these draft regulations. The government response to SSAC's question as to how the department would ensure prompt decisions is at paragraph 8.3 of the Explanatory Memorandum. It verged on the gnomic:

"The Department is committed to ensuring action is taken promptly by introducing a range of performance indicators. Work to develop these indicators are ongoing"—

sic—

"and will be finalised prior to October 2013".

Are they the same performance indicators whose scope the Minister said he was considering? If so, can he give us any hints as to what they might be, whether they are definitely going to be introduced and, if so, when?

Furthermore, paragraph 12 of the Explanatory Memorandum published with these regulations suggests that the Government do not intend to publish data on the number of requests they receive for reconsideration, how long it takes to process them or the outcome of the reconsideration requests. Can the Minister tell me if I have got that right? If so, how can Parliament scrutinise the effectiveness of this process, which the Government intend to replace a statutory process which is, at least currently, subject to published data?

The other big issue raised in response to the consultation was the proposal the Minister referred to; that the department should consider paying ESA pending reconsideration. The Minister indicated that this was not a change from the current process and that ESA is of course paid only at the assessment rate once an appeal is started. However, as he acknowledged, an applicant may not now go to appeal and is therefore obliged to wait for however long it takes the department to reconsider his or her case. Can the Minister take me through what would happen to someone in that circumstance? If the claimant did what he suggests, and applied for JSA, would they therefore be subject to the full range of conditionality and sanctions that would apply to anyone else making an application for JSA?

If that is the case, can the Minister help me understand what would happen if a claimant, for example, who believed they were not fit for work none the less had their application for ESA turned down? They start a process of reconsideration and appeal but meanwhile, because they have nothing else to live on, decide to apply for JSA. However, they are sanctioned for failing to take up a job or to follow an instruction which they do not believe they are fit to do. Let us suppose that claimant is eventually successful, and the tribunal agrees that they do not have to undertake work because they are not fit to do it. What would then be the status of any sanction that was applied to the claimant in those circumstances?

Another issue that was raised in relation to these proposals was about what would happen if the department refused to reconsider a decision, either because it felt there were no grounds or because the claimant was late in making the application. Can the Minister confirm

that that means that the applicant could not go to appeal because there had been no reconsideration and that is a necessary gateway, if you like, before being allowed to appeal? Are there any circumstances in which a claimant could appeal without having had a reconsideration? If so, what time limits would apply? Can the Minister—this is particularly important—tell us how broad he is willing to make the grounds for considering a late application for reconsideration? Many concerns have been expressed about vulnerable clients, particularly perhaps those with mental health issues, who might struggle with that. How broad will he be able to be with that?

The principles of mandatory reconsideration were discussed in some detail during the passage of the Welfare Reform Bill, so I have not revisited them today. I realise that I have asked a number of detailed questions, but they do seem to be crucial. I hope the Minister will answer them now or, at worst, when he comes to write, if necessary, after the event.

Lord Freud: I thank the noble Baroness for responding with her customary detailed and forensic approach to this. She has raised a number of important issues, which gives me an opportunity to set out the Government's thinking a little further. I can assure the noble Baroness that we will be closely monitoring the new process and its impact on claimants and appeals during the early stages of its implementation. Clearly, it is a key change and we must get it right. I will deal with as many of the specific questions as I can and turn to the printer to answer the others.

The noble Baroness asked, first, to what these regulations apply. Earlier regulations dealt with the contributory JSA and ESA—in practice we have taken that apart—which is the new ESA and JSA element. These regulations apply to the legacy versions of income-based ESA and JSA. The two income-based benefits will be gradually replaced by universal credit.

On the question of conditionality, we would see modified conditionality for a person requesting mandatory consideration—that is, conditionality that would be adjusted for the fact that the person was in that position. This is the current position and, in practice, there will be no change on that basis.

On the publication of data, the issue is that the data effectively will not meet the standards for publication, which, as the noble Baroness knows, are pretty strict. That means that they will not be publishable because the collected data will not be validated. That is the issue. A validation system for this would be costly. Therefore, we have no plans for publication, although we will look at how we can get more information out. We are looking at how we monitor the process in the early period to make sure in particular that we get the timings right and that appropriate information is made available.

On the question of late application for reconsideration, the decision-maker is in a position to extend the time to apply if the claimant has good reason for not having applied within the deadline, which is one month. However, there is an absolute deadline of 13 months that the decision-maker cannot go beyond.

I think that I have answered the bulk of the questions, but there are a few more on which I will write to the noble Baroness to make our position clear. On that basis, I commend these regulations to the Committee.

Motion agreed.

Committee adjourned at 5.43 pm.

Written Statements

Monday 8 July 2013

British Indian Ocean Territory Statement

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Honourable Friend, the Parliamentary Under-Secretary of State, Mr Mark Simmonds, has made the following written Ministerial statement:

On 20 December last year my Right Hon. Friend the Foreign Secretary announced that we would take stock of our policy on the resettlement of the British Indian Ocean Territory (BIOT). I wish to update the House on this process.

This Government has expressed its regret about the way resettlement of BIOT was carried out in the late 1960s and early 1970s. We do not seek to justify those actions or excuse the conduct of an earlier generation. What happened was clearly wrong, which is why substantial compensation was rightly paid. Both the British courts and the European Court of Human Rights have confirmed that compensation has been paid in full and final settlement.

Decisions about the future of the British Indian Ocean Territory are more difficult. Successive British Governments have consistently opposed resettlement of the islands—on the grounds of both defence and feasibility.

The Government must be honest about these challenges and concerns. Long-term settlement risks being both precarious and costly. The outer islands, which have been uninhabited for 40 years, are low-lying and lack all basic facilities and infrastructure. The cost and practicalities of providing the levels of infrastructure and public services appropriate for a twenty-first century British society are likely to be significant and present a heavy ongoing contingent liability for the UK tax-payer.

However, the Government recognises the strength of feeling on this issue, and the fact that others believe that the resettlement of BIOT can be done more easily than we have previously assessed. We believe that our policy should be determined by the possibilities of what is practicable.

I am therefore announcing to the House the Government's intention to commission a new feasibility study into the resettlement of BIOT.

Whilst we believe that there remain fundamental challenges to resettlement, we are resolved to explore these in partnership with all those with an interest in the future of BIOT. We are determined that this review will be as fair, transparent and inclusive as possible, so that all the facts and factors affecting the issue of resettlement can be shared and assessed clearly.

As part of the process, officials are meeting with a wide range of interested parties, including Chagossian communities in Mauritius, the UK and in the Seychelles. We know that there are strong views and expertise within the House and we welcome contributions from all.

The results of these consultations will inform directly the detailed shape of the new study. Though this will be a study commissioned by the Government, we will ensure that independent views from all interested parties will be used when considering how we take the study forward. Our intention is to make the remit of the study of resettlement as broad as possible, so that all the relevant issues—practical, financial, legal, environmental, and defence matters—are given full and proper consideration.

It is important that we take this forward carefully. The last feasibility study 10 years ago took eighteen months. The new study is unlikely to be concluded any more quickly. I will update the House once the initial consultation has been concluded.

ECOFIN Statement

The Commercial Secretary to the Treasury (Lord Deighton): My right honourable friend the Chancellor of the Exchequer (George Osborne) has today made the following Written Ministerial Statement.

A meeting of the Economic and Financial Affairs Council will be held in Brussels on 9 July 2013. The following items are on the agenda to be discussed.

Presentation of the Lithuanian Presidency Work Programme

The Presidency will present its six month work programme for ECOFIN.

Follow-up to the European Council on 27-28 June 2013

Ministers will hold an exchange of views on the June European Council Conclusions.

Adoption of the euro by Latvia

Following the recommendation adopted at June ECOFIN and the positive assessment of Latvia's convergence programme and criteria at European Council, ECOFIN will adopt the legal acts concerning the adoption of the euro by Latvia.

Implementation of the two-pack

The Council will seek to endorse the Code of Conduct for the euro area member states on draft budgetary plans and the Council will be invited to confirm its intention not to raise objections to the delegated regulation proposed by the Commission, on content and scope of the reporting obligations for euro area Member States subject to an excessive deficit procedure.

Follow-up to G20 Finance Deputies meeting on 6-7 June (St Petersburg) and preparation of G20 Meeting of Finance Ministers and Governors of 19-20 July (Moscow)

The Presidency and the Commission will debrief Ministers on the G20 Finance Deputies meeting. Council will then be invited to endorse the EU Terms of Reference for the forthcoming G20 Finance Ministers' and Central Bank Governors' meeting.

Any other business – Current legislative Proposals

The Presidency intends to give a state of play update on the Market Abuse Directive/Market Abuse Regulation.

Proceeds of Crime Act 2002

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My hon Friend the Minister of State for Crime Prevention (Jeremy Browne) has today made the following Written Ministerial Statement:

My right hon Friend the Home Secretary has today laid before Parliament the 2012-13 annual report of the appointed person under the Proceeds of Crime Act 2002. The appointed person is an independent person who scrutinises the use of the search power to support the measures in the Act to seize and forfeit criminal cash.

The report gives the appointed person's opinion as to the circumstances and manner in which the search powers conferred by the Act are being exercised. I am pleased that the appointed person, Douglas Bain, has expressed satisfaction with the operation of the search power and has found that there is nothing to suggest that the procedures are not being followed in accordance with the Act.

From 1 April 2012 to the end of March 2013 over £65 million in cash was seized by law enforcement agencies in England and Wales under powers in the Act. The seizures are subject to further investigation, and the cash is subject to further judicially approved detention, before forfeiture in the magistrates' court. These powers are a valuable tool in the fight against crime and the report shows that the way they are used has been, and will continue to be, monitored closely.

Schools: National Curriculum

Statement

The Parliamentary Under-Secretary of State for Schools (Lord Nash): My right honourable friend the Secretary of State for Education (Michael Gove) has made the following Written Ministerial Statement.

On 7 February this year, I made a statement outlining the next stage in our programme of raising standards in schools. I outlined draft programmes of study for a revised national curriculum, a new approach to qualifications for secondary school students and also a new and fairer way of holding schools to account for the quality of their teaching.

No national curriculum can be modernised without paying close attention to what's been happening in education internationally.

Officials in the Department for Education have spent years examining and analysing the curricula used in the world's most successful school systems such as Hong Kong, Massachusetts, Singapore and Finland.

Informed by that work and in consultation with subject experts and teachers the Department produced a draft revised national curriculum, which we put out for public consultation five months ago.

We have given all the submissions we received during the consultation period close and careful consideration,

and today we are publishing a summary of the comments received and the government's response.

We are also publishing a revised national curriculum framework for all subjects except key stage 4 English, mathematics and science.

Copies of each of these documents have been placed in the Library of the House. A consultation on key stage 4 English, mathematics and science will follow in the autumn, once decisions on GCSE content for those subjects have been taken.

The publication of our proposals provoked a vigorous and valuable national debate on what is, and what should be, taught in our schools. We have welcomed this debate.

It is right that every member of society should care about the content of the national curriculum, not only because it helps to define the ambitions that we set for our young people, but because of what it says about the knowledge that we, as a society, think it is essential that we should pass down from one generation to the next.

The updated national curriculum framework that we are publishing today features a number of revisions to the draft made on the basis of evidence and arguments presented to us during the consultation period. In particular we have revised the draft programmes of study for design and technology to ensure that they sufficiently reflect our aspirations that it should be a rigorous and forward-looking subject that will set children on a path to be the next generation of designers and engineers.

We have also revised the programmes of study for history. We have given teachers a greater level of flexibility over how to structure lessons and we have increased the coverage of world history, while also requiring all children to be taught the essential narrative of this country's past.

Other significant changes include the inclusion of a stronger emphasis on vocabulary development in the programmes of study for English and greater flexibility in the choice of foreign languages which primary schools will now be required to teach. And perhaps the most significant change of all is the replacement of ICT with computing. Instead of just learning to use programmes created by others, it is vital that children learn to create their own programmes.

These changes will reinforce our drive to raise standards in our schools.

They will ensure that the new national curriculum provides a rigorous basis for teaching, provides a benchmark for all schools to improve their performance, and gives children and parents a better guarantee that every student will acquire the knowledge to succeed in the modern world.

Having confirmed our intentions for the new national curriculum we are, in accordance with the legislation that underpins it, commencing a one month consultation on the legislative Order which will give it statutory effect. Subject to the outcome of that consultation, we intend to finalise the new national curriculum this autumn so that schools have a year to prepare to teach it from September 2014.

Written Answers

Monday 8 July 2013

Adoption

Question

Asked by *Baroness Hamwee*

To ask Her Majesty's Government what is their estimate of (1) the number of people who might seek assistance with regard to obtaining information in relation to the adoption of a direct ancestor, and (2) the number of people who, in such a case, would seek contact with relatives in the event that the direct descendants of adopted persons were brought within the scope of section 98 of the Adoption and Children Act 2002; and on what basis any such estimates are made. [HL1254]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The Department for Education does not collect any data that would allow it to make such estimates. We are currently exploring with the Law Commission whether access to adoption information for the descendants of adopted people might be included as part of the Commission's 12th programme of law reform. I understand why descendants of adopted people want to find out more about their relative's history but there is a need to balance this against the rights and wishes of adopted adults and, where the adopted adult has died, their birth family. This is a complex and sensitive issue which needs careful consideration before any change to legislation is considered.

Advisory Committee on Business Appointments

Questions

Asked by *Lord Kennedy of Southwark*

To ask Her Majesty's Government whether the Advisory Committee on Business Appointments has ever blocked an appointment for (1) a current or former minister, (2) a current or former member of the armed forces, or (3) a current or former member of the civil service. [HL1077]

To ask Her Majesty's Government whether anyone has ever taken advice on an appointment from the Advisory Committee on Business Appointments and then not taken up the appointment. [HL1078]

Lord Wallace of Saltaire: The role of the Advisory Committee on Business Appointments is to provide independent advice to the Prime Minister (or the Foreign Secretary as appropriate) on the application of the Business Appointment Rules to the most senior members of the Civil Service, Armed Services and Diplomatic Service who wish to take up appointments within two years of leaving Crown service. The Committee also provides independent advice directly to former Ministers on appointments they wish to take up within two years of leaving Government.

As was the case under previous administrations, the Committee handles all applications confidentially. It publishes its advice on its website, and in its annual report, once appointments have been taken up or announced. It does not publish its advice on appointments not taken up.

Agriculture: Agri-tech Strategy

Question

Asked by *The Countess of Mar*

To ask Her Majesty's Government when their agri-tech strategy will be launched; and what are the reasons for the delay. [HL1275]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie): The agri-tech strategy will be launched this summer. Agricultural technologies form a complex sector with a wide range of interests, covering many parts of the research base, the supply chain from primary production through to retailers and consumers, and those working to develop trade and to support international development. It has therefore taken a little longer than anticipated to reach a position where the main components of this strategy have wide appeal, so allowing this broad constituency to work collaboratively on programmes that create economic growth in the UK.

Agriculture: Genetically Modified Crops

Questions

Asked by *Lord Hylton*

To ask Her Majesty's Government what factors they will take into account in their consideration of genetically modified crops; and whether that consideration will take into account the needs of small farmers in developing countries. [HL1252]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): The Government's policy will take account of all relevant factors. There is evidence that the use of existing GM crops has helped small farmers in developing countries and research is underway to develop new types of GM crop that could provide further benefits to smallholders in Africa and elsewhere.

Asked by *The Countess of Mar*

To ask Her Majesty's Government whether they have made any assessment of the paper Glyphosate resistance threatens Roundup hegemony by E Waltz in *Nature* biotechnology, 28:537–538 2010; and, if so, what assessment they have made of that paper's analysis of the long-term requirements of genetically engineered crops for herbicides. [HL1272]

Lord De Mauley: The article by Emily Waltz is a commentary on one aspect of a major report by the US National Academy of Sciences (NAS) on the impact of GM crops in the United States. Both the article and

the report highlight the need for effective management of herbicide-tolerant crops by farmers and the use of more diverse weed control strategies, to guard against the development of resistant weeds. It is also noted that new types of GM herbicide-tolerant crop could provide further options for weed management. The overall finding of the NAS report is that GM crops have delivered substantial net environmental and economic benefits, although it notes that the impacts have been variable and may change over time.

Asked by The Countess of Mar

To ask Her Majesty's Government what research they have conducted into the potential cost of loss of United Kingdom markets should any genetically modified wheat trial contaminate United Kingdom commercial wheat. [HL1273]

Lord De Mauley: The GM wheat trial by Rothamsted Research is subject to tight controls and it is not expected to cause any difficulty in relation to commercial wheat production.

Alexander Litvinenko

Question

Asked by Lord Pearson of Rannoch

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 10 June (WA 211), what representations they have made to the government of Russia about the extradition of Mr Lugovoi to stand trial in the United Kingdom for the murder of Alexander Litvinenko; and whether they will ask the Crown Prosecution Service to make their evidence on Mr Lugovoi available to the coroner, Sir Robert Owen QC. [HL1221]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The then Director of Public Prosecutions announced in 2007 that the UK had requested the extradition of Mr Lugovoi from Russia, and that the request had been declined.

The Metropolitan Police Service and Crown Prosecution Service are co-operating fully with the Coroner. The police have provided the Coroner with a report of its investigation into the death of Alexander Litvinenko, and have undertaken an extensive disclosure process to ensure that all relevant material is made available to Sir Robert Owen.

Apprenticeships

Questions

Asked by Lord Adonis

To ask Her Majesty's Government what was the total number of staff employed within the UK Green Investment Bank on 1 May 2013; and how many of them were (1) under the age of 21, (2) apprentices under the age of 21, and (3) apprentices over the age of 21. [HL1251]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie): As of 1 May 2013, total staff numbers at the Green Investment Bank were 78. No staff were under the age of 21 and none were apprentices.

Asked by Baroness Sharp of Guildford

To ask Her Majesty's Government, for the latest year for which figures are available, what proportion of apprenticeships aimed at those aged (1) 16–18, (2) 19–24, and (3) over 24, were delivered by (a) further education colleges, (b) independent education providers, and (c) employers. [HL1360]

Baroness Garden of Frognal: Information on the number of Apprenticeship starts and achievements by provider type and age are published in a Supplementary Table to a quarterly Statistical First Release (SFR).

http://www.thedataservice.org.uk/NR/rdonlyres/9A4EE3C3-7FF3-4AAC-B864-F41966A9349F/0/January2013_Apprenticeship_Provider_Type.xls

http://www.thedataservice.org.uk/Statistics/fe_data_library/Apprenticeships/

Armed Forces: Medals

Question

Asked by Baroness Hayter of Kentish Town

To ask Her Majesty's Government why the list of armed forces medals awarded to a past recipient is not made available other than to the next of kin.

[HL1120]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): However remote the risk, the Ministry of Defence (MOD) would not wish to facilitate unsolicited approaches to families to purchase medals and are mindful that some medals may relate to service in sensitive military operations, which even today might give rise to personal security risks for the families concerned. Therefore, in recognition of the duty of care owed to the family of a deceased Service person, who normally wish to retain ownership of the medals, in the 25 years following the date of death, the Ministry of Defence will not disclose to a third party details of campaign medals issued. This policy has the overwhelming support of charities and organisations that represent the interests of current and former Service personnel and their families, and is fully consistent with our Freedom of Information Act 2000 obligations.

After this 25 year period, and if it is held, the MOD will disclose, without the requirement for Next of Kin consent, details of campaign medals issued.

Whilst details of all State level honours and awards bestowed upon Service personnel are published in the London Gazette, care is taken to ensure that entries are devoid of data that might jeopardise the safety and security of the Service person and their family. It is also the case that the Service person (or next of kin in the case of a posthumous award) is asked whether they are content for the honour and award bestowed to be the subject of media attention.

Armed Forces: Military Equipment

Question

Asked by **Lord Avebury**

To ask Her Majesty's Government whether they will publish details of the types and quantities of United Kingdom military equipment which have been, or will be gifted, leased, lent or sold to Uzbekistan as part of the drawdown from Afghanistan. [HL1225]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Details of the items to be gifted were outlined in the Departmental minute laid before the House on 13 February 2013. Specifically:

Land Rover Spares: commercially available components and major assemblies, to the value of £100,000;

50 Leyland DAF 4-ton trucks: a general purpose load carrying 4x4 vehicle, plus an associated spares package, with an approximate sales value of £7,000 per truck.

Banks: Lending

Question

Asked by **Lord Myners**

To ask Her Majesty's Government what assessment they have made of the impact on the availability of capital to support the needs of small and medium-sized enterprises and residential mortgage borrowers of the introduction by the Prudential Regulatory Authority of a gross leverage limit to the ratio of bank lending to capital; and how they expect mutual lenders will comply without reducing lending. [HL1100]

The Commercial Secretary to the Treasury (Lord Deighton): UK banks, building societies and credit unions are regulated by the Prudential Regulation Authority (PRA). In March, the interim Financial Policy Committee (FPC) made a series of recommendations to strengthen the resilience of major UK banks and building societies. On 20 June, the PRA provided an update on progress in implementing these recommendations. Consistent with the FPC recommendations, the PRA has asked firms to ensure that all plans to address shortfalls do not reduce lending to the real economy. It is not for the Government to comment on specific recommendations for and by the FPC or the PRA, nor in relation to specific institutions.

Children: Education

Question

Asked by **Lord Storey**

To ask Her Majesty's Government what assessment they have made of the impact of overcrowding on the quality of a child's education. [HL1267]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The review "Class size and education in England evidence report" was published on the Department's website in December 2011¹.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183364/DFE-RR169.pdf

Children: Sexually Explicit Material

Questions

Asked by **Baroness Benjamin**

To ask Her Majesty's Government what plans they have to include modules to discourage children from accessing internet pornography as part of sex and relationship education in schools. [HL1104]

To ask Her Majesty's Government what they are doing to ensure that schoolchildren learn that pornography is not a realistic depiction of normal sexual relationships. [HL1135]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): Sex and relationship education (SRE) is compulsory in maintained secondary schools and although primary schools do not have to teach it, many choose to do so in later years. Statutory guidance specifies that teachers should ensure their pupils learn about the importance of stable relationships. This is a vital part of high quality SRE. All teaching should ensure that pupils develop a strong sense of respect for others and an understanding of what constitutes a healthy relationship. In this context, schools can use SRE to teach children about the dangers of pornography, and we trust in the professional judgement of teachers to do so appropriately.

The Government does not prescribe programmes of study or modules for sex and relationship education (SRE) as we believe that it is for schools to tailor their local SRE programme to reflect the needs of their pupils. Schools can use SRE to teach children about the impact and effects of pornography should they choose and we trust in the professional judgement of teachers to do so appropriately.

There are a range of resources and expertise from professional organisations that schools can use to help address this important issue. For example, the Personal, Social and Health Education Association and the Sex Education Forum produce specific resources for teachers on the issues around pornography.

Asked by **Baroness Benjamin**

To ask Her Majesty's Government what steps they are taking to raise awareness among young people about young boys pressurising girls for sex and the uploading of sexually explicit material online without consent. [HL1106]

Lord Nash: Young people should never feel pressured into any action by their peers. We expect schools to ensure that all pupils learn to respect others and to reflect this in their broad educational ethos.

Issues relating to sexual consent specifically should be addressed in sex and relationship education (SRE), which is compulsory in maintained secondary schools. When teaching SRE, schools (including academies through their funding agreements) must have regard to my right honourable friend the Secretary of State for Education's SRE guidance which ensures that young people are taught how to avoid exploitation and abuse, as well as how the law applies to sexual relationships.

The uploading and sharing of sexually explicit content is a particular issue that schools will want to address in SRE and we encourage teachers to make use of the expertise of professional organisations in this area. For example Child Exploitation and Online Protection Centre (CEOP) provide specific resources for schools and children and young people about dealing with 'sexting'.

China Question

Asked by *Lord Stoddart of Swindon*

To ask Her Majesty's Government what assessment they have made of the potential impact of the trade relationship between the European Union and China on the United Kingdom's bilateral trade relationship with China. [HL1341]

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): Trade between the UK and China continues to increase; UK goods exports to China rose 20% in the first four months of 2013 compared to the same period in 2012. The UK was the only EU Member State to see an increase in both imports from and exports to China in 2012. The UK strongly supports the deepening and strengthening of the EU's trade relationship with China, to complement the UK's own bilateral trade and investment relationship. For example, the EU is exploring a potential Investment Protection Agreement with China, which would benefit UK investors.

Drugs: Ecstasy Question

Asked by *Lord Laird*

To ask Her Majesty's Government how many people have died in the last five years from ecstasy tablet use; how many of those deaths were due to poisoning by the pills themselves; and whether there have been recent instances of multiple deaths from contaminated illegal sales. [HL1354]

Lord Wallace of Saltaire: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the Authority to reply.

Letter from Glen Watson, Director General for ONS, to Lord Laird, dated July 2012.

As Director General for the Office for National Statistics, I have been asked to reply to your recent question asking how many people have died in the last five years from ecstasy tablet use, how many of those deaths were due to poisoning by the pills themselves, and whether there have been recent instances of multiple deaths from contaminated illegal sales. (HL1354)

Table 1 provides the number of drug-related deaths where Ecstasy (also known as 3,4-methylenedioxy-methamphetamine—MDMA) was mentioned on the death certificate in England and Wales, for deaths registered between 2007 and 2011 (the latest year available).

MDMA is normally consumed in tablet form, but is also taken in powder form or very occasionally as crystals. It is not possible to determine how many people died from ecstasy tablet use, as the physical form of MDMA is not recorded on the death certificate.

It is also not possible to determine how many of the ecstasy-related deaths in Table 1 were directly due to ecstasy poisoning or how many were caused by other factors such as contaminated illegal sales. Detailed information about complications of ecstasy use, including whether the death was related to a contaminated source, is not systematically recorded on death certificates. Moreover, around 50% of ecstasy-related deaths involve more than one substance, and it is not possible to tell which was primarily responsible for the death.

Drug-related deaths are certified by a coroner following an inquest, and can only be registered once the inquest is completed. Due to the length of time it takes to hold an inquest, it can take months (or even years) for these deaths to be registered. The latest statistical bulletin showed that the median registration delay for drug-related deaths was 171 days in England and Wales in 2011. ONS are not informed about a death until it has been registered, so our records will not contain recent drug-related deaths, as they will not have been registered yet.

The number of drug-related deaths registered in England and Wales from 1993 to 2011 are available on the ONS website. This annual bulletin includes a breakdown of the substances involved in the deaths, including deaths where selected substances (including ecstasy) were the only substance mentioned:

www.ons.gov.uk/ons/rel/subnational-health3/deaths-related-to-drug-poisoning/index.html

A copy of the table has been placed in the Library of the House.

Table 1. Number of drug-related deaths where Ecstasy / MDMA was mentioned on the death certificate, England and Wales, deaths registered between 2007 and 2011^{1,2,3}

Registration year	Deaths
2007	47
2008	44
2009	27
2010	8
2011	13

¹ Cause of death was defined using the International Classification of Diseases, Tenth Revision (ICD-10). The ICD-10 codes used to select deaths related to drug poisoning are shown in Box 1 below. Deaths were included where one of these codes was the underlying cause and Ecstasy or MDMA was mentioned on the death certificate.

² Figures for England and Wales include deaths of non-residents.

³ Figures are based on deaths registered, rather than deaths occurring in years 2007 to 2011. Due to the length of time it takes to hold an inquest, it can take months for a drug-related death to be registered in England and Wales. Additional information on registration delays for drug-related deaths can be found in the annual statistical bulletin: www.ons.gov.uk/ons/rel/subnational-health3/deaths-related-to-drug-poisoning/index.html.

Box 1. *International Classification of Diseases, Tenth Revision (ICD-10) codes used to define deaths related to drug poisoning*

Description	ICD 10 Codes
Mental and behavioural disorders due to drug use (excluding alcohol and tobacco)	F11–F16, F18–F19
Accidental poisoning by drugs, medicaments and biological substances	X40–X44
Intentional self-poisoning by drugs, medicaments and biological substances	X60–X64
Assault by drugs, medicaments and biological substances	X85
Poisoning by drugs, medicaments and biological substances, undetermined intent	Y10–Y14

Embryology

Question

Asked by **Lord Alton of Liverpool**

To ask Her Majesty's Government further to the Written Answers by Baroness Thornton on 6 April 2010 (WA 393) and by Earl Howe on 8 March 2011 (WA 389-90) and 18 June 2013 (WA 33), whether the Human Fertilisation and Embryology Authority's Research Licence Committee concluded on 18 November 2009 that the activities covered by research licences R0152 and R0153 shared the same aims; if so, whether those aims had ever changed previously; if not, what the differences were between the aims of the research covered by those licences and how any such differences were considered; and what was the connection between type 1 diabetes and mitochondrial disease. [HL1111]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Human Fertilisation and Embryology Authority has advised that it has nothing to add to the information I gave the noble Lord in my Written Answer of 18 June 2013 (Official Report, col. WA 33).

Employment

Question

Asked by **Lord Tuhig**

To ask Her Majesty's Government what were the average (1) salary, and (2) contracted hours per week, of (a) public sector jobs lost in 2012 and the first six months of 2013, and (2) private sector jobs created in 2012 and the first six months of 2013.

[HL1292]

Lord Wallace of Saltaire: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the Authority to reply.

Letter from Glen Watson, Director General for ONS, to Lord Tuhig, dated July 2013.

As Director General for the Office for National Statistics, I have been asked to reply to your recent Parliamentary Question asking Her Majesty's Government what were the average (1) salary, and (2) contracted hours per week, of (a) public sector

jobs lost in 2012 and the first six months of 2013, and (2) private sector jobs created in 2012 and the first six months of 2013 (HL 1292).

The Annual Survey of Hours and Earnings (ASHE) is the most comprehensive source of earnings information in the United Kingdom. However, ASHE cannot be used to identify those who left employment and those who began employment in a particular time period and therefore cannot be used to answer the question. Furthermore, there are no other sources of information held by ONS available which could be used to answer the question.

Environment: Chinese Lanterns

Question

Asked by **Lord Greaves**

To ask Her Majesty's Government how many fires they estimate to have been caused by Chinese lanterns in the past year; and whether they are considering their policy on the availability and use of such lanterns following the recent fire at a recycling plant in the West Midlands. [HL1364]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):

I refer the noble Lord to the answer given by the Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs (Jo Swinson) on 4 July, Official Report, House of Commons, Column 775W.

In the last four years, English fire and rescue services have reported only one incident caused by a sky lantern that resulted in significant damage to an outbuilding. In 2012–13, English fire and rescue services attended over 100,000 outdoor fire incidents (grassland/woodland etc), of which sky lanterns were potentially responsible for around 200 fires (0.2% of all outdoor fires), none of which caused substantial damage.

We must await the outcome of the investigation into the cause of the fire on 30 June at the J&A Young recycling plant, Smethwick, Birmingham—then consider whether action is necessary. We should guard against knee-jerk reactions without knowing all the facts.

Food: Meat

Question

Asked by **The Countess of Mar**

To ask Her Majesty's Government what support they have provided in each of the last three years for the production of pasture-fed meat. [HL1249]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):

We have supported livestock farmers under the Farming and Forestry Improvement Scheme (FFIS), part of the Rural Development Programme for England (RDPE). Information on specific support for pasture fed meat could only be obtained at disproportionate cost.

Government Departments: Meetings

Questions

Asked by *The Countess of Mar*

To ask Her Majesty's Government what meetings they held during development of their agri-tech strategy with (1) the genetically modified food industry; (2) the organic industry, and (3) agroecology experts and researchers. [HL1276]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie): All Ministers' meetings with external organisations are published on the Gov.uk website which can be accessed using the hyperlinks below.

<https://www.gov.uk/government/organisations/department-for-business-innovation-skills/series/bis-quarterly-publications-april-to-june-2012>

<http://www.defra.gov.uk/corporate/about/who/ministers/transparency/>

<https://www.gov.uk/government/organisations/department-for-international-development/series/ministerial-gifts-hospitality-travel-and-meetings-with-external-organisations-in-the-department-for-international-development>

Officials have had continuing engagement with a wide range of agri-tech stakeholders during the development of the strategy.

Further Government-led stakeholder engagement in the strategy has included a consultation (open from October to December 2012) and a lead stakeholder event in April 2013.

Asked by *Lord Stoddart of Swindon*

To ask Her Majesty's Government whether the expenses of the United Kingdom ministers and civil servants who attended the Bilderberg Conference in June 2012 were met by public funds; and, if so, whether they will provide details of those funds. [HL1287]

Lord Wallace of Saltaire: There was no cost to public funds.

Health: Doctors

Question

Asked by *Baroness Masham of Ilton*

To ask Her Majesty's Government how many departments of emergency medicine have vacancies for doctors. [HL1308]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): There is no central collection of the number of vacancies for doctors in departments of emergency medicine. Following the publication of the Fundamental Data Review in March 2013, the National Health Service vacancy collection, which had previously been suspended from 2011, has now been discontinued.

Housing: Private Rented Sector

Question

Asked by *Lord Greaves*

To ask Her Majesty's Government which local authorities are operating compulsory licensing schemes for private landlords in their areas, other than by means of a selective licensing scheme. [HL1299]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): This information is not held centrally.

Other than selective licensing the only other statutory licensing schemes for private rented housing relate to Houses in Multiple Occupation, mandatory licensing for larger Houses in Multiple Occupation and a discretionary power to extend licensing to smaller types of Houses in Multiple Occupation.

Immigration

Question

Asked by *Lord Laird*

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 3 June (*WA 134*), whether they will seek to amend provisions in the European Economic Area Free Movement Directive allowing European Union nationals to bring their non-European Union family members into the United Kingdom without income restrictions; and whether they have assessed the compliance with human rights standards of United Kingdom Immigration Rules that require British citizens to meet the minimum income threshold of £18,600 to sponsor non-European Economic Area national spouses to settle in the United Kingdom. [HL901]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The rights of European Union nationals to live and work in other Member States, and to be accompanied by their family members who do not hold European Union nationality, are set out in the Free Movement Directive (2004/38/EC) by which the UK is bound. The Directive is implemented in the UK through the Immigration (European Economic Area) Regulations 2006. The introduction of an income requirement for non-EEA family members of EEA nationals would require significant changes to the Immigration (European Economic Area) Regulations 2006 which would require the re-opening of the Free Movement Directive in order to be lawful.

The Government does not tolerate abuse of free movement. The Home Secretary has consistently raised her concerns about fraud and abuse of free movement at the Justice and Home Affairs Council, and we are working to curb such abuse domestically, and together with our European partners. The Government will also examine the scope and consequences of the free movement of people across the EU as part of the Review of Balance of Competences in 2013.

On 13 June 2012, the Government published its assessment of the compatibility with the European Convention on Human Rights of the minimum income

threshold and other requirements of the Immigration Rules which, from 9 July 2012, are to be met by a non-EEA national spouse applying to settle in the UK with a British citizen. A copy of that assessment was placed in the Library.

Individual Savings Accounts

Question

Asked by **Lord Lee of Trafford**

To ask Her Majesty's Government when they expect to announce a decision on the eligibility of shares quoted on the Alternative Investment Market for inclusion in ISAs, following their consultation.

[HL1085]

The Commercial Secretary to the Treasury (Lord Deighton): On 1 July, the Government published its summary of responses to the consultation on including shares traded on small and medium-sized enterprise equity markets within ISA-qualifying investments. It intends to introduce the necessary legislation before the summer recess.

Internet: Online Payroll

Question

Asked by **Baroness Byford**

To ask Her Majesty's Government what steps are being taken by HM Revenue and Customs to help any farmers who are unable to implement online payroll reporting from their own premises.

[HL1163]

The Commercial Secretary to the Treasury (Lord Deighton): HM Revenue & Customs (HMRC) will allow employers who are "digitally excluded" to submit their Real Time Information (RTI) returns via an alternative paper channel for a limited period. Farmers will be eligible for this treatment in the same way as any other employer.

To be treated as "digitally excluded", employers will need to satisfy HMRC that they meet certain conditions. One of those conditions is that the employer cannot access an internet connection, including 'dial up'.

In each case, the employer must demonstrate to HMRC why they cannot use a third party, such as an agent or a friend, to submit RTI on their behalf.

Very few employers are expected to qualify as digitally excluded customers and HMRC will keep the need for the alternative paper channel under review.

Legal Aid

Question

Asked by **Lord Touhig**

To ask Her Majesty's Government how many victims of (1) domestic abuse, and (2) human trafficking, are expected to be affected by proposed changes to (a) residency criteria for access to civil legal aid, and (b) legal aid funding of cases assessed as having borderline prospects of success. [HL1059]

The Minister of State, Ministry of Justice (Lord McNally): The Transforming Legal Aid consultation contains a range of measures to reduce the cost of legal aid and improve the public credibility of the legal aid scheme, which at £2 billion is one of the most expensive such systems in the world. It cannot be immune from the Government's commitment to getting best value for every penny of taxpayers' money. The consultation therefore proposes that those allocated civil legal aid should have a strong connection to the UK.

Victims of trafficking and domestic violence seeking to claim asylum would be excepted from the residence test. People who did not meet the residence test would also be entitled to apply for exceptional funding as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

On 1 and 2 (a), as the Legal Aid Agency (LAA) does not collect data on the residency status of civil legal aid recipients, no figures are available to assess numbers of people that will be affected by the proposed introduction of a residence test.

On 1 and 2 (b), the LAA does hold data concerning cases assessed by legal aid providers as having borderline prospects of success; this may differ from the LAA's own assessment. In such cases the provider is required to apply to the LAA and set out its estimate of the prospects of success. The table below sets this data out in domestic violence cases.

Financial Year	Domestic Violence	
	Total Number of Certificates With 'Borderline' Prospects Of Success	
2008-09	9	
2009-10	9	
2010-11	8	
2011-12	10	
2012-13	4	

The LAA does not hold data on the number of trafficking cases assessed as having borderline prospects of success, because prior to April 2013 the LAA did not record information on victims of trafficking as a separate group.

Victims of domestic violence or trafficking may also claim civil legal aid for other cases assessed as having borderline prospects on other matters. The LAA does not hold data on whether claimants in such cases are victims of trafficking or domestic violence.

We are now carefully considering responses to the recent consultation. As part of that consultation a full impact assessment is available at <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>.

Migrants: Romanians and Bulgarians

Question

Asked by **The Lord Bishop of Derby**

To ask Her Majesty's Government what resources have been allocated to provide support for local voluntary organisations to meet any additional costs arising from the entry of migrants from Bulgaria and Romania. [HL1295]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):

Work to address pressures, including financial pressures, arising from the entry of migrants from Bulgaria and Romania is best assessed and delivered at a local level; including through mainstream funding programmes such as health and education.

This Government is focusing on work to cut out abuse of free movement and to address “pull” factors for immigration, such as access to benefits and public services.

Museums and Galleries: Works of Art

Question

Asked by Lord Myners

To ask Her Majesty’s Government whether they will investigate the governance of the Foundling Museum and the role of Coram in its operation; and whether they will investigate the status of works of art donated to the Foundling Museum which were funded by the Heritage Lottery Fund and the National Heritage Memorial Fund and supported by the Department of Culture, Media and Sport.

[HL1101]

The Advocate-General for Scotland (Lord Wallace of Tankerness): Charities are regulated by the Charity Commission. The Attorney General also has various functions in relation to charities which he exercises in the public interest on behalf of the Crown as *parens patriae*. The Attorney is aware that concerns have been raised in relation to the governance of the Foundling Museum. He has made enquiries with the parties involved and will consider what further action, if any, he should take bearing in mind the role of the Charity Commission.

National Institute for Health and Care Excellence

Question

Asked by Lord Alton of Liverpool

To ask Her Majesty’s Government what treatments currently approved by the National Institute for Health and Care Excellence normally apply to no more than 10 patients per year. [HL1306]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The National Institute for Health and Care Excellence (NICE) has not issued technology appraisal guidance on any treatments with an estimated eligible patient population of fewer than 10 patients.

Information on treatments recommended by other NICE guidance, including clinical guidelines and interventional procedures guidance, could only be provided at disproportionate cost.

Overseas Aid

Question

Asked by Lord Boateng

To ask Her Majesty’s Government what proportion of the total spending by the Department for International Development was spent on (1) agriculture, (2) research and development, and (3) science, technology and innovation in the reduction of poverty, in each of the last three years; and what is the proportion of planned spending in each of the coming two years. [HL1168]

Baroness Northover: DFID reports spend according to input sector codes specified by the Organisation for Economic Co-operation and Development’s Development Assistance Committee (OECD-DAC).

The table below provides information on DFID bilateral spend in the requested categories, using spend against the appropriate input sector codes, as a proportion of total DFID bilateral spend for the last three years. DFID also contributes to work in these sectors through core contributions to multilateral organisations. This is not captured in the data below.

Spend for 2012/13 will be published in Autumn 2013 in ‘Statistics on International Development’. Planned spend is not disaggregated by thematic area to this level of detail, and therefore we are unable to provide an estimate of planned spend for 2013/14.

%	2009/10	2010/11	2011/12	2012/13	2013/14
Agriculture	2	2	2	**	***
Research and development	4	3	3	**	***
Science, technology and innovation in the reduction of poverty*	<1	<1	<1	**	***

* Spend in this category is also included as part of the ‘Research and development’ spend

Details of spend by input sector codes are published in additional table A3 of the ‘Statistics on International Development’ publication available online at: <http://webarchive.nationalarchives.gov.uk/20130128103201/http://www.dfid.gov.uk/About-us/How-we-measure-progress/Aid-Statistics/Statistics-on-International-Development-2012/SID-2012-Additional-tables/>

Pakistan

Question

Asked by Lord Hylton

To ask Her Majesty’s Government whether they are making representations to the government of Pakistan about the recent murders of three members of the Provincial Assembly of Sindh; and whether they have yet received any replies. [HL1086]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We regret the levels of political violence in Pakistan, including these murders of members of the Provincial Assembly of Sindh. We regularly discuss with the Government of Pakistan how they are tackling the threat from militant groups and other forms of violence, including the Prime Minister, my right honourable friend the Member for Witney (Mr Cameron) on 30 June.

Probation Services: Outsourcing

Questions

Asked by Baroness Howe of Idlicote

To ask Her Majesty's Government what safeguards they will put in place as part of their plans for outsourcing probation core tasks in England and Wales to ensure that commercial considerations do not override the administration of justice. [HL726]

To ask Her Majesty's Government how they intend to ensure fair and transparent competition in line with European law and international standards under their proposals for outsourcing probation services. [HL727]

To ask Her Majesty's Government whether they have plans to prevent large providers from developing powerful consortia that might minimise competition under their proposals for outsourcing probation services. [HL729]

The Minister of State, Ministry of Justice (Lord McNally): On 9 May, the Ministry of Justice published *Transforming Rehabilitation: a Strategy for Reform*, which sets out the plans for transforming the way in which offenders are managed in the community in order to bring down reoffending rates.

These reforms will open up delivery of probation services to a far wider range of potential providers. The competition will be conducted in line with European procurement law and will be supported by a set of principles of competition to ensure the integrity of the competition.

We have designed a system with clear lines of accountability and governance, and we will ensure that contracted providers and the public sector probation service adhere to a set of national minimum standards and that providers have internal quality assurance processes. There will also continue to be an independent Inspectorate of Probation with the same statutory remit as now.

Competing services will open up rehabilitation services to a more diverse range of providers and will allow us to use innovative payment mechanisms which drive a focus on reducing reoffending. We are clear that we are keen to see partnerships between VCS organisations, or private and VCS providers, coming forward to compete for contracts. We will put in place market stewardship arrangements so smaller VCS can work as sub-contractors to larger providers under fair and sustainable arrangements.

Asked by Baroness Howe of Idlicote

To ask Her Majesty's Government whether they will encourage probation trusts to merge or be subject to takeover by larger trusts under their proposals for outsourcing probation services. [HL728]

Lord McNally: On 9 May, the Ministry of Justice published *Transforming Rehabilitation: a Strategy for Reform*, which sets out the plans for transforming the way in which offenders are managed in the community in order to bring down reoffending rates.

Under these proposals the market will be opened up to a diverse range of new rehabilitation providers, so that we get the best out of the public, voluntary and private sectors, at the local as well as national level.

We will create a new public sector National Probation Service, working to protect the public and building upon the expertise and experience of probation professionals.

Property: Letting

Question

Asked by Baroness Hayter of Kentish Town

To ask Her Majesty's Government what is the anticipated timescale for the implementation of the sections of the Enterprise and Regulatory Reform Act 2013 relating to redress schemes for letting and management agency work. [HL1265]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): Requiring all letting and managing agents to belong to an approved redress scheme will give tenants an effective way to address complaints and drive up standards in the private rented sector. I am keen to make rapid progress in putting schemes in place, while also giving Parliament the opportunity to fully debate the detail, through two successive affirmative orders. The intention is for the first order—setting out the criteria and process for approving schemes—to be laid in Parliament this autumn. The second order, which will make it a legal requirement for agents to belong to a scheme, will be laid as soon as we are satisfied that there are sufficient approved schemes. We expect that to be early in 2014.

Public Records: Colonial Documents

Questions

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 151–2), whether they will discuss the digitisation of the archives of former colonial administrations with the Association of Commonwealth Universities and relevant Commonwealth governments. [HL1239]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): There are no current plans to consider digitisation of these archives. Due to the cost of digitisation the Foreign and Commonwealth Office generally releases all of its paper records in their original format.

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 152), how many of the former senior diplomats engaged in the sensitivity reviewing of Foreign and Commonwealth Office archive files have served in former colonial possessions in Africa or their successor states. [HL1240]

Baroness Warsi: Six of the former senior diplomats have served in former British colonial territories in Africa, or their successor states, whose pre-independence files were included in the colonial administration files.

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 152), on how many occasions Professor Badger has been asked to review the decisions of the Foreign and Commonwealth Office in relation to archival material relating to African former colonial administrations; and in how many cases he has not upheld the decisions he has been asked to review. [HL1241]

Baroness Warsi: In line with his role as Independent Reviewer, Professor Badger is able to inspect the colonial administration files or any of the associated review and transfer work, at any time. He has made regular visits to the Foreign and Commonwealth Office (FCO) archive since 2011 and has discussed release decisions with sensitivity reviewers. He has also reviewed in detail a range of FCO applications to the Lord Chancellor's Advisory Council on National Records and Archives (LCAC) for the closure or retention of colonial administration material. Professor Badger remains confident that the release of colonial administration files by the FCO is consistent with the Foreign Secretary's commitment to release all of these files, subject only to legal exemptions.

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 152), what opportunities exist for them to be acquainted with and to take into account the views of Commonwealth nations concerned as to archival material relating to their previous colonial administrations. [HL1242]

Baroness Warsi: The Foreign and Commonwealth Office's sensitivity reviewers are appointed on the basis of their extensive diplomatic knowledge and experience, which includes knowledge of Commonwealth matters.

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 152), what meetings have occurred between the Foreign and Commonwealth Office and National Archives officials responsible for decisions relating to the files of former colonial administrations with their counterparts in the Commonwealth countries concerned or with academics from those countries. [HL1243]

Baroness Warsi: No meetings have been held by Foreign and Commonwealth or National Archive officials responsible for decisions relating to the files of former colonial administrations with Commonwealth counterparts or academics as part of the current review and transfer process.

Asked by Lord Boateng

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 26 June (WA 151), given the current rate of progress in the review and transfer in alphabetical order of the files of colonial administrations, when they expect the files of the Gold Coast administration will be catalogued in the National Archives. [HL1244]

Baroness Warsi: The Gold Coast colonial administration records have all been publicly available at the National Archives since 27 July 2012 subject to any legal exemptions.

Rainforests

Questions

Asked by Lord Eden of Winton

To ask Her Majesty's Government whether they have made a recent estimate of the loss of tree cover in the world's principal rainforests; if so, what assessment they have made of how much is due to (1) licensed, and (2) illegal, logging operations; and what assessment they have made of the resulting impact on the livelihoods of the indigenous people living in those forests. [HL1209]

Baroness Northover: The UN Food and Agriculture Organisation estimates that globally around 13 million hectares (ha) of forests were converted to other uses (including agriculture) or were lost through natural causes each year between 2000 and 2010. Countries where major rainforest clearance took place from 2005-10 are Brazil, Indonesia and Nigeria.

Comprehensive and reliable assessments on how much deforestation has been due to illegal logging, and what effect this has on the livelihoods of indigenous people are not available. DFID currently supports a study that will directly measure illegality in logging and forest clearance in Indonesia. DFID supports studies in 25 forest countries into the dependence of indigenous communities on forests carried out by the Centre for International Forest Research's (CIFOR) Poverty and Environment Network project. DFID also supports Civil Society Organizations such as The Rainforest Foundation and Rights and Resources Initiative which work with forest-dependent and indigenous communities to help them secure their rights to the forests they live in and prevent both illegal clearing and authorised conversion to which they do not agree.

Asked by Lord Eden of Winton

To ask Her Majesty's Government in which countries major rainforest clearance, whether from licensed or illegal logging operations, is currently taking place. [HL1210]

Baroness Northover: Based on the most recent Food and Agriculture Organisation data available through the Forest Resource Assessment 2010, the countries where major rainforest clearance took place from 2005-10 are: Brazil, Indonesia and Nigeria.

Schools: First Aid

Question

Asked by **Baroness Jenkin of Kennington**

To ask Her Majesty's Government what initiatives and support are (1) currently available, and (2) being considered, to help children learn first aid in schools. [HL1319]

The Parliamentary Under-Secretary of State for Schools

(Lord Nash): Teachers are free to teach first aid within the wider school curriculum as part of non-statutory personal, social, health and economic (PSHE) education. We believe that schools are best placed to make decisions about whether to offer such training.

The Government strongly encourages schools to work with professional organisations when developing and delivering their PSHE programmes, including in first aid. Organisations such as the British Heart Foundation, the British Red Cross and St John Ambulance provide excellent resources and training on emergency life-saving skills, which schools are free to use.

We have asked Ofsted to report on specific effective practice on PSHE. We have also provided grant funding to the PSHE Association to undertake work advising schools in developing curricula, signposting schools to excellent resources, and improving staff training.

Schools: Inspectors

Question

Asked by **Lord Storey**

To ask Her Majesty's Government further to the Written Answer by Lord Nash on 20 June (WA 78), how many independent schools were assessed by Ofsted further to an order from the Secretary of State in each of the last ten years, and of those how many were "schools that are normally inspected by an independent inspectorate". [HL1270]

The Parliamentary Under-Secretary of State for Schools

(Lord Nash): In the last three years we have asked Ofsted to carry out 136 emergency independent school visits. Of these six were visits to "schools that are normally inspected by an independent inspectorate".

The Department holds information on independent schools for seven years. To obtain the information requested for this period would incur disproportionate cost.

Somalia and Somaliland

Question

Asked by **Lord Avebury**

To ask Her Majesty's Government whether they will seek ways of facilitating the transfer of funds to Somalia and Somaliland by individuals, businesses and aid agencies to replace the arrangements which are being suspended by Barclays on 11 July. [HL1092]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office

(Baroness Warsi): The Government recognises the role that remittances play in supporting the economy and people of Somalia. Officials from the Foreign and Commonwealth Office convened a meeting on 24 June to consider the issue of remittances to Somalia, including Somaliland. The meeting was attended by officials from the Home Office, Her Majesty's Treasury, Her Majesty's Revenue and Customs, the Serious Organised Crime Agency and the Department for International Development. The meeting agreed that officials would seek additional detailed information and assess further. The meeting also noted that Barclays' decision to withdraw services from money service businesses is ultimately a private commercial matter, and it is for individuals, businesses and aid agencies concerned to find alternative arrangements for transferring money to Somalia if they are affected.

Taxation: Capital Gains Tax

Question

Asked by **Lord Forsyth of Drumlean**

To ask Her Majesty's Government what was the effect on revenue to the Exchequer of the increase in capital gains tax in 2010; and what were the revenues for each of the last five years. [HL1095]

The Commercial Secretary to the Treasury

(Lord Deighton): Introducing the higher 28 per cent rate of Capital Gains Tax (CGT), together with raising the Entrepreneurs Relief lifetime limit from £2 million to £5 million, was forecast to raise £925 million by 2014/15 at the time of the June 2010 Budget. This costing included an assessment of the behavioural effects on CGT receipts, as well as the positive effect on income tax receipts. The policy costings document published alongside the 2010 Emergency Budget Report sets out the methodology for arriving at such estimates and the likely effects on revenue.

The forecast yield from the emergency budget 2010 measures, as published in the 2010 Emergency Budget report, is given in the table below:

	2010-11	2011-12	2012-13	2013-14	2014-15
Exchequer impact (£mn)	0	725	825	850	925

No further estimates of the effect of raising the capital gains tax rate for those gains which qualify for the higher rate have been produced. It is not possible to separate, with any precision, the impact of the measure from other factors affecting CGT receipts in the outturn.

Capital Gains Tax receipts, for the last five years, for which information is available, are given in the following table:

Year	2008-09	2009-10	2010-11	2011-12	2012-13
Receipts (£mn)	7,852	2,491	3,601	4,337	3,905

Taxation: Corporation Tax

Question

Asked by *Lord Wills*

To ask Her Majesty's Government what estimate they have made of the percentage of revenues earned in the United Kingdom by each of the mobile phone companies operating in the United Kingdom which have been paid in corporation tax in each of the last five years. [HL1108]

The Commercial Secretary to the Treasury (Lord Deighton): The Government has made no such estimate.

HM Revenue & Customs is legally prohibited from disclosing the tax affairs of identifiable companies.

Visas

Question

Asked by *Lord Laird*

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 3 June (*WA 154*), how soon after a visa for leave to enter the United Kingdom for work or student purposes is taken up can an application for indefinite leave to remain be granted; how soon after that can a person apply for British citizenship; and whether they are considering breaking the link between such grants and citizenship or to extend the time periods involved. [HL1015]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Those in the UK on work routes can generally qualify for settlement after a period of five years' residence. There are accelerated routes for those who have leave as an Entrepreneur or Investor. There is no direct route to settlement for those here in a student category.

A person who is the spouse or civil partner of a British citizen can apply for citizenship once they have been granted indefinite leave to remain and have been resident in the UK for a period of three years. Other

applicants have to meet a five year residence requirement and have had indefinite leave to remain for a period of 12 months.

We have no plans to amend the requirements for citizenship at the current time.

Young Offenders: Transport

Questions

Asked by *Baroness Stern*

To ask Her Majesty's Government how many children detained in (1) young offender institutions, (2) secure training centres, and (3) secure children's homes, have attended a family funeral in the last five years. [HL1156]

To ask Her Majesty's Government how many children detained in (1) young offender institutions, (2) secure training centres, and (3) secure children's homes, have been handcuffed during their journey to attend a family funeral in the last five years. [HL1157]

To ask Her Majesty's Government how many children detained in (1) young offender institutions, (2) secure training centres, and (3) secure children's homes, have been handcuffed during their journey to attend a hospital appointment in the last five years. [HL1158]

The Minister of State, Ministry of Justice (Lord McNally): It is not possible to provide information on the number of children detained in either a (1) under-18 Young Offender Institutions (YOIs), (2) Secure Training Centres (STCs) or (3) Secure Children's Homes (SCHs) who attended a family funeral because information is not held centrally.

SCHs do not use handcuffs and therefore no children detained in SCHs are handcuffed to attend a funeral or hospital appointment. The Ministry of Justice, National Offender Management Service and Youth Justice Board does not routinely collect information on children detained in (1) under-18 Young Offender Institutions or (2) Secure Training Centres who have (a) been handcuffed during their journey to attend a family funeral, and (b) been handcuffed during their journey to attend a hospital appointment.

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