

Vol. 711
No. 93



Friday
19 June 2009

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Surveillance (Constitution Committee Report)

Motion to Take Note

Schools: Statutory Instruments (Merits Committee Report)

Motion to Take Note

Written Statements

Written Answers

For column numbers see back page

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House of Lords

Friday, 19 June 2009.

10 am

Prayers—read by the Lord Bishop of Bradford.

Surveillance (Constitution Committee Report)

Motion to Take Note

10.06 am

Moved By Lord Goodlad

That this House takes note of the Report of the Constitution Committee on Surveillance: Citizens and the State (2nd Report, HL Paper 18).

Lord Goodlad: My Lords, the report was published in February this year after a lengthy inquiry, which commenced during the chairmanship of your Lordships' committee by the late Lord Holme of Cheltenham. I speak on behalf of all members of the committee in paying tribute to the wisdom, assiduity and vivacity with which he chaired our proceedings. I also pay tribute to the work of the late Lord Bledisloe, who died recently; his scholarship, experience and attention to detail made an invaluable, and indeed memorable, contribution to all our proceedings.

I am grateful not only to members of the committee but to all those who gave evidence to us in this country, in Canada and in the United States of America. While the committee alone is responsible for its conclusions, those conclusions are based on the evidence submitted, and the witnesses played a crucial role in influencing them.

I thank our specialist advisers, Professor Charles Raab of Edinburgh University and Dr Ben Goold of Oxford University, and our legal adviser, Professor Andrew Le Sueur of London University. The contribution of the clerks has been beyond praise but their identities will remain, as always, shrouded in impenetrable mystery.

I am grateful to Jack Straw, the Lord Chancellor and Secretary of State for Justice, a regular witness before your Lordships' committee, for co-ordinating and presenting to Parliament the Government's response to the report, which was published on 13 May. Your Lordships' committee published an analysis of that response on 7 June this year, which recites our various points of appreciation and of disappointment, together with the reasons for both.

The issues addressed in the report affect every citizen in the land and its publication occasioned widespread—indeed, perhaps unprecedented—media coverage, both in this country and elsewhere. In the limited time available, it would perhaps be helpful for the purposes of debate if I referred to the issues covered by the Government's response, together with others to which Government and Parliament will return in the future, rather than dwelling in general and abstract terms on those considerations already rehearsed

in the report about the future balance between privacy, security, necessity, proportionality and the relationship between individuals and the state. I shall touch briefly on the National DNA Database, closed circuit television, covert surveillance by local authorities, oversight of the powers of surveillance exercised under the Regulation of Investigatory Powers Act, the encryption of personal data held by the state and privacy impact assessments.

The committee made 44 recommendations. I shall, inevitably, mention but a few. We believe that the Regulation of Investigatory Powers Act 2000 should be amended to include judicial oversight of surveillance carried out by public authorities and that compensation should be paid to those who are found to have been subject to unlawful surveillance under the Act's powers. We recommend that the Government should consider whether local authorities are the appropriate bodies to exercise RIPA powers and that, if they so continue, there should be a definition of the circumstances in which the use of these powers is appropriate. As the Minister will be aware, there has been massive public concern about the use of the powers in relation to rubbish and residential qualifications for education purposes.

We recommend that the Data Protection Act 1998 should be amended to make it mandatory for government departments to publish a privacy impact assessment before adopting new data collection or processing schemes and that the Information Commissioner should scrutinise and approve those assessments.

We recommend, inter alia, that legislation should be introduced to replace the existing regulations governing the National DNA Database to reassess which DNA profiles are retained and for how long. We welcome the Government's decision now to reassess this matter, which is of immense public concern.

We recommend that the Government introduce a statutory regime for the use of closed circuit television and legally binding codes of practice for all CCTV schemes. We welcome the Government's acceptance of the need for, and recent commissioning of, an independent appraisal of the effectiveness of CCTV. It is of astronomical expense, paid for by the taxpayer. We heard evidence from the police that, since most violent crime is unpremeditated, it does not deter violent crime and that car crimes are committed round the corner where there is no CCTV. I hope that the Government may revisit their objection to our recommendation of a statutory regime for CCTV.

I hope, too, that the Government will reconsider their decision not to allow the Information Commissioner power to inspect private sector organisations without their consent. As public service functions increasingly involve transfers of personal data across organisations and sometimes across other unintended boundaries, there is a widening anomaly in the application of the Data Protection Act 1998, about which many people are deeply worried. Those private sector organisations that successfully resist the Information Commissioner's power to inspect may well be those with something quite serious to hide.

I hope that in his reply the Minister will be able to give your Lordships more details about how the Information Commissioner may be better empowered

[LORD GOODLAD]

to monitor the effect of surveillance and data collection on Article 8 rights under the European Convention on Human Rights, which is an extremely sensitive and uncertain area.

We recommend that the Data Protection Act 1998 should be amended so as to make it mandatory for government departments to publish a privacy impact assessment before the adoption of any new data collection or processing scheme and that the Information Commissioner should scrutinise and approve privacy impact assessments, which are a relative novelty in our jurisdiction but not in others.

We welcome the Government's commitment to urge greater flexibility in the inspection work carried out by the Interception of Communications Commissioner and the Chief Surveillance Commissioner, as we recommended. Perhaps the Minister will wish to say a word about proposed future guidance to public authorities in this area and the future work of the Investigatory Powers Tribunal.

Realisation of the enormous increase in surveillance and data collection by the state and other organisations, and dissemination thereof, has now dawned on Parliament, on government, on the public and on those in the media who take an interest in these matters. It is seen by many people as a threat to our long-standing traditions, privacy and individual freedom. We have recommended that a parliamentary Joint Committee on the surveillance, data collection and distribution powers of the state should be established to scrutinise relevant legislation and practice. I think that that is an important recommendation in the light of terrorist threats and legislation that comes through without our really noticing it. I hope that the Government and Parliament may in due course come to share the view of your Lordships' committee.

A key recommendation—perhaps, in a sense, a text—for today's debate is contained in paragraph 144 of the report: namely, that privacy and the application of executive and legislative restraint to the use of surveillance and data collection powers are necessary conditions for the exercise of freedom and liberty, which has been won over many centuries, and that privacy and executive and legislative restraint should be taken into account at all times by the Executive, by government agencies and by public bodies, all of which—or nearly all—should be accountable to Parliament. That, in recent years, has self-evidently not been happening. I hope that today's debate may make some contribution to its doing so in the future. I beg to move.

10.18 am

Lord Morris of Aberavon: My Lords, the Constitution Committee, of which I am a member, under the wise chairmanship of the noble Lord, Lord Goodlad, has delivered a monumental report. Our parliamentary system can be proud of it. The security of the state has to be guarded, and within this, the freedom of the individual has to be enshrined. I will not go into the detail of our 44 recommendations or the Government's responses. Some are encouraging; some are frankly disappointing. In the name of the need to combat

terrorism, the Home Office's actions do not give the appearance of a holistic approach. It is the piecemeal erosion of liberty that I fear, and it is ever vital to bear in mind proportionality as a test to any governmental response.

The knowledge of the world now about so many of our individual actions and lives is so totally different from how it was in the world in which we grew up, with a bringing together of so many strands of information about us already. How much more will be known in 10 or 20 years' time? Is it all necessary? Are sufficient safeguards in place, in the form of the detail of legislation, judicial oversight and oversight by the various commissioners? Have the commissioners the powers and the resources to be proactive?

Only recently, at the Hay-on-Wye festival, Sir Richard Dearlove, who led the Secret Intelligence Service—MI6, so called—from 1999 to 2004, is reported as having attacked “the loss of liberties” caused by expanding surveillance powers and described some police operations as “mind boggling”. He feared the striking and disturbing invasion of privacy by the Big Brother state. These are the reported comments of the man in charge of the intelligence service during the September 11 attacks. They are indeed disturbing, coming from such a source.

He highlighted the fact that Scotland Yard has carried out more than 150,000 stop-and-searches since 2007, compared with fewer than 300 in Manchester. They may all be necessary, but I would need considerable persuasion of their proportionality in all parts of the country. I do not know whether the attention of the police inspectorate has been drawn to the disparity. One has to be eternally vigilant. I had some responsibility in this field as a law officer, but is the fear of terrorism being used now disproportionately to defend some of the actions of the government and public organs?

Since Roman times, it has been asked, “Who is to guard the guardians?” How do we explain the need for our National DNA Database to be the largest in proportional terms in the world? I know as a former constituency Member how popular are CCTV cameras with those who are afraid, but can we justify being world leaders again, with an estimated 4 million CCTV cameras? Is this an effective use of the £500 million of public expenditure which has been involved? During the 1990s, approximately 78 per cent of the Home Office crime prevention budget was spent on installing CCTV. These methods of surveillance have grown on us with hardly a murmur, so I welcome the Government's support for a national body to oversee the use and deployment of CCTV.

The Regulation of Investigatory Powers Act, or RIPA, has been used in ways that were never intended, as an umbrella for all sorts of activities by public organs—it was mentioned by the noble Lord, Lord Goodlad. It was never envisaged—indeed, it was categorically denied by Home Office at the time—that it would apply to local authorities. Hence, local authorities were able to pursue all sorts of investigatory activities, from snooping into overfull dustbins to spying on the working of school catchment areas.

The string of Home Office junior Ministers who came before us were particularly unconvincing in defending the changed attitude of the Home Office. It

was an about-turn. The appetite of some of the local authority witnesses, although I hope that they were not representative, for the use of these powers was simply gargantuan. One gave us as an illustration their usefulness in catching travellers who persuaded old ladies to part with large amounts of money to do minor roof repairs—a worthy cause, of course. But what have the police been doing over the years, using their own investigatory powers, with proper safeguards? In my professional experience, they seemed to have been properly activated by the police over many years. I just cannot see how the need in this field cannot be met by the police as it has been traditionally. I do not believe that local authorities are appropriate bodies to exercise RIPA powers. If they do so, the Government should define the circumstances, and the proper training and authorisation standards. The Government have moved in the right direction in their response. We shall follow closely the current consultation.

I have touched on but a few of the areas of our concern. I summarise our main responses to the situation that we now find ourselves in. First, we need oversight, particularly judicial and by our commissioners. Secondly, there should be new roles and resources for the various commissioners that we have in place, particularly in scrutinising and approving private impact assessments. Thirdly, I feel particularly strongly that a parliamentary Joint Committee, mentioned by the noble Lord, Lord Goodlad, on surveillance and data powers should be established to, among other things, supervise what Sir Richard Dearlove claimed were “inadequate laws to regulate some surveillance powers”. The work of your Lordships’ Constitution Committee in this field is broadly done. Someone else must carry the baton. I find the Government’s response to this aspect of our report particularly disappointing.

10.27 am

Baroness Manningham-Buller: My Lords, I congratulate the Constitution Committee on this report, which is timely and thorough. I read through the doorstep of evidence and congratulate the committee on listening to it all. Some of it is well informed; some of it is not informed at all.

I shall concentrate on surveillance for national security purposes, but touch on the other matters, such as local authorities where I share the views of the previous two speakers. In thinking about what I wanted to say today, I looked again at the European Convention on Human Rights. I had forgotten how it allows for interference with privacy in such a broad range of areas. I shall read them out to the House, if I may, to remind it:

“Everybody has a right to respect for his private and family life, his home and his correspondence ... There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law”—

I shall come back to that phrase—

“and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

That is pretty unrestrictive. I am not sure that I want my privacy invaded to protect my morals or anybody else’s.

As I have said before in this House, I am concerned that the most intrusive powers of the state should be used only for the most serious crimes and threats in proportion. I hope that the House will forgive me if I sound a little didactic occasionally, because surveillance is used very sweepingly. I would define four main sorts of surveillance. In the most intrusive category, I would put, first, eavesdropping—the deployment and use of microphones in places where the individual or people whom they are targeted against would have a presumption of privacy—and, secondly, the interception of communications. The committee at one stage called this wire-tapping. No, no—that is an American phrase. In the UK we talk about very low-key interception of communications. Those two are the most intrusive techniques, and when I joined the Security Service in 1974 they were done without any legal basis. There was ministerial authority but no legal basis.

In 1985, roughly 30 years after the European convention, we got the Interception of Communications Act, which was welcome and which concentrated on those two surveillance techniques. When I joined in 1974, I was astonished—naively—that the state bugged people. It was not public knowledge then. I was rather shocked that we were listening to telephones and opening mail; this did not seem to be decent behaviour. However, what reassured me and kept me in the service was the degree of scrutiny, care and toughness with which those resources were applied for and deployed. In particular, from a very early age I was taught that they were to be deployed only if other methods of investigation were not available or had proved fruitless, and if the threat and necessity were sufficiently serious and high to warrant that intrusion.

I go back to my point on being in accordance with the law. After the fall of the Eastern bloc, when my service and SIS went to places such as Hungary, Poland and Czechoslovakia to advise them on creating democratically accountable security and intelligence organisations in a democracy, we told them all that they needed a proper legal base. They needed a proper law to cover what they were going to do. When it was clear that the Government were going to introduce the Human Rights Act in 2000, we realised, as others did, that it would affect two other major techniques. One was what RIPA called “direct surveillance”, which means following people and observing them—walking and moving around behind them, seeing what they do from static or mobile surveillance. The other was the recruitment and deployment of covert human intelligence sources to collect information on them. We realised that those two techniques, which I would suggest are less intrusive than the first two, were not specifically authorised in law. I am proud that in the security service we argued very strongly that we needed a legislative base for those techniques—and, I might say, in the face of some opposition—in what then became RIPA.

Perhaps the House will forgive me for repeating that. Just to talk about surveillance broadly can confuse. There are various levels of intrusion and, I would argue, various levels of authorisation may be appropriate for them. Unlike some of the police witnesses, I believe that RIPA has worked well. It has not worked well on angles such as local authority; it has been interpreted

[BARONESS MANNINGHAM-BULLER]

too broadly in my view, but I do not believe that the bureaucracy that was criticised by some witnesses to your Lordships' committee is too much. It is right that for these intrusive powers there should be very close scrutiny, that internal processes need to be robust and challenging and that the external scrutiny—currently by Ministers—for the most intrusive methods needs to be thorough and conscientiously done. An audit trail is essential, not least for post hoc scrutiny and for public confidence.

I would caution against having higher levels of authority for the lower levels of surveillance. I would regard, for example, that having court approval or prior judicial approval to follow someone would be unwieldy and unworkable, given the imperatives of speed and flexibility in fast-moving operations. I would not be surprised if, at some stage, judicial authorisation replaced ministerial authorisation, but that should be only for the most intrusive techniques and not for the low-level ones, otherwise the whole system will grind to a halt.

There are two of the committee's recommendations that I wish to argue against. Paragraph 474 argues for "sufficient detail and specificity" in surveillance techniques. That can be interpreted in different ways, but it would be mad to alert those who threaten us seriously to the emerging capabilities of the state to be deployed in the most serious and high-level threats. The history of intelligence is like an arms race—a series of advantages for the state that are eroded as people become aware of those capabilities and the state has to move fast to keep ahead of them. For example, techniques to do with mobile telephony that we use today were unknown to the public 10 years ago, which gave a tremendous advantage in investigating terrorist crime. If we reveal those capabilities in too great a detail, they will cease to produce intelligence. I do not exaggerate—I am not one for hyperbole—but people will die as a result.

The other problem that I have in regard to national security, referred to in paragraph 477, is the suggestion that those subjected to surveillance should be told after the event, subject to the caveat that,

"no investigation might be prejudiced as a result".

That would rule out the suggestion in most cases. The source of the information that triggered the investigation; the other individuals involved; the possible need for surveillance in future; the Article 1 rights of any covert human intelligence source involved who produced the information; the protection of foreign intelligence under the third country rule, which we will cease to get if we do not protect it—all those make that a difficult recommendation.

Finally, I believe that the public will understand and support the need for intrusive techniques where the threat demands it. When my former service approaches a member of the public to ask to sit in their bedroom for a week—or maybe three months—to watch somebody, when I would say, "Oh please not", they say, "Yes". If it is serious and important, the public support us in conducting those operations. But what they and I, and other Members of the House, are queasy about is the spread of these technologies and approaches and the retention of data for things that fall outside the narrow

category of very serious threats that I am describing. I was glad to see that the committee included private activities in that; it is right that its recommendations covering those are also taken seriously.

It is entirely right that we should consider these things. The days when national security, as an issue, was very much hidden away and not discussed are over, and rightly so—but we must be careful in what we describe here and what the consequences will be if we do not narrowly interpret in the way I have suggested.

10.38 am

Baroness O'Cathain: My Lords, being a member of the Select Committee on the Constitution was the high point of my many years in your Lordships' House, and the document, *Surveillance: Citizens and the State*, was the high point of my time on the committee. It is customary to pay tribute to the chairman of the committee but, in this case, whether it was customary or not, I would pay fulsome tribute to the excellent, patient professionalism of my noble friend Lord Goodlad and to all members of the committee. The team work was excellent and the dedication was most marked, and I am sure that the report will stand for a long time as an example of how such work should be done. On every issue, there was a lot of humour alongside some very earnest discussion and debate. We had our sadnesses, too, as our chairman has already said, but this report is a lasting memorial to the fine work of those who have departed. It certainly was a great experience to be a member of the committee.

There were occasions when we thought that we were, as the current in-phrase states, "ahead of the curve", and others when we were running very hard to keep ahead of latest developments. It was difficult to agree a cut-off period but eventually we had to draw stumps. That is an indication that the issue will continue to hold our attention—and that it needs to continue to hold our attention, not only for the reasons that we give in our report but for the reasons given today by the noble Baroness, Lady Manningham-Buller, and all that she has revealed.

The headline-grabbing issues following the publication of the committee's report were always likely to major on the question of DNA databases, the proliferation of CCTV cameras and the effects of RIPA on what we believe is our right to privacy in every sphere of our lives. I am not convinced that our views on the issue of DNA databases are mirrored by the public at large—not that that should constrain a Select Committee from putting forward its views and presenting conclusions that are at odds with a lot of what one might call "conventional wisdom".

DNA databases are a big topic of conversation, discussion and debate way outside the Westminster village. Their undoubted usefulness in solving crime, in identifying people who have been suddenly killed or injured and in dealing with sad cases of amnesia or dementia are all so positive; but of course there is also the persistent, and correct, emphasis on the right of privacy for everyone. The committee concluded in paragraph 200 that a universal DNA database would, "be more logical than the current arrangements",

but thought that it would be undesirable,

“both in principle on the grounds of civil liberties, and in practice on the grounds of cost”.

Having left the committee—time-expired, I hasten to add—I have thought long and hard, and I feel that a universal DNA database would be so much better than the current situation, which, as described in the report, does have some serious flaws. The conclusions of the report are well stated and well founded, but surely if many years ago we had knowledge of the amazing usefulness of DNA data, we would by now have a universal DNA database.

I fear that my view is mirrored by an ever growing number of people, and not just among the chattering classes nor in the newspaper-generated campaigns. A great deal of serious discussion and debate is devoted to the subject and I hope that minds might be changed. Of course the privacy issue is important—it is fundamental—but there must be a case for agreeing that if everybody’s DNA is on the database, that issue will lose its potency.

As well as the undoubted cost issue, we would have to be absolutely convinced that the systems were failsafe and that the data were encrypted to such an extent that they were secure. Recent experience makes all of us worry about this—actually, it probably terrifies us—but we cannot stop advances in technology and must be prepared to consider likely long-term benefits against convictions held as a result of short-term experience.

Of course the government response is *ad idem* with the committee’s recommendation, and I accept that. I just wanted to use this opportunity to put a marker up and say: let us not ensure that this view is fixed in concrete for ever.

I turn now to the issue of CCTV surveillance. The proliferation of CCTV cameras and the oft-quoted statistic that there are more CCTV cameras in this country than in the whole of the rest of Europe engender dozens of differing views—not least among the population at large. At a dinner party last Saturday the subject came up. The hostess, who happens to be a chairman of the magistrates in our nearest city, almost went crazy at the very suggestion that there should perhaps be a reduction in the number of CCTV cameras. She said, “They are the most valuable tool we have in nailing crime. They must be a deterrent because of the number of criminals who are convicted as a direct result of the evidence from CCTV cameras”, and so on. One of the other guests was equally exercised about the subject. She bewailed, “I hate the things. Whenever I catch sight of myself on them I realise just how old and fat I am”. In her case, neither statement is true. What is true is that the cameras do have a propensity to show up bad posture and remind one that a hair appointment is long overdue.

I find the ubiquitous presence of CCTV cameras most comforting, and certainly not a threat to privacy. It is much more a security-enhancing issue, though I concede that this reaction is likely to be both gender- and age-related. The committee’s recommendation states:

“We recommend that the Home Office commission an independent appraisal of the existing research evidence on the effectiveness of CCTV in preventing, detecting and investigating crime”.

That was answered by the government response to the effect that they have already commissioned an independent appraisal of the evidence about the effectiveness of CCTV in preventing, detecting and investigating crime. When is this review likely to be completed? I think that we would all like to see it.

I also support the committee’s response to that information which urges the Government to ensure that the review is made available more widely so that it can inform a genuine debate on the subject—not just a dinner party argument.

The impact of RIPA on the citizens’ privacy was a topic of much discussion and debate, and has already been alluded to. A lot of it was fairly torrid stuff. Whereas the mushrooming number of CCTV cameras is visible, the covert activities of public authorities in using surveillance to further their own aims could be, and has been, unacceptable, as the noble and learned Lord, Lord Morris, said. Sadly, in many cases the suspicion is created that public authority employees have been overzealous in using covert methods to obtain evidence of malpractices that are not exactly of a life-threatening nature. The committee recommended that the,

“Government consultation on proposed changes to the Regulation of Investigatory Powers Act 2000 should consider whether local authorities, rather than the police, are the appropriate bodies to exercise such powers. If it is concluded that they are the appropriate bodies, we believe that such powers should only be available for the investigation of serious criminal offences which would attract a custodial sentence of at least two years”.

I am afraid that the government response is just not good enough. They rely on a code of practice. This is not the first occasion—and, sadly, it will almost certainly not be the last—when I feel obliged to pour scorn in great measure on codes of practice. When will we all, and not just the Government, accept that codes of practice are only as effective as the level of integrity of those who are in a position to administer them? It has been for ever thus. Yes, I know that in many cases codes of practice are worth while and effective, but in many more cases they are regarded in somewhat the same light as hurdles which human ingenuity feels compelled to avoid by racing round them, or, even worse, as a challenge to demolish them, often in a blatant way.

We have just to cast our minds back about a year to see that codes of practice in the banking and financial sector generally did not stand up. Codes of practice need teeth. Too often they may have teeth, but the teeth are not in great condition and many of them fall out. The government response states that there will be consultation. My cynicism regarding codes of practice is almost identical to my cynicism about the promise of government consultation as the panacea for all. The noble Baroness, Lady Manningham-Buller, spoke about different levels of authorisation, which obviously has merit—and almost certainly much more merit than codes of practice.

The work undertaken on this report was long and arduous but it was wonderfully interesting, so much so that Wednesday mornings took on a marvellous sense of exuberance for those of us involved. It was sad that it had to come to an end. The issue has of course not come to an end, and nor will it, ever bearing in mind

[BARONESS O'CATHAIN]

the innate conflict between privacy and security. However, the report will be a most useful reference document for many years to come. I hope it is widely read. It was just marvellous to be part of the project.

10.50 am

Lord Peston: My Lords, I join others in congratulating our chairman on his chairmanship of the report. The noble Baroness, Lady O'Cathain, put it all absolutely admirably, except that I would go further—I find it miraculous that we have produced an agreed report. That is entirely down to our chairman. I also echo her remarks that, since the whole subject of the Constitution Committee is a million miles from my interests, I found—and still find—our Wednesday morning meetings absolutely fascinating. I really look forward to them.

To place this in context, I shall start by referring to two of the greatest thinkers of our country. Adam Smith saw it as the first task of government to protect the people of the country from an outside threat, and its second task to protect them from a threat from inside. He saw that as central to the role of government. Nearly as great a thinker was John Stuart Mill, 100 years later, who emphasised above all the role of privacy when he said that,

“there is a circle around every individual human being which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep”.

He said that the point to be determined is where the limits should be placed. Bearing both those ideas in mind, all Governments face the same quandary. If there is a terrorist outrage, they will always be blamed for not being tough enough. Equally, when an ordinary citizen is stopped by the police from going about their everyday business, they feel that they are being threatened and their fundamental liberties impaired—but, yet again, they blame the Government. In a sense, the Government cannot win either way.

What troubles me a little is that since the national impact of a terrorist attack is of an altogether larger order of magnitude, it is not surprising that Governments give it the greater priority. What worries me is that, instead of a rational analysis of the balance of advantage between the threat of the terrorist and the impairment of personal liberty, what appears to happen is that those who shout the loudest get their own way.

Having said that, I turn to the question of CCTV, which we deal with in chapter 3 of the report. I am currently totally at a loss as to what has happened to this independent inquiry. I thought that it had been published, but I am not sure whether it has or not. Perhaps we could be told. I am told that it has not been printed, but I gather that it may be available in some other form. There are certain fundamental questions that must be answered in connection with it. I am not at all clear that any of them are being dealt with by the independent inquiry. The first is the obvious one of whether CCTV is effective. The second is, even if it is effective, does it justify its cost? In connection with that, there is the standard economic question: are there not better ways of spending the money to improve security? The obvious one, which we heard in evidence, was better street lighting.

I ask my noble friend the Minister the question that others have raised: is it true that we have more CCTV cameras than the whole of the rest of Europe? Is it true that we have far more per capita than the USA? I gave him notice of these questions, so he may know the answer now. I look forward to it if he does.

Deputy Chief Constable Graeme Gerrard of the Cheshire constabulary put the point very well. In evidence, he said to us:

“In terms of reducing crime there are mixed results ... there was some quite good indication that it reduces the public's fear of crime. If you look at where most of the pressure is for CCTV in the community, the vast majority of it comes from the public who actually want it ... It is certainly not being driven by the Police Service”.

That leads us to this question: if the public want these CCTV cameras—and my ad hoc experience is that that is true—what is the correct response that those of us in public life, not least the Government, should give? Should we say, “If it is what they want, then it is what they ought to have even though it is not backed by any evidence at all”? Or is it our duty to educate them and tell them that they are wrong?

This does not apply just to the present Government. I keep using the word “Government”, but I do not necessarily mean just the present Government. Governments seem to be afraid of telling the public, “We hear what you are saying, and you are mistaken”. No one seems willing to do that at all, in any field. Well, as someone who has devoted his life to a mission to explain, I certainly believe that if all CCTV cameras do is reassure you when you should not regard them as doing so, then someone ought to say to you, “Why don't you think about it a little bit and realise that you are mistaken?”. However, I know that I am totally out of step with all sorts of people on that—including, as the noble Baroness, Lady O'Cathain, points out, magistrates who ought to know better.

Briefly, on the privacy impact assessment, I have to say to the Minister that the Government seem to be slightly casual in their response. They said:

“Departments are encouraged to consider undertaking a privacy impact assessment”.

That does not seem to be strong support for privacy impact assessments, or to offer any confidence in the notion that they will occur. I would have thought that, for once, the Government might say to all the relevant bodies, “You will do them, and you will publish them”.

I conclude with a question which was, in a sense, always with us in the committee. Are we sleepwalking into the surveillance society? There will be a range of opinions and reasonable answers to that question, from those who would say “possibly”, to those at the other end who would say “certainly”. I am really at the extreme. We are already in the surveillance society. I very much hope that it is not irreversible.

10.58 am

Lord Pannick: My Lords, I joined your Lordships' Constitution Committee after the work had been done on this report, and therefore feel no inhibition whatsoever in agreeing what a valuable and powerful report it is, under the wise chairmanship of the noble Lord, Lord Goodlad. For the committee to produce a report that

has attracted praise from across the range of opinion, uniting the organisation Liberty and the *Daily Mail* newspaper in a most unusual alliance, is a reflection of the quality of the work, the importance of the issues discussed and the urgent need for greater controls on state power.

The topic to which I wish to draw particular attention today is that addressed in paragraphs 197 and 464 of the report. The report there recommends that the Government should,

“comply fully, and as soon as possible, with the judgment of the European Court of Human Rights in the case of *S. and Marper v. the United Kingdom*”,

delivered on 4 December last year on the subject of the DNA database. That judgment held that this country is in breach of Article 8 of the European Convention on Human Rights because DNA profiles of persons arrested for, or charged with, a criminal offence but not subsequently convicted, are retained on the national DNA database for an unlimited period.

The Government, to their credit, have accepted the judgment unreservedly and have announced that they will change the law to ensure compliance. The question of what should happen now arises in the context of your Lordships’ committee’s recommendation—with which the Government agree—namely, that this country should not adopt a universal DNA database for reasons of principle, given the privacy concerns, and for the practical reasons of cost and guaranteeing the security of the information. The issue therefore arises of the circumstances in which the DNA of persons arrested but not convicted of a criminal offence should be retained. In relation to this important matter the Government are, of course, correct to point out at page 8 of their response to the report of your Lordships’ committee that this is a context, like so many others under the convention, in which it is necessary to strike a balance between the rights of the individual and the need to protect the public. However, that balance must be struck with due regard to the point made at paragraph 196 of the committee’s report that DNA profiles provide the state with large amounts of highly sensitive information about the individual—information,

“that could, in the future, be used for malign purposes”.

The European Court made the same point in concluding that the retention of DNA samples is a *prima facie* breach of the right to private life. Therefore, the Government need to justify very carefully the proposals set out in their consultation paper on how this country is to move forward in the light of the *Marper* judgment. I invite your Lordships’ consideration of three matters. First, I am puzzled about why the Government think that it is appropriate to retain for up to six years—this is now their proposal—the DNA profiles of adults who were arrested for, but not convicted of, an offence which was not serious, violent or terrorist related.

In Scotland, as the European Court explained, there is no power to retain DNA material when a person is arrested but not convicted unless the alleged offence is serious. Can the Minister please explain to the House whether there is any evidence to suggest that the practice in Scotland has caused any detriment to the fight against serious crime in that country? We

are talking about people who have no criminal convictions. Whatever the position in relation to those arrested for, but not convicted of, serious offences, the Government surely need the strongest justification for retaining the DNA profiles of adults who have no criminal record and who were arrested for a non-serious offence.

Paragraph 6.5 of the Government’s consultation paper suggests that an earlier arrest for an alleged drugs offence—even if there is no conviction—may be linked to later offences of murder. If that is so, surely the proper response for the Government is to provide that an arrest for a drugs offence, even if there is no subsequent conviction, should mean that DNA samples may be retained for six years, rather than for them to propose that all DNA profiles may be retained for six years in relation to any case where a person is arrested but not convicted of a non-serious offence.

Secondly, the Government also propose that there should be a 12-year period for retention of the DNA profiles of those arrested but not convicted in relation to serious, violent or terrorist offences. Again, this is much longer than the three-year period, plus a possible two-year extension if a sheriff consents, which applies in Scotland, as noted in the European Court judgment. The evidence presented in the consultation paper to justify a 12-year period is to my mind very weak. Can the Minister help the House on whether there is any evidence at all to suggest that this three-year period, plus the possible two-year extension in Scotland, has in practice caused any detriment whatever to the fight against serious crime in Scotland? Has any senior police officer in Scotland so suggested?

The third and final point is that the consultation paper sensibly suggests that in exceptional circumstances the DNA profile that is retained should be destroyed before the expiry either of the six-year period or of the 12-year period if an application is made to that effect to an appropriate body. The Government propose that the application should be made to a chief constable. It is in my view very unsatisfactory indeed, given the important personal interests involved, that whether there are discretionary grounds for deletion of the DNA profile should be decided by a non-judicial body, the chief constable, subject only to judicial review. Will the Minister please consider recognising a right of appeal to an independent judicial body which would have power to require the deletion of the DNA profile?

If I have been arrested but not convicted, and I object to my DNA profile being retained by the state, giving it access to personal and intimate information, and I think I have a strong argument that the arrest was unjustified—for example, because of mistaken identity—surely I should have the opportunity to ask an independent court or tribunal to decide whether my DNA profile should be retained for the six or 12-year period, or whether I should be treated in this respect like any other person who has no criminal convictions.

11.10 am

Baroness D’Souza: My Lords, I am most grateful to your Lordships for this opportunity to pay tribute in the context of this debate to the passing of a truly

[BARONESS D'SOUZA]

great man, Lord Dahrendorf of Clare Market. It is for others to assess the contribution that he made to political and social theory, international relations and education in the 20th and 21st centuries; all I will say is that it is clearly a very considerable contribution.

The celebration in honour of Lord Dahrendorf's 80th birthday in May, held in St Antony's College, Oxford, where he was for several years the greatly respected warden, was the occasion for a gathering of the significant thinkers of our time. It was a magical two days where the theme of liberty or the lack of it was examined in great detail. What has been apparent for many decades was again abundantly in evidence—that individual liberty was the single passion that informed Lord Dahrendorf's life. It is the theme of the majority of his 55 books, the core of his life's work and the reason why he, together with his father, was imprisoned by the Nazis in pre-war Germany.

But Lord Dahrendorf—Ralf—was also my hero, and he was my friend. He and his then wife, Lady Ellen Dahrendorf, together extended and went beyond the call of friendship some years ago when I was in need of their generosity. I regularly stayed with them in their farmhouse in the Black Forest, and there I got to know the man rather than the somewhat remote international figure he had by that time become. If you had not seen Lord Dahrendorf wearing a green felt trilby and conducting the local brass band in a bierkeller, you did not really know the man at all. I think that he is the first person to have been a Minister in Germany, as a member of the Free Democratic Party, and a Member of this legislature. His decision to take up citizenship in this country was due in large part to his love of and admiration for the British brand of liberty. He was pre-eminently a European. He loved good food and the best champagne; he was a swimmer and a jazz enthusiast. He was funny, endlessly courteous, extremely generous and perhaps the most profound thinker of the late 20th century.

In the past few years, as a Member of the same House, I had become even closer to him and his family. I shall miss him greatly, and know that his huge influence will continue to cast its light widely, long into the future.

11.13 am

The Earl of Erroll: My Lords, I shall speak briefly in the gap to make a couple of points on the importance of privacy. I should have put myself down to speak but forgot to do so; I am sorry.

I spend a lot of time discussing and speaking on these issues in the world of ICT, so I am quite familiar with them. It worries me that the acquisition, accumulation and analysis of the mass of surveillance material alters the relationship of trust between the citizen and the state. On the one hand we have privacy, and on the other identification. With the best of intentions in what Orwell accurately called our system of democratic socialism, the state tries to help people, protect them from other people, or catch—I give the example referred to earlier—rogue traders to help the trading standards people do good things.

But is this proposed accumulation of stuff effective? If you want to find a needle in a haystack, do not build a bigger haystack—storing a lot of stuff may just tie investigators in knots. Also, it is easy to mislead machines and lay false trails. For instance, I accidentally left my mobile behind today, so I will not appear to have been in the House. Lastly, a lot of the data are not correct or do not cross-reference correctly, so you can draw wrong inferences from the material.

We must use human intelligence, properly targeted and properly controlled. The control issues that the noble Baroness, Lady Manningham-Buller, mentioned are extremely important. We recreate what I call our digital footprint very rapidly, through our record of travel, use of credit cards, telephone calls, the tracking of the IMEI number of your mobile phone as you wander around, and the purchases you make. People do not realise that it does not take long to build up a picture of someone's life. Even if you start from scratch, with proper surveillance intelligence and interception you can build up a picture of whether someone is a criminal very rapidly, much quicker than you think. Therefore, I do not think you need a huge tail of stuff behind someone.

I always worry about the people who will look at the material. I remember that the definition of a puritan is someone who has a haunting fear that someone, somewhere, is enjoying themselves. We have all done something silly at some time—at a stag party, a hen party or somewhere—and told little white lies, and I always feel that we all have a right to rehabilitation and should be allowed to forget some of those past embarrassments. They should not be available to create a risk of blackmail in the future. If something is stored, there is a good probability that it will eventually leak. That is the danger, however good your security is.

I congratulate the committee on an excellent report.

11.16 am

Baroness Miller of Chilthorne Domer: My Lords, it is customary to say that reports are powerful but this report is the most powerful that, in the 11 years that I have been in this House, I have seen from any committee in either House. Its power comes from the fact that it delves into the heart of the principle of what freedom means in the 21st century. In recent years, the ability to gather and store data on people has developed to beyond anything our legislation was designed to cope with, even legislation that passed into statute as little as 10 years ago. The committee was composed of individuals with a deep understanding of what the constitution is meant to protect. Therefore, it has produced a thoughtful report and one with many practical suggestions. I associate these Benches with the tributes paid to Lord Holme of Cheltenham, whom we of course greatly miss, and with the moving tributes to Lord Dahrendorf and Lord Bledisloe. The House will miss them all greatly.

The committee states in its report:

“We regard a commitment to the freedom of the individual as paramount. It is a precondition of the functioning of our existing constitutional framework”.

That concept is incredibly important in the debate that the committee goes on to address—that freedom means two things: freedom from interference in our private lives, and the freedom provided by security so that we can go about our lives safely. I also found the evidence volume extremely interesting. One example of it is page 183, where Professor Bert-Jaap Koops from the Tilburg University Institute for Law gives an overview of the approaches to the right to anonymity in France, Germany, the US and Canada. It is important that the committee took that much wider view because, in a world where people and data travel so much, it is impossible to confine our view to the purely domestic. ID theft can and does happen on a global scale, and international events of course produce domestic legislation. There is no more powerful example than 9/11 in the US producing the domestic legislation that we passed in haste but now rubber-stamp each year.

The committee identified that public acceptance of a much increased level of surveillance had clearly resulted from the terrorism threat, but we on these Benches are astonished that the Government are so dismissive of the recommendations in paragraphs 486 to 488 that they should engage the public properly in a debate about the balance between the risks and benefits of surveillance, data collection and data sharing. They just pass the buck to the Information Commissioner's Office. Richard Thomas in his time in that office has done a fantastic job at raising public awareness of these issues and no doubt his successor will continue this work. However, leaving the whole task to the ICO would only be appropriate at all if the ICO were resourced at a level that enabled it to do the work on the scale that the committee is recommending—although I am not sure that it would be appropriate even then. Can the Government say by how much they are intending to increase resources to the ICO's office?

While on the subject of the Information Commissioner, I remind the Minister that it was only after opposition in your Lordships' House, which voted for my amendment in the Criminal Justice and Immigration Bill in 2008 to strengthen the Information Commissioner's powers, that the Government conceded that that was necessary. They have still not produced the regulations to do that, as the committee points out in its report in paragraph 243. The same powers need to be applicable to the private sector, with which the public sector is utterly intertwined anyway. These Benches will pursue that at every opportunity.

This report is not the first to warn that the Government's enthusiasm for data sharing has given the impression that they view the practice as an "unconditional good". The Thomas-Walport review warned of that in 2008. The Government have had some time to pay attention to the risks that that report underlined and to prepare themselves better for a response to this report.

The report mentions an interesting new term, "dataveillance"—amassing personal data, data sharing, data mining, profiling and data matching, as well as more obvious forms of surveillance, such as CCTV, which pose a very different level of threat to freedoms.

I am grateful that the noble Lord, Lord Pannick, has saved me some time, because he has examined deeply the question of DNA retention. In our debates

on the Policing and Crime Bill we will have a further opportunity to debate that issue, and we will take the opportunity to challenge the Government's attitude.

The report outlines many concerns that too much data are collected. In other cases, too many people have access to those data. The technology is leaping ahead of political oversight. In paragraph 12 on page 438 of the evidence, there is an interesting comment about the police national computer, which is subject to "collaborative working", whereby people who might like to access it, but strictly speaking should not, can in fact get the information they need very easily. The evidence points out that vehicle and handheld terminals make confidentiality much more difficult to assess and control. That is the technological challenge.

Many of your Lordships have mentioned the application of the Regulation of Investigatory Powers Act. The fitness for purpose of that Act covers everything from life-and-death issues to the everyday. On death—we are debating this in the Coroners and Justice Bill—the Government maintain that there is a need to guard methods of gathering intercept evidence and that the evidence must lead sometimes to closed inquiries substituting for inquests—even though we are apparently the only country in the world to find intercept evidence inadmissible. However, I accept that there is more debate to be had on this. I was very interested in the contribution of the noble Baroness, Lady Manningham-Buller, on this subject. We urgently need the implementation of the proposals in the Chilcot review, which, according to the information that the Government recently sent round, is still at the stage of a design model—yet we are passing legislation all the time that depends on the outcome of that review.

On a more everyday level, there is concern about the interception of communications for commercial gain. There was an illegally trialled interception of web traffic when BT and Phorm decided to intercept users' web traffic to produce a targeted advertising system. The Government's response to that was very weak. I have mentioned previously in this House that the Home Office's lack of interest in that illegality was ill-advised and led to speculation as to whether it was due to its own wish to use such technology that it regarded such an illegal trial so lightly.

When RIPA became law nine years ago, such technologies were beyond the scope of legislators in making decisions on whether the Act was up to the job. Now its enforcement is something that the Government need to address. If the legislation is lacking in any way they must bring forward suggestions to improve it. The report considers two types of surveillance, as other noble Lords have said. They have mentioned all the issues around the use of RIPA by local authorities. The report's recommendations on that are very important.

The report also highlights the fact that authorisation is available to too many bodies, that RIPA allows surveillance authorities to authorise their own activities without judicial oversight—that is a particularly important gap—and that there is a division of responsibility for surveillance between different commissioners. That was interesting to read and there was a variety of opinion as to whether those activities were satisfactory

[BARONESS MILLER OF CHILTHORNE DOMER]
or unsatisfactory. There was clearly a difference of opinion as to whether or not the system was unduly bureaucratic.

RIPA was passed in 2000. I remind your Lordships that local authorities were not at that time included in the list of public authorities that could have access to communications data. That provision was introduced in secondary legislation in 2003. That highlights the danger of secondary legislation and how very careful we must be when granting the Government powers under something as critical as RIPA. The orders can result in infringements such as those mentioned by noble Lords this morning.

We found that the Government's overall response to the criticisms of RIPA were very weak. I am looking forward to the Minister's defence. In other European countries, such as Germany, there is a constitutional commitment to the principle of proportionality which governs all data and surveillance rules. I should be interested in the Minister's comments on the proportionality issue.

The report proposes some immensely important actions on Article 8 compliance, on judicial oversight of surveillance, on identification systems, and on areas for new legislation. The report has effectively drawn up a work programme for the joint committee that it proposes, whereby, as legislators and scrutinisers, we would have a far better grip on this whole area. The key recommendations are in paragraphs 493 and 494. The Government may not, as their response states, be, "persuaded that the creation of a new joint committee is the most effective way to ensure effective scrutiny".

I ask the Minister: do the Government prefer the disjointed approach because it leaves far less room for informed challenge? That is what they are saying—if they do not want a joint committee, they prefer a disjointed approach, with responsibility and oversight spread between different departments and Select Committees. However, the report highlights that the link between the citizen and surveillance is the basic functioning of our constitution. If the Government are serious about constitutional reform, they must accept that the proposal to establish a new joint committee on surveillance is essential.

11.29 am

Lord Henley: My Lords, I start by offering my congratulations to my noble friend Lord Goodlad and his committee on producing this excellent and weighty report with its 44 recommendations to the Government. I take it that, when the noble Lord comes to reply, he will not try to respond to all 44 of the recommendations—the Government have done that—as I think that he will have quite enough to do in responding to the various points that have been put to him this morning.

I also congratulate my noble friend on attracting such an excellent list of speakers to his debate. It includes current members of the committee such as the noble and learned Lord, Lord Morris of Aberavon, and the noble Lord, Lord Peston, new members such as the noble Lord, Lord Pannick, and former members such as my noble friend Lady O'Cathain, who described

herself as "time-expired". My noble friend might describe herself as time-expired; I would never dare to do that and I do not think that many other members of the committee would dare to describe her as such. I am sure that in due course she will have an opportunity to go back on to this committee or other committees, as appropriate.

I also congratulate my noble friend on attracting the noble Baroness, Lady Manningham-Buller, to this debate. She brought her expertise to it and reminded us that not only was there Volume I of the report, which I have read, but the even weightier volume of evidence, which she seems to have studied in great detail. I confess that I have not yet done that, but I have a long journey ahead of me and no doubt I can look at it in due course.

The noble and learned Lord, Lord Morris of Aberavon, summed up the Government's response to the Select Committee's report when he said that some of it was encouraging but that some was, frankly, disappointing. That theme seemed to crop up again and again in speeches from noble Lords during the debate. Therefore, we certainly look forward to what the noble Lord has to say when he replies.

At this stage, I make one brief comment on that response. As I understand it, the committee's report came out on 6 February and the Government produced their response, within almost three months, on 13 May. Therefore, I thought that on this occasion the Government had been reasonably speedy—something that the Ministry of Justice and other departments certainly do not always manage, a point on which I think that we will comment again later when we discuss the consultation on the European Court of Human Rights case, *S and Marper*, which the noble Lord, Lord Pannick, mentioned.

I think that I can sum up the view of my party very briefly by quoting what my noble friend Lady Neville-Jones said in a debate in April on the regulation, collection and retention of personal data. She said that we all,

"understand the argument that the collection and retention of personal data are necessary for the efficient running of public services, and to aid our security services and the police in the fight against terrorism and serious organised crime. However, as has also been said, unchecked this justification is leading to an exponential increase in the amount of personal information that is collected, retained and accessed by all manner of different bodies".—[*Official Report*, 2/4/09; col. 1190.]

That briefly sets out our position and stresses the need for both balance and proportionality, a point stressed by my noble friend Lord Goodlad and again by the noble Lord, Lord Peston. The noble Lord cited both Adam Smith and John Stuart Mill, who seemed to be a slightly lesser man but almost as great. Even so, the noble Lord saw that one had to take the view of one in terms of the protection of the individual and the protection of the state and of the other in terms of the need to protect our privacy.

Having set out our views, perhaps I may deal with one or two points raised during the debate. The first concerns the whole question of data sharing and use. We welcome the Government's decision to drop Clause 152, which I think was its last numbering, from the Coroners and Justice Bill. Not only will that save a degree of time as that lengthy Bill travels through this

House, but leaving the clause in would have had a truly a dramatic impact. It would have allowed Ministers to make an information-sharing order, meaning that a whole range of public servants would have had access to the public's personal data. Data would have been able to be shared by officials across Whitehall and local authorities and even with companies in the private sector simply in order to meet a government policy objective. Therefore, we welcome that and we consider it important, particularly in the light of the fact that public trust in the ability of government to keep personal details safe—this should be stressed—is at an all-time low. The noble Lord will remember that only last year HMRC lost the personal data of almost half the population, leaving, I am told, some 7 million families worried about the security of their bank accounts. More recently, we have heard about the details of thousands of criminals, held on a memory stick, being lost by a government contractor. Therefore, we will continue to oppose any steps towards creating an even larger database by stealth and thus we welcome the dropping of Clause 152.

I move on to the questions about DNA raised by the noble Lord, Lord Pannick. We have consistently called for the National DNA Database to be placed on a statutory footing. Having confirmed their intention to respond to the recent ECHR judgment, which I mentioned earlier, the Government should follow through that pledge rather than attempt to shoehorn arrangements into the Policing and Crime Bill to give the Home Secretary the right to make regulations on the retention and destruction of photographs, CCTV images, fingerprints and impressions of footwear, as well as DNA samples, without the need for a full debate in Parliament and without giving any indication of what those regulations might be. The noble Lord, Lord Pannick, referred to the Government's response to this on page 8 of their report. He stressed that the Government had announced that there would be consultation. On 7 May, we finally got the consultation document from the Home Secretary setting out her proposals for a retention framework, which, as the Government's response says,

"seeks to gain the support and confidence of the public and balances public protection with the rights of the individual".

The Minister will know the criticisms that I have made of some of the consultations that his department has conducted in the past—that is, how long they have taken and how long we have waited for a response from the Government. I shall be very grateful for anything that he can say on that matter and, in particular, if he can say a little more about when he hopes the Home Office will complete that consultation.

As many noble Lords have pointed out, there has been a massive expansion of CCTV over the past few years. It has delivered many disadvantages in undermining civil liberties and bringing about a loss of privacy and it is questionable whether it has brought any advantages. The noble Lord, Lord Peston, stressed that we had to ask whether it works and whether there are better ways to spend the money. He thought that street lighting might be a better approach. He should remember that, if he expands street lighting, there will be further objections from the astronomers. There will always be other people who worry about these matters, and there

are genuine complaints about the loss of darkness that we experience. Going back to the importance of CCTV, I think that it is worth looking at the remarks of one senior policeman—I think that it was the head of the Visual Images, Identifications and Detections Office at Scotland Yard—who revealed that only 3 per cent of crimes are solved by CCTV. The noble Lord is correct to ask whether it works. It might, as my noble friend Lady O'Cathain said, make people feel better and safer, but it does not do anything to make us safer, as it does not lead to a greatly increased rate of convictions.

I end by referring to the closing remarks of my noble friend, who stressed that paragraph 144 was possibly the most important one in the report. I suggest that it might be framed and put on the desks of all Ministers. The last sentence, in particular, would be a timely reminder to them of how to make up their minds on these matters. It says:

"Privacy and executive and legislative restraint should be taken into account at all times by the executive, government agencies, and public bodies".

If the Government could bear that in mind, there would be no need for a further report in due course from the Select Committee on the Constitution and a further debate of this sort.

11.41 am

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, I start by warmly thanking the noble Baroness, Lady D'Souza, for her moving and personal tribute to Lord Dahrendorf. It was clearly a tribute to one of her noble friends in every sense. It was a very moving tribute and we are grateful to her for coming in to this debate. As someone who did not know him as well as the noble Baroness did but who respected him from afar as a fellow Member of this House, I have two points to make. First, what an honour it was for the United Kingdom that he should choose to come here and become a citizen of this country and then a Member of this House. Secondly, in a sense, the debate in which we are indulging today, which involves these difficult and complex questions of liberty of the individual and security of the state, and the interrelationship between the two, is perhaps an appropriate one for the moving and personal tribute given by the noble Baroness. I thank her on behalf of the House.

I also thank the noble Lord, Lord Goodlad, for introducing the debate and all noble Lords who have spoken in it. I thank him not just for introducing the debate but for having chaired the committee along with the late Lord Home while it discussed these important topics. The noble Lord and his committee have made an important contribution to the debate on surveillance and the report sets out clearly the issues facing us all. The Government responded in May and I have just seen the constructive analysis published by the committee this month.

As I said, the issues are very complex. The Government have to strike a balance, as all noble Lords have said, between the right of the public to their privacy, their right to the more effective delivery of public services and their right to protection from crime and terrorism.

[LORD BACH]

I want to make it clear that the Government's role is to safeguard our citizens from those who would seek to do us harm while ensuring that our rights to privacy and freedom are protected. Broadly speaking, the noble Lord's committee, this debate and the recent debates in this House—I have in mind the one called by the noble Earl, Lord Northesk—have sought to consider the question of the role of the state in protecting civil liberties and freedom. Our country has a proud tradition of individual freedom. This involves freedom from unjustified interference by the state. It also includes freedom from interference by those who would do us harm.

We believe that as a Government, we have put in place a strong legislative framework to protect the rights of individuals. This includes the Human Rights Act which obliges public authorities to comply with European convention rights, including the right to respect for private life. That right is always balanced against collective interests, such as national security and the prevention of crime. The noble Baroness, Lady Manningham-Buller, reminded us what the convention says in relation to the state's role in that, too. It is right that we should constantly satisfy ourselves that we have got that balance correct.

For example, the balance needs to be right in a rapidly moving world. Developments in technology are especially rapid, providing greater opportunities and benefits to us as individuals. But those who would do us harm can also take advantage of the developments. This creates an ever-increasing challenge as we seek to safeguard and protect the public. That is a challenge that the Government and their enforcement agencies are duty bound to respond to. The use of data is essential to delivering efficient, effective and joined-up public services. Recently, communications data, which are the who, the when and the where of communications—not the content—have been key in securing convictions in the Rhys Jones and Hannah Foster murder cases and to bring to justice those responsible for the suicide terror attack at Glasgow Airport. Such data also helped to uncover a global online paedophile network which has so far led to 50 arrests in the United Kingdom.

DNA techniques have helped bring thousands of serious offenders to justice, helping police solve around 1,000 rapes and murders in 2006-07. More than 18 million employment checks have stopped over 80,000 unsuitable people working with children and vulnerable adults in the past four years alone. Focused targeting of dangerous individuals has helped us to pre-empt many attacks and bring serious criminals and terrorists to justice. Indeed, if these opportunities were ignored or not put to their full benefit, it is not just your Lordships who would criticise the Government, but the general public in their millions.

The Government will always take a proportionate view of what needs to be done to protect the public and respect individual privacy and we will need to be flexible in our approach if circumstances require it. The debate about the new world we live in—the 21st century as the noble Baroness, Lady Miller, put it—and respect for privacy is a central part of our approach to security. Being open about this is also why

we have set out a principled approach to the use of information in preventing crime and terrorist acts. In reviewing existing policies and processes, the Government will seek to ensure that due consideration is given to the following key principles at all times.

First, are robust safeguards in place to protect information and individual liberties? Secondly, are our plans and actions proportionate to the damage and the threat they are seeking to prevent? Thirdly, are we being as transparent as possible? Fourthly, are citizens being given the right amount of choice? Those four principles underpin our approach to privacy and security: proportionality, safeguarding, transparency and, perhaps above all, common sense. Applying the common-sense test throughout, we need to make sure that policies and processes are proportionate and balance the respect for privacy with the potential harm. We need to ensure that robust safeguards are in place. We will be as open and transparent as possible with the public about what we do and why we do it.

As part of the Government's commitment to proportionality and necessity, we have made several announcements recently. I make no apologies for consulting the public on these vital issues and referring the committee to the consultations in our response. On DNA for example, we have set out clear proposals and are asking for views on them as one part of the policy-making process. That must be right. We would certainly be criticised by noble Lords if we pre-empted the conclusions of those consultations.

Let me turn to some of the large topics raised. I apologise in advance for not dealing with all of them. On DNA, which is a very important topic, as the House knows well, the European Court of Human Rights found on 4 December last year in the case of *S and Marper* a violation under Article 8 because of the "blanket and indiscriminate" retention policy for DNA and fingerprints. However, the court also indicated that it agrees with the Government that the retention of fingerprint and DNA information pursues the legitimate purpose of the detection and therefore prevention of crime, and recognised the need for,

"an approach which discriminated between different kinds of case and for the application of strictly defined storage periods for data".

We in this country have long recognised the importance of DNA as an investigative tool in helping to detect offenders and bring them to justice and, as important, if not more important, in helping to eliminate the innocent from inquiries. We know from the research that between March 2001 and 31 December 2005, there were approximately 200,000 DNA profiles on the National DNA Database, which would previously have had to be removed, before legislation was passed in 2001, because the person was acquitted or charges dropped. The startling fact is that of those 200,000 profiles that applied to those arrested but not convicted, approximately 8,500 profiles, from some 6,290 individuals, have been linked with crime scene profiles involving nearly 14,000 offences. Those are offences of all kinds, but they include 114 murders, 55 attempted murders, 116 rapes, 68 sexual offences, 119 aggravated burglaries and 127 supply of controlled drugs offences.

I suggest to the House that that is a startling fact and one that we cannot forget in the arguments about DNA. We, of course, fully accept the judgment of the European Court and the need to implement the judgment in open and public debate. That is why we published our proposals in a public consultation document on 7 May. I have been asked when we will complete that consultation. We aim to publish the summary of responses to that paper in September of this year and to consult on draft regulations to be laid before the House towards the end of the year.

That document, *Keeping the Right People on the DNA Database*, sets out a statutory framework aimed at striking the right balance in this difficult area. To achieve that important balance, we have made proposals in a number of key areas in which noble Lords have been interested. The noble Lord, Lord Pannick, in particular, asked me some questions about them. Among those proposals are, first, that all samples, whether from people who are arrested and not convicted or convicted, will be destroyed. Secondly, profiles for adults arrested and not convicted will be retained for six years, and for those arrested for a violent, sexual or terrorist-related offence for 12 years. Thirdly, we propose specific arrangements for juveniles to delete profiles and fingerprints on their reaching 18 years old, provided that they have not been involved in more than one offence.

Your Lordships will be aware that at paragraph 467 the Select Committee report recommended the replacement of the existing statutory framework and the provision of regulatory oversight of the national DNA database. On the statutory framework, we have submitted proposals to replace it and, indeed, to go further. Beyond what I have already outlined, we propose to place in regulations the criteria for the person to apply for the deletion of DNA data ahead of the expiry of the six or 12-year period. We are also proposing to put in place an independent monitoring and scrutiny process, of the applications of the regulations and enhance the independent membership and accountability, of the national DNA database strategy board. We hope that those measures will achieve the same aim as the recommendations of the committee on this important area of policy.

The noble Baroness, Lady O’Cathain, talked about a universal database. Let me reply in this way. We acknowledge that of course there is support in some parts of the public for a universal database, but there are similarly strong objections to it. It is a subject that requires much wider public debate, not least to consider the ethical and practical issues involved. We also want to consider the resource implications. We have no plans to introduce a universal database.

The noble Lord, Lord Pannick, asked a series of questions. If he will forgive me, I shall write a letter to him, which of course will go to all Members who are here, dealing in some more detail with his questions. In general terms, the figures that I have specifically concentrated on about the DNA of those who were arrested but not convicted, and the fact that the profiles linked so closely to some really serious offences in the following few years is, in my view, an important answer to the noble Lord. Research has also been carried out

by the Jill Dando Institute which suggests that those who are arrested and not convicted have a propensity to offend that is similar to those who are arrested and convicted but who have not been given a custodial sentence. I refer the noble Lord to that research, but I would take up too much of the limited time I have left if I were to attempt to answer him any further. Also, I have not forgotten his last question about the chief constable or some judicial authority.

We believe that CCTV is a powerful crime-fighting tool. The noble Lord, Lord Henley, gave the figure of 3 per cent for the number of extra convictions. What he did not mention was the crime it deters. There is no doubt in my mind that CCTV deters crime. If I may say so, if you ask anyone outside—the general population sometimes have considerable wisdom—they will concur with the general suggestion that CCTV is indeed a powerful tool, and that they are grateful that widespread CCTV exists. Police operational experience and various research shows that it deters and detects crime and helps to secure convictions. What seems to have been slightly dismissed in the argument today is that it also reduces fear of crime, which I would have thought is pretty important to this House, as well as to the rest of the country. In case there is any doubt about it, we remain committed to the use of CCTV in helping to make communities feel safer.

My noble friend Lord Peston raised interesting questions about CCTV and specifically asked what is happening to be independent inquiry. The National Policing Improvement Agency, will be disseminating the Campbell collaboration review, to police and key stakeholders later this summer. The review will be made publicly available by being placed on the internet.

Moving to RIPA, I was most interested in what the noble Baroness, Lady Manningham-Buller, had to say about that. Our public consultation seeks to explain and obtain views on the public authorities which have been permitted by Parliament to authorise key covert investigatory techniques under RIPA. We are seeking the public’s views on questions such as which public authorities should be able to authorise investigatory techniques, such as covert surveillance in public places; when and why such techniques should be used; whether the rank of authorising officers in local authorities should be raised to senior executive; and whether elected councillors should also play a role in overseeing any use of covert techniques by local authorities.

There were a number of interesting comments from noble Lords in this debate, several of which centred on the role of local government as regards RIPA. As the noble Baroness, Lady Miller, reminded us, RIPA did not create a new power to enable local authorities to carry out covert surveillance. It established a regulatory framework to ensure that the powers were used appropriately and that proper consideration was given to human rights. Of course, there are examples of those powers being used inappropriately. However, I say to my noble and learned friend Lord Morris of Aberavon, that the example he gave of a local authority using RIPA against a Traveller who defrauded an elderly householder by pretending to do much more work than he had done did not seem to be the best example that could be chosen of local government

[LORD BACH]
snooping. One would naturally think that the elderly householder who was being defrauded was the victim of a serious offence and someone the courts would seek to protect by imposing a long prison sentence. We have to make sure we get the balance right. As my right honourable friend Jacqui Smith said in her speech in December, this power has been misused. The importance of the inquiry that we are entering into is to make sure that it is not misused in future.

A lot was asked about the Information Commissioner. Many important points were made about that role, not least by the noble Baroness, Lady Miller. I think the House will want to thank the Information Commissioner, who is about to retire, and will be pleased that he was honoured in the recent Queen's Birthday Honours List. There are some important points around the Information Commissioner's role, which I do not have time to go into during this reply. The noble Baroness will know well that a Bill is going through this House to make available to the commissioner powers to assess central government departments' and public authorities' compliance with the Data Protection Act 1998; to impose a deadline and location for providing information relating to investigations; and to require any person where a warrant is being served to provide any information required to determine compliance with the Data Protection Act. We are also proposing to commence the provision made in the Criminal Justice and Immigration Act 2008—some of us will have happy memories of it—to impose civil monetary penalties on data controllers for deliberate or reckless loss of data.

I think I have reached the end of the time I should take in troubling your Lordships' House. If there are matters that I have not touched on, I shall write to the noble Lord, Lord Goodlad, and distribute the letter. This has been an excellent debate on an excellent report, and the Government thank the noble Lord and his committee. I have done my best in the few minutes I have had to try to show that the Government do, and always will, attempt to take a principled and proportionate view of what needs to be done to protect the public and respect individual privacy. We must never be complacent, and where change is required, we will make it, but I strongly believe that we do not live in a surveillance society and that this Government are determined to make sure that we never do.

12.04 pm

Lord Goodlad: My Lords, I echo the tribute paid by the noble Baroness, Lady D'Souza, to the late Lord Dahrendorf. He was, if anybody was, truly a citizen of the world. He had almost uniquely wide experience—frequently harsh experience—of the world. All those who knew him over the years, who from time to time thought they were vaguely expert on a particular subject, always found that he was totally up to speed and had some wise comment, gently communicated, to contribute. I was never taught by him, but he must have been a truly great teacher. He will be deeply missed by all those whose lives he touched and enriched, not least your Lordships'.

This has been an extremely helpful debate, and I am most grateful to all those who participated in it. Great expertise has been brought to bear both from the Back Benches and the Front Benches on a range of self-evidently important, sometimes disparate but linked, issues. I am particularly grateful to the Minister who, with his invariable courtesy, omniscience and, given the range of his responsibilities, apparent ubiquity, has sought to reply to most of the considerations that were raised. The noble and learned Lord, Lord Morris of Aberavon, who is, I think, the senior member of your Lordships' Select Committee, said that the Select Committee's work on this matter has been brought to a conclusion, and that is true. It has, certainly for the moment. However, the work of Parliament on these issues has certainly not been brought to a conclusion. We will scrutinise with the greatest care what the Minister said. As parliamentarians and possibly, in future, as the Select Committee, we will look at this issue all the time. Like General MacArthur, we shall return.

Motion agreed.

Schools: Statutory Instruments (Merits Committee Report)

Motion to Take Note

12.07 pm

Moved By Lord Filkin

That this House takes note of the Report of the Merits of Statutory Instruments Committee on the cumulative impact of statutory instruments on schools (9th Report, HL Paper 45).

Lord Filkin: My Lords, in moving this debate, I shall briefly set out why the committee felt an inquiry was desirable, what it found and what it recommended and then conclude with one or two thoughts about what might be some wider implications of its inquiry recommendations. Before launching into that, I shall thank the committee's staff, especially Paul Bristow, for their excellent work. I mention Paul by name because he no longer works with the committee. I also thank the witnesses, including officials from the department, because they gave extremely good evidence, and the Minister, who engaged positively with the inquiry. Finally, I thank my fellow committee members who are quite outstanding in their diligence and commitment to our work.

It is perhaps obvious why we had the inquiry. The committee had particularly noticed that the Government's thrust to reduce the burdens of regulation on business had not been matched by a similar thrust to reduce the burdens of regulation on the public sector. It has marked that point for some time. The committee was also concerned about the high volume of secondary legislation that the Government impose on the world out there, particularly when it bears on one common point. Therefore, the committee was concerned to see the cumulative impact of secondary legislation on schools as a case in point. It chose schools because they seemed a good example and because the committee was aware that, in 2006-07, DCSF made over 100 new

statutory instruments addressed to schools. We clearly wanted to inquire why there were so many statutory instruments; what the schools that were being regulated and instructed think about this; and, fundamentally, whether this welter of secondary legislation achieved its objectives, which goes to the heart of the committee's terms of reference.

As noble Lords would expect, and as is right, the Minister Jim Knight said that statutory instruments are a necessary instrument of policy and that the objective of improving schools and education is a goal that all of us would support. He also said that the department had been working to reduce the volume of legislation, but what we found did not fully support this. The department had carried out a survey on the effects of the New Relationship with Schools that started in 2004, and schools had noticed no diminution in the volume of regulation coming to them.

The Implementation Review Unit, which gave excellent evidence to us, also told us that this welter of legislation being generated from the department was perhaps made worse because there was no single point in the department with an overview of the totality of what bore on schools and that made the sort of judgments that perhaps should be made as to whether cumulatively this would work or whether the cumulative consequences would be negative. The National Association of Head Teachers also said that the department made no attempt to take an holistic view of the legislative impact.

Schools also said that the issue was wider than the department itself. They would have loved it if the department acted more as a gatekeeper to consider the other regulations generated by the Government that bore down on schools, and had an holistic view of whether the system could sensibly bear and positively respond to this level of innovation and instruction. So those who are being regulated cast strong doubts on whether this was an effective, efficient or sensible system.

We as a committee therefore recommended addressing some of the immediate problems and having a common commencement date for the vast majority of regulations so that schools knew when most regulations were going to come in. We also recommended that there should be at least one full term's notice that this was going to happen in order to give schools a proper lead-in time to prepare for it. If those two recommendations were taken, the notice period would in effect be from 1 April each year to the beginning of September. In our view, that would undoubtedly improve preparedness and, we hope, have a consequential benefit. The fact that the department had to bring in all those instruments on 1 April would, one would hope, make it more likely that someone in the department would ask whether the system could cope with the volume of this legislation and regulation and whether it was likely to have the beneficial effects desired or, to quote the BRE, whether more would be less. In other words, does the volume of activity reduce the likelihood of getting the outcomes that you want?

The next major thing that we recommended—I will not cover all the points because my colleagues on the committee will cover many of them—was a fundamental review of the effects of the Government's

action. There is no point in public expenditure or government action unless the Government find out whether they work in practice. Why is that so? It is so because, unless you know whether your policies have worked, you do not know whether they are succeeding or failing. More fundamentally, unless you actually find out what works and what does not work, you have no feedback mechanism or learning system, and you therefore have a culture that does not learn what forms of action work and what do not. The Implementation Review Unit—a respectable body—said that the department is very poor at feedback and evaluation. Others said that there was little evidence of post-legislative impact assessment. Most of our committee built up a picture of a world in which too much was being attempted too frequently and with too little understanding of its impact.

What, then, might be some of the wider lessons from this? I have mentioned the New Relationship with Schools, which I think was initiated by Charles Clarke in 2004 and launched in 2005. I had the pleasure of serving with him as a Minister at that point. It considered whether it was possible to cohere what the department did in order to reduce the burdens and to focus its actions on the most important. I have mentioned the evaluation by researchers afterwards that schools regrettably had not noticed a difference.

The other conclusion—these are personal comments which the committee does not necessarily share—is that the model of change exhibited by the picture painted by the report is open to question and challenge. In essence, it starts with what may be a rather crude understanding of how people shift their behaviour both individually and institutionally. It is, in essence, a model that says: "We will issue a regulation and instruction and then the world will respond". That is often the case, although regrettably not always. It would be wonderful if it were; we would have much greater success in public service reform.

It is a crude model of change because it does not necessarily recognise that, while an instrument on its own might get results, you have to look at what is happening to the system in total, and to consider with deep understanding how an organisation is coping and whether the cumulative impact will make change happen. Although I have the greatest respect for many civil servants, not many of them who are involved in making policy and legislation necessarily deeply understand the managerial realities of how a headmaster or headmistress of a busy school is actually coping. Therefore, the individual official who makes the secondary legislation often has a very small, blinkered view of what is most important: the statutory instrument itself. They make it without the wider picture of what else is happening and without a real understanding of the collective burdens on and challenges that face a head.

As a consequence, the headmasters and headmistresses who gave their evidence to us did not see what the department was doing to them as beneficial; they often saw it as an impediment to progress. From a Government whom I support and applaud, that is deeply worrying—even though one may take that with a pinch of salt, because members of professions do moan—because it casts doubt on whether this is an effective system of promoting change.

[LORD FILKIN]

In essence, I suggest that the model whereby you keep on generating a whole number of small, specific input specifications and regulations is weak in its motivation and in developing effective accountability for outcomes. It would be marvellous if we got results only by specifying inputs, but there is not much evidence to support the idea that that, by itself, is an effective model of change.

We were emboldened in this view when we looked across the pitch and saw what the Government were doing with academies. They had generated academies as a completely different model: bodies that are exempt from the vast majority of departmental statutory instruments and held to account through their governance arrangements for the outcomes that they generate. The question that we asked the Minister was this: if you believe that top-down regulation is burdensome and a potential impediment to success, and that you should hold academies to account through the results that they achieve, why do you not do that for other schools? The Minister's response was in part that the Government have different governance and accountability models for academies compared with other schools. I do not think that all members of the committee were convinced that that was a sufficient answer.

I therefore hope that the forthcoming White Paper will show that some of the messages that we and others have sent to the Government about how to improve the educational system and how to ensure that the educational standards of our children are taken deeply to heart. There are some signs that it might do that.

The committee will not let go of post-implementation reviews. We believe fundamentally that unless departments find out whether their legislation has any effect, it is potentially a waste of money. Therefore, we have started another inquiry to look across the piece at whether government departments are following up in order to evaluate whether they got the effects from their legislative processes that they told Parliament they would get.

Because it is a short report, I felt that this should be a short speech. I shall conclude by signalling that all of us know that our society, our country, faces the biggest fiscal challenge over the next decade that it has faced since the Second World War. It is not a short-term blip. When the economy has recovered, we will still face a fundamental fiscal deficit which will go on until 2017-18 at the very least.

I declare my interest as the chairman and founder of the 2020 Public Services Trust, which is the major commission that we have launched into these issues. To most of us this requires a debate in civil society about what the central state does, how it behaves and, for those things that the central state continues to do, how it seeks to motivate the rest of civil society to respond to what it sees as its priorities and imperatives. For many of us, that must mean that the default model should shift from a belief that the best way is to have another initiative, to legislate and to create a new instruction in regulation. The default model should be the question: how do we motivate those who have to respond to this to be powerfully motivated to achieve

the outcome rather than to respond to the specification of a set of inputs? Noble Lords will be relieved to know that I shall pause now. I beg to move.

12.21 pm

Lord Lucas: My Lords, I start by paying tribute to our urbane and effective chairman, the noble Lord, Lord Filkin. It has been a pleasure to serve with him on the committee. The Merits Committee seems to me to involve sifting through a large quantity of material with a great deal of concentration and care. It reminds me, and perhaps other noble Lords who are parents, of an occasion when one of my children swallowed something small and valuable. The next few days were spent waiting for its arrival and looking for it with great care and concentration. It is a measure of the talent of the noble Lord, Lord Filkin, that he keeps the noses of the members of the committee, many of whom have great talent and experience of their own, in the nappy pile week after week, with great effectiveness. When he lets us lift our heads to pursue a rather wider question like this, we do so, as may be imagined, with enthusiasm. We have produced an accurate and constructive report on this occasion and I am grateful to the Government for what is, by the standards of government, a very helpful reply.

I want to echo the question asked by the noble Lord, Lord Filkin. Are statutory instruments, and all the related documents with which the Government bombard schools, the best way to get schools to do what the Government want them to do? Like the noble Lord, Lord Filkin, my answer to that question is no. Statutory instruments have their place. I cannot see how you can deal, say, with schools admissions regulations in any other way. There has to be a set of clearly defined, common, detailed rules that should be obeyed to the letter. A statutory instrument is well placed to do that. But if you go beyond a certain point in the number and frequency of statutory instruments, you get beyond the school's capacity to deal with them. For a small school, such as a primary school, or a school which is in any measure of difficulties, that number is quite low. It is certainly way below the levels we see at the moment. So it is no surprise to me that the burden of our evidence showed that statutory instruments, guidance and all the other things that the department produces are not proving to be effective at the moment.

I am particularly supportive of our recommendation for post-implementation reviews. I am delighted that that is a direction in which the committee will point itself in the future. It is a most important discipline to bring to bear on the Civil Service. It chimes too with the recommendation that we should move towards a system of accountability for key outcomes with a system of support for schools to which they can turn when they want help in achieving those key outcomes.

It is a ministerial imperative that in their short lives in office Ministers should make a mark on the world. They have tended to define that. When the noble Lord, Lord Filkin, spoke to us as a Minister, he echoed that in saying that he wanted to get things done while he was there. Doing things has been seen in terms of producing a statutory instrument and a policy,

and seeing it implemented and in force, which has led to a Civil Service where policy has come to be much more important than delivery. As an outcome for schools, a succession of imperatives and regulations leaves them in a state of constant turmoil. There is an alternative model. Ministers could achieve just as much in terms of personal satisfaction and press releases if they concentrated on research, pilot studies and initiatives where schools joined in voluntarily—there is a great deal of fun and joy to come out of such things—and they do not do any harm to the structure of education. There will always be a few big initiatives moving through. Educational initiatives probably have a natural timescale of about 10 years. Like the rolling presidency of the European Union, each Minister in succession will move on a peg or two the things they most care about, which seems to me to be a proper ministerial activity too.

Schools should be looking at a set of objectives that are defined on outcomes. They should have a system of looking at, say, how to teach physics better, how to improve discipline or how to deal with whatever problems they are experiencing, and they should know immediately where to turn, although that is not easy. We have tried various initiatives to spread good practice between schools. None of them has ever really taken off. We could do much better by concentrating our efforts on producing a system that really makes it easy for schools to discover how to do better. Schools should be allowed to pursue their own self-improvement in their own way and in their own time, subject only to outside accountability, which I imagine would be an extension of Ofsted or something similar.

Where schools have been allowed to do that—say, with the adoption of the International Baccalaureate—it has been done without any disruption to any school. It is a great challenge to take on the IB and it requires a lot of adjustment and training. I have never heard a school complain. It has always been a positive experience because schools have done it when they want to do it. That is not at all what has happened in the case of diplomas, which are a wonderful concept and a great direction in which to move. But the implementation has been done to ministerial timescales and not educational timescales. I hope that they will get through it and that we will see something of it at the end. But it would have been a lot better if it had been done on the system proposed by the noble Lord, Lord Filkin, rather than that of the Government.

12.29 pm

Baroness Butler-Sloss: My Lords, I should like to start by endorsing the comments made by the noble Lord, Lord Lucas, about the chairman of the Merits Committee, the noble Lord, Lord Filkin. It is for me also a huge pleasure and an instruction to be a member of the committee that he chairs. I very much agree with all the comments that have so far been made and would like to underline one or two of the points made so delicately and so ably by the noble Lord, Lord Filkin. They are worth saying again, perhaps in a slightly different way.

Members of the Merits Committee have a unique opportunity to gauge the volume of statutory instruments pouring out of government departments, and no more

do they pour out from a government department than from this one, the DCSF. It is an extraordinary business to read them, one after another. In paragraph 4 of our report there is a striking comment about the impact on schools of this stream of statutory instruments. It is from the National Governors' Association and it will be helpful if I quote it again. It says:

“For the professionals in schools the endless piecemeal change has become one of the main reasons given for leaving the job. It is not unruly and undisciplined children that are forcing good teachers and governors out of our schools; it is unruly and undisciplined legislation”.

The cumulative effect of the statutory instruments is becoming almost unbearable, so we were told.

I recognise, of course, the need to give directions to schools, but it became apparent from the evidence that there was a lack of co-ordination between different parts of the department; each did not know what the other was doing. I noted with interest that the noble Lord, Lord Filkin, said that if they all came on the same day they might have someone look at them to see whether they were all necessary or whether they co-ordinated the purpose of improving education in our schools.

I get the impression from the IRU—which is, for goodness sake, set up to advise the Government—that the Government does not listen to it as much as they should. Paragraph 8 of our report states:

“Recent research commissioned by the IRU shows that in 2006/7 academic year the Department and its national agencies produced over 760 documents aimed at schools. The research also found that no single part of the Department was aware of the totality of what was being offered”.

There is, therefore, no overview. There is a need for much better management of statutory instruments. Otherwise it is quite obvious that they will not be as effective as they ought to be.

There is another problem in distinguishing between regulations and guidance and an understanding of what it is actually intended should be done by the schools. For example, there is great use of the words “must” and “may” and “shall” and “should”, and it is not always easy for schools to know whether what they have is guidance or obligatory regulation. There is obviously—I hope it is not widespread but I fear that it may be—a misunderstanding in some schools as to what is required of them. Bigger schools have to deploy a member of staff to deal with the volume of statutory instruments and guidance; smaller schools do not have that opportunity and there is, undoubtedly, not only misunderstanding but a lack of compliance.

Communication is a two-way relationship and a balance has to be struck between instructing schools on what they should do and a degree of flexibility in allowing them to get on with the job on the ground. It is important in communication that each side listens to the other and it is very important that the department should listen to schools and its own advisory body, the IRU. The question is whether the present system is the best way to deliver key outcomes. E-mailing is a good step forward but there is much else to be done. The department should stand back and think holistically of a better way to co-ordinate statutory instruments and guidance. Less volume might arise from that. A greater degree of flexibility should be left to schools

[BARONESS BUTLER-SLOSS]

and there should be less micro-management. Let schools manage at a local level the day-to-day details that have to be dealt with. If the better schools are left to get on with it, the department could crack down on the schools that are failing to perform.

In a speech he made on 5 May at Prendergast School in south London, the Prime Minister set out his vision for education. He talked about coming forward with proposals to reduce the burdens on the schools from guidance, correspondence and statutory duties, and said that the Government would stand back and allow teachers and school leaders greater freedom to innovate. There is, I fear, some scepticism as to the effect on the ground of what the Prime Minister's welcome words will achieve. The track record is not encouraging. We need to improve the coherence of communication instead of producing more and more statutory instruments. The Government should concentrate on outcomes in a more creative partnership with schools.

12.36 pm

The Lord Bishop of Bradford: My Lords, I add my thanks to the noble Lord, Lord Filkin, for introducing the debate and also, more importantly, for the report itself. It is clear, succinct and incisive; the same cannot always be said about the instruments which are being discussed. Indeed, Oxford council and the diocese of Oxford run a website to help schools know what they need to know, and it brings in quite an income. If only the Department for Children, Schools and Families could be similarly discerning and similarly profitable.

Head teachers especially suffer from instrument overload. There have been 1,596 of them since 1997 and head teachers are expected to know them all. I am told anecdotally that they take up more than twice the amount of print needed to cover the entire work of Shakespeare. The National Association of Head Teachers believes that the plethora of instruments is a powerful disincentive to the recruitment of head teachers. A national professional qualification for head teachers has now been introduced to raise standards, but I wonder whether it puts people off. I am told that 50 per cent of those who successfully complete the course fail to apply for headships. I should be grateful if the Minister could enlighten us and give us more detailed information on that matter.

I was speaking to a stand-in head a few weeks ago—she was one of those inspiring people who you think is the right person in the right place—and I asked her whether she was applying for the vacant headship. She said, “No. I have done the NPQH but I would not enjoy being a head teacher. I would much rather stay where I am”.

Rural schools have particular difficulties in finding heads. A 50 per cent teaching load is common for heads in rural schools but they still have to know the same regulations as the heads of larger schools. They still have to cope with all the administrative detail. This has led in north Yorkshire and Lancashire and three areas in my diocese to schools exploring the idea of appointing head teachers who will cover not one but two or even three schools which are perhaps five

miles apart. The local communities are desperate that there should be a head in such schools because when the school closes, it is the death knell for that community. The present system of acceptance on to the training course for would-be heads means that few teachers who are committed to rural schools can get on to the scheme. The few who complete the NPQH are therefore not seeking small-school experience and are not then offering themselves. It is a desperate situation.

The instruments are also a disincentive for would-be governors, who regard them as overbearing bureaucracy. Those with professional backgrounds can cope; they can help the head teacher implement the various regulations. In our inner cities and outer estates, however, the situation is different: there is an added burden on the head to get it right. Church schools are in a relatively advantageous position. Often, but not always, there is a parish priest active on the governing body, and we are able to look around our dioceses to find governors from elsewhere—people with relevant experience, expertise and interests. However, that reduces the critical local input that governors need to provide.

The noble and learned Baroness, Lady Butler-Sloss, has referred to the need for two-way communication; indeed, we had a dinner debate earlier this week on the subject of two-way communication between Parliament and the people. The department sends out pilot initiatives, but I am told by teachers that the regulations that then follow are run out unchanged before the pilot schemes have even been evaluated. At the moment, 11 consultations are taking place on education and school matters, and each has a two-month to three-month response time. There are 60 such initiatives in a year. The department says that schools rarely respond but teachers say that there are too many initiatives, they are poorly advertised, they are not a priority, schools want to get on with the business of teaching and the consultations make very little difference anyway.

Some years ago I heard the late Roger Perks, head teacher of Baverstock school in Birmingham, give one of those talks that you hear every 10 years or so which you remember, and which shape you, for ever. In a private conversation afterwards about how he had turned the school around, he said, “We have only one school rule”. If only!

My experience as a school governor and, in the 1990s, a higher education college governor, was that we were encouraged to pursue vision and values first of all—to work towards creating an ethos that would shape the whole life of our educational institution. That is what we have sought to do in setting up an academy, as we heard from a previous speaker. It is important to get the values and the vision right first. Then, all the instruments that we need should be an expression of that vision and value. The noble Lord, Lord Lucas, mentioned the admissions policies. Even if we need lots of regulations to govern admissions, these, more than anything, should be an expression of the vision, the values and the ethos of the school.

The noble Lord, Lord Filkin, spoke of motivating people. I believe that most teachers, as they enter the profession, are already highly motivated. I am sure that all of us, as we look back on our own education, can remember at least one teacher who opened a

window on a new world for us, who valued us and who entered imaginatively into our minds. We could even be here today because of that teacher. Those teachers, and others like them, did not teach by numbers.

12.45 pm

Baroness Deech: My Lords, the Merits of Statutory Instruments Committee is a wonderful committee on which to serve, not only because of the distinguished and incisive chairmanship of the noble Lord, Lord Filkin, but because of the range and perspective over the entire workings of Government and the impact of those rules on people. The topic of today's debate is therefore an example of what can be learnt across the board in the following areas: the microscopic management of education, the fact that there are targets and rules rather than outcomes, the feeling that consultation is not genuine and the inaccessibility of law to those who need it.

There were over 10,000 statutory instruments referring to schools from 1987 until today, found on the Government's own website. Searching for the words "schools finance" brought up 2,560. The DCSF produced more statutory instruments than any other department in a recent 12-month period. There is an outpouring of rules without follow-up. There is unintelligibility, for those of your Lordships who have looked at statutory instruments, so that, without the accompanying guidance, schools cannot handle them. Drafting and sending out that accompanying guidance adds to the length of time taken to get the news to schools.

No consideration appears to be given to people like governors and head teachers in relation to the lead-in time, and there is a failure, which the previous speaker referred to, to use IT to join up the many into the one. There is no reason why IT should not be used to put together and streamline all the statutory instruments on one particular point. Now is perhaps not the time to mention it, but that use of IT could so readily be made available in this Chamber. If we discuss a statutory instrument, why can the wording not appear on the screens that are already installed around the Chamber, for the benefit of all of us?

Whatever can be said about the demerits of the statutory instruments applying to schools, exactly the same can be said in many other fields with which your Lordships have been concerned. Gambling and human tissue are recent examples of outpourings of apparently disjointed statutory instruments which ordinary people have to get to grips with. And just wait until this House gets going on the statutory instruments that will pour out in relation to ID cards. As I said, computing could piece them together and would help with plain language, avoiding the need to refer back to the Explanatory Memorandum to understand the instrument.

I am glad of this debate because Parliament has not paid much attention to how statutory instruments work out in practice. But the Merits Committee has had the chance to hear the groans of heads and governors, and we share their pain. The department, and all others, must carry out post-implementation reviews of statutory instruments to see whether the policy objectives were met. If not, they must stop

pouring out more statutory instruments until that problem is resolved. The most important recommendation of the report, as others have said, was that there should be post-implementation reviews, starting with the impact assessment that accompanied the statutory instruments.

The committee was grateful to the Minister of State, the right honourable Jim Knight MP, for his constructive response to the review. But he has gone, and this is part of the trouble. The Minister is no longer in post, and the necessary follow-up to statutory instruments might get lost because the civil servants and Ministers who have been tasked with those responsibilities get transferred elsewhere and there appears to be no mechanism for picking up that responsibility within the office they have left. The then Minister made a commitment to establish a mechanism to ensure that the department monitors the impact of statutory instruments on schools; this House will wait anxiously to see whether that is done.

There are some particular problems, such as communication. There needs to be a single portal through which schools access information. Sending thousands of e-mails to the schools apparently does not work because they cannot be sorted to see which refer to new regulations. As all your Lordships will know, there is nothing more calculated to block communication than the existence of thousands of e-mails.

Another issue is the one term's notice that needs to be given to schools. Too many broad exceptions to this were claimed in the government response. For example, teachers' pay and conditions cannot be brought in at the same time as everything else. Another example is the schools admission appeals code, which was laid on 4 December 2008 and came into force on 10 February 2009, presumably leaving no time to train the panels and clerks involved. A uniform start date of 1 September was recommended, but, again, in the response there were too many exceptions—for example, 1 January for admissions and 1 April for financial matters. Finally, there are too many data requests to schools. Your Lordships are well acquainted, across the board, with the problems of privacy and loss surrounding data. What is the point of all those data?

Reform should start with the proposals in the report from the Merits Committee. Then there should be a move forward to a radical new approach using IT for consolidation and communication.

I cannot but reflect, as I stand in the very place where the late Lord Dahrendorf so often sat, that this House will miss his wisdom in academic matters very much. I had the privilege of serving as a fellow Head of House in Oxford across the road from his college, St Antony's. I wish it to be remembered that he brought international sparkle to his college. He assisted in opening out the university to the international scene. From the academic point of view, he will be sorely missed.

12.53 pm

Lord Rosser: My Lords, I, too, am a member of the Merits of Statutory Instruments Committee and endorse the comments already made about its chairmanship under my noble friend Lord Filkin.

[LORD ROSSER]

Other noble Lords, my noble friend in particular, have given a very thorough résumé of the findings in the committee's report and the reasons for the recommendations, as well as commenting on the Government's response. In view of that, I should like to confine my observations to a few specific areas.

Most of us by nature prefer to be left alone, to get on with things without what we might regard as time-consuming interference from elsewhere, particularly so when that involves changes in practices and procedures which we ourselves have not necessarily considered essential.

Unless a statutory instrument is implementing the details of a change in practice, procedure or policy which is universally accepted as desirable by those directly affected, it will always run the risk of being branded as unnecessary bureaucracy, difficult to understand, an additional workload burden and another reason why people have less time to do the job that they are paid for and want to do. There are always likely to be more people ready to voice criticism of the impact of statutory instruments than there are to sing their praises.

To that extent, I suspect that virtually every government department that produces any significant number of statutory instruments is on a loser when it comes to the views and perceptions of those on whom the instruments have the most impact. However, the committee's report on the cumulative impact of statutory instruments on schools showed that, as far as the Department for Children, Schools and Families is concerned, steps could be taken to address the concerns and frustrations over the department's approach to, and voluminous use of, statutory instruments which were expressed to us by those who gave oral and written evidence.

The Government's response to the committee's recommendations is helpful in that it indicates that a number of the recommendations will be implemented in varying degrees, which at least suggests that the department recognises that the issues identified by the committee have substance and weight.

As has already been said, the Government set up a panel of schools practitioners in 2003-04 called the Implementation Review Unit to offer advice on the relationship between the department and schools. Part of its remit is to review the impact of the Government's education policy pre- and post-implementation, with a view to minimising and reducing burdens in schools. The committee took evidence from the Implementation Review Unit, and it is worth noting that it believes that what it describes as "stakeholder engagement" is better than it has ever been.

However, it and other witnesses consider that the system is overregulated and that what they feel is the focus on processes should shift towards establishing accountability for the delivery of key outcomes—in other words, rather less in regulation and guidance for schools on systems, procedures and processes that have to be followed and implemented, and rather greater emphasis on accountability for the outcomes that have to be delivered, with more flexibility for those running the schools over the means and processes

that they decide to use to achieve those outcomes. Such an approach would almost certainly reduce the need for so many statutory instruments, and perhaps the department should give full consideration to whether statutory instruments are the best way to deliver the key outcomes being sought.

In his evidence to the committee, the Minister referred to the light-touch regulatory framework for academies. The committee did not recommend, as has been reported in some quarters, that the same approach should be extended to all maintained schools. It certainly called for the department seriously to consider a less heavy-handed approach, since that was the thrust of much of the evidence that we heard. The committee then said, however, that if the department considered that the light-touch regulatory framework for academies was appropriate and successful, that lighter touch should be extended to all maintained schools.

It is for the department to make the judgment on whether the light-touch regulatory framework for academies is appropriate and successful. In his response to the committee's recommendation, the Minister referred to academies and an evaluation strategy and stated that,

"judgment cannot be made until we have a longer and more detailed evaluation of the programme"

Such caution is perhaps understandable in the light of an article in *Private Eye* magazine, based on figures provided to the Library in the other place, indicating that more than two-thirds of privately sponsored academy schools have not received the money pledged to them by their sponsors.

There was not unanimity of view from those who submitted evidence over the merits of the lighter-touch regulation for academies. The Advisory Centre for Education said that the "light touch" afforded to academies often results in a deficit of accountability and a poor deal for children and parents, especially vulnerable ones. Its view was that all academies should be brought fully within the ambit of national education law in the same way as maintained schools.

The committee's report refers to evidence we received that, to those on the receiving end, new statutory instruments, or amendments to existing instruments, seem to be introduced far too frequently, and with insufficient understanding of their impact. There is surely a need for the department to ensure that it carries out, as others have already commented, a proper post-implementation review of all statutory instruments to see whether they have achieved their objectives, whether they were necessary in the first place and what lessons can be applied to the implementation of future instruments.

Such reviews would also pick up the issue of the need for a proper assessment of the cumulative impact of statutory instruments on schools, since it appeared that this issue of the cumulative impact was not being as fully considered as it should be by the department, even though it was clearly a source of concern to many of our witnesses. Nor was it just the issue of the number of statutory instruments themselves that was raised with us, but the volume of guidance coming from the department and other education initiatives. We were told, as the noble and learned Baroness, Lady

Butler-Sloss, said, that the guidance did not always make it clear whether it was a requirement or whether it was optional. Sometimes the local education authority would put its own interpretation on the status and meaning of the guidance.

While some evidence we received suggested that stakeholder engagement was better than it has ever been, it was also clear that those on the front line who had to implement legislation and associated statutory instruments as well as different education initiatives felt that more could be done to involve them in policy development at an earlier stage. The department needs to look at this point, as many of the concerns and frustrations we heard might well be significantly reduced if those most affected felt that their points had been taken into account before statutory instruments were issued, guidance sent out or new initiatives embarked on. As the Advisory Centre for Education commented, if the law is set out clearly that tends to make things easier, not more difficult. The same applies to guidance and clarity over what is meant and what is expected.

I welcome the Government's response to the committee's report, which did not seek to dismiss the thrust of what the report said and provided a real expectation that specific measures will address some of the recommendations made. There will always be some differences of view on key issues of policy, but it can only be in the interests of all concerned, not least the pupils themselves, if those involved at all levels in developing and implementing policy can work together as far as possible to achieve ways in which to move forward that minimise or eliminate any potential adverse consequences or difficulties for those at the front line. I hope that the department, and in particular Ministers, since they should be the drivers of change, will reflect further on the points made in the report and on the contributions to this debate, because the present practices and procedures, and the culture that they embody, have to change.

1.02 pm

Lord Turnbull: My Lords, I am not a member of the Merits Committee, but I have two interests that are relevant to the debate, the experience of which will I hope corroborate the excellent report that the committee has produced. First, I am the chairman of the governors of an independent school, Dulwich College, and, secondly, I am chairman of the shadow board of trustees of the Isle of Sheppey academy, of which Dulwich is the lead sponsor. The trustees are responsible for planning the opening of the academy in September. It will be one of the largest and most complex academy projects in the country but also one of the most needed.

I do not have any formal connection with the maintained sector. Noble Lords might infer from the report that therefore I could have no problems, but that is not correct. Independent schools are affected by many aspects of regulation, and I fear that the committee is being excessively trusting of the claim that academies enjoy a "light-touch regulatory framework". I thought that that notion was rather abruptly disavowed by the department's response, when it said that funding agreements through which academies are regulated are, "detailed and lengthy legal contracts".

I can tell noble Lords that they really are detailed and lengthy. Before the Isle of Sheppey academy can get final sign-off to open in September, it needs to get signed off from Ofsted, and before that we will have to have approved about 50 policy statements. Because about 80 per cent of the staff are being TUPE-ed across from the predecessor schools, the academy is fully enmeshed in the national teachers pay and conditions regulations.

My starting point is that much of the corpus of regulation is essential. First and foremost, children must be protected from those who might harm them. I accept therefore the chore of securing CRB clearance. However, what I do question is that when I became involved in the second school, the question I expected was, "Are you registered, and, if so, what is your number?", but instead I was required to make an entirely separate application; and I have ended up with two certificates for identical roles in two schools. Meanwhile, schools up and down the country are unable formally to appoint governors because there is a waiting time of several months. While accepting the case for CRB clearance, we should not administer the system in a way that discourages parents and volunteers from the community contributing to school activities.

The second area where regulation is necessary is health and safety. This was highlighted dramatically last month when the sports hall at Sheppey, which had been laid out with 150 desks for exams, had a huge air duct fall from the ceiling. Sadly one boy was seriously injured. It was only by luck that the incident was not a lot more serious as most of the ducting fell in the space between the rows of desks.

It is clear that proper risk assessments are required for activities such as school trips, but these need to be carried out with a great deal of common sense. That said, it is clear from the committee's report that a lot of regulation is overly prescriptive, too focused on the how rather than the what, and the committee has been very successful in identifying serious flaws in the process.

The Merits Committee is renowned for the understatement of its language, so a recommendation from it that the department should "seriously consider" is, in my view, just as imperative as 245 "you musts" from the department. The committee has hit the target in arguing that for most statutory instruments there must be a common commencement date, coinciding with the start of the school year, and that notification should be given at least a term ahead. The evidence the committee has unearthed showing that July and August were the favourite months for laying statutory instruments is really quite damning.

One can ask why such an obvious principle as common commencement dates with adequate notice should not have been introduced years ago. I do not think that we should be too churlish, but rather we should welcome the clear assurances given in the response by the former Minister with responsibility for schools.

Another target hit by the committee was the tendency to produce statutory instruments on the "fire and forget" principle, and to treat pilots not as a step which

[LORD TURNBULL]

is then only followed when evidence of a pilot has been evaluated, but as a foot in the door in a predetermined process.

One issue that I think could be revisited is the use of time in schools. The statutory framework requires 380 sessions of attendance each year—that is, pupils are required to attend twice a day, morning and afternoon, on a fixed 190 days across the year. Pupils are in class only about 15 per cent of the time even in the weeks that they are at school. Results have got to be achieved by integrating the use of time in the school with the use of time outside the school, even if this means rethinking this age-old framework about statutory timetables.

There are also issues relating to independent schools. The inspection process has been delegated by Ofsted to the Independent Schools Inspectorate. Dulwich College had a thorough inspection last November, which included an examination of its boarding provision. Ofsted still insists on retaining responsibility for boarding and it will make another inspection in September, which will undoubtedly duplicate much of what has already been done.

To conclude, the Merits Committee is to be congratulated on its report and on the evidence that it has unearthed. What is now needed is some stability of purpose in the department to see this through. Like the noble Baroness, Lady Deech, I think it is a pity that the former Minister with responsibility for schools, who was developing a very good reputation and who gave the pledges on behalf of the department, was caught up in the frantic game of musical chairs masquerading as a reshuffle. It is essential that the commitments given are carried through and are not elbowed aside by a new set of ministerial priorities.

Like the noble Lord, Lord Filkin, I will finish on a philosophical note. Regulation is often seen as a response to market failure, where the market or the free choice of individual players does not produce the best outcome for society. However, regulation is itself an example of market failure, because those who impose it do not bear the costs. Left to itself, it is inevitable that regulation will grow beyond its optimum point. It is therefore necessary that this corpus of regulation is periodically revisited and hacked back. I am grateful to the Merits Committee for its part in that process.

1.10 pm

Baroness Sharp of Guildford: My Lords, I join others in thanking the noble Lord, Lord Filkin, and his committee for an excellent and illuminating report. As the noble Lord said in introducing the debate, there has been a great deal of concentration on bureaucracy in the private sector and not nearly enough emphasis on the impact of bureaucracy on the public sector and its effects on public sector efficiency. This report begins to open that door and gives us pause for thought.

I declare an interest as the governor of a two-form entry primary school in Guildford. It is not a very small rural primary school, but it is a smallish school. I am also on the governing board of Guildford College of Further and Higher Education, and a member of

what is called the “local council” of Guildford High School, a private independent school for girls. In these different roles, I see different aspects of regulation.

I was struck by two quotations from the evidence given to the committee. First, Clarissa Williams, president of the National Association of Head Teachers, said:

“Governors, as you know, have huge responsibilities in our schools and are ultimately responsible with the head”.

I was also struck by the evidence from the National Governors Association. It struck home because in one form or another I have been a governor of schools since the 1970s. It said:

“Nor do we think it is right that the 350,000 volunteers who, as governors, provide schools with crucial support and communities with local lines of accountability for the work of their schools, put themselves at risk of penalty (albeit as a governing body rather than as individuals) for non-compliance with such an extensive and ever-growing raft of secondary legislation. Keeping governors abreast of change in schools is a major piece of work for school leaders and administrators. A major challenge facing school staff and governors is to identify what is actually required as legislation from what is offered as optional advice and guidance”.

I echo that. As a governor, you sit there and the head says, “We need to implement this piece of legislation”. As with many county councils, Surrey County Council has an advice service that tells us, and we governors get a rather formidable list of all the things that we have to do. Frequently, however, the head—or the head and the chair, or the chair of a particular committee—must translate that statutory guidance into a policy, such as a policy for behaviour or a policy for diversity. There are all kinds of policies.

That takes time. Not only do you have to get your mind around what the legislation is asking of you and what the guidance tells you that you need to do, but you must then carry that forward, develop a policy and write it down in understandable terms, which your governing board then goes through and agrees. Then it becomes the school policy on books, or whatever. That has to be reviewed every year. All these policies come back to us regularly, and we look at them. It takes a lot of time for a head teacher to do this.

I have been in this House for almost 11 years, for 10 of which I have been a Front Bench education spokesman. During that time 12 fairly major education Bills have gone through, with considerable secondary legislation attached to most of them. They were big Bills. The first Act on which I cut my teeth, so to speak, was the Learning and Skills Act 2000. We are now undoing it, doing it all up again and creating four quangos instead of one. I shall discuss later how many bits of secondary legislation seem to be coming from that.

We also had the Children Act 2004. One of the features of that Act was that we had to create plans for children. You had to bring together all the partners so that you got social services, PCTs, schools and directors of children’s trusts, which we were trying to create, sitting there making five-year and annual plans. Each plan has to be put together, which involves a great deal of top management time. We are paying directors of social services or directors of children’s trusts somewhere in the region of £100,000 to £120,000 a year—huge amounts of money. Even the head of a small primary school now earns £50,000. Heads of large secondary

schools often earn up to £100,000. We should think of the cost in terms of time spent sitting round a table developing plans which then have to be reviewed each year and translated into five-year plans to implement all this legislation. That involves a huge amount of time.

We had difficulty finding a head for my primary school. Last year the head was off for a couple of months due to stress. Why was that? I had been receiving e-mails that she put together at midnight because that was the only time she could catch up. She runs an active school with about 250 kids serving one of the more disadvantaged parts of Guildford. She is constantly “fire fighting” incidents arising in the school. The only time she gets to consider statutory requirements and to write the plans and the school’s policies is between eight o’clock at night and midnight. Therefore, it is not surprising that that causes stress or that it is difficult to recruit new head teachers, as the right reverend Prelate said.

The requirements we are discussing are a huge burden. How have they grown up? As noble Lords can tell, I have been involved in the education world for some time. In the 1950s and 1960s education was not generally centralised but organised through local education authorities. Some were very good. The old LCC, which became the Inner London Education Authority, had a reputation for excellence, as did the North Riding of Yorkshire and some other local education authorities. However, others were not much good. It was very much a postcode lottery whether you ended up with a good authority or a bad one. Gradually through the 1960s one saw a certain amount of legislation coming in that tried to create a level playing field—in modern parlance—between local authorities. However, an area that nobody ever delved into was known as the secret garden of the curriculum. That was the domain of the class teacher. In the 1960s there were things that parents such as myself could talk to the head teacher about but you never suggested to the class teacher that they should teach something different because it was up to him or her to decide that matter. A good head would always know what class teachers did as it was the head’s responsibility to find out what was going on but there was no national curriculum. There were often guidelines from local authorities about what they expected but we did not get the national curriculum until 1989.

To my mind the turning point was the great debate on education that Callaghan instigated in 1978. He did so because it became clear that we had a superb elitist education system. At the top level we were doing quite well but down below we were just not performing. We had fewer young people going to university than our competitors and far too many of our young people were leaving school with no qualifications whatever, and far too few with intermediate level qualifications. We basically needed to up our game if we were to remain competitive in the new world opening up at that time.

With the new Government of Mrs Thatcher—now the noble Baroness, Lady Thatcher—in the 1980s, the push was for decentralisation and to get the schools off the back of the local authority. The problem so far

as that Conservative Administration were concerned was the local authorities. We saw the introduction of the concept of the grant-maintained school and the city technology colleges, which were the predecessor of academies. On these Benches, we have always tended to defend local authorities but we have argued strongly, as the committee does, that if freedom for academies is so good why cannot all schools have it?

When the Government started introducing specialist schools, we argued that every school should be a specialist school. Similarly, we argued that we wanted to return some freedom to the profession. It is necessary to do that. However, we have problems with academies. The noble Lord, Lord Turnbull, is right that the funding agreements are tight but commercial in confidence. We do not know them. There is not public accountability. We see education as serving communities, so schools need to co-operate with each other. That is now fashionable; we are pleased to see that. However, you need a broad strategic steer from local authorities; we see local authorities as still having a role in that sense.

We went on to the national curriculum in 1989 and it has been downhill all the way from then. The opposition Benches make much of the fact that they want to devolve responsibility down to schools, but in their next breath you hear them saying, “But you must teach phonics with synthetic phonics”. You cannot have both; you cannot devolve responsibility but lay down that you must teach phonics through synthetic phonics. There is obviously a line to be drawn there.

We have seen the raft of tests and the like that come through once you begin. One feature mentioned in the report is the new financial management standards. In my little primary school, fortunately one governor came from business and we had a good bursar, and the two of them spent three months trying to translate those into the new standards. We meet the standards, but it was an enormous burden on them. Now you have the direct passporting of money to schools, central government lay down how much should be spent per pupil, what is to be taught to different age groups, the numbers of staff and support staff needed, what sort of training the staff have, how after-school activities shall be conducted, and all kinds of things like that. What is the overall impact? I spoke to the head of one of our large comprehensive schools, who happens to sit on the governing body of the further education college, just after the report came out. I gave him a copy and said, “You might be interested in this. As a matter of interest, can you do me a back-of-an-envelope calculation of how much of your time is taken up by translating all the stuff for the school?”. The e-mail I got back from him stated:

“I have spoken to some of my Headteacher colleagues about the amount of time they spend on dealing with government directives, legislation, advice and guidance and they agree with me that it is now approximately 50 per cent of our daily working”.

Everybody knows that heads of schools are vital. If you get a good school, it is usually because you have a good head and a good little team around them. The time that the head can give to leading that school is vital. We do not want them having to sit with wet towels round their heads trying to interpret legislation; we want them to be leading their schools. Education is

[BARONESS SHARP OF GUILDFORD]

leading people. It is vital that those heads can give their time to leading people, and that we do not turn them off.

I was interested in what the noble Lord, Lord Filkin, said at the end of his speech. Last week, I attended the presentation of the final report of the Nuffield study that has been going on for the past five years. It was asking: what sort of curriculum do we need for our 14 to 19 year-olds? It ranges widely, but its conclusion on policy and policymaking was rather interesting and picks up the point made by the noble Lord, Lord Filkin. Perhaps I may read noble Lords a short paragraph, which states:

“We have argued that ‘fast politics’ and policy busyness is essentially manipulative, in that it tends to exclude, frustrate and demoralise social partners whose efforts are needed to shape and deliver effective educational reform. There is, therefore, a strong case for a new style of politics from the perspective of both equity and efficiency. There is a role for slower politics based on a regard for professional experience and judgement and the perspectives of different social partners”.

That brings me back to my head teacher. If you are to motivate and carry people like that along with you, it is vital that you do not frustrate them with too many initiatives. If we look across the “initiativitis” that we have suffered in our public services over the past 10 or 20 years, we should have cause to reflect. This committee’s report is very good in terms of starting that reflection.

1.26 pm

Baroness Verma: My Lords, I join other noble Lords in congratulating the noble Lord, Lord Filkin, and the Merits Committee on this very informative report. It highlights the great pressures that overburden can place on a sector that has already had so many changes, initiatives, targets and demands laid at its door that the professionals within it barely have time to bed-in one government demand before another comes along.

Much of what I was planning to say in my speech today has already been said by several noble Lords. However, a number of points are worth repeating. It is crucial that schools are not continually burdened with the weight of increased bureaucracy while trying to carry out the functions that they are employed to do. I have met many great head teachers who are inspirational, visionary and full of innovation and commitment to ensuring that their students reach their full potential. These enthusiastic engines in schools must be allowed to make progress without hindrance.

Research undertaken by the implementation review unit found that, during 2006-07, more than 760 communications were sent to schools from the Department for Children, Schools and Families and its national agencies. Surely the Minister must accept that this is excessive, adds to the burdens of implementation and distracts providers of learning from the job in hand. The report clearly highlights the concerns felt by those in the schools sector about overload and micromanagement by central government. As the noble and learned Baroness, Lady Butler-Sloss, said, the National Governors’ Association—it is worth repeating—said that,

“endless piecemeal change has become one of the main reasons given for leaving the job. It is not unruly and undisciplined children that are forcing good teachers and governors out of our schools; it is unruly and undisciplined legislation”.

In responding to the report’s recommendations, will the Minister say whether she agrees with her colleague in another place, Jim Knight, that ongoing regulation is needed if the Government are to deliver their manifesto policy in an environment that has a very high degree of delegation? The teaching sector would probably think that that is an unhelpful view. What action will the Government take to ensure that, as Recommendation 1 in the report suggests, the Department for Children, Schools and Families should strengthen its gate-keeping activities, particularly by minimising the burdens placed on schools by regulations issued by other government departments? It should also look at how statutory instruments are worded and ensure that they provide clarity to those who are expected to deliver them, as the noble and learned Baroness, Lady Butler-Sloss, said.

The National Association of Head Teachers drew attention to school leadership and to those who were expected to implement the communications. It argued that there were too many SIs and associated initiatives, which had a direct bearing on the ability of less experienced school leaders to consider SI regulations, unlike experienced school leaders, who would consider and prioritise the regulations and their implementation. These SIs and initiatives impose unnecessary pressures on school leaders at an unacceptably early stage of their careers. Can the Minister say what measures will be taken to ensure that new school leaders are given sufficient support to understand and deliver the relevant communications? Furthermore, does she agree with the report’s Recommendation 3, that:

“Schools should be given at least one full term’s lead-in time between the notification of a new requirement in a statutory instrument and the commencement of that requirement”?

In May this year, the Prime Minister said in a speech to the National College for School Leadership that regulating burdens on schools needed to be addressed. He said that,

“government also needs to know where to step back. Academies and Trusts have additional freedoms, but we must look harder at how we can rationalise the statutory duties, correspondence and guidance that schools receive ... And so, in doing so, we will free up schools to push forward the frontiers of innovation ... So, as government steps back and offers greater freedoms, we must support the leadership of our schools to step forward”.

In supporting what the Prime Minister said in May, will the Minister assure us that the recommendations made by the Prime Minister and Jim Knight, who said that the Government would want to take a view about whether it would be possible to replicate certain aspects of the academies model more widely in the system, will be implemented? Will she also assure us that the new schools Minister will continue to lessen the burdens on schools, given that he is a member of the Socialist Education Association, which has been very vocal about ending the academy programme? Will she also say whether Recommendation 6 in the report will be implemented, especially if the Government think that the light-touch regulatory framework for academies is appropriate and successful and that lighter touch should be extended to all maintained schools?

The IRU has expressed concerns about the number of SIs that the Government have introduced and the impact that they have had. It reported:

“We doubt that the excessive use of secondary legislation (and statutory guidance) concerned almost entirely with mandatory processes that schools must adopt rather than outcomes they should achieve is the most effective way of equipping schools to make the maximum contribution towards those outcomes”.

The then schools Minister, Jim Knight, said in May this year that SIs would be assessed through impact assessments. Can the Minister say what progress has been made and whether any information is available to show that the Government are serious in their considerations? I ask this in view of the Apprenticeship, Skills, Children and Learning Bill currently being debated in your Lordships’ House. I know that the Bill has raised a great number of concerns among many organisations about the increased burdens that they face, and I suspect that those fears will be compounded by the prospect of a whole new raft of SIs that will follow. It would be useful if the Minister could provide assurances that these matters will be addressed, particularly the point raised by the right reverend Prelate about the number of consultations to which schools are expected to respond.

The teaching profession must have flexibility, particularly in its recruitment processes, if it is to attract talented people. Sadly, the number of teacher vacancies is a symptom of a sector weighed down by too many initiatives, too much bureaucracy and too much form-filling, added to the increasing incidence of teachers having to deal with disruptive pupil behaviour in the classroom.

The report suggests a common commencement date for SIs and a lead time of at least a term so as to assist teachers in preparing for an SI’s implementation, particularly as schools also bear the pressures of SIs brought through by other departments. Will the Minister ensure that this gets immediate attention to alleviate some of the pressures currently felt by schools? Will she say whether post-implementation evaluation will take place and stakeholders then consulted? Will there be feedback before subsequent implementations are applied?

The report has raised a number of recommendations. Witnesses who have contributed in their evidence all raise the concerns felt by many noble Lords here today. My noble friend Lord Lucas raised the very important point on the capacity of schools, particularly small schools, to respond to the burdens of implementation. My noble friend, the noble Lord, Lord Filkin, and others in the committee have worked with great expertise to produce a balanced report, to which I hope the Government will respond with enthusiasm. I will listen with great interest to the Minister’s response, as I suspect that we shall visit this matter again.

1.35 pm

Baroness Thornton: My Lords, I begin by thanking the Select Committee and noble Lords for having undertaken this important inquiry and the debate today, and I thank my noble friend Lord Filkin for opening the debate. It is a great honour to be replying to such a distinguished committee of experts.

I am pleased to say, particularly to the noble Baroness, Lady Verma, that the Government have already welcomed the report of the Select Committee on the Merits of Statutory Instruments because we recognise that at its heart, it identifies a key challenge: the need to rationalise the impact of the statutory duties, correspondence and guidance that schools receive. The Government agree with the committee on the importance of removing barriers and obstacles to delivery in schools so that teachers can focus on teaching and learning—and head teachers on leading their schools, as the noble Baroness, Lady Sharp of Guildford, said. The Department for Children, Schools and Families has made a commitment to significant changes in response to the recommendations in the report.

The 10-year programme outlined in the Children’s Plan included the aim of achieving world-class schools and an excellent education for every child. This aim is central to all new policies impacting on schools. My intention in my remarks is to address each of the main recommendations of the report and then address myself to specific points made by noble Lords.

Noble Lords will recognise that legislation is an important tool for any Government in setting clear frameworks and instructions for the delivery and providing equity and high standards across the system to ensure that every child benefits from an excellent education. However, the department is aware of the difficulties which arise from an accumulation of regulations, described eloquently in this debate and in the report. I would contend that we are steadily reducing the volume of statutory instruments impacting on schools. Wherever possible, regulations are consolidated to make it easier for schools to access information and reduce the risk of non-compliance. I intend to expand on that in my remarks.

Notwithstanding the remarks of the noble Lord, Lord Turnbull, noble Lords will understand that secondary legislation allows for a great deal of flexibility. Consultation with stakeholders often throws up the need for amendments to procedures. Many statutory instruments have been welcomed by schools, parents and other stakeholders. For example, the school admissions code enjoyed cross-party support. The committee’s report states that the department should shift its primary focus away from the regulation of processes through statutory instruments. However, as my right honourable friend Jim Knight, the then Minister responsible for schools, pointed out in his response to my noble friend Lord Filkin, legislation is just one of the mechanisms available to help the Government achieve their ambitious vision for world-class schools, but it is by no means the department’s main focus. The Government also effect change in schools in many other ways, through support and guidance, funding incentives or the accountability provided by Ofsted inspections and the school improvement partnerships. Indeed, many of the initiatives mentioned by the noble Lord, Lord Lucas, through research and pilots are included.

The department is committed to minimising bureaucracy in schools and the number and quality of statutory instruments impacting on them. We believe

[BARONESS THORNTON]

that the scope of any secondary legislation must be clear and limited to actions that will have positive outcomes for children and young people.

We agree with the committee that it is important to manage the planning and production of secondary legislation. One function of the department is to systematically review and challenge the amount of regulation in the system. In response to the committee's recommendation, the department will be strengthening its systems to monitor and review of the quality of statutory instruments and accompanying guidance. I undertake to keep my noble friend and his committee informed of progress in that respect, although I suspect that it will show interest in that progress.

A gate-keeping function is provided by the Implementation Review Unit, a panel of experienced schools practitioners with a specific remit to advise the Government and other agencies on issues of bureaucracy in schools. Although funded and supported by the department, the unit has a guaranteed independence which enables it to set its own agenda and challenge the department on bureaucracy issues. The work of the panel helps the department to minimise the bureaucracy associated with regulations from all government departments. The current review of the Implementation Review Unit will further strengthen the department's aim to remove barriers and obstacles to delivery in schools.

Engaging effectively with stakeholders throughout the policy-making process is key to the successful implementation of policy in practice. As noble Lords will know, it is a requirement to consult interested parties on proposed changes to regulations. I note the comments made about the number of consultations. This is one of those situations where we are damned if we do and damned if we do not. Apart from anything else, consultation means that there is an early-warning system about proposed changes and that we seek the views of stakeholders and interested parties to make sure that those changes best reflect the needs of the sector. That is an important and powerful tool to ensure good applicability.

The department has a regular and productive dialogue with a wide range of school workforce unions, which advise the Government on workforce reform, as well as providing valuable input into the policy-making process. There are several other groups with school practitioner members who provide input into the department's policy processes, such as the primary and secondary head teacher reference groups.

We acknowledge the Committee's recommendation that there should be a focus on outcomes rather than the regulation of processes. That was especially emphasised by the noble and learned Baroness, Lady Butler-Sloss. The debate on outcomes tends inevitably to focus on testing and on results at age 11 and 16. That continues to be important, but the Government focus on wider outcomes for children as set out in the Every Child Matters framework. All five outcomes in that framework are vital for children and young people if they are to fulfil their potential. The new school report card system

will provide a better, more holistic measure of the overall performance of every school, ensuring effective accountability without putting undue pressure on schools.

The current system for school accountability has served to drive real improvements in attainment. *New Relationship with Schools* set out a clear approach to school accountability focusing on outcomes. The upcoming White Paper referred to by several noble Lords will develop the reforms started with the new relationship even further, by strengthening the role of school improvement partners in challenging and supporting schools.

Moving onto more technical but no less important issues, as my noble friend Lord Filkin recognised, the Government agree with the committee's recommendation that there should be a commencement date of 1 September for all statutory instruments affecting schools. The House will appreciate that there are some situations where an urgent change is required, which will lead to some exceptions. However, the department has committed to a systematic approach to commencement dates in response to this recommendation. The department will also work towards a lead-in time of at least one full term between laying a statutory instrument and its commencement. I am pleased to be able to tell noble Lords that we have already made progress in this area, and always try to ensure that reasonable time is given for consultation on new secondary legislation, including parliamentary consideration. I take the point made by the noble Baroness, Lady Sharp, about the pressures that that puts on governors in ensuring that guidance is implemented.

That brings me to communications with schools. The Government agree with the recommendation of the committee that communications to schools should be improved, informed by advice provided by practitioners. We are led by what practitioners say, which is a key point in the report. As my right honourable friend Jim Knight outlined in his response to the committee, the department is already working hard to improve the accessibility of its communications. All central communications to schools are co-ordinated through one bi-weekly email, which clearly differentiates between statutory and non-statutory guidance. This email now contains concise headlines, so that schools can access essential information more easily. A new online service is being developed in consultation with stakeholders that will bring together all content from the department and its agencies. I hope that will address some of the points raised by the noble Baroness, Lady Deech. I thought they were very pertinent and very important for how we deal with this issue and solve these problems.

The Government agree with my noble friend Lord Filkin's point that effective policy making, including meaningful consultation with stakeholders and post-implementation review, is the key to successful implementation on the front line. The department has recently been working on strengthening its—as it were—customer focus and impact assessment in all its policy making.

The Government also agree—this is a very agreeable speech—with the committee that post-implementation review is an integral part of the policy-making process. This was mentioned by many noble Lords, particularly

my noble friend Lord Rosser. The implementation of policy is systematically reviewed. Ofsted also provides evidence through inspections and surveys of how policy is implemented. The department runs a devolved system, and the delivery chain feeds information and intelligence back to the centre. The department also uses stakeholder groups to provide feedback on implementation.

Specific statutory instruments will now be assessed and reviewed through impact assessment. The Better Regulation Executive in the Department for Business, Innovation and Skills is working on updated guidance to make clearer how review findings should be published.

I shall turn to some specific points made by noble Lords. I was very struck by my noble friend Lord Filkin's opening remarks. We have known each other for some time. His remarks reflected the accumulated wisdom of his time in public service and his record. He pointed to the collective burdens facing head teachers. I hope he will feel that the Government have taken this report seriously, which we do. He and my noble friend Lord Rosser were right that academies are regulated in a different way from other schools. We are evaluating those differences at the moment.

I am not going to follow the noble Lord, Lord Lucas, into his piles of nappies analogy of the work of the Merits Committee because it made me wonder about what takes place at its meetings. However, he made some important points about implementation and the burden of regulation. I hope he will feel that the Government are taking this report seriously. The noble and learned Baroness, Lady Butler-Sloss, gave the department quite a poor grade for its co-ordination. I thought C- was the direction that we were heading in, but I hope she will acknowledge that there is a willingness to improve and that my remarks show that we are moving in the right direction so that her next report card will reflect that. She asked whether the department sufficiently listens to the Implementation Review Unit. We listen carefully and respond to concerns about the implementation of the Government's ambitious aims for schools. The IRU continues to have a key role in advising the department and highlighting its productive engagement on the contents of the forthcoming White Paper and in its recent memorandum to the Merits Committee.

I welcome the right reverend Prelate the Bishop of Bradford to his first week as our duty Bishop. We might meet on the train going home to Bradford this afternoon. He made some pertinent points about the challenges facing head teachers, as did the noble Baroness, Lady Sharp of Guildford. I do so agree with his comment about the importance of getting the vision and values right.

The right reverend Prelate made specific points about headship qualifications. Under the old national professional qualification for headship, the conversion rate was low, as some teachers used it as a continuous professional development opportunity rather than seeing it as a route to being a serious and immediate candidate for headship. The new NPQH had its first entry in September 2008 and is a much more focused qualification, with a stringent test on entry to ensure that the candidates intend to take up the leadership involved in headship. We expect the conversion rate to be much higher.

The right reverend Prelate also talked about small schools in rural areas and the pressures on small schools, particularly in more remote areas. The Government recognise those issues, and partnership opportunities are available to schools to share resources such as governance, leadership and business managers to reduce some of these pressures.

The noble Baroness, Lady Deech, quoted some truly terrifying statistics, going back over many years, on the accumulative problem. She also, as I have already said, pointed to the importance of the use of IT. I completely agree, and I hope that some of my remarks have shown that we are making progress in this direction. She and others also mentioned that we will miss our right honourable friend Jim Knight, but I am sure that our brand new Minister, Vernon Coaker, will be more than pleased to co-operate with the committee in due course, and I undertake to draw his attention to the debate in your Lordships' House today.

The noble Baroness, Lady Deech, asked whether the DCSF will establish a mechanism to monitor new statutory instruments. We remain committed to establishing a mechanism to monitor statutory instruments that will include a review of the volume, quality and timeliness of all new school-related statutory instruments and accompanying guidance. Officials are discussing this with Vernon Coaker right now.

On a personal note, may I say how much I agree with the noble Baroness and other noble Lords about how much the House will miss the wisdom and great knowledge of Lord Dahrendorf, who was the director of the London School of Economics when I was a student there in the 1970s?

My noble friend Lord Rosser has a long record of service to the Merits Committee and his point was well made about the focus being on systems instead of on outputs and accountability. He also very pertinently pointed to the complexity surrounding the interpretation and reinterpretation of guidance at local level.

The noble Lord, Lord Turnbull, made a very welcome contribution, and I wondered whether he was tempted to join the committee's galaxy of hardworking experts at some point.

The noble Baroness, Lady Sharp, has great experience in so many aspects of education and made a very good point about the need to support governors in their implementation of policy. She gave us a wonderful lesson in the history of the development of educational policy and guidance, and in how we managed to end up where we are. A great deal of cost is involved in departmental working. Indeed, the DCSF collaborates with many departments that work with us on matters that affect schools. However, many good points were made about how we notify departments and ensure that the common commencement date of 1 September works right across government.

The noble Baroness, Lady Verma, asked her usual examination list of questions. I hope that we have managed to address most of her concerns. I agree with my right friend Jim Knight about the balance between freedom and regulation in the context of an intelligent accountability framework for what is needed. The noble Baroness asked how statutory instruments are

[BARONESS THORNTON]

worded. The government lawyers who draft regulations are committed to using plain and direct English, but they also need to ensure that the legal effects of an instrument are absolutely clear and leave nothing open to differing interpretations of the task that is being undertaken.

In conclusion, I thank noble Lords again for this report and for their contributions to this debate. The Department for Children, Schools and Families is taking account of the recommendations and we will work hard to bring about the changes necessary to meet those recommendations. The Government believe that these changes will help to manage the overall impact of regulations and their accompanying guidance on schools, as well as improving communications with all our stakeholders. I am not surprised to learn that the committee will pursue this matter. I heard the sound in the voice of my noble friend Lord Filkin of, if not a zealot, certainly an enthusiast who has got the bit between his teeth on this matter.

Running an outstanding school which provides an excellent education for all its pupils is an enormous challenge. I am sure that noble Lords will share my admiration for the daily dedication shown by all those working in schools. The Government hope that in

response to this report, barriers and obstacles to delivery can be removed and teachers can focus on giving every child an excellent education.

1.55 pm

Lord Filkin: My Lords, I thank most warmly all noble Lords who have spoken in this debate, which has exceeded my expectations. I should also like to thank my noble friend. She is right. The department has responded positively to many, if not all, of the committee's recommendations. I very much hope that the White Paper will show a significant change of approach for the future. Whether the rest of government have paid attention to it, I doubt. Yet the committee believes that there are issues in this report of relevance to all of government, but I doubt whether other government departments or Ministers are even at this stage aware of it. All of government need to question the volume of directive legislation that they generate. If they did, it would mean less work for the Merits Committee, and I would welcome that; although it is not for that reason that I propose it.

Motion agreed.

House adjourned at 1.56 pm.

Written Statements

Friday 19 June 2009

EU: Employment, Social Policy, Health and Consumer Affairs Council

Statement

The Parliamentary Under-Secretary of State, Department of Health (Lord Darzi of Denham): My honourable friend the Minister of State, Department of Health (Gillian Merron) has made the following Written Ministerial Statement.

The Employment, Social Policy, Health and Consumer Affairs Council met on 8 and 9 June in Luxembourg. The Health and Consumer Affairs part of the council was taken on 9 June. Andy Lebrecht, Deputy Permanent Representative at UKRep represented the UK.

At the meeting, the council adopted recommendations on the Czech presidency theme of patient safety, including the prevention and control of healthcare associated infections and on action in the field of rare diseases. The United Kingdom supported the adoption of these conclusions.

The presidency provided a progress report on the proposal for a directive on cross-border healthcare, which was followed by a debate between member states where it was clear that there remain concerns among member states on treatments to be included under the directive. The UK intervened to thank the Czech presidency for its work taking this dossier forward, and welcomed the council's firm support for certain fundamental principles—in particular that of ensuring that member states retain the ability to determine healthcare entitlements. The UK noted that there remained some technical issues to be resolved in chapters 1 to 3, and that we still had serious concerns about the extent and appropriateness of some provisions of chapter 4 (on co-operation between healthcare systems).

Over lunch, there was a discussion from the Commission on H1N1(A) influenza, following a paper the Commission had provided to member states in advance.

The afternoon discussion focused on the pharmaceutical package. The majority of member states which intervened welcomed the proposals on counterfeit medicines and pharmacovigilance, as did the UK. Most member states, however, were not supportive of the third element of the package: the proposals on information to patients. The UK noted that the divergent views across Europe meant that discussion of a harmonised legal framework was difficult. However, the UK encouraged member states to find a way to keep the issues under discussion.

Under any other business, the presidency and Commission provided information on a range of issues including a summary of the lunchtime discussion on swine flu, a directive on standards of quality and safety of human organs intended for transplantation, the outcome of a council working party on public health at senior level and information on ingredients

in tobacco products. The incoming Swedish presidency provided information on its priorities for health, which it intends to take forward under its presidency.

Railways: Potters Bar and Grayrigg Derailments

Statement

The Secretary of State for Transport (Lord Adonis):

Further to the Written Statements by the then Secretary of State for Transport (Geoff Hoon) on 23 October 2008 (col. 19WS) and 19 November 2008 (col. 24WS), I should like to inform the House that following careful consideration, including those representations made by affected parties, I have decided that the public interest is best served by the continuation of the two inquests that have begun into the deaths resulting from the rail accidents at Potters Bar and at Grayrigg. I have therefore decided not to convene a public inquiry into the accidents, either individually or jointly.

I regret the length of time taken to reach this point and the anxiety that this may have caused to those who have lost loved ones. However, the chronology of events and the issues are complex and I considered it important to ensure that my decision regarding the next steps is the right one.

Having considered the material before me, I am satisfied that separate inquests will allow for appropriate further independent investigations of the accidents, with the bereaved and injured able to participate and express their views and concerns in a transparent forum open to public scrutiny. Although the conduct of the inquests is a matter for the coroners, the inquests will be capable of examining the relevant issues raised by the accidents, including those that are common to both.

Safety on the rail network is a paramount consideration. In relation to the Grayrigg accident, I am satisfied that the Rail Accident Investigation Branch (RAIB) has carried out a thorough investigation into the accident as part of the new rail safety and accident investigation regime, which included consideration of relevant issues arising from earlier accidents including Potters Bar. In particular, I note that the RAIB consulted key stakeholders, including the bereaved, prior to the publication of its final report, during which process no further lines of work or testing by RAIB were identified. There will be a further independent examination of the accident during an inquest, which I am satisfied is capable of addressing any relevant questions that remain unanswered. I shall make funds available to the coroner for south and east Cumbria, to assist him in carrying out a full investigation, if these are requested.

With regard to the Potters Bar accident, it has already been established that there will be an enhanced inquest into that accident, and funding has previously been agreed to enable the Hertfordshire coroner to appoint an assistant deputy for this purpose. A High Court judge, Mr Justice Sullivan, had been appointed accordingly; but he has since been made a Lord Justice of Appeal. We are working with the Lord Chief Justice to identify an appropriate judge to act as an assistant coroner in the Potters Bar inquest and I understand

that he hopes to make a decision shortly. This inquest, which was adjourned following the Grayrigg accident, will provide an opportunity for a further independent examination of the Potters Bar accident, with the bereaved and injured able to participate in a forum which is open and transparent. I consider that, in light of the court's comments during the earlier judicial review proceedings, the proposed full inquest into the Potters Bar accident should be capable of addressing any relevant unanswered questions.

The travelling public will want to be assured that the rail network is safe; I have an identical interest. I note that, in October 2008, the Office of Rail Regulation (ORR, the independent rail safety regulator) assured the then Secretary of State that no further immediate actions to ensure the safety of passengers and staff were necessary as a result of RAIB's final report into Grayrigg, beyond those that had already been taken.

Moreover, in the light of the significant changes and improvements to the railway safety regime during the period between the Potters Bar and Grayrigg accidents, I believe it is in the public interest that the new structures are allowed to operate as intended. I note that actions have already been taken by RAIB and ORR following the Grayrigg accident to secure the ongoing safety of the railway. Since I am satisfied that effective investigation and action have already taken place, I see no good reason to take steps which may call the new structures into question prematurely or which might be seen as questioning the independence, value and outcome of the RAIB investigation into Grayrigg before the ORR, the rail industry and others have had a sufficient opportunity to act upon all of its recommendations.

As stated in the Written Statement to Parliament by the then Secretary of State on 23 October 2008 (col. WS 19), the Government consider it essential to ensure that the way forward selected is one that will deliver closure to those who were affected, as soon as possible. I do not consider that any significant advantage in timing would be achieved by setting up a public inquiry, such as to outweigh other considerations in favour of proceeding with two inquests, as has been suggested by some of those who made representations to me. The timetable for further investigations into these accidents is a matter for the coroners, who may wish to discuss the timing of the inquests given that there may be some overlap between the interested persons involved. However, even if the separate inquests are held sequentially, I anticipate that the two inquests are capable of being completed to a similar timescale as would apply to a public inquiry. In these circumstances, I consider that the way forward selected is consistent with my objective of helping to deliver closure to those affected with minimal delay.

I am grateful for the comments and observations received from interested parties, which have served to inform me in reaching a decision.

The full text of my decision has been placed in the Libraries of the House. Copies are also available from the Vote Office and Printed Paper Office.

Schools: Partnerships for Schools

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My honourable friend the Minister of State for Schools and Learners (Vernon Coaker) has made the following Written Ministerial Statement.

Building Schools for the Future is helping transform secondary school infrastructure in England, providing world-class teaching and learning environments for pupils, teachers and communities. Since the programme was established, more than £3 billion of funding has been committed to rebuilding and renewing the estate, with more than 75 schools now benefiting from this investment. Around a third of all secondary schools are now involved in the programme.

In 2004, the department created Partnerships for Schools to manage the programme centrally and support local authorities in local implementation. The funding and management of Partnerships for Schools has been carried out under a joint venture between the department and Partnerships UK. Partnerships UK was set up to help the Government deliver improvements in public services particularly where major infrastructure renewal programmes are involved.

Through the joint venture, Partnerships UK has made a significant contribution to the successful delivery of Building Schools for the Future by providing strategic, commercial, programme and project management expertise, and in the early years secondment of key staff. Since 2006 Partnerships UK has also been supporting Partnerships for Schools in the construction of new academies. As the National Audit Office pointed out in its recent report on Building Schools for the Future (published on 12 February 2009), "the effect [of the joint venture arrangement] has been to engender top level attention to BSF in PUK, and greater in-depth support and commitment", and this has been crucial in establishing the programme.

Following the success in setting up these programmes, and recognising Partnerships for Schools' increasing maturity as an organisation and the plans to enlarge its remit later this year, the department and Partnerships UK have reviewed the governance arrangements for Partnerships for Schools and have agreed that it is no longer necessary for Partnerships UK to engage as intensively as through the joint venture, which was focused on Building Schools for the Future. It has therefore been agreed to bring the joint venture to an end.

Going forward, Partnerships UK will maintain an active involvement in the delivery of Building Schools for the Future and other capital programmes by continuing to provide support through an existing alternative contractual basis rather than through the joint venture. As part of the new arrangements, the chief executive of Partnerships UK will be an ex officio board member and director of Partnerships for Schools, and the finance director of Partnerships UK an ex officio observer to the board.

As a result of the termination of the joint venture the department is paying Partnerships UK an amount of £22.4 million. This sum repays Partnerships UK for its share of the funding of the joint venture plus a return on that investment. The return remunerates Partnerships UK for interest on its investment, the risks associated, and the support and commitment to the programmes provided to date.

Written Answers

Friday 19 June 2009

Broadcasting: Digitalisation

Question

Asked by Lord Dykes

To ask Her Majesty's Government whether they will consider additional incentives to accelerate the switch to digital television, including an increase in the number of multiplexes. [HL4167]

The Minister for Communications, Technology and Broadcasting (Lord Carter of Barnes): We do not consider that incentives are necessary to accelerate switchover at present. Almost 90 per cent of UK households' primary TV sets are already digital. The analogue switch-off programme is progressing according to a detailed engineering plan, the duration of which is determined by technical and engineering considerations. Additional multiplexes could be created as spectrum is released by digital switchover, but this would be a commercial matter for anyone wishing to operate multiplexes.

EU: Accounts

Question

Asked by Lord Pearson of Rannoch

To ask Her Majesty's Government whether the European Union's Court of Auditors has been able to ratify the European Union's accounts for the past 14 years; and, if not, why the European Union is permitted to propose regulation for the City of London. [HL4086]

The Financial Services Secretary to the Treasury (Lord Myners): The European Court of Auditors (ECA) has regularly given a positive statement of assurance on the reliability of the EC accounts. The UK Government are pleased that, for the first time, the ECA's report on the 2007 EC Budget gives an unqualified positive statement of assurance on these accounts.

It is disappointing that for the 14th year in succession the ECA was unable to give a positive opinion on the legality and regularity of the underlying transactions for the majority of EC Budget expenditure. Nevertheless, it is encouraging that the percentage of Budget expenditure that has been given a positive opinion has been increasing, currently 40 per cent, up from 35 per cent in 2005 and only 6 per cent in 2003.

Under the treaty the Commission proposes draft legislation for the single market in financial services which applies to the City and financial institutions across Europe.

Sport: Swimming

Questions

Asked by Baroness Northover

To ask Her Majesty's Government whether the Secretary of State for Culture, Media and Sport approved the requirement in Sport England's Whole Sports Plan 09–13 Capital Fund which states that to fit the selection criteria for the fund swimming pools are required to "buy and utilise ASA products and services". [HL4077]

The Minister for Communications, Technology and Broadcasting (Lord Carter of Barnes): The ASA has recently revised the criteria for capital funding, contained in its publication referred to in the Question, and no longer includes this requirement.

Asked by Baroness Northover

To ask Her Majesty's Government whether they have made an assessment of the competitiveness and value-for-money of the swimming qualification market. [HL4078]

Lord Carter of Barnes: The Department for Culture, Media and Sport has not made an assessment of the competitiveness and value-for-money of the swimming qualification market.

Asked by Baroness Northover

To ask Her Majesty's Government whether Sport England's Whole Sports Plan 09–13 Capital Fund for Swimming Pool Facility Funding is in line with current United Kingdom and European Union competition regulation. [HL4079]

Lord Carter of Barnes: All national governing bodies are required to govern their affairs properly as a condition of Sport England funding.

If it is evident that a national governing body has breached the conditions of Sport England's funding agreement, then depending on the nature and the severity of the breach, Sport England has the ability to suspend, terminate and/or clawback the whole or a proportion of the 09-13 funding award in accordance with the terms of its agreement with the NGB.

Earlier this year, Sport England provided guidance to national governing bodies on managing their capital funding, based on best practice developed over five years delivering the Community Club Development Programme.

Taxation: Income Tax

Question

Asked by Lord Laird

To ask Her Majesty's Government further to the Written Answer by Lord Myners on 11 June (WA 164) concerning their not disclosing details of intergovernmental discussions, when that decision was taken; and why. [HL4363]

The Financial Services Secretary to the Treasury (Lord Myners): I refer the noble Lord to the Answer given to him on 11 June (*Official Report*, House of Lords, col. *WA 164*).

Treasury: Payments

Question

Asked by Lord Oakeshott of Seagrove Bay

To ask Her Majesty's Government what payments were made from HM Treasury to (a) Clifford Chance, (b) Freshfields, (c) Slaughter and May, (d) Allen & Overy, and (e) Linklaters in 2008–09; and to what those payments related. [HL3789]

The Financial Services Secretary to the Treasury (Lord Myners): The Treasury made the following payments in 2008–09.

<i>Organisation</i>	<i>£'000</i>	<i>Purpose</i>
Clifford Chance	1	Custody of documents
Freshfields	41	Financial services issues related
Slaughter and May	22,150	Financial stability related
Allen & Overy	713	Financial stability related
Linklaters	225	Financial stability and other financial services related issues

The figures are provisional as they form part of the Treasury's Resource Account, which is subject to audit by the Comptroller and Auditor General. The major part of the amount paid relates to advice given to the Treasury on financial stability. Under a number of agreements with financial institutions, certain fees are recoverable and the relevant sums listed do not therefore represent a net cost to the Treasury.

Friday 19 June 2009

ALPHABETICAL INDEX TO WRITTEN STATEMENTS

	<i>Col. No.</i>		<i>Col. No.</i>
EU: Employment, Social Policy, Health and Consumer Affairs Council.....	91	Railways: Potters Bar and Grayrigg Derailments.....	92
		Schools: Partnerships for Schools.....	94

Friday 19 June 2009

ALPHABETICAL INDEX TO WRITTEN ANSWERS

	<i>Col. No.</i>		<i>Col. No.</i>
Broadcasting: Digitalisation	237	Taxation: Income Tax	238
EU: Accounts	237		
Sport: Swimming	238	Treasury: Payments.....	239

NUMERICAL INDEX TO WRITTEN ANSWERS

	<i>Col. No.</i>		<i>Col. No.</i>
[HL3789]	239	[HL4079]	238
[HL4077]	238	[HL4086]	237
		[HL4167]	237
[HL4078]	238	[HL4363]	238

CONTENTS

Friday 19 June 2009

Surveillance (Constitution Committee Report)	
<i>Motion to Take Note</i>	1285
Schools: Statutory Instruments (Merits Committee Report)	
<i>Motion to Take Note</i>	1312
Written Statements.....	WS 91
Written Answers.....	WA 237
