

Vol. 717  
No. 48



Tuesday  
2 March 2010

PARLIAMENTARY DEBATES  
(HANSARD)

# HOUSE OF LORDS

## OFFICIAL REPORT

*ORDER OF BUSINESS*

Questions

Health: Alcohol  
Israel and Palestine  
Sport: Clubs  
NHS: Staff

Child Trust Funds (Amendment) Regulations 2010  
Health and Social Care Act 2008 (Regulated Activities) Regulations 2010  
Health and Social Care Act 2008 (Consequential Amendments No. 2) Order 2010  
Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010  
Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010  
Service Voters' Registration Period Order 2010

*Motions to Refer to Grand Committee*

Business of the House

*Motion to Refer to Grand Committee*

Child Poverty Bill

*Order of Consideration Motion*

Equality Bill

*Report*

Corporation Tax Bill

*Second Reading*

Equality Bill

*Report (continued)*

---

Grand Committee

Welsh Zone (Boundaries and Transfer of Functions) Order 2010  
Code of Audit Practice 2010 for Local Government Bodies  
Code of Audit Practice 2010 for Local NHS Bodies  
Environmental Permitting (England and Wales) Regulations 2010  
Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010  
Extradition Act 2003 (Amendment to Designations) Order 2010  
Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2010  
*Considered in Grand Committee*

---

Written Statements

Written Answers

*For column numbers see back page*

£3.50

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

The bound volumes also will be sent to those Peers who similarly notify their wish to receive them.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

*This issue of the Official Report is also available on the Internet at [www.publications.parliament.uk/pa/ld200910/ldhansrd/index/100302.html](http://www.publications.parliament.uk/pa/ld200910/ldhansrd/index/100302.html)*

#### PRICES AND SUBSCRIPTION RATES

##### DAILY PARTS

*Single copies:*

Commons, £5; Lords £3.50

*Annual subscriptions:*

Commons, £865; Lords £525

##### WEEKLY HANSARD

*Single copies:*

Commons, £12; Lords £6

*Annual subscriptions:*

Commons, £440; Lords £255

*Index:*

*Annual subscriptions:*

Commons, £125; Lords, £65.

LORDS VOLUME INDEX obtainable on standing order only.

Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

*Single copies:*

Commons, £105; Lords, £40.

Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9.00 and can be supplied to standing order.

WEEKLY INFORMATION BULLETIN, compiled by the House of Commons, gives details of past and forthcoming business, the work of Committees and general information on legislation, etc.

*Single copies:* £1.50.

*Annual subscription:* £53.50.

*All prices are inclusive of postage.*

© Parliamentary Copyright House of Lords 2010,

*this publication may be reproduced under the terms of the Parliamentary Click-Use Licence, available online through the Office of Public Sector Information website at [www.opsi.gov.uk/click-use/](http://www.opsi.gov.uk/click-use/)*

## House of Lords

*Tuesday, 2 March 2010.*

2.30 pm

*Prayers—read by the Lord Bishop of Bradford.*

### Health: Alcohol

#### *Question*

2.36 pm

*Asked By Lord Brooke of Sutton Mandeville*

To ask Her Majesty's Government what action they are taking to reduce the number of people being treated in hospital for alcohol-related conditions.

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** My Lords, the level of alcohol-related hospital admissions, and indeed crime and deaths related to alcohol, is of course unacceptable. In the Department of Health we are determined to try our best to turn this round but there is no one simple solution. The Government's response includes the alcohol improvement programme, which supports the NHS in reducing hospital admissions—two-thirds of PCTs have already chosen this as a priority—the Alcohol Effects campaign, helping people to understand how much they drink and what the health risks are; and a new mandatory code introduced by my right honourable friend the Home Secretary, which tackles the worst promotions.

**Lord Brooke of Sutton Mandeville:** My Lords, I thank the Minister for that Answer. Arising from it, can she think of any particular reason why the annual number of hospital admissions involving people with an alcohol-related disorder, from injuries sustained while drunk to liver disease, has risen by no less than 69 per cent in the few years since the hotly contested passage of the Licensing Act 2003?

**Baroness Thornton:** My Lords, statistics published over the weekend suggest—very puzzlingly, I think, given the concern on this matter—that drinking levels have not changed much since 1992. Those statistics from the Office for National Statistics raise some interesting questions. However, the noble Lord makes a very important point. We do not accept that the changes in the licensing laws have led to this situation but there is no doubt that 9 million adults regularly drink more than the NHS advises and long-term are placing their health at risk, and that 2 million adults regularly drink double the amount that we suggest is safe. Therefore, it is very important that we concentrate on a number of things, one of which is informing people about the risks that they face by abusing alcohol in this way. We make sure, for example, that doctors and hospitals now take account of the many people who come to them with alcohol-related issues. However, there are many different ways in which this matter needs to be tackled.

**Lord Walton of Detchant:** My Lords, is the noble Baroness aware of the alarming statistics produced by Professor Christopher Day and Dr Christopher Record of Newcastle University, which clearly demonstrate a very serious and substantial continuing increase in the incidence of alcohol-induced liver disease in young people in Tyneside? That increase is clearly related to promotions for cheap alcohol in the pubs and clubs of that area. Is it not time that the Government reviewed and reconsidered their decision not to impose a minimum charge per unit of alcohol?

**Baroness Thornton:** We are looking at that as one of the solutions; there is no question but that we have to look at all the solutions. However, although there are pockets of the country where this is a very serious problem, the fact is that fewer young people are drinking now than were drinking a few years ago. The problem is that those who are drinking are drinking more. The Chief Medical Officer's first-ever guidance on drinking for young people and their parents says that it is healthiest for children under 15 to avoid alcohol. The Government need parents—and all of us—to take responsibility not to give their children alcohol in an inappropriate way, for example. That is why in January 2010 we launched a new social marketing foundation aimed at young people, and this is having an impact. There are many different ways in which we need to tackle this.

**Baroness Turner of Camden:** My Lords, what can be done to reduce what seems to be binge drinking by young people? It is a rather distressing phenomenon which I think is a relatively recent development.

**Baroness Thornton:** Binge drinking, unfortunately, is not limited to young people, but it is absolutely true that it can make our town centres deeply intimidating and unpleasant places. Law enforcement officers—the police, trading standards and licensing authorities—have the power to do a great deal more about this. We have given them those powers and we urge them to use them to stop the anti-social behaviour which arises from excessive consumption of alcohol by young people in their town centres.

**Lord Alderdice:** My Lords, we on these Benches support moves to try to deal, so far as possible, with alcohol-related problems outside of hospital. There are, however, challenges: challenges not only in detoxification, of course, but in trying to prevent incidents of self-harm and suicide outside of hospital. We know that alcohol and drug addiction is closely related to the increase in self-harm and suicide. Why, therefore, do the two most recent government directives on drugs and alcohol make no reference to self-harm and suicide, and why does the National Treatment Agency's main report on risk also make no mention of self-harm and suicide? I declare an interest as the chairman of the Royal College of Psychiatrists' commission on self-harm and suicide.

**Baroness Thornton:** I do not know why they do not refer to those issues. What I can say is that the treatment of alcohol misuse has been given inadequate attention

[BARONESS THORNTON]

for very many years, as I am sure the noble Lord and I would agree. Over the past few years we have provided resources, such as £2.7 million in new funding for regional alcohol managers, which I think means alcohol improvement programmes, and £8 million in funding for the early identification of new patients who are regularly drinking, for example. Moreover, as I said in my earlier Answer, two-thirds of PCTs are now working out ways of identifying people and getting them into treatment programmes more quickly than they were in the past.

**Lord Mancroft:** My Lords, if it is correct that the Government have put so much money into treatment—as they claim that they have, and as the figures reveal that they have—can the Minister tell us why so many rehabilitation beds are currently empty and, at the same time, the waiting list is so long?

**Baroness Thornton:** I undertake to find out why that might be the case—I am very surprised to hear it. We are very keen that rehabilitation beds should be used, and used to the maximum. As the noble Lord will know, the more people we get into rehabilitation, the better our chances of combating this awful scourge.

**Baroness Howe of Idlicote:** My Lords, can the Minister give us any information on those with a double addiction to drugs and alcohol and, in particular, whether any assessment has been made of the effect that this is having on families, especially families with young children, and the somewhat chaotic circumstances in which they live?

**Baroness Thornton:** My brief does not contain information about the effect on families of a double addiction to alcohol and drugs. However, I think that good sense tells us that that is indeed an appalling situation. The systems in place to deal with addiction and with alcohol and drug misuse need to be brought to bear in those families even more than in others.

## Israel and Palestine *Question*

2.45 pm

*Asked By Lord Dykes*

To ask Her Majesty's Government what steps they will take to promote a resumption of direct talks between Palestinian representatives and Israel to seek a full agreement.

**Lord Brett:** My Lords, my right honourable friend the Foreign Secretary is in regular contact with Israeli and Arab partners making clear the need for the parties to resume negotiations as soon as possible. He reiterated the priority that he attaches to peace in the Middle East during his meeting with his counterpart Mr Lieberman on 22 February and in his conversation with Prime Minister Salam Fayyad on 23 February.

**Lord Dykes:** Is it not a growing tragedy that the ridiculous antics of the Netanyahu Administration are having the effect of making an excellent country, Israel, almost as unpopular as apartheid South Africa, much to the detriment of millions of its decent citizens who want a peaceful settlement? Does the Minister agree that this farce cannot continue? When will the EU insist on the reversal of recent settlements and on real, proper negotiations, not ones in which the Israelis pretend as they have done in the past?

**Lord Brett:** My Lords, I sense the frustration in the noble Lord's question, which I am sure is shared in many parts of the House. There is no shortage of hard words about all the parties involved in what we hope is a move towards negotiations for peace in that part of the world, so I should not add to them. Suffice it to say that we continue to believe as a Government—and this thought is held more broadly in Europe—that sharing a full and frank dialogue with the partners in Israel and Palestine is the best way to bring forward what at the end of the day is the only solution, which is a move towards negotiations. While the frustration continues and this question continues to be asked—it is only a week since I replied to a similar Question and one can appreciate the frustration—at the end of the day perseverance will be the answer.

**Baroness Deech:** Does the Minister realise that the ability of this Government to influence any action by the Israeli Government is greatly undermined by, first, the threats to Israeli politicians who might visit this country and, secondly, the rising tide of anti-Semitic incidents, which tend to be connected with events in Israel, so that the relationship is seen as hostile? What does the Minister propose to do to change this situation?

**Lord Brett:** The short answer to the noble Baroness is that the Government do all in their power to seek to influence. If people refuse to be influenced, that is indeed a difficulty. We are candid—some would say critical—friends of Israel and Palestine. We do not abandon that friendship, but neither should we abandon the candid and critical views that we have. For example, we hold to the view that settlements are illegal and a barrier to moving towards peace. That is not a view that we should change simply because the parties involved do not accept it.

**Lord Campbell-Savours:** My Lords, can my noble friend identify one single benefit to the Palestinian people in the past 43 years since 1967 that has arisen out of the diplomacy to which he referred and to which David Miliband referred yesterday?

**Lord Brett:** I note my noble friend's comments. A week ago his advice was to break the blockade, but I think that his advice is fairly nihilist on this occasion. We cannot allow our frustration at the parties to lead us to abandon the only course. The two-country solution is the only viable one. I understand the frustration of my noble friend and others, but our abandoning the field and leaving it to others would not bring that date nearer; it would push it further away.

**Lord Hamilton of Epsom:** Will the Minister spell out the achievements of Mr Tony Blair as head of the Middle East quartet?

**Noble Lords:** Oh!

**Lord Brett:** I do not find too much amusement in the situation in the Middle East. It is a tragic situation in which all the parties are trying to do their best. That includes Mr Blair, who has made a significant contribution to those aims through his work as a quartet representative, as evidenced by the quartet's continued confidence in him. We welcome the achievements of the quartet's representatives and their efforts to bring about transformative change in the occupied Palestinian territories. Most important, we will continue to support those efforts rather than scoff at them.

**Lord Clinton-Davis:** My Lords, is it not essential that talks should take place without preconditions as soon as possible? It does no good at all to have both sides hurling allegations around. Do the Government support the view of Senator George Mitchell and the European Union that talks are essential and that we are losing valuable time by not having them?

**Lord Brett:** I can both assure my noble friend and assist the House with a very short answer: we agree entirely with that point of view.

**Lord Wallace of Saltaire:** My Lords, the Question was about British policy on Israel and Palestine, which on the whole has been to follow the American lead, recognising that the United States has the greatest influence over what happens there, particularly in Israel. Now that it seems that the Obama Administration's efforts to relaunch talks with Israel and Palestine have been blocked by domestic opposition within the United States, should not Britain be pushing with our European partners for the EU to play a more active role in getting talks started again between the two sides?

**Lord Brett:** My Lords, I do not see the two things as alternatives. I believe that President Obama's Administration continue in their endeavours, in which we share as Europeans and as Great Britain. Therefore, I think that this is a false prospectus. We should indeed put all our efforts behind the EU and the United States and make our own individual efforts to bring peace to the area. Looking for division is a diversion.

**Lord Low of Dalston:** My Lords, does the Minister not agree that we need to give some traction to our diplomatic efforts by working with our European partners to bring effective pressure to bear on Israel?

**Lord Brett:** Effective pressure comes in many ways. The Goldstone report, which has featured in previous Questions, is a case in point. The resolution carried in the General Assembly on 26 February revealed changes in patterns of voting. The United Kingdom was able to vote with the majority to call for what we have been calling for for some time: a full, credible and

impartial investigation into all the allegations made by the Goldstone committee. The vote in favour was substantial: there were 91 votes in favour and seven against, with 31 abstentions. That is European unity at its best but also a recognition that the Palestinian delegation had moderated its text and had taken into account the concerns that we raised. Now we want to see those who are independent, on both sides, produce a clear picture of what happened as a way of moving forward.

## Sport: Clubs Question

2.52 pm

*Asked By Lord Clement-Jones*

To ask Her Majesty's Government what assessment they have made of the regulatory burdens facing voluntary sports clubs; and what steps they are taking to reduce them.

**Lord Davies of Oldham:** My Lords, sports clubs are integral to our Olympic legacy plans to develop a world-class community sports system. We have a good record in supporting them—for example, by introducing the Community Amateur Sports Club scheme and intervening, where possible, to ensure that regulation remains fair and proportionate. A recent example has been with water charging. Although we are never complacent, it was pleasing that a recent CCPR survey found that sports clubs were, “thriving despite the economic downturn”.

**Lord Clement-Jones:** My Lords, I thank the Minister for that reply. It is slightly rose-tinted, as the CCPR and Sport England are very concerned about the future of these clubs. There are currently many problems with regulation, not least the proposed withdrawal of the exemption for PPL licences and problems under the Licensing Act 2003. Above all, there are problems as regards the 2010 rating listing, which shows significant increases in rateable value, especially where improvements have been carried out. Added to the proposed withdrawal by some local authorities of discretionary rate relief, this could be disastrous. These clubs are the backbone of sporting activity in this country. What do the Government propose to do about it?

**Lord Davies of Oldham:** My Lords, sports clubs are local. The noble Lord identifies the withdrawal of discretionary rate relief but that is a local matter to be dealt with by local councils, as is their democratic right. We are concerned that this may have adverse effects on some sports clubs, but if they join the Community Amateur Sports Club scheme, to which I referred earlier, they may find some support there which takes account of the withdrawal of the relief.

**Lord Addington:** My Lords, would the Minister agree that amateur sports clubs provide the main driving force for adult sporting activity in this country? Bearing that in mind, would the Government agree

[LORD ADDINGTON]

that it is not enough to say that local authorities should give them support but that there should be positive action from the Government to try to withdraw as many burdens as possible? People do not join a sports club to become the secretary of the organisation; they join to take part.

**Lord Davies of Oldham:** I agree with every sentiment the noble Lord expresses, except criticism of the Government. The noble Lord will know that through the Community Amateur Sports Club scheme, we have given enormous support from central resources to sports clubs, but sports clubs are local institutions dependent upon their local communities. Decisions taken locally have to be respected. I am sure the noble Lord is not suggesting that we should intervene across the whole of the country in every case where a sports club is in some difficulty. What we have got is a scheme that can give some help.

**Lord Clement-Jones:** My Lords, is the Minister aware of the proportion of clubs that belong to the Community Amateur Sports Club scheme? If he does not have those figures to hand, I believe it is 3 per cent. That is not a high proportion of the 150,000 clubs in this country.

**Lord Davies of Oldham:** My Lords, that is because sport in this country has existed over a long period through voluntary effort and commitment and local understanding of the needs of sports clubs. Long may that situation reign. We have a scheme that offers help to those who may need specific relief in certain circumstances and additional funds, and that is how central government should respond.

**Lord Brooke of Sutton Mandeville:** My Lords, can I, through the Minister, congratulate the Foundation for Sport and the Arts on the assistance it gives to sports clubs up and down the country? It is notably illustrated by the fact that its smallest grant was £25, given to a village cricket club to fill in the rabbit holes on the boundary.

**Lord Davies of Oldham:** My Lords, we all know the threat that rabbit holes present to deep fielders on the boundary. I am grateful that it has been remedied in that case. The noble Lord is right to identify the extent to which sport in this country has benefited from lottery funds. We are concerned that we should build up sport in this country as a preparation for the Olympics and as a legacy thereafter.

**Lord Howard of Rising:** If the Minister is so keen on improving sport in this country, rather than giving central assistance, could he consider removing some of the many impediments that sports clubs encounter? I declare an interest as chairman of the National Playing Fields Association.

**Lord Davies of Oldham:** My Lords, the noble Lord would do well to identify these impediments, and then I might indicate how the Government are tackling

them. If one of the impediments is the threat from increased water charging, he will know that last year we intervened to ensure that clubs had some defence against it in areas where the costs were considered to be extravagantly high. He will also know that in the Flood and Water Management Bill we intend to continue those concessions for sports clubs.

**Baroness McIntosh of Hudnall:** My Lords, I declare an interest as a member of the board of the Foundation for Sport and the Arts. Is my noble friend aware that the funds that originally went into the Foundation for Sport and the Arts came from the football pools, not the lottery? However, that does not make the work of the Foundation for Sport and the Arts any less effectual, and I am sure my noble friend would agree that it does not alter the fact that funds from the lottery have made an enormous difference to sport in this country.

**Lord Davies of Oldham:** I am grateful to my noble friend for that correction. She has a long history with regard to these issues and has made a valuable contribution. We were aware that the initial support came from the football pools, but we all know why the National Lottery has had to supplant decreasing returns from the football pools.

## NHS: Staff Question

2.59 pm

Asked By **Baroness Finlay of Llandaff**

To ask Her Majesty's Government what action they are taking to minimise junior doctor staffing gaps on hospital rotas.

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** There are more doctors working in the NHS now than there have ever been in its history, and there are 49,000 junior doctors in training. Clearly, it is the job of trusts and clinical leadership to ensure that they are designing appropriate staff service rotas in accordance with the working time regulations and to ensure patient safety at all times, including cover for the inevitable gaps created by things such as annual leave, maternity leave and out-of-hours training programmes.

**Baroness Finlay of Llandaff:** I thank the Minister for that reply. Does she recognise the results from the BMA survey which show that four in 10 doctors in training are working in understaffed rotas? In accident and emergency that figure is worse at one in six. I declare an interest as my daughter is one of those trainees. More than half of junior doctors reported pressure to work additional, unrecorded hours. They have to toss up between working more than their regulated hours and leaving patients, and they opt to stay with their sick patients. Does she also recognise the need for those trusts that secure derogation from

the European working time directive to plan now to be compliant because that derogation period will run out?

**Baroness Thornton:** My Lords, the survey by the BMA, which supports the implementation of the working time directive, is to be welcomed as a snapshot of the views of a relatively small self-selected number of junior doctors—1,500 out of 49,000. None the less, it provides us with some alerts and concerns, particularly about the training of those junior doctors. The vast majority of the NHS is now compliant with the working time directive and in accident and emergency we now have double the number of doctors and consultants that we had 10 years ago. The noble Baroness will know that patient safety is at the heart of the reorganisation that has taken place. Before the BMA produced its survey, we had recognised the concerns of trainee doctors about their training. My right honourable friend the Secretary of State has asked Medical Education England to review the impact of the European working time directive on doctors in training and the reduced hours that they are working. That will be completed next month and I will be happy to share that with the noble Baroness at that time.

**Lord Morgan:** My Lords, does my noble friend have any information on the impact of the working time directive on such matters as patient deaths, the length of stay or readmittance to hospitals?

**Baroness Thornton:** My noble friend raises an important point. We all accept that tired doctors make mistakes and there is substantial evidence to support that. We believe that the working time directive is improving patient care, not damaging it. Trainee doctors in NHS North West recently conducted their own research, which has just been published. I should be happy to put that in the Library for Members to see because it is very interesting. NHS North West, which adopted the European working time directive a year earlier than the rest of the NHS, conducted a survey on whether this had a detrimental effect on the standardised mortality ratios—that is, the number of deaths in hospital—on the average length of stay and on readmissions. I am happy to report that it showed not only that it did not have a detrimental effect but that there were some signs of improvement. As I say, I commend that research to the House.

**Earl Howe:** My Lords, the noble Baroness did not comment on one aspect of the Question asked by the noble Baroness, Lady Finlay, which was to ask what measures the Government have put in place to ensure that junior doctors are not pressurised by employers to work in excess of the 48-hour limit.

**Baroness Thornton:** I apologise; I did not deal with that derogation. A very small number of 24-hour emergency care services have a permitted derogation to work an average of 52 hours a week rather than 48 hours. Health authorities have until 2011 to comply with the 48-hour working time directive and that time has to be spent sorting that out. In the department,

through Dr Wendy Reid, our national clinical adviser, and her working team, we are providing those health authorities with support and we would be very concerned if there was any sign of doctors being bullied or pressurised into undertaking work that they should not be undertaking or of patient safety being jeopardised. We would want to know about that. In fact, we investigated some issues that had been raised and found that not to be the case.

**Lord Alderdice:** The Minister spoke about the training review that is taking place. There is reason to believe that there may be some suffering on that front. I agree entirely with her that a doctor being wide awake is very much in the interests of patient safety. However, there is another important difficulty with the rota changes: continuity of care.

**A noble Lord:** Question!

**Lord Alderdice:** If a junior doctor is covering many beds in many wards, continuity of care for patients is less. What is the Minister's proposal to address that element of the problem?

**Baroness Thornton:** The noble Lord raises a very important point. I was alluding partly to it when I said that this is an issue of clinical leadership and the reorganisation that is needed at a local level. It would appear from the evidence that is emerging that implementation of the working time directive is pointing to where there are gaps, where there is a need to reorganise and where better leadership is required. It is important to strike a balance between doctors not being exhausted, their being able to continue the care that is necessary and their being able to undertake the training that they need.

**Lord Patel:** Does the Minister agree that if more care, including out-of-hours care, was provided by fully trained specialists, patient care would be safer? Does she further agree that the Government and the profession need to work together to achieve this within five years?

**Baroness Thornton:** I thank the noble Lord for that question. I welcome his support. I hope that he may help us in taking forward those discussions with some of his senior colleagues in the royal schools. We know that Homerton Hospital has completely reorganised its training for its junior doctors. It offers a very good example of the handovers to which the noble Earl referred and of the need for doctors to have the necessary time to undertake specialist training without being whipped off to accident and emergency. The Homerton seems to have tackled those pressures very successfully.

**The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon):** My Lords, I remind all noble Lords, both on Front Benches and Back Benches, that, for an effective Question Time and for the Government to be held properly to account, we need short answers and short questions.

## Child Trust Funds (Amendment) Regulations 2010

### Health and Social Care Act 2008 (Regulated Activities) Regulations 2010

### Health and Social Care Act 2008 (Consequential Amendments No. 2) Order 2010

### Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010

### Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010

### Service Voters' Registration Period Order 2010

*Motion to Refer to Grand Committee*

3.07 pm

*Moved By Baroness Royall of Blaisdon*

That the draft orders and regulations be referred to a Grand Committee

*Motion agreed.*

### Business of the House

*Motion to Refer to Grand Committee*

*Moved By Baroness Royall of Blaisdon*

That the following two select committee reports be referred to a Grand Committee:

Report of the Information Committee on Are the Lords Listening? Creating connections between people and Parliament (First Report, Session 2008–09, HL Paper 138)

Annual Report 2008–09 of the House of Lords Information Committee (2nd Report, Session 2008–09, HL Paper 179).

*Motion agreed*

### Child Poverty Bill

*Order of Consideration Motion*

3.08 pm

*Moved By Baroness Farrington of Ribbleton*

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 7, Schedule 1, Clauses 8 to 16, Schedule 2, Clauses 17 to 31.

*Motion agreed.*

## Equality Bill Report

3.09 pm

*Clause 1: Public sector duty regarding socio-economic inequalities*

### Amendment 1

*Moved by Baroness Warsi*

1: Clause 1, leave out Clause 1

**Baroness Warsi:** My Lords, I rise to move Amendment 1 and to speak to Amendments 2 and 3. It will come as little surprise that we on these Benches still feel very strongly that the public sector duty regarding socio-economic inequalities should be removed from the Equality Bill. As we made clear in Committee in your Lordships' House, it would be very difficult indeed to find anyone who did not think that there were socio-economic problems, and that immediate and effective action should be taken to address these issues.

The problem of socio-economic disadvantage is deeply entrenched, and so it is crucial that action is taken to confront these problems and to have a practical impact on the lives of individuals, families, communities and the country as a whole.

We are living at a time during which the number of children living in poverty has been increasing since 2004. It is expected that the Government will miss their 2010 target to reduce child poverty by 600,000 people. People on free school meals are over 180 times more likely not to get a single good GCSE than to get three "A"s at A-level. The rate of exclusion for violence against a pupil is three times higher for secondary schools in most deprived areas, compared with 10 per cent in the least deprived. There is a very serious problem of socio-economic disadvantage, and that is something which we can all agree upon.

The difference here is that we believe that real action should be taken in order to address the root causes of the problem, and we believe that these clauses are an empty gesture at a very serious problem. Worse still, we are not alone in these thoughts. This has been conceded by the Government in defending the Bill, saying: "What is the harm in it?" We also heard from the noble Lord, Lord Lester, who at Second Reading referred to the duty as,

"a vague and unworkable exercise in political window-dressing that attempts to suggest that Labour alone is concerned to reduce socio-economic inequalities".—[*Official Report*, 15/12/09; col. 1416.]

We share the noble Lord's disappointment. I see that by Committee, however, the noble Lord, Lord Lester—who does not appear to be in his place today—after spending time with his friends, I think he said, had been persuaded that he would no longer support us in opposition to this part of the Bill. This is despite a clear statement to the contrary at Second Reading and his continuing to refer to it as,

"the so-called duty, which is gesture politics, politically motivated, too vague, and unlikely to achieve its important aim".

He referred to it as,

"a duty 'writ in water'".

We read that in his letter to the *Guardian* on 23 January 2010.

I am therefore frankly confused that the noble Lord, Lord Lester, can now accept or even promote the argument against the duty, and yet is suddenly of the persuasion that it would be better not to remove it. I very much hope that political grandstanding is not becoming all the rage. We, on the other hand, stand by our opposition to the clause for the reasons which were presented to your Lordships in Committee. We are concerned that this duty has been inelegantly tagged on to the beginning of a Bill to make an empty gesture to the very serious socio-economic problems embedded in this country. We find it an unacceptable way to make legislation, particularly about a problem which merits and deserves important and real action.

In this House, it is not our duty to create press releases for the Government. We are here to scrutinise legislation and to pass considered and rational laws. I fail to see how Part 1 of the Bill represents these criteria.

I am disappointed that the Government have not acknowledged that there is a qualitative difference between socio-economic disadvantage and socio-economic inequality. I fear that these two categories have been conflated. The result is that we have three clauses at the beginning of the Equality Bill which may represent some cutting back of the weeds of socio-economic inequality, but will do nothing to address the root causes of underlying rot beneath.

3.15 pm

The empty gesture is part of the reason why we cannot just sit back and accept the Government's claim that the provisions will hopefully "do no harm". That is not necessarily true. There is the harm of raising expectations about a duty which will, according to the Government's guide to the duty, "do almost nothing". It will not create a new equality strand; or a justiciable right for individuals; or address discrimination against individuals on account of socio-economic factors; or affect or determine operational decisions; or require public bodies to use their resources to remove unequal outcomes in every case that is identified. I am troubled by the fact that people may receive false hope from a clause which will do none of these things. Moreover, to pass legislation which purports to do no harm, as was referred to in another place, while no one can really pinpoint exactly what it does do, raises the concern that there may be unintended consequences.

The noble Lord, Lord Lester, was nervous about this in Committee when he stated that,

"its presence in the Bill could give rise to politically motivated attempts to use judicial review to challenge a wide range of decisions by already overburdened public authorities, diverting energy and attention from the serious problems of discrimination, victimisation and harassment that the Bill is designed to tackle".— [*Official Report*, 15/12/09; col. 1416.]

Will the Minister really still face noble Lords and say that there is no risk of harm in legislating in this way? She will doubtless inform us that the clause is there for strategic decision-making and to force authorities to take these factors into account. I fail to see exactly how this will be the case.

I have spoken at length on this issue and for that I ask for the patience of the House. I hope that your Lordships will understand that we on these Benches

are keen to address the deeply entrenched problems of socio-economic disadvantage. We cannot however lend our support to an empty political gesture which will not address the problems that we are so keen to tackle. I beg to move.

**Baroness Northover:** My Lords, I oppose the noble Baroness's amendments on socio-economic duty. We fully accept the principle behind what the Government are proposing, although we have been critical of whether this measure will deliver it. My noble friend Lord Lester of Herne Hill, who is unfortunately not here today because he is at a long-arranged meeting, gave long thought, as noble Lords will imagine, to how this might be done differently. Indeed, he came up with a major improvement. However, the Government indicated that they would not support his changes. He therefore felt that in the interests of time and the far greater merits of the Bill as a whole that he should not press on with it.

My noble friend has worked extremely hard to bring this legislation about in the first place, with his own Bill and with his extraordinary work throughout all the stages of this Bill. He strongly believes that the Bill will contribute to the reduction of inequality. Nothing should be allowed to deflect from that and there should be no delay. We do not think that the Conservatives are right simply to strike this provision from the Bill. It was extraordinary to hear the previous presentation about the prevalence of inequalities and then the proposal that we should strike this out. We look forward in due course to further discussions on how this provision, the substance of which we have always welcomed, will be delivered.

**The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon):** My Lords, these amendments revisit the debate on the need for the socio-economic duty. Since we have discussed the duty at some length at each stage of the Bill, I will be as brief as possible. The duty will create an overarching legal requirement on central government departments, local authorities and key public bodies to take account of the need to reduce socio-economic inequalities. This measure is necessary because without it we will never fully tackle the underlying causes of many of the inequalities addressed elsewhere in the Bill. Inequality and disadvantage are not only associated with issues to do with age, gender, disability or ethnicity; at the root of many of those inequalities is a much broader one; namely, persistent poverty.

This is not a matter of press releases or gesture politics. It is a reality for too many people in our country. As the noble Baroness says, I know that the Opposition and the Liberal Democrats share our desire to address this issue. At the Hugo Young lecture in November, David Cameron said that,

"we should focus on the causes of poverty ... we should focus on closing the gap between the bottom and the middle ... focusing on those who do not have the chance of a good life is the most important thing to do".

That is exactly what we are trying to do.

The comprehensive report from the National Equality Panel, published in January, showed how inequality rose very significantly during the 1980s. It also showed

[BARONESS ROYALL OF BLAISDON]

that the Government have successfully managed to stop that rise. In some areas, we have made good progress in reversing it. It is equally clear that real challenges remain. The report shows how inequalities of outcome related to socio-economic background embed themselves even before children enter school, and then are reinforced and accumulate throughout the life cycle, through the school years and entry into the labour market, right through to retirement.

Public bodies must tackle these inequalities in a concerted and sustained way. That is what this duty will require. They will need to think strategically about what more they can do to address socio-economic disadvantage individually and with their partner organisations when they decide their key priorities, set their targets and plan and commission their services. That goes directly to the heart of the matter.

There was much debate in Committee about whether the Government should be tackling the outcomes or causes of socio-economic disadvantage. To be clear, we are trying to break the cycle of deprivation, where the effects—the outcomes of past disadvantage such as childhood poverty, poor educational achievement, poor housing and health et cetera—become the causes of future disadvantage and inequality. This duty will help us to break that cycle. We have made clear in the wording of the duty that we want to see real change with tangible, measurable outcomes.

The Scottish and Welsh Governments want this too. Clause 2 will enable the duty to be extended to cover public bodies in Wales and Scotland. It is noticeable that the Scottish Government, having been initially sceptical about the duty, held a public consultation that overwhelmingly backed it and then asked to be included.

Clause 3 is necessary to ensure that the duty has its intended effect, influencing the key strategic decisions that public bodies make without giving rise to private rights which would divert resources away from benefitting the public as a whole. The noble Baroness, Lady Warsi, again made reference to the comment of my right honourable friend Vera Baird that there is no harm in this. As I made clear in Committee, the noble Baroness quotes the Solicitor-General selectively. She also said it is a strong measure and that,

“It will help us drive progress and promote better outcomes for people who need the most help”.—[*Official Report*, Commons, Equality Bill Committee, 11/6/09; col. 159.]

This is overwhelmingly the right thing to do.

The duty is an essential part of the Bill. It underpins all the excellent work that we and others in the public sector are doing to tackle inequality and disadvantage. It will have a significant positive effect on the way that public services are planned and delivered. With minimum bureaucracy and maximum flexibility, the duty will make clear that tackling all inequalities—whether they arise from characteristics such as age, ethnicity or disability or are due to poverty more generally—is a core function of public services. It is the right thing to do. It is extremely important that we all demonstrate our commitment to tackling poverty and disadvantage. I ask the noble Baroness to withdraw her amendment.

**Lord Avebury:** My Lords, before the noble Baroness sits down, does she agree that the noble Baroness, Lady Warsi, should have been influenced by all the discussion that has taken place outside this House? As well as the Scottish and Welsh Governments, as the Minister said, the Equality and Human Rights Commission have forthrightly supported the original purpose of these clauses. My noble friend Lord Lester has wisely altered his opinion. It is a pity that Oppositions do not sometimes do that, as Governments do.

**Baroness Royall of Blaisdon:** My Lords, I agree that there has been much debate from many organisations, such as the CABs, around these clauses. They are right to urge us to change our minds. I am glad that, when people listen to the arguments, from time to time they change their minds.

**Baroness Warsi:** My Lords, I was interested to hear the comments from the Liberal Democrat Front Bench. The noble Lord, Lord Avebury, referred to the Equality and Human Rights Commission and outside bodies urging us to rethink and change our minds. I take on board those comments, but the noble Lord will also be aware that the noble Lord, Lord Lester, gave an explanation for his change of mind. If I recall, that change came from his having dinner over Christmas with some Irish, left-wing-leaning friends—not the Equality and Human Rights Commission. Clearly he is listening to other bodies and friends to change his mind.

The central point in this matter is that socio-economic disadvantage is a severe issue. There is no doubt about that. I take issue with the Minister on socio-economic disadvantage. It has got worse under this Government. The gap between the richest and poorest has got wider. Social mobility has got worse. I quoted the statistics earlier.

I am extremely familiar with the Hugo Young lecture to which the Minister referred. The lecture, given by my right honourable friend the leader of the Opposition, was extremely good and I am grateful that she referred to it. It effectively pointed out that socio-economic inequalities are dealt with by following a certain policy direction and above all by having political will, which I would say the current Government do not appear to have. When you have policies and a benefit system that effectively keep families apart, of course you are going to have worse socio-economic disadvantage in those communities, but you cannot deal with socio-economic inequality by legislating it away in the 13th year at the end of a tired Government.

**Baroness Royall of Blaisdon:** If I might say so, I think that the noble Baroness's memory about what has been happening over the past 12 or 13 years is somewhat selective. We have made significant progress over the past 12 years in addressing inequalities and there have been notable reductions in child poverty and pensioner poverty, and significant improvements for poor children in school achievement. Yes, I recognise, like the noble Baroness, that there is a lot more to be done. That is why we have included these clauses in the Bill, because we believe that this is one of the ways forward.

**Baroness Warsi:** My Lords, I do not doubt the sincerity of the Minister in her commitment to this cause, but we on these Benches do not feel that this is the right way to deal with it. At this stage, I would like to test the opinion of the House.

3.26 pm

*Division on Amendment 1*

*Contents 107; Not-Contents 197.*

*Amendment 1 disagreed.*

### Division No. 1

#### CONTENTS

Allenby of Megiddo, V.	Lindsay, E.
Alton of Liverpool, L.	Lucas, L.
Anelay of St Johns, B. [Teller]	Luke, L.
Astor of Hever, L.	Lyell, L.
Attlee, E.	McColl of Dulwich, L.
Baker of Dorking, L.	Macfarlane of Bearsden, L.
Bowness, L.	MacGregor of Pulham
Bramall, L.	Market, L.
Brittan of Spennithorne, L.	Marland, L.
Brooke of Sutton Mandeville,	Mayhew of Twysden, L.
L.	Miller of Hendon, B.
Brougham and Vaux, L.	Montrose, D.
Buscombe, B.	Morris of Bolton, B.
Byford, B.	Murphy, B.
Campbell of Alloway, L.	Naseby, L.
Cathcart, E.	Neville-Jones, B.
Cobbold, L.	Noakes, B.
Colwyn, L.	Norton of Louth, L.
Cope of Berkeley, L.	O’Cathain, B.
Craig of Radley, L.	Onslow, E.
Crathorne, L.	Palmer, L.
De Mauley, L.	Patten, L.
Deech, B.	Pearson of Rannoch, L.
Denham, L.	Pilkington of Oxenford, L.
Dixon-Smith, L.	Platt of Writtle, B.
Dundee, E.	Quinton, L.
Eames, L.	Rawlings, B.
Eccles, V.	Renton of Mount Harry, L.
Eccles of Moulton, B.	Roberts of Conwy, L.
Eden of Winton, L.	Rogan, L.
Elton, L.	Rotherwick, L.
Ferrers, E.	Ryder of Wensum, L.
Fookes, B.	Saltoun of Abernethy, Ly.
Freeman, L.	Sanderson of Bowden, L.
Gardner of Parkes, B.	Seccombe, B. [Teller]
Geddes, L.	Selborne, E.
Glentoran, L.	Selkirk of Douglas, L.
Goodlad, L.	Selsdon, L.
Hamilton of Epsom, L.	Sharples, B.
Hanham, B.	Shaw of Northstead, L.
Hayhoe, L.	Shephard of Northwold, B.
Henley, L.	Shrewsbury, E.
Higgins, L.	Skelmersdale, L.
Hodgson of Astley Abbots,	Stevens of Ludgate, L.
L.	Stewartby, L.
Howard of Rising, L.	Strathclyde, L.
Howe, E.	Swinfen, L.
Howell of Guildford, L.	Taylor of Holbeach, L.
James of Blackheath, L.	Thomas of Swynnerton, L.
Jopling, L.	Tugendhat, L.
Kilclooney, L.	Verma, B.
Kimball, L.	Waddington, L.
King of Bridgwater, L.	Walpole, L.
Laird, L.	Warsi, B.
Lawson of Blaby, L.	Wilcox, B.

#### NOT CONTENTS

Acton, L.	Ahmed, L.
Addington, L.	Alderdice, L.
Afshar, B.	Alli, L.

Alliance, L.	Harris of Richmond, B.
Anderson of Swansea, L.	Harrison, L.
Archer of Sandwell, L.	Hart of Chilton, L.
Ashdown of Norton-sub-	Haskel, L.
Hamdon, L.	Haworth, L.
Ashley of Stoke, L.	Henig, B.
Avebury, L.	Hilton of Eggardon, B.
Bach, L.	Hollis of Heigham, B.
Barnett, L.	Howarth of Breckland, B.
Bassam of Brighton, L.	Howarth of Newport, L.
[Teller]	Howe of Idlicote, B.
Berkeley, L.	Howells of St. Davids, B.
Best, L.	Hoyle, L.
Billingham, B.	Hughes of Woodside, L.
Bilston, L.	Irvine of Lairg, L.
Birt, L.	Jay of Ewelme, L.
Blood, B.	Joffe, L.
Bonham-Carter of Yarnbury,	Jones, L.
B.	Jones of Cheltenham, L.
Borrie, L.	King of West Bromwich, L.
Boston of Faversham, L.	Kingsmill, B.
Bradford, Bp.	Kinnock, L.
Bradley, L.	Kirkhill, L.
Bradshaw, L.	Krebs, L.
Brett, L.	Layard, L.
Broers, L.	Lea of Crondall, L.
Brooke of Alverthorpe, L.	Levy, L.
Brookeborough, V.	Lipsey, L.
Brookman, L.	Listowel, E.
Butler-Sloss, B.	Livsey of Dalgarth, L.
Campbell of Surbiton, B.	Low of Dalston, L.
Campbell-Savours, L.	Macdonald of Tradeston, L.
Carter of Coles, L.	McIntosh of Haringey, L.
Chidgey, L.	McIntosh of Hudnall, B.
Chorley, L.	MacKenzie of Culkein, L.
Christopher, L.	Mackenzie of Framwellgate,
Clark of Windermere, L.	L.
Clarke of Hampstead, L.	McKenzie of Luton, L.
Clement-Jones, L.	McNally, L.
Clinton-Davis, L.	Maddock, B.
Corston, B.	Mallalieu, B.
Cotter, L.	Mar, C.
Coussins, B.	Martin of Springburn, L.
Craigavon, V.	Massey of Darwen, B.
Crawley, B.	Maxton, L.
Cunningham of Felling, L.	Meacher, B.
Davies of Coity, L.	Miller of Chilthorne Domer,
Davies of Oldham, L. [Teller]	B.
Dear, L.	Mitchell, L.
Donoghue, L.	Montgomery of Alamein, V.
Drayson, L.	Morgan, L.
D’Souza, B.	Morgan of Drefelin, B.
Dubs, L.	Morgan of Huyton, B.
Dykes, L.	Morris of Aberavon, L.
Elystan-Morgan, L.	Morris of Handsworth, L.
Evans of Parkside, L.	Morris of Manchester, L.
Evans of Temple Guiting, L.	Myners, L.
Evans of Watford, L.	Neuberger, B.
Falkner of Margravine, B.	Newcastle, Bp.
Farrington of Ribbleton, B.	Northover, B.
Faulkner of Worcester, L.	O’Loan, B.
Fearn, L.	Ouseley, L.
Finlay of Llandaff, B.	Patel, L.
Foster of Bishop Auckland, L.	Patel of Blackburn, L.
Fyfe of Fairfield, L.	Pendry, L.
Gale, B.	Pitkeathley, B.
Garden of Frogna, B.	Ponsonby of Shulbrede, L.
Gibson of Market Rasen, B.	Prashar, B.
Glasgow, E.	Prosser, B.
Golding, B.	Putnam, L.
Goudie, B.	Quin, B.
Graham of Edmonton, L.	Quirk, L.
Greengross, B.	Ramsay of Cartvale, B.
Grocott, L.	Razzall, L.
Hamwee, B.	Redesdale, L.
Hannay of Chiswick, L.	Rennard, L.
Harries of Pentregarth, L.	Roberts of Llandudno, L.
Harris of Haringey, L.	Rooker, L.

Rosser, L.	Thomas of Winchester, B.
Rowe-Beddoe, L.	Thornton, B.
Royall of Blaisdon, B.	Tomlinson, L.
Sandwich, E.	Tunncliffe, L.
Scott of Needham Market, B.	Turner of Camden, B.
Sewel, L.	Tyler, L.
Shutt of Greetland, L.	Wallace of Saltaire, L.
Simon, V.	Wallace of Tankerness, L.
Slim, V.	Walmsley, B.
Snape, L.	Walton of Detchant, L.
Stair, E.	Warner, L.
Steel of Aikwood, L.	Warnock, B.
Stone of Blackheath, L.	Waverley, V.
Strabolgi, L.	Wedderburn of Charlton, L.
Symons of Vernham Dean, B.	Whitaker, B.
Taverne, L.	Wilkins, B.
Taylor of Blackburn, L.	Williams of Crosby, B.
Taylor of Bolton, B.	Williams of Elvel, L.
Tenby, V.	Williamson of Horton, L.
Teverson, L.	Young of Hornsey, B.

3.40 pm

**Clause 2 : Power to amend section 1**

*Amendment 2 not moved.*

**Clause 3 : Enforcement**

*Amendment 3 not moved.*

**Schedule 1 : Disability: supplementary provision**

*Amendment 4*

*Moved by Baroness Warsi*

4: Schedule 1, page 134, line 16, at end insert—

“( ) Without prejudice to the operation of sub-paragraph (2), the mental impairment consisting of or resulting from depression that has ceased to have a substantial adverse effect on a person’s ability to carry out normal day to day activities, shall always be treated as if that effect is likely to recur if the person has had within the last 5 years a previous episode of such impairment which has had a substantial adverse effect on the person’s ability to carry out normal day to day activities for a period of 6 months or more.”

**Baroness Warsi:** My Lords, Amendment 4 is designed to address how long-term or fluctuating conditions fit into the provisions of the Bill.

As we stated in Committee, we welcome the fact that the Bill already contains some provisions to address fluctuating and recurring conditions. Paragraph 2(2) of Schedule 1 states:

“If an impairment ceases to have a substantial ... effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur”.

From the example given in the Explanatory Notes, we can glean that “effect is likely to recur” means that the condition has been diagnosed as an underlying mental health condition.

Our concern is that many fluctuating and recurring conditions are very hard to diagnose, and this situation may be exacerbated by considerable debate in the medical profession. The end result, of which we are afraid, is that some people may not be covered by the protective provisions in the Bill purely because it is too difficult to forecast accurately whether the condition is likely to recur.

In her response, the noble Baroness, Lady Thornton, stated that this amendment would create a risk that those with depression are treated more favourably than others and that it could blur the line between those who have suffered a single period of depression and those who have a clear illness. Although I take those points on board, the noble Baroness did not address the key issue, which is that it is very difficult to draw the line between what might be a single period, or even several discrete episodes, of an illness such as depression, and an underlying long-term condition. Evidence shows that at least 50 per cent of people will have a recurrence following their first episode and that at least 70 per cent of people will have one following their second. However, this can often be confirmed only retrospectively.

I fear that legal wrangles will arise from this part of the Bill whereby the courts will have to make the final decision. That is far from ideal. Moreover, diagnostic manuals drawn from the National Institute for Health and Clinical Excellence guidelines say that moderate or severe depression is a time-limited disorder which will typically last up to six months. That is why we have included the period of six months. Therefore, it is not an arbitrary figure but comes from those guidelines. It often cannot be confirmed that specific periods will last for up to 12 months. If it also cannot necessarily be determined whether the depression should be classed as discrete episodes rather than as a long-term condition, it is likely that those with depression could be left out of the Bill’s provisions.

The noble Baroness, Lady Thornton, was nervous that this amendment could afford greater protection to those with depression than to those who have other impairments. However, that is already the case for some other conditions which are rightly deemed to be covered by the protection of the provisions although the facts of those cases might not quite fit the definition given in the Bill; patients with cancer, HIV or multiple sclerosis, for example, are all deemed to come under the definition of disability. Is it therefore correct to say that the amendment could not be accepted because it would treat depression more favourably? Surely the Government have already accepted that this is necessary in some cases. They have already said that the position is difficult as there could be two periods of depression that were not connected and, therefore, did not represent an underlying problem. That might be true, but the situation illustrates the difficulty of diagnosis. Sometimes it could represent distinct episodes, but at others it could represent an underlying condition. A different trigger is not necessarily conclusive proof that they are distinct episodes.

The main difficulty is clarifying exactly when an underlying condition starts. We are looking to achieve certainty and clarity in the Bill and to ensure that protection is there for all who should have it. I am not at all sure that the provisions in this area achieve that.

3.45 pm

Paragraph 1 of Schedule 1 gives a regulation-making power. Is this something that the Government would consider using to include a condition such as depression? Will the Minister give a commitment to investigate

further whether there is a need to do so? Alternatively, how do the Government hope to use guidance in this respect? It would be very useful to know their exact intentions on demonstrating a commitment to the inclusion of everyone who should be entitled to protection.

I turn to Amendment 14. As I said in Committee, the Bill should be about achieving real change. The noble Lord, Lord Low, made a compelling case that access to information for disabled people remains an area where inequality is still rife and that real change is needed. Fifteen years after this party took the original Disability Discrimination Act through Parliament, we support this amendment to help disabled people share in the information age. However, we must not assume that improvement will necessarily follow. This seems to be an opportunity for the Equality and Human Rights Commission to distinguish itself. These Benches certainly want to know what plans it has to take advantage of this new provision to drive real changes for disabled people. In Committee, we tabled amendments similar to Amendments 20A and 44A to probe the Minister on the extent and cost of reasonable adjustments. I look forward to the Minister's response.

I look forward to the Minister's response to these amendments and to Amendment 60 in the name of the noble Lord, Lord Low. I have some sympathy with it but will wait to hear whether the Minister thinks that it is necessary. I beg to move.

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** My Lords, I shall speak briefly to Amendment 14 in the name of my noble friend Lady Royall. This amendment makes it explicit that to satisfy the first and third requirements of the reasonable adjustment duty, covering changes to provisions, criteria and practices and the provision of auxiliary aids, those bound by the duty must take reasonable steps to provide information in an accessible format where disabled people would otherwise be at a substantial disadvantage in the way that information is being disseminated.

When the noble Lord, Lord Low, spoke in Committee on 13 January, he told us that removing the barriers created by providing inaccessible information is as important to the inclusion of those with print disabilities as the removal of the barriers created by physical features is to those with physical disabilities. We were left in no doubt about the prevailing strength of feeling on this issue during the very good debate that followed. I agreed that we would take the matter away and return to it on Report.

We share the same objectives as the noble Lord, Lord Low, here. We want a duty that is set out in clear and unmistakable terms so that both those with rights and those with responsibilities understand what they are. We want to see a significant increase in the reported levels of compliance with the duty where it concerns the provision of information in accessible formats. It is important that all kinds of organisations consider the information they provide to their audiences and what steps they may need to take to bring themselves into line with the duty. As we said in Committee, we consider that the duty as drafted works. That said, however, and on further reflection, we have decided to act to move the matter beyond doubt.

This amendment reinforces what already appears in the Bill and provides greater transparency. It should enable the Equality and Human Rights Commission to exemplify with authority in its statutory codes and guidance how the duty should be delivered for those disabled people who experience information disadvantage. These debates may well cause the EHRC to consider whether an inquiry into the provision of accessible information would be a timely and worthwhile intervention for it to make.

We are proud of this amendment. We believe that if it is properly built on, it could be a turning point for people with information disabilities. I therefore commend it to the House. I am also very grateful to the noble Baroness for her support. At the end of this debate, I shall give the Government's view on the other amendments in this group, including that of the noble Baroness.

**Lord Low of Dalston:** I see some difficulty with Amendment 4 as drafted. One has to wonder why depression is singled out. There is also a difficulty with assuming that depression is likely to recur. However, the definition of disability is something which presents the greatest obstacle for disabled people wishing to make claims of discrimination. A particular difficulty surrounds the application of the term "long-term". Although we may not be able to achieve a final solution this afternoon, this is an issue to which Parliament will need to return at some stage.

I want to speak mainly to government Amendment 14, which has just been spoken to by the noble Baroness, Lady Thornton, and also to Amendments 20A, 44A and 60, which are in my name. Before I do, however, let me make two general points. First, those representing disabled people are very appreciative of the extent to which the Government have taken their concerns on board during the passage of the Bill, particularly as it has passed through your Lordships' House. They are also particularly appreciative of the efforts of the Bill team and departmental lawyers to find solutions to sometimes quite intractable problems and to incorporate them in the Bill. This testifies to the good outcome that can be achieved when you have a listening Government and a House of Lords which knows its onions subjecting legislation to careful scrutiny.

Secondly, I hope it will be seen as a helpful move in expediting Report stage to have grouped together all these amendments which relate to disability. This entails some sacrifices in terms of presentation and getting things on the record, but I hope that it will nevertheless be win-win and that we will all be net gainers.

The amendment on which I want to focus, however, is government Amendment 14. In Committee, as the noble Baroness has reminded us, I moved an amendment to add an additional reasonable adjustment requirement, to avoid the disadvantage caused by the provision of information in an inaccessible form. I pointed out that we had lost all reference to accessible information in the Bill. I was very gratified by the strong support that noble Lords gave my amendment both in Committee and privately afterwards. I place on record my appreciation of that support. The noble Lord, Lord Elton, put his finger on it when he said:

"The Committee needs to know how adding the same obligation to this statute will remedy the failure of similar provisions in

[LORD LOW OF DALSTON]  
 earlier statutes. Is not some stronger measure or different approach needed to relieve this intolerable situation?"—[*Official Report*, 13/1/10; col. 558.]

The Government agreed to take the matter away and return to it today and this is the result. I believe that this is a case where the Government can genuinely claim to have listened and responded appropriately and I welcome the amendment wholeheartedly. I believe that this is the stronger measure that the noble Lord, Lord Elton, was calling for. It is not in exactly the form that I moved in Committee, but I believe that, to all intents and purposes, it gives us the requirement that I was seeking.

As I think the Minister recognises, this is potentially a major step forward for anyone with a print disability of any kind. Of course, as she said, a change in the law does not of itself change anything. However, the change that this amendment signals and potentially delivers will afford a much more solid basis for robust enforcement action by regulators, advocacy organisations and disabled people themselves. I believe that this is a positive outcome for which the Government can take real credit and I welcome it unreservedly. Businesses and public sector bodies now need to think carefully about what they need to do to comply with this duty and promptly take action, as I expect this duty to be vigorously enforced.

I turn briefly to the remaining amendments in the group. I tabled Amendment 60 for Committee, but, under pressure of time, I did not move it on the understanding that the Government would take it away and see if they could accommodate it. I am pleased to say that we have had constructive discussions and, as a result, I have now retabled the amendment. The intention is simply to put the universal understanding of the present law beyond doubt in statute.

As regards Amendments 20A and 44A, first, I need to point out that there are a couple of errors on the Marshalled List. Amendment 20A relates to line 25, not 35, on page 137, and Amendment 44A relates to line 14, not line 4, on page 193.

Secondly, I must apologise for the fact that they are late amendments. This reflects the fact that discussions are still ongoing. The amendments reflect the stage that I believe the discussions have reached. I have accepted the Government's formulation—"avoid the disadvantage"—in Schedule 2 but believe that it is necessary to spell out exactly what that means, because if we do not there is a risk that the intention to reproduce the current law, which everyone shares, is put in doubt. The issue is quite complex but I believe that the Government are now seized of the fact that there may be a problem and also that there may be a need to make changes to Schedule 15, on associations, to reflect those in Schedule 2. I wish to give the Government's continued reflection all possible encouragement in the hope that they will be able to return with the solution at Third Reading.

**Baroness Thornton:** My Lords, Amendment 4 in the names of the noble Baronesses, Lady Warsi and Lady Morris, is a recurring amendment, which we debated in Committee on 11 January. It would make an addition to the provisions in Schedule 1 for some people who experience depression. It would apply only to a person

who in the past five years has had a period of depression that has had a substantial adverse effect on their ability to carry out normal day-to-day activities for a period of six months or more. It would enable them always to be treated as though that substantial adverse effect was likely to recur and thus meet the long-term element of the definition of disability.

The Government's position, which I set out on 11 January, has not changed. I am happy to set it out again today and to try to provide such further reassurance as I am able. We recognise, of course, that depression can have a profound effect on a person's life, but we do not consider that extending the Equality Bill in this way is an appropriate way forward to deal with that issue.

Paragraph 2(2) of Schedule 1 already provides for people whose impairment has fluctuating or recurrent adverse effects. That provision can, of course, help people with recurring periods of depression to benefit from the Bill's protection. If a person has experienced a six-month period of depression that has had a substantial adverse effect on their normal day-to-day activities and that effect is likely to recur, the Bill enables that effect to be treated as continuing. It would apply regardless of whether the previous period was within the past five years.

The relevant test of whether something is likely to recur has been held by the House of Lords to mean only that something "could well happen", rather than that it had to be "probable" or "more likely than not". This test is relatively easy to satisfy and so anyone whose depression could well recur would be covered by the provision as it stands.

If we accepted the amendment, it would result in some people with depression being treated differently from others who experience periods of ill health or impairment, which can also have substantial adverse effects. I think that we were right to suggest then—and I repeat it now—that any such different treatment might well have a stigmatising effect on people with depression, which would be a wholly unwelcome outcome.

The noble Baroness is right that it is often not possible to say whether someone has an underlying mental condition. I remind the House that we amended the definition in the 2005 Act, which we are carrying forward into this Bill, to remove the requirement for mental health impairments to be well recognised clinically and so increase protection for people with mental health problems. Of course, in this Bill we have extended protection to perception, so a person with a depressive condition who did not satisfy the Bill's definition of a disabled person would be protected if, for example, their employer discriminated against them because he considered mistakenly that the impairment was likely to recur. This would also cover situations where an employer acted as a result of a prejudice against the mental illness that he thought his employee had. Therefore, given the provision already in Schedule 1, we believe that it is unnecessary to make the addition proposed in this amendment.

4 pm

Amendments 20A and 44A in the names of the noble Lord, Lord Low, and the noble Baroness, Lady Campbell, address how the reasonable adjustment

duty works in the context of services and functions where a physical feature puts a disabled person at a substantial disadvantage and seek to import some of the familiar language from the Disability Discrimination Act. One of the benefits of this Bill is that it simplifies and harmonises discrimination legislation. These amendments, which apply only to services and public functions, do not achieve that result. Might they be taken to imply that similar considerations should not feature in the world of work? I am sure that the sponsors of the amendments would be horrified at that suggestion. We are wary of unintended consequences. However, as the noble Lord, Lord Low, has implied in his remarks, this is what you might call work in progress, so we would like to give further consideration to this pair of amendments. On that basis, I ask the noble Lord, Lord Low, not to press his amendments.

Finally, in Clause 210, Amendment 60, tabled by the noble Lord, Lord Low, would define “substantial” for the purposes of the Bill. We use the word on a number of occasions in relation to disability provisions—for example, where we refer to people being at a “substantial disadvantage” for the purposes of the reasonable adjustment duty. The definition proposed by the noble Lord, Lord Low—

“more than minor or trivial”—

is the one that appears in guidance on matters to be taken into account in determining questions relating to the definition of disability and in the DRC’s code of practice for employment and occupation. Both of these support people working with the Disability Discrimination Act and we would expect identical references to appear in the statutory guidance that will support the Bill’s introduction. We consider the case law to be settled and clear.

The motive behind the amendment—to ensure legal certainty and to ensure that “substantial” can continue to be read in the widest possible terms—is understandable. We have been told that the consequences would be catastrophic for disability discrimination law if the courts were to interpret the word differently from the way in which they have hitherto and thus raise the threshold before the protection is assured.

While we do not anticipate the potential future difficulties that the noble Lord, Lord Low, and his legal advisers fear, for the reasons that I have set out briefly, we are minded to move to address the considerable concern that they have expressed and to put the matter beyond doubt. On that basis, the Government will accept the noble Lord’s amendment.

**Baroness Warsi:** My Lords, I thank the Minister for her detailed response. I also listened to the detailed response given to my amendment by the noble Lord, Lord Low. In those circumstances, I beg leave to withdraw the amendment.

*Amendment 4 withdrawn.*

### **Clause 8: Marriage and civil partnership**

#### *Amendment 5*

*Moved by Baroness Coussins*

**5:** Clause 8, page 5, line 27, leave out “marriage” and insert “marital status”

**Baroness Coussins:** My Lords, the amendments in this group all seek to achieve the same, specific objective: to give the same protection from discrimination in employment on grounds of being married or in a civil partnership to all people who might suffer discrimination on the ground of their marital status. In other words, anyone who is unfairly discriminated against by an employer or prospective employer simply because they are unmarried, widowed or divorced should have a legitimate complaint of unlawful discrimination in the same way as a married person currently does.

These are the same amendments that I brought forward in Committee but which I withdrew because the Government argued that the evidence was not strong enough to justify their acceptance. I should like to try again to convince the Government that these amendments are important and should be incorporated into the Bill.

There are three main reasons for this. First, the purpose of the Bill is meant to be to harmonise protection and to strengthen and extend protection in certain circumstances. For example, the provisions on age discrimination are being extended and new provisions on gender reassignment are being introduced. The marital status gap is an obvious loophole, which has needed plugging since 1975 when the Sex Discrimination Act first came into force. Employment practices and social norms and expectations have changed since then and discrimination against married women in the workforce is much less of an issue than it was, but the Government, rightly in my view, have decided to retain and not abandon protection from marriage discrimination in case its removal should have the unintended consequence of triggering the revival of unacceptable behaviour. The Government should also take the opportunity to extend similar precautionary protection from marital status discrimination across the board. That would be in line with the overall strategy of the Bill, which I do not think was ever meant to be just a tidying-up exercise to consolidate the dozens of different pieces of disparate equality law.

Secondly, I am concerned that in an economic climate for employers of serious cost-cutting and cutbacks it is quite possible that certain work-related benefits might be targeted and subject to just this sort of discriminatory revision. New and often subtle ways of discriminating might well creep back or emerge. No one, of course, would be able to get away with refusing, let us say, relocation expenses to a married employee, but an employer might lawfully decide, if the Bill remains as it is, to save a bit of money by saying that single employees were no longer eligible for relocation costs. Other ways in which single people could face marital status discrimination might include through not being entitled to the same terms of compassionate leave as married employees, being required to work shifts or unsocial hours or being required to work on days, such as Christmas Day, from which married people were first in line to be excused. These examples would not be money-saving for an employer but they are examples of the type of practice that used to be common and might easily be revived if the message of a piece of flagship new legislation from the Government is that only married employees continue to deserve marital status protection at work.

[BARONESS COUSSINS]

Thirdly—I hope that this part of my argument might persuade the Government to think carefully about accepting my amendments—marital status protection is already the accepted norm or status quo for very large numbers of people. It might not be enshrined in the Sex Discrimination Act but it is what most people assume already exists. Hundreds of thousands of employees in this country work for companies or organisations with their own equal opportunities policies, where marital status is included in the list of criteria and where discrimination is prohibited. It is always the case that marital status protection applies to all employees, not just the married ones.

In Committee I cited a few examples of prominent employers from the public, private and voluntary sectors where this is the case. I have investigated a bit further and have found many dozens of employers who include marital status in their equality policies. I cannot find a single one that has a policy to protect only married people in the way in which the Sex Discrimination Act does and this Bill now proposes to continue. In particular, I hope that the Government will pause to ask why a policy of across-the-board marital status protection is good enough for the 524,000 people who work in the Civil Service and the more than 2,000 people who work in both Houses of Parliament but for some reason is not appropriate to include in the legislation for everybody else.

It has been suggested to me that there may well be situations where an employer legitimately and fairly needs to discriminate against a person on the ground of their marital status to preserve standards of good governance or ethics—for example, to avoid having a cohabiting couple being co-signatories to a bank account. That is a fair point, but it would apply equally to a married couple and I cannot accept that it is a barrier to doing the decent and logical thing in this Bill. After all, if employers such as Marks & Spencer, BP, Britvic, Oxfam and a plethora of local authorities and police forces, not to mention the entire Civil Service, have managed to find ways of dealing with such situations within the context of a fully inclusive marital status policy, these kinds of problems are clearly not insurmountable. Appropriate management procedures would be able to deal with them and this should not be an obstacle to taking a principled stance on discrimination in the legislation.

Without my amendments, the Bill would send a negative message to employers and there might be a risk of retrenchment within existing equality policies at the expense of people who are not married but who should in my view be equally protected against discrimination on grounds of marital status.

If the Government are reluctant to accept my amendments on the ground that they take the existing law further than the status quo, I respectfully suggest that the status quo against which they should be looking to measure is the status quo of existing good practice. Our equality law should surely reflect and encourage that, not undermine or undercut it. Could it really be right in the 21st century that an employer should be able to refuse promotion to a widower with dependent children because of an assumption that he has too much on his plate and cannot take on any

extra responsibility? Could it be right in the 21st century that a backward-looking employer could lawfully refuse to employ a divorcee simply because he or she is divorced?

I was talking only last week to somebody who said that it had crossed her mind when she applied for a head teacher's post that being divorced might just count against her. If it had, she would not have been able to put her finger on the discriminatory point or process, because this is exactly the kind of discrimination that takes place and operates under the radar. That is one reason why there is such a lack of evidence in terms of case studies. If this were in the law, at least it would get a mention on training courses in recruitment and selection procedures, so that people would see that a marker had been put down and know that they had to avoid such discrimination, which would be unlawful. I really do not believe that it is right for the Government to pass up what has been described as a once in a generation opportunity to put equality law in order.

Finally, I reassure noble Lords that my amendments are not in any way anti-marriage. They simply seek to apply the same standard of protection consistently to all people, irrespective of marital status. I beg to move.

**Baroness Afshar:** I speak in support of this amendment, because, in many cases, particularly among minority groups, there is a strong tendency to discriminate against women on grounds of marital status. Very often, in a misplaced understanding of honour, single women are not accepted to front-desk jobs, because it is thought that that would be dishonourable. Divorced women are seen as inappropriate in their marital status and are therefore likely not to be accepted. Widowed women are sometimes seen as bringing bad luck. It seems to me that, unless and until we make marital status one of the grounds that should not be a barrier to employment, all kinds of misunderstood ideas of good luck, honour or respectability could bar the way to women who are often desperate for work, particularly if they have lost their husbands. It is very important that we protect them.

**Baroness Howe of Idlicote:** My Lords, I spoke to this amendment in Committee. Having listened to the extremely detailed and eloquent speeches of the noble Baronesses, Lady Coussins and Lady Afshar, who I think originally proposed the amendment, I really cannot see why there should be any difficulty in accepting this amendment. I hope that the Minister will be able to give us some hope that it can be accepted, because when one looks at the situation in different countries as well as in this one—and we have a range of different nationalities now in this country—one realises all too well just how much marital status does matter as far as jobs and opportunities are concerned.

**Baroness Finlay of Llandaff:** My Lords, I would like to comment on this amendment, to which I have added my name. Both my noble friends Lady Coussins and Lady Afshar have spoken about women and the reasons behind this amendment, but I remind the House that men, too, could benefit from this amendment, particularly widowers. Widowers can find it hard in society, particularly if they have young children. Value

judgments are often made about them or against them. A man may be competent and ready for promotion or to apply for another job, yet subtle value judgments are made if he is also caring for bereaved children. The situation is worse if there are issues around the nature of the bereavement. Bereavement is a stigmatising experience in some parts of our society. It can be difficult for the children, but it can also be difficult for the man who is left caring. It is for those men, as well as for the women whom we have been addressing in this amendment, that I ask the Government to make sure that everybody, irrespective of marital status, is on an equal footing in law.

4.15 pm

**Baroness Butler-Sloss:** My Lords, I had not intended to speak, but I was impressed by the speeches we have just heard, particular that of my noble friend Lady Afshar. I have some knowledge of the problems that have occurred for Muslim women. The thought that they could be disadvantaged in English working surroundings, as they are disadvantaged in other parts of the world, leads me to believe that the Equality Bill is not covering an important minority group in this country. I also agree with the point made by my noble friend Lady Finlay of Llandaff because men have particular problems when they are widowed with children. The Muslim minority group deserves to be helped in this way.

**Baroness Thornton:** These amendments to Clause 8 replace marriage with marital status so that people who are unmarried, widowed or divorced would be protected by the Equality Bill. The amendments to Clauses 13, 19 and 25 are consequential to the amended Clause 8.

I regret to say that I am probably about to disappoint some of my favourite Baronesses. I apologise for that, but I hope I can convince them that we do not think this is necessary. I listened closely to the arguments when we debated these amendments in Committee. Since then, I have had the opportunity to consider these arguments. I know that my noble friend Lady Royall has listened to further representations from the noble Baronesses, Lady Coussins and Lady Finlay. It is clear that all the noble Baronesses who have spoken are committed to the cause of equality and want to ensure that people are not treated unfairly. We understand their concerns, and that is why we introduced the Equality Bill.

However, in the previous debates and the discussion today, I have seen nothing to convince me that discrimination by employers against unmarried people, widows, widowers or divorced people is a real issue occurring in Britain today that needs to be addressed by the Bill. We consider that the potential scenarios presented as a justification for these amendments are covered by existing provisions in the Bill relating to gender and, possibly, age discrimination.

The noble Baroness, Lady Coussins, spoke about companies and, as ever, she has researched the points she put to your Lordships' House. Some companies cover marital status in their equal opportunities policy. The law bans discrimination because of marriage or civil partnership, but there is no evidence that people

are being discriminated against because they are single, widowed or divorced. Some businesses may choose to present their policies as being inclusive of all their staff, and we think that is good practice that we do not want to discourage. However, we do not believe that that is an argument for a need to change the law to protect against discrimination. We do not believe that discrimination by employers against people because they are married is a significant problem either, as demonstrated by the evenly balanced response to the *Discrimination Law Review* consultation and by the lack of representations since then on this issue by the public or organisations. However, we decided to retain the existing protection not just to ensure that the type of conduct it was introduced to outlaw in 1975 does not reoccur, but because we know that this protection has been used in cases as recently as 2007.

Several noble Baronesses raised the issue of widows and widowers. Widowers and widows have the same level of protection from discrimination employment. Under the Sex Discrimination Act 1975, widowers should not be treated less favourably on the grounds of sex than women, whether or not they are widows, or vice versa. It is unlawful for an employer to treat a widower any less favourably than they would treat a widow. We do not believe that this Bill will in any way send a negative message to employers.

I thank the noble Baroness, Lady Coussins, and others for raising those concerns. I know that she will be disappointed with our decision on this matter. We have considered her arguments closely but we believe, on the balance of evidence, that the Equality Bill should continue to provide protection only for civil and married partners under this part and will provide protection for others under other parts.

The noble Baroness, Lady Afshar, raised concerns about the treatment of single and divorced women, particularly from minority groups. The examples the noble Baroness gave will be covered by the Sex Discrimination Act since it is very unlikely a single or divorced man would be treated in the same way under those circumstances. I ask the noble Baroness, Lady Coussins, to withdraw her amendment.

**Lord Ouseley:** Before the Minister sits down, what evidence does she have that employers will get a negative message as a consequence of these amendments? What evidence is there that employers will resist this or that there is a single employer in this country who would find that this would add pressure on them?

**Baroness Thornton:** I suggest to the noble Lord that that is not a reason for accepting the amendment. The point I was making was that not including these amendments would not send a negative message to employers. The message that the Bill sends to employers is that we are determined that they should follow the best possible equalities practice. There is no reason to accept amendments for which we do not feel there is an evidence base.

**Baroness Coussins:** My Lords, I am grateful for the Minister's response. As she expected, I am disappointed at the Government's decision not to accept the

[BARONESS COUSSINS]  
 amendment. I hope I am wrong, but I fear for unintended consequences without amendments to the Bill along these lines. However, I reluctantly beg leave to withdraw the amendment.

*Amendment 5 withdrawn.*

*Amendments 6 to 9 not moved.*

### **Clause 9 : Race**

#### *Amendment 10*

*Moved by Lord Avebury*

**10:** Clause 9, page 6, line 7, at end insert—

“(5) A Minister of the Crown may by order—

- (a) amend this section so as to provide for caste to be an aspect of race;
- (b) amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.

(6) The power under section 205(4)(b), in its application to subsection (5), includes power to amend this Act.”

**Lord Avebury:** My Lords, I am not going to repeat the arguments for recognising the existence of caste discrimination here in Britain that were so thoroughly canvassed in Committee. I simply remind your Lordships that the Committee on the Elimination of All Forms of Racial Discrimination found in 2002 that descent includes caste and called on member states of the parent convention, including the UK, to enact domestic legislation to combat such discrimination. When we discussed in Committee a number of different ways of bringing caste into the protected characteristics, my noble friend Lord Lester asked whether the Government were of the opinion that discrimination on the grounds of caste was capable of falling within the concept of race under the law as it stands. He said that if there were to be litigation, the courts would have regard to the fact that caste comes into the definition of racial discrimination under Article 1 of the convention.

We understand that the Equality and Human Rights Commission took that view and therefore concluded initially that the legislation we proposed was unnecessary. But since there is no specific mention of caste in our law, it would be a chancy and expensive business for anybody to try this out in the courts. The EHRC has, I am pleased to say, now agreed to back a suitable case with legal advice and funding, and the Anti Caste Discrimination Alliance and others are actively trawling for an example which fits within the parameters of employment, education, and the provision of goods and services. The EHRC welcomes the amendment as enabling steps to be taken to prevent caste discrimination if the evidence demonstrates a necessity to do so.

Meanwhile, the Government have commissioned further research building on the scoping study published by the ACDA last November to establish the extent of discrimination by caste here in Britain. We are convinced that it will put beyond doubt the necessity for exercising the power in the amendment. That makes sense, and

we look forward to hearing from the Minister details as to who is being given the job of conducting the research and what its terms of reference and timing will be.

After we considered bringing caste into the Bill in Committee, the Minister invited representatives of some 17 anti-caste organisations in the UK, representing several hundred thousand people, to give their point of view to her and her officials. I think that she will agree with me that this was a totally unprecedented gathering, at which all those organisations spoke with a single voice on the need to seize the opportunity presented by Bill for action against caste discrimination by treating caste as a subset of race. The Minister told us later that she was minded to accept an amendment along these lines. We were very grateful to her for listening for nearly two hours to those organisations in the Committee Room upstairs.

The Leader of the House wrote last week to the chairman of the Delegated Powers and Regulatory Reform Committee saying that the Government were minded to accept the amendment and explaining how proposed subsection (6) might be needed to make exceptions for a provision such as in paragraph 2 of Schedule 2, which limits the definition of race in the public sector equality duty in Clause 148. The reference to “specified circumstances” is required to enable consideration to be given to single-characteristic associations, exempting those associations from the application of the discrimination provisions in Clause 101 but not in terms of colour.

The note accompanying the letter to my noble friend Lord Goodhart also says that when the research shows that there is evidence of caste discrimination occurring in Great Britain, the Government will consider whether exercising the power in the amendment is a proportionate response to the problem. We are content to leave this problem to be resolved when the research becomes available and would ask only for an undertaking from the Minister that she will discuss it with the anti-discrimination organisations at the time, as she has done on this occasion.

This is a textbook example of how democracy should work. At first, the Government were reluctant to put any reference to caste in the Bill, but they listened to the voices of those who were at the receiving end of caste discrimination, and so did the EHRC. There is now the hope that a test case will be taken through the courts under existing legislation. In parallel, the Government have commissioned the research that we believe will demonstrate the proportionality of adding caste to the Bill using these powers. These are important steps towards ending caste discrimination, which is as pernicious as discrimination against persons having any of the protected characteristics already in the Bill. I beg to move.

**Lord Harries of Pentregarth:** In rising to support the amendment, I join the noble Lord, Lord Avebury, in thanking the Minister for listening carefully for two hours to 17 of the most affected communities in Britain. The noble Lord, Lord Lester, said that such was the sense of passion and momentum at that remarkable meeting that it was like the early days of race relations legislation. There was an extraordinary

sense of conviction, united passion and momentum. That said, I have to express on behalf of the affected organisations a sense of disappointment that there is not an amendment before us today which puts in the Bill discrimination on the grounds of caste.

I shall make only one point. Everybody has recognised that there is social discrimination on the grounds of caste, but the Government have argued that there is no clear evidence that discrimination is being exercised in the spheres of education, employment and the provision of goods and services. The affected organisations have presented a wealth of evidence to the Government which they maintain shows this, but the Government have so far remained unconvinced; they are therefore commissioning more research, for which we are grateful.

Because of this uncertainty on the part of the Government, it was arranged for me to meet personally and to talk with somebody who claimed that they had been discriminated against on the grounds of caste. This was an extremely well educated person who had been recruited to work in the NHS. He had obtained a good job here, and was well educated, intelligent and very sensible. All was going extremely well until he applied for leave to go back to India for a family event. In the questioning around where he came from and his background, it emerged that he was a Dalit, and he said that the relationship between him and his supervisor immediately changed for the worse in a most dramatic way. His position in the job was made extremely uncomfortable; eventually he was suspended and for a whole year, he was off work. His case was taken up by the union, which managed to obtain £12,000 compensation for him, but it said that it was unable to take it further—and this is the key point—because there was nothing in the law at the moment which made discrimination on the grounds of caste illegal.

I was absolutely convinced that this was a clear case of discrimination. An intelligent, well educated, sensible person, who I am glad to say has now gone on to another job, been promoted, and is doing extremely well, had a most devastating experience. Just one case of discrimination on the grounds of caste is surely enough to make it into the Bill, and of course, there is far more than that.

Like the noble Lord, Lord, Avebury, we look forward to the results of the research commissioned by the Government, and we hope that when they see that research, they will, as he has said, consult the affected organisations. We believe that at that point, the order-making power will be triggered.

4.30 pm

**Baroness Flather:** My Lords, I want to add a few words and to thank the Government for adding caste to this Bill. This is an enabling amendment, and while it is not exactly what people would have liked, to have got this far is a big thing. I personally am very grateful. I am also looking forward to the research, not only because it will help us to do the right things in the future, but also because it will tell us what exactly is happening in this field. This is because so far, research has been mentioned on every occasion, but none has been done by any government agency. We look forward to that, and once again, I am very pleased to see such a provision in the Bill.

**The Earl of Sandwich:** My Lords, I supported my noble and right reverend friend Lord Harries in the earlier stages of this Bill. I am also grateful to the Government for recognising that this is a major problem. I extend thanks, as the noble Lord, Lord Avebury, has, to the noble Baroness for sitting through what was a momentous meeting of the organisations. I can see that the phrasing of subsection (5)(a) in the amendment is a cunning means of introducing the measure by order, yet I remain uncomfortable with the wording. My noble and right reverend friend Lord Harries has made a powerful case for continuing in this battle for the right legislation. There is still a lot to be done, and I look forward to seeing the issue revived in a more developed form, perhaps in the next Session.

**Baroness Warsi:** My Lords, I hope that the Minister will excuse me. I am suffering from a migraine; hence I may sound slurred as well, unfortunately. I wish to make one point only in relation to this. I had a lengthy meeting with the Anti Caste Discrimination Alliance. It attended along with CasteWatch, the Dalit Solidarity Network, and the Voice of Dalit. As noble Lords around the House have said, they make an extremely compelling case. The case studies that they have put forward are extremely moving. I agree with the noble and right reverend Lord, Lord Harries of Pentregarth, that it brings back those sentiments from when lobbying was being done in relation to race discrimination. These very sad and moving case studies have been tracked now for a number of years. What came out of that meeting is that this issue has been raised for many years at a national and a European level. Indeed, the Government have been lobbied for many years to try to identify this area of discrimination.

This flagship Bill has been many years in gestation, but now, at the eleventh hour, the Government effectively are having to accept this amendment by way of delay until another day. I am concerned that unfortunately we now have a position where the Government are not saying that this is such an important issue that we accept it and that therefore it should be in the Bill; nor are they saying that they have done the necessary research and inquiries and feel that it is not an issue and therefore should not be in the Bill. They are putting the matter off for another day. We should not be in this position on such an important Bill.

**Baroness Thornton:** My Lords, this amendment contains a power to add caste to the definition of race in Clause 9. The power, if used, would prohibit unlawful discrimination and harassment because of caste in the same way as for colour, nationality and ethnic or national origins. The amendment also contains a power to make exceptions to provisions on caste and consequential amendments.

In Committee, I undertook in our debate on caste to come back on Report with more developed thinking. The case for legislating against caste discrimination has been made repeatedly during the Bill's passage with much passion by the noble and right reverend Lord, Lord Harries, and the noble Lords, Lord Avebury, Lord Lester and others, and by many people in the other place. At all stages, we have said that discrimination because of a person's identity or personal characteristics

[BARONESS THORNTON]  
is unacceptable in modern Britain. The Government take this issue seriously and are always willing to consider whether there is a case for legislating against caste discrimination.

We have also made it clear that we are not persuaded of the need to legislate immediately on this as matters stand. The evidence to date, including the recent report of the Anti Caste Discrimination Alliance, suggests that caste prejudice tends to occur predominantly in areas such as marriage and social and personal interactions, rather than in areas covered by this Bill such as employment and the provision of goods and services. While the ACDA's study did not in our view warrant amending the Bill, it clearly suggested that there could usefully be more in-depth research in this area. As I said in Committee, the Government are taking this forward.

I am therefore pleased to announce that the Government have commissioned the National Institute of Economic and Social Research to conduct this research. It will be wide-ranging and will go beyond the relatively narrow area covered by discrimination law to examine caste-based prejudice and discrimination more broadly. It will involve structured discussions with stakeholders and individuals. The aims of the study will explore the nature, extent and severity of caste prejudice and discrimination in Britain, and its associated implications for future government policy. I would be very happy to share the other parts of the brief with noble Lords. It will report in July or August of this year.

The findings of the research will inform and shape the Government's thinking on caste discrimination. We accept that the outcome of the research will come too late for the inclusion in the Bill of specific provision prohibiting caste discrimination. But legislating now is not the only option. At the meeting I was privileged to attend on 4 February with the noble Lords, Lord Avebury and Lord Lester, and the noble and right reverend Lord, Lord Harries, and a large and passionate gathering of caste interest groups—indeed, I believe that the noble Baroness, Lady Northover, was there—a strong case was made for taking a power in the Bill now. This amendment contains such a power. It was a privilege to take part in that meeting.

I take the point made by the noble and right reverend Lord, Lord Harries, about the sense of disappointment at not putting caste in the Bill at this point. To the noble Baroness, Lady Warsi, I would say that at every stage of this Bill we have looked for evidence about discrimination. We now think that that evidence may exist, which is why we have commissioned the research. The appropriate and proportionate approach is to take the power to deal with this if and when that evidence is produced. Therefore, we have concluded that this is the proportionate approach. We place a high value on evidence-based policy making. This amendment will allow us to act in an appropriate way in response to the research evidence and any subsequent public consultation. I am happy to indicate to the noble Lord that that consultation will take place at every stage as we move forward. I am therefore happy to indicate to the House the Government's acceptance of the noble Lord's amendment.

**Lord Avebury:** My Lords, I am grateful to all who have spoken on this amendment, particularly to the noble Baroness, Lady Warsi. It may well be that when the research is received she is one of the Ministers who has to consider it. I am not prejudging the outcome of events likely to take place within the next few weeks but everyone will concede that there is at least that possibility. The favourable remarks of the noble Baroness this afternoon give me optimism that once this research is available we will proceed rapidly to legislation.

I must acknowledge the disappointment, expressed first by the noble and right reverend Lord, Lord Harries, but also by the noble Baroness, Lady Flather, that this is not, as she said, exactly what we were asking for. We would like to have seen something in the Bill. If people will be a little patient, we shall have the ingredients which conclusively prove, as we believe, that caste discrimination occurs in the fields covered by the Bill. We welcome what the Minister told us about the NIESR research being undertaken.

I conclude by saying how grateful we are to the Minister. She has listened. We would expect that of Ministers normally but that does not always happen to the extent that we have seen from the noble Baroness. With her help we have arrived at a satisfactory intermediate solution.

*Amendment 10 agreed.*

**Clause 13 : Direct discrimination**

*Amendments 11 and 12 not moved.*

**Clause 19 : Indirect discrimination**

*Amendment 13 not moved.*

**Clause 20 : Duty to make adjustments**

*Amendment 14*

*Moved by Baroness Thornton*

**14:** Clause 20, page 10, line 41, at end insert—

“( ) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.”

*Amendment 14 agreed.*

**Clause 25 : References to particular strands of discrimination**

*Amendments 15 to 17 not moved.*

*Amendment 18*

*Moved by Lord Wallace of Tankerness*

**18:** After Clause 26, insert the following new Clause—

“Harassment (gender reassignment): education

(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
  - (i) violating B's dignity, and
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

- (2) A also harasses B if—
- (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.
- (5) This section applies to Part 6 (education)."

**Lord Wallace of Tankerness:** My Lords, the purpose of Amendments 18 and 19 is to outlaw harassment in schools on the basis of what the Bill calls "gender reassignment" and harassment in schools as well as in services and public functions on the basis of sexual orientation. In a similar vein, Amendments 35 and 36 are designed to make it illegal for the responsible bodies of schools to harass students on the basis of sexual orientation or gender reassignment.

One can readily understand that harassment of young, gay students in schools can be disturbing and alarming for them. I raised this issue at Second Reading and shortly thereafter received an e-mail from someone in Northern Ireland underlining the concerns about harassment of gay pupils. Likewise, we would all abhor the harassment of those going through the transgender process. These amendments primarily establish in law a protection against harassment and also challenge the Government, who resisted these amendments when they were raised by my noble friend Lord Lester in Committee on the basis that they do not believe there is a gap in the protection. The amendments provide the Government with an opportunity to explain why they think that gap has been plugged.

On Amendments 36 and 37, Clause 85(3) states:

"The responsible body of such a school must not harass ... a pupil [or] a person who has applied for admission as a pupil". Subsection (10) then says that in the application of Section 26, dealing with harassment, "for the purposes of subsection (3), none of the following is a relevant protected characteristic".

It then includes gender reassignment and sexual orientation—the two paragraphs we are trying to delete. It almost seems as if the green light is being given to school bodies to go ahead with harassment, although I know that that is not the Government's intention. When you see exemptions set out so starkly, some explanation is required.

I understand that the argument that the Government have rehearsed in the past is that the application of what is now Clause 210(5) indicates that where there has been an exemption in respect of harassment in particular circumstances, it will still be possible for a

person to bring a discrimination claim on the ground that they have been subjected to a detriment. We seek some reassurances about that because there are differences. When there is a question of a detriment it is necessary to provide a comparator, whereas our amendments relating to harassment import the reasonability test.

My noble friend Lord Lester of Herne Hill took part in debates during the passage of the Equality Act 2006 about the third exemption in Clause 85(10), relating to religion or belief. He argued strongly for that exemption on the grounds that there are distinctions. I am sure that we will return to this later in the debate this evening when we come to the clauses dealing with public sector duty. There are distinctions with regard to religion and belief because, as my noble friend has said on more than one occasion, one person's religion is another person's blasphemy. Whole issues of freedom of speech and expression arise and he certainly believed that the exemption was necessary to avoid legal uncertainty or misconceived or divisive claims. If the Government's argument with regard to gender reassignment or sexual orientation is that discrimination claims can be made by virtue of Clause 210(5), does that in any way open the door for any of the legal uncertainties that my noble friend raised in the past in relation to religion?

Finally, it is my understanding that nothing in the Bill would protect a pupil being bullied by another pupil because of any protected characteristic. However, a school's failure to deal with homophobic bullying against a pupil when it deals with other types of bullying could amount to direct sexual orientation discrimination. That being the case, it would be helpful if in replying the Minister could indicate what steps are being taken, over and above the steps that we have already heard about in recent months, to ensure that schools take a proactive approach to matters such as tackling homophobic bullying, which puts pupils who are lesbian, gay, bisexual or transgender at a disadvantage compared with straight pupils. I beg to move.

4.45 pm

**Baroness Wilkins:** My Lords, I shall speak to Amendments 37, 38, 39, 40 and 41 in my name. The Disability Discrimination Act explicitly provides for the reasonable adjustment duties in education to be anticipatory—that is to say that the duty is to disabled persons generally and not just to an individual disabled person. The provisions in the Bill are not so explicit; in fact, they are at best confusing.

As noble Lords may remember, the noble Lord, Lord Low of Dalston, spoke about this at Second Reading, and I first raised the matter of anticipatory adjustments for disabled people in education in Committee on 19 January. My noble friend the Leader of the House said that she would write to me on this matter, and I am most grateful to her for her letter, in which she tried to assure me that the provisions in the Bill were already anticipatory and did not need changing.

Unfortunately, despite my noble friend's swift and helpful reply, the disability lawyers were not convinced that the provisions were explicit enough to make the law clear. I was therefore pleased when the noble Lord, Lord Low of Dalston, moved an amendment in Committee the following week to make the duty explicit.

[BARONESS WILKINS]

In response, my noble friend Lady Thornton gave the undertaking that the matter would be reconsidered on Report, and the amendment was subsequently withdrawn.

I am most grateful to my noble friends Lady Royall and Lady Thornton and to the excellent Bill team for their understanding and hard work in reconsidering the matter. It has been resolved entirely to my satisfaction and that of the noble Lord, Lord Low, and our disability legal advisers. The Government have agreed to make the changes that we sought and that are provided for in these amendments and I very much hope that they will be accepted.

**Lord Avebury:** I draw attention to Amendment 34, which is included in this group and is designed to remove the ability of schools to discriminate against pregnant students. I understand that the Government have indicated that they are likely to accept this amendment, and indeed have moved their own on the same matter. Without this amendment, it would have been legal for a school to expel a student on the basis of her pregnancy. We want to remove that discrimination, and I hope that the result of this debate will be to achieve that.

**Baroness Morris of Bolton:** My Lords, we debated these amendments at great length in Committee, but I am not surprised that the noble Lords, Lord Lester of Herne Hill and Lord Wallace of Tankerness, have tabled them again, given that the noble Lord, Lord Lester, was adamant that the answer from the Government was not acceptable. Nevertheless, we too remain consistent with our line from Committee. We accept the merit of the noble Lords' intentions. All of us, from all sides of the Chamber, agree that bullying is wrong in all circumstances. This amendment is therefore laudable in its desire and intention to address bullying on the basis of gender reassignment or sexual orientation. However, this is not the right way to tackle the problem of pupil-to-pupil bullying in schools. Where bullying is between pupils, it is not appropriate for the law to be involved. It must be dealt with by the school and by the appropriate school authorities. This is also addressed by clear guidance from the DCSF.

If the intention is to cover harassment from a person in authority—for example, from a teacher to a pupil—such as mocking a youth undergoing gender reassignment, then I agree with the noble Baroness, Lady Thornton, who made it clear in Committee that this would already be prohibited by the Bill. She said that,

“it would be unlawful discrimination for anyone working in a school to bully a pupil because of his sexual orientation or gender reassignment”.—[*Official Report*, 13/1/10; col. 582.]

The Government then clarified this position with two further amendments. I am therefore unclear whether the amendments in the names of the noble Lords are necessary.

We then debated the amendment in the name of the noble Baroness, Lady Wilkins, in Committee. It was clear that there was agreement about the principle of these amendments. The Minister said that this was not a fundamental disagreement of policy or principle, but was simply a disagreement on the drafting. I know how that can be because I always seem to draft

amendments poorly when I do it myself. We on these Benches agree with the noble Baroness, Lady Thornton, that the principle behind the amendments was sound, but we considered that the duty already contained sufficient provision to ensure that education authorities should anticipate the needs of disabled students and make reasonable adjustments accordingly.

I gather, however, that the Government might be minded to accept these amendments to make it absolutely clear that the Bill includes this duty. We also feel that it is important to minimise, as far as possible, the disadvantage which disabled students may experience during their education. We would therefore not object to these amendments, which are, after all, a difference of drafting about a principle with which we all agree.

**Baroness Royall of Blaisdon:** My Lords, I turn to the amendments on harassment, tabled by the noble Lords, Lord Lester and Lord Wallace, and the noble Baroness, Lady Northover. I am at one with the noble Lords in seeking that the Bill should ensure that lesbian, gay and trans pupils in schools, and indeed lesbian, gay and trans customers, are protected against bullying behaviour by schools and by service providers. As noble Lords said, it is abhorrent if gay and trans pupils are bullied at school. I am therefore grateful to them for tabling the amendments, as it gives me the opportunity again to state again very clearly that such protection is already ensured by the Bill as it stands. These amendments seek to plug a perceived gap in protection, mainly for schoolchildren but also for users of goods, facilities and services provided by or on behalf of public authorities. We gave firm assurances in Committee that no such gap exists, and I make that absolutely clear now. I am grateful for the support of the noble Baroness, Lady Morris.

Behaviour that constitutes harassment as anyone would understand it is already covered by the definition of direct discrimination. Pupils subjected to ridicule by their teachers because of their sexual orientation or their gender identity, or customers insulted or turned away by service providers for the same reasons, will be able to claim that they are suffering direct discrimination by way of a detriment.

We have looked long and hard at whether there might be a genuine need to extend specific provision that is modelled on the harassment clauses that apply elsewhere to schools and to the provision of goods and services, but no one has put to us, and we have been unable to imagine, a scenario in which there is unacceptable bullying behaviour in these contexts and where the direct discrimination provisions would not apply.

Children in schools have been legally protected against discrimination because of sexual orientation since the Equality Act (Sexual Orientation) Regulations came into force in 2007. Those regulations do not refer specifically to harassment, but the guidance to schools on their responsibilities makes it very clear that bullying behaviour is unlawful, and gives specific examples of harassment to illustrate this. The same message will be conveyed very clearly in the guidance on the Bill. The absence of a specific harassment reference makes no difference whatever to a school's responsibilities to the children in its care.

The noble Lord asked whether the Government were dealing proactively with bullying in schools. The Department for Children, Schools and Families has placed a duty on head teachers in England and Wales to put measures in place to prevent all forms of bullying, and has provided guidance for schools on dealing with homophobic bullying. The guidance makes it very clear that a school that does not take homophobic bullying as seriously as bullying on any other ground is vulnerable to charges of discrimination.

We intend to introduce a new duty on schools to record and report serious and persistent bullying between pupils and incidents of verbal and physical abuse against school staff, so we are being proactive.

On Amendment 34, I thank the noble Lords, Lord Lester and Lord Wallace, for again tabling this amendment, which was debated in Committee and which we accepted in principle then. It completes the protection for school pupils who are pregnant or new mothers. I assure the noble Lord who moved the amendment today and other noble Lords that we still fully support this amendment, and I am very happy to accept it.

Finally, I refer to the amendments in this group in the name of the noble Baroness, Lady Wilkins, on anticipatory duties in education. Although, as the noble Baroness, Lady Morris, said, they will not change the substance of the legislation, I recognise that there is a strong feeling that they will make clearer its provisions in this respect, and on that basis I am very happy to accept them.

**Lord Wallace of Tankerness:** My Lords, I am very grateful to the Leader of the House for her response to this debate, and to the noble Baroness, Lady Morris, for indicating—I think this was unanimous in the House—that the object of these amendments is to show our abhorrence and to ensure that there is adequate protection for the victims of bullying at school or elsewhere on the grounds of sexual orientation or transgender status. It has been useful to hear that unanimous view expressed and to have placed on the record the Government's belief that there is no gap and that the protection is adequate. I wondered why, if it was not required for sexual orientation, it is required for race—I am sure there is a reason—but it has been worth while to set it out clearly and for the record, as I said. It has also been worth while to hear about the guidance that has been issued and to hear that not to comply with it could open up school authorities to claims of discrimination.

I am also grateful for confirmation that the Government will support Amendment 34, so when we come to it I will make every endeavour to move it. In the mean time, I beg leave to withdraw the amendment.

*Amendment 18 withdrawn.*

*Amendment 19 not moved.*

5 pm

**Clause 29 : Provision of services, etc.**

*Amendment 20*

Moved by **Baroness Butler-Sloss**

20: Clause 29, page 15, line 37, at end insert—

“( ) A service-provider must make reasonable adjustments to ensure that, so far as is possible, no employee is required to be complicit with an action or circumstance to which the employee has a genuine conscientious objection on the basis of the employee's beliefs regarding sexual orientation.”

**Baroness Butler-Sloss:** My Lords, I shall speak also to Amendment 21. I declare an interest as an Anglican—though in relation to Amendment 21, I should emphasise that I am an Anglican and not a member of the Roman Catholic Church, although I am happy to put forward this amendment on its behalf. I am speaking to Amendment 20 on behalf of the noble and learned Lord, Lord Mackay of Clashfern, who is unable to be here today.

It is important to recognise that the matter of conscience is addressed in Article 1 of the Universal Declaration of Human Rights. Perhaps your Lordships will permit me to quote it. It states:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

As the noble and learned Lord pointed out in Committee, the question of conscience is a crucial criterion of a civilised state. We in this country recognise conscience in various ways. We recognised it during the Second World War, when people were permitted to be conscientious objectors and to serve our country in ways other than on the battlefield. Doctors, including doctors in the NHS, have the right, as a matter of conscience, not to perform abortions. Consequently we have a current use of conscience in our existing and current legislation.

It is interesting that, so far, there is no ability to have an issue of conscience in relation to sexual orientation. How do we balance equality, discrimination, rights and recognition of the needs of different groups of minorities? All sorts of minorities need protection, not only the minorities who are in same-sex relationships. It is important that we recognise, by a tolerance and a flexibility of approach, that there is a negative effect of anti-discrimination towards some groups in relation to other groups and that that is a matter where conscience should be allowed to play a part. We should be able to accommodate various religions and various cultural beliefs. We are a broadminded society, and the Equality Bill should recognise that too.

There was a case that fell foul of the statutory instrument on equality and anti-discrimination—the case of a marriage registrar who, as your Lordships may remember, refused to officiate at a civil partnership ceremony. She initially won the case but then lost in the higher courts. That was an issue of conscience. She was held to be wrong although other registrars were able to perform the ceremony. Such ceremonies are a very important day, but not every registrar has to officiate at them. Indeed, this particular local authority has an excellent record of looking after civil partners who wish to have the service performed for them. This is a modest amendment and deserves support. I hope the Minister will find its modest dimensions acceptable.

Amendment 21 relates to Catholic adoption societies. At the moment, Catholic adoption societies do not exist; some exist as non-religious societies but none as a Catholic society. The effect of the Equality Act (Sexual Orientation) Regulations 2007 has never been

[BARONESS BUTLER-SLOSS] debated in either House. In considering the Equality Bill, the other place had four minutes in which to discuss the issue before the guillotine fell. This is therefore the only place where, and the only time when, this rather sad issue will come before your Lordships.

In the same way, it is important that same-sex couples should have the right to have a religious service in a church or other religious establishment that is prepared to allow them to do so. That is the subject of Amendment 53, to which I have put my name. I believe that same-sex couples should be able to have religious services in religious establishments where that establishment permits them to do so. As I understand it, both the Quakers and the liberal Jews in some places are prepared to do it. If we think that that is right, it ought also to be right for Catholic couples who wish to adopt to be able to go to an agency that has the same ethos and religious beliefs and will look after that couple in the way that Roman Catholics would wish. However, they cannot do so. I remember having to informally advise the Exeter Anglican and Roman Catholic adoption society that it could not continue using the words that it had used as regards suitable people for its adoption society. As I am sure everybody knows, the Catholic societies are no longer Catholic.

This is a relatively modest requirement that would permit a minority group to work through its own religious beliefs as regards those who wish to become adopters. It does not in any way prevent a gay couple going to any adoption agency. I understand that—to the knowledge of the Catholic Church—under the 2007 statutory instrument, only one such couple went to a Catholic agency, and they were helped to find another agency which was not Roman Catholic that would help them to adopt a child. We are talking about allowing for minorities. We ought to be able to allow for minorities in every way and not decide that they should not have the right to opt out as regards sexual orientation.

I asked a senior founder member of Stonewall, whom I know extremely well and whose aims I very much support, what he thought about my putting my name to this amendment. He said that he saw absolutely no problem with it. He knew very well that gay couples wishing to adopt—and good luck to them—could apply to many agencies; almost every agency, in fact. He did not consider that my amendment in any way infringed the rights of, or was discriminatory towards, gays. I found that a very comforting conversation.

The question really is, what are the outcomes of the 2007 statutory instrument and what would be the position if your Lordships' House did not accept this amendment? Two adoption agencies have closed down, a third is mired in litigation over whether it can continue, and all the other Catholic agencies have given up supporting Catholics, and, of course, have given up those obligations which the Catholic Church had required of the Roman Catholic agencies.

It is very important that same-sex couples should have the right to be considered as potential adopters—as they do, and as they should have. They can apply to many agencies, as I have said. However, it is also important that Catholic families should be able to apply to Catholic adoption societies. I beg to move.

**Lord Waddington:** My Lords, I support the noble and learned Baroness as far as these amendments are concerned. It seems grossly unfair to require a person who has been recruited as a registrar of marriages to do something rather different, which is contrary to his or her religious convictions, and register a civil partnership. Yet that is what happened to a local authority employee recently. It seems that the local authority was just trying to make a point at her expense, because it was never suggested that there were not other registrars in the borough with no religious objection to registering civil partnerships who would be prepared to do that work. It was an act of gross unfairness. Here is an opportunity for us, in a Bill that is supposed to be about fairness, to remedy a very obvious wrong.

As for Amendment 21, it seems absolutely tragic that adoption agencies should have been driven out of business simply because of the obduracy of the Government a year or two ago. What possible damage is done if an adoption agency that is unwilling to place a child with a gay couple directs that couple to an agency that is perfectly happy to place a child with them? Here again is an opportunity to put right a very obvious wrong.

**Baroness O'Loan:** My Lords, I support the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss, and I declare an interest as a Roman Catholic. I think that the House agrees that there must be a provision of public services and that there must be equality of access to the ability to adopt children. There must also be a protection of the freedom of conscience of anyone who is engaged in a public service—with necessary restrictions, of course. There are, in law, many competing rights and the function of this House is to attempt to balance the protection of those rights—not only to preserve the rights of those of different sexual orientation, where the right to adopt can be preserved, but also to protect the rights of religious believers.

It is enormously important in the process of adoption and fostering that there should be an understanding that this process also requires ongoing support for many years. The support that would be supplied by the Catholic adoption agencies would have been support in the context of faith and spirituality. That provision has now been lost to the people. I do not think that I need say any more, other than to support the noble and learned Baroness in this amendment.

5.15 pm

**Lord Patten:** My Lords, one Roman Catholic follows another, rather like those trains that one is warned about at French level crossings. The noble and learned Baroness, Lady Butler-Sloss, has outed herself as an Anglican and I had better come out as a Roman Catholic and follow her example in declaration. I support her excellent Amendment 21, which is—I say this to the Leader of the House—very modest not only in intent but in extent. It is bent only on attempting to right an injustice to a minority.

As the noble and learned Baroness noted, back in 2007 the Prime Minister's official spokesman said that the objectives of the Government's policy in bringing forward the sexual orientation goods and services

legislation was both to avoid any dilution or dissipation of Catholic adoption expertise and to avoid discrimination. That was on the record. Unfortunately, the Government did not, in the end, provide any credible means for the realisation of those objectives. For reasons that the noble and learned Baroness has explained so clearly, neither end has been achieved, with very unfortunate consequences for a minority of children and for a minority religion.

As it happens, Catholic agencies have quite simply been the very best agencies for placing children recently, as the record shows. I am sorry to break into fractions here but the latest figures available to me demonstrate that just 3.6 per cent of Catholic placements broke down in the period up to the adoption order, while the comparable figure for voluntary agencies as a whole was 5.5 per cent and the figure for local authority agencies—I pay tribute to the difficult work that they have done—was very much higher, at about 20 per cent. Catholic agencies have been particularly successful at placing children with serious behavioural problems—something that, again, the Prime Minister’s official spokesman recognised.

In this regard, it is worth noting that on 21 February 2007 Mr Julian Brazier in another place questioned in that extremely brief four-minute debate the wisdom of the Government’s failure to accommodate Catholic adoption agencies. He related the story of a boy called Jake, who was helped by the now defunct Roman Catholic Salford adoption agency. I am told that this boy was three when he was placed for adoption. I know that very often it is wrong to argue generalities from a particular case but I think that this is a telling one. Jake had waited a long time for a family. He had been placed with a very experienced foster carer, who managed his extreme behaviour with difficulty. I pay great tribute to that foster carer for the difficult work that was done with that child. He had some obsessional behaviour: he did not like doors being closed and he hated getting wet. He also had extraordinary behavioural problems. The local authority social workers were so concerned about any family coping with his challenging behaviour that they asked his foster carer to provide a video of him in all his difficulties to show to prospective adopters so that they knew what they were letting themselves in for. Jake did find adoptive parents. They were secured by the now closed Salford Roman Catholic adoption agency. They were given an option to say no but felt that the little boy needed them. Therefore, this child was very fortunate.

It strikes me that the noble and learned Baroness wishes only to see more boys and girls experience similar good fortune if possible. I wonder how many children like Jake are not adopted today but would have been had it not been for the unfortunate failure of the initial goods and services legislation to make reasonable space, as the noble and learned Baroness so eloquently set out, for faith-based adoption. It is a good question to ask your Lordships, although it is almost a rhetorical one, because the Salford agency no longer exists in any shape or form due to the failings of the Government’s goods and services legislation.

Another agency that has been closed down by the legislation is the Westminster children’s society. I think that I told your Lordships in an earlier debate on this

Bill that that has had unfortunate effects. It strikes me as extremely odd, if not poignant, that as recently as Friday 19 February the equally recently retired chief executive of the Roman Catholic Westminster children’s society, the Reverend Jim Richards, went to Buckingham Palace to have the MBE conferred on him by Her Majesty for services to children and families, as the citation said. Therefore, an honour has been given by the public to Mr Richards through Her Majesty for doing things that the Government think are illegal. It is a very peculiar world when someone can get the MBE for doing something that the Government do not wish to see happen—that is, providing goods and services through a faith-based adoption agency. It is pretty rum and I do not really understand it. The noble Baroness the Leader of the House may be able to explain later—or perhaps she could write me one of those letters that we conventionally get—how this odd conundrum can be solved in my mind.

In the question of Catholic adoption agencies, it seems that three sets of rights are in play. This matter needs to be debated because it has never been debated before in either place. First, there are the rights of the child—rights not to have his or her best interests placed in jeopardy by legislation that did not make space for what were the most successful adoption agencies. I am borrowing the noble and learned Baroness’s phrase about space; it is very apposite.

Secondly, there are the rights of the service providers who wish to deliver a service as a vocation and to be allowed to do so without violating their identity. I imagine that some will be quick to point out that no one is forced to violate their conscience, in the sense that no one has to provide that service—it is not compulsory. However, being told that you can either violate your identity by making yourself complicit in an action that your faith prohibits or simply cease service provision, with a loss of vocation and livelihood, does not seem particularly reassuring. This does not help a more diverse and tolerant society. It is hardly a vaunting triumph for the equality agenda.

Then there are the rights of the service users—the would-be parents, the adopters-to-be. This interest group, the adopters-to-be, have barely been mentioned in your Lordships’ House and I think not mentioned at all in another place. We should pause for a moment and reflect on the difficulties that they have. One of the interesting things about our earlier debates was that everyone focused on the rights of same-sex couples to access adoption services from any provider, while very little thought was given to those would-be parents who just happened to want to be able to access adoption services in the context of a Catholic ethos, from at least some providers, and who now lack that opportunity entirely.

This is strangely illiberal from a House that very often seeks to promote the liberal agenda. It is something that the noble and learned Baroness’s amendment sets out to correct in all the clarity that her amendment contains. This situation is particularly strange when one recognises that, as the noble and learned Baroness said, there was record of only one same-sex couple approaching a Catholic agency, where they were courteously referred to an alternative provider. All went well and no one was outraged or upset. I was

[LORD PATTEN]

particularly interested to hear what the noble and learned Baroness had to say about her friend from Stonewall wondering what on earth the fuss was about in making it possible for people to have access in this way.

A large number of couples, including non-Catholic couples, who appreciated the opportunity of being able to access adoption in a Catholic ethos can no longer do so. In this context, on the basis of the Government's actions—again, perhaps the noble Baroness, Lady Royall of Blaisdon, can help me—it is difficult not to draw the conclusion that some rights are much more important than others and that some minorities are much more important than other minorities, such as Roman Catholic minorities, a number of Muslim minorities and others. The dismissal of the rights of those wishing to access adoption services in the context of a Catholic ethos is particularly strange because it comes at a time when the Government are placing so much emphasis, and I agree with them, on the importance of reforming public services to promote more choice, not less.

However, far from extending choice, we have here goods and services legislation that is actually eroding choice. Clearly the public are becoming increasingly unhappy about this restriction of choice—hence the e-mail petition on adoption choice, which has been drawn to my attention, that is currently on the Downing Street website. It calls on the Government to amend the Equality Bill to make space for Catholic adoption agencies, as they said that they would do back in 2007 but alas have not found the means of doing so. The noble and learned Baroness has given them the script to enable them to do what they said that they would do back in 2007.

I believe that, in just the same way that a law designed for the majority can have negative and destructive effects on a minority, from which the minority needs to be protected, through the provision of different treatment under the law, so, too, can laws designed for one equality strand, as one might inelegantly term it, have negative and destructive effects on some other minority strands, such as religious adoption and fostering agencies, which the noble and learned Baroness's Amendment 21 deals with. If we fail to respect the principle of equal treatment under the law, we will get into, and have got into, all kinds of quite unnecessary difficulties.

Mindful of the fact that equality interests can sometimes conflict with each other, the aim of any democratic Government should surely always be to apply the law for one minority strand, governing the interactions of others with it, to the population at large and other minority strands generally. To this extent, and only to this extent, those other strands should be provided with different treatment under the law, so that there is space for different communities. That is what the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss, seeks to do. If we fail in this task and create laws for one equality group that can be used to oppress another, we will have a recipe for social conflict and grave injustices to minorities.

I have two questions for the noble Baroness, Lady Royall of Blaisdon. First, why are the rights of those who want to have an opportunity as UK citizens to access adoption services in the context of a Catholic ethos in some instances less important than the rights

of same-sex couples who want to access adoption in all instances? For the avoidance of doubt, I shall repeat that question. Why are the rights of those who want to have the opportunity to access adoption services in the context of a Catholic ethos in some instances thought to be less important than the rights of same-sex couples who want to access adoption in all instances? Surely there should be equivalence between groups.

Secondly and lastly, given that the Government were warned in advance that agencies would close—as they have done, including some of the very best—and given that it was clear that this service disruption could do nothing but negatively affect the best interests of children in need of adoptive parents, why did the Government not find a way through? The answer is extremely simple and it has been given by the noble and learned Baroness. This is the way to make it possible, not just in the interests of all the Jakes out there who could still today access the very best adoption care if it were not for the blunt nature of the Government's goods and services legislation, but also in the interests of the service users—the parents—who wish to go to a Catholic adoption agency.

I believe that the Government should recognise three years on from the legislation that they made a small but unfortunately damaging mistake. I am sure that they did not mean it to be damaging—certainly not the Leader of the House. That mistake has been made but now there is a golden opportunity for the Government to support Amendment 21 or to bring forward an amendment of their own. I am sure that the Minister in her normal way will give me a straight answer to my first question, so will she then proceed to undertake to bring forward an amendment such as the model script provided by the noble and learned Baroness in her Amendment 21?

**Baroness Afshar:** As a Muslim educated in a Catholic school and subsequently in a Protestant school, I think that for many people faith is an important parameter of life and that they should be allowed to exercise their belief and standards in choosing to adopt, which after all is a service to the nation. In this time of dire shortages, when the need for adoption is greater than ever, it is important not to exclude parents who would be supported by their faith from exercising their right to choose a child who would be raised in the same faith.

**The Lord Bishop of Bradford:** My Lords, in the light of the noble Baroness's introduction of herself, I too must declare that I am Anglican. The fact that the sexual orientation goods and services legislation was introduced by secondary legislation in 2007 placed parliamentarians concerned about its implications for Catholic adoption agencies in a very difficult position. As unamendable regulations they could vote against the regulations as a whole, vetoing the many good provisions in them, or they could accept them knowing that they would be confirming the demise of Catholic agencies. Today, I very much welcome the fact that we can have a sensible debate about the sexual orientation goods and services legislation, affirming all that is good about it, but highlighting the need for this amendment to make space for Catholic agencies and others.

If we want to create a diverse society in which people with sometimes very differing views happily live alongside each other, we must have equality laws that make space for difference. There should be space, for example, for lesbian, gay and bisexual organisations to operate in line with their ethos. Regulation 18 of the sexual orientation regulations, now replaced by Clause 19 of the Bill, provides for this. There should be space for Catholic adoption agencies and for other faith-based bodies to operate according to their ethos.

Surely, in relation to the adoption of children, it is the well-being of the children that is primary. I believe that their needs are best served if the options are not reduced: if they are not reduced to eliminate lesbian and gay couples; if they are not reduced to eliminate Catholic couples. We must avoid developing equality laws for one strand in a way that makes life very difficult for another strand, thus vulnerable to exploitation by others, whose purpose is to make life difficult for the negatively affected strand and for their own different purposes.

Between January and March 2007, when the sexual orientation rights were being debated, Stonewall, which has already been mentioned and commended and which has a legitimate interest in sexuality, issued just three press releases on the subject, while the National Secular Society, whose *raison d'être* does not pertain to sexuality at all, issued 10 strongly worded press releases championing the unamended regulations. We must understand, as others have observed, that in the same way a law designed for a majority can have a negative and destructive effect on minorities, from which they must be protected by different treatment under the law, so, too, can laws designed for one equality strand have negative and destructive effects on other equality strands, for which they should also be provided with different treatment under the law.

Many people have mentioned registrars. I sometimes wonder whether the small town of Settle is rather like the village from which Miss Marple comes, where everything happens. That village happens to have a registrar who spoke to me and was very distraught. At the time of speaking to me, she was able to carry on her work because others would cover during the registration of lesbian and gay couples' civil partnerships. She was quite happy with that and they were happy, but she was thinking of retiring early because of the pressure upon her by the expected regulations. It seemed a shame. I hope that now that the Government have an opportunity to right this wrong, they and we will support the amendments of the noble and learned Baroness, Lady Butler-Sloss.

**Lord Alton of Liverpool:** My Lords, the contributions we have heard today clearly demonstrate that goods and services legislation is complex and requires careful debate. I very much regret that that was denied in 2007 and welcome the opportunity that my noble and learned friend has given the House today to consider this question afresh. These amendments, which I strongly support, strike the right kind of balance for reasons that have been eloquently adumbrated during the course of our proceedings.

Like others who have talked about their faith background, I make no secret of the fact that I am from a Catholic background. I live in the Salford diocese, and there has been great sadness there that the adoption agency in that diocese has had to close. I think it is an example of the law of unintended consequences. I do not believe that the Government set out with a vendetta against Catholic adoption agencies, with an agenda to try to close them. However, it has been one of the unfortunate side effects of the legislation that was enacted in the past.

However, I do not come to this amendment as a Catholic. I come to it as a Member of your Lordships' House concerned about the position of minorities and, as the noble Lord, Lord Patten, said as well, the position of service users, about which we have heard far too little during these debates. I come to it also because of my belief in minorities. One of the reasons why, when I was in another place, I voted against Section 28 was because of my belief in the importance of the place of minorities in society. Minorities will often be in competition and we are hearing today the debate about when majorities and minorities sit together in a tolerant and plural society.

I also caution those who, as Queen Elizabeth I said, "make windows into men's souls". I think we have to be very careful in this plural society not to make a big issue of the way in which people practise their faith. I am concerned, as the right reverend Prelate the Bishop of Bradford has just said, that there is an aggressive agenda at work which is almost itself becoming an ideology. The National Secular Society should reflect on that carefully, because pushing people into a corner on issues of conscience is not healthy for a democratic society.

On Sunday, I was struck by the headlines in one newspaper about the effect of the Children, Schools and Families Bill and how it may be a requirement on Catholic, Jewish, Muslim and Anglican schools to refer pupils in the future for abortion services. I am sure that the Leader of the House will have seen those headlines. That too will raise a huge conscience question. It will be impossible for many people who run such schools. So respect for conscience is something that ought to unite the whole of your Lordships' House.

The noble Lord, Lord Patten, referred to the good work that these adoption agencies have done over the years. Rod Liddle is not a man who is given to writing very positive reports about many people, but I was struck by a review of a new book by Pauline Prescott that he wrote in last weekend's *Sunday Times*. She very movingly described how a church adoption agency helped her when she was a teenager to put her child into adoption. She has had the benefit of being reconciled with him; he has had an illustrious career in the Armed Forces as a result. The Jewish rabbi who said that a man who saves a single life saves the world was right. We never know how these events will work out when we provide the opportunity for people to be adopted and to live.

Modern concerns for equality were very much inspired by the work of scholars such as John Stuart Mill and Alexis de Tocqueville. They warned us about the tyranny of the majority and we should understand that warning

[LORD ALTON OF LIVERPOOL]  
 today. They recognised that if you embrace a crudely majoritarian model of democracy, that will result in the formation of laws that have no regard for the rights of minorities. When laws designed for the majority are found to have negative or destructive effects on minorities, those minorities should be protected by different treatment under the law, usually courtesy of legal exceptions. There are numerous examples of such provision in relation to things such as military service, the taking of oaths, vaccination, abortion, the wearing of motorcycle helmets, and the wearing of protective head covering on building sites.

The sexual orientation goods and services legislation has failed because it has not made adequate provision to protect the interests of what have been described as “these other strands”. The impact of this is clearly seen today in the closure of both the Salford and, closer to home, the Westminster agencies, and the cessation of operations by the Leeds agency that is this very week fighting in the courts for its continued existence. Other agencies have continued, but no longer as agencies of the church. It is a real tragedy when people are pushed underground when they are actually doing great work, which should be seen as such.

These changes have negatively affected children needing adoption by causing very unfortunate service disruption. They have had very unfortunate effects on those would-be parents wishing to access adoption in the context of the Catholic ethos. It seems bizarre to me that legislation that is supposed to further goods and services provision should have jeopardised the goods and services rights of so many people. These people did not want all adoption services to be provided in the context of the Catholic ethos, but they did hope that they might continue to have the option of accessing those services somewhere in a context that is accessible to their protected characteristic. They are asking why this has been taken away, because the Government have determined that another protected characteristic should be free to access services anywhere in a way that is accessible for their protected characteristic.

I very much welcome my noble and learned friend’s amendment, which moves us to a place where a right balance can be struck. Failure to rise to this challenge leaves us with what might be described as majoritarian equalities legislation that has no regard to its effect on other minorities. Ironically, it moves us from the place where we properly worked to avoid the tyranny of the majority to a place where we are in danger, in some contexts, of creating a tyranny of a minority. I very much hope, therefore, that the Government will accept the spirit of the amendment which my noble and learned friend has moved today, and also accept, in view of the moderate way in which she moved the amendment, and in which all the noble Lords who have contributed to this debate today have spoken, that we want to see a reasonable resolution of an issue that is, as I have said, the result of the law of unintended consequences.

**Baroness Morris of Bolton:** My Lords, I too declare an interest as a Roman Catholic and vice-president of the Catholic Union of Great Britain. I say to the noble and learned Baroness, Lady Butler-Sloss, who I thought argued her case beautifully, as one would expect, that

the Conservative Party is broad-minded and that we have always considered these issues to be issues of conscience and therefore subject to free votes. Therefore, what I am going to say is my personal view. I shall be brief because these are weighty issues coming very late in the Bill right at the end of the legislative process.

As my noble friend Lord Patten said, Catholic adoption agencies had a worldwide reputation for the work they did in placing some of the most damaged and vulnerable children. One reason why they had great success is that they were supported by the Catholic community in the parishes. Their aftercare was second to none. That was why they had good results. For the Catholic Church, the issue was not about sexual orientation, but about sex outside marriage. It was the same for heterosexual couples.

At one stage, my husband and I very nearly adopted from the Catholic adoption agencies. In the end, we decided not to, and I became pregnant. There was a young boy who did not want full-time adoption. He just wanted a family that would have him at the weekend because he wanted a ferret. A ferret was all he wanted in life. We considered long and hard whether we could give him a home at the weekend and give him a ferret. In the end, we decided not to. I have often thought long and hard about that young man. I hope he did get his ferret and I hope he got it in a loving Catholic home.

**Baroness Murphy:** My Lords, I shall speak briefly to urge the Government not to accept these amendments. I find them quite shocking. Essentially, I would defend to the death the rights of religious groups and organisations to believe what they want to believe but, when it comes to how those religious groups behave in relation to the rest of society, they cannot exercise a right that so diminishes the rights of other groups. I do not doubt that that is not the intention of my noble and learned friend Lady Butler-Sloss, but these amendments are deeply, offensively, homophobic. The Government must resist them at all costs.

**Lord Low of Dalston:** My Lords, I did not intend to speak in this debate, but I have listened carefully to what has been said and it has prompted one or two reflections that I would like to give voice to briefly, particularly in the light of the remarks by my noble friend Lady Murphy.

I am not a religious person, but people of all faiths and none should be concerned about the value of tolerance. It is a value that we should not lightly undermine. What leads people to support provisions that seem to have the effect of undermining free speech and conscience and creating the oppressive majoritarian regime of which my noble friend Lord Alton spoke? I think that it arises from concern over the exercise of free speech and conscience operating as a sword for the oppression of minority groups. That may not be the intention, but the exercise of rights of free speech and conscience can operate in that way, which is the mischief to which my noble friend Lady Murphy referred.

We should be concerned in our zeal to prevent such provisions from operating as a sword not to prevent them from operating as a shield in the hands of people who are simply concerned to protect their private

belief and their freedom to act in accordance with it. As my noble friend Lady Afshar said, faith and belief are important strands in our civic life and we ought to be concerned not to undermine people's freedom to believe these things and to act reasonably in the light of them.

That word "reasonably" leads me to make a suggestion. If the Government are minded to stand pat on the provisions of the Bill and to resist the amendments, it occurs to me that they might like to reflect a little more on what has been said and come back at Third Reading, as was suggested, with their own amendment that glosses these amendments, upholds their spirit and enables people to exercise their conscience, so long as that does not cause any harm to others or have any disproportionately adverse effect. We have heard a lot of testimony in this debate to suggest that the operation of the provisions that are maintained in the Bill has had a disproportionately adverse effect. If exercising the right of conscience were not to have a disproportionately adverse effect, that is the basis on which we could reasonably support amendments of this kind in the interests of upholding the value of tolerance.

5.45 pm

**Baroness Royall of Blaisdon:** My Lords, Amendment 20, moved by the noble and learned Baroness, Lady Butler-Sloss, is similar to an amendment moved in Committee by the noble and learned Lord, Lord Mackay of Clashfern. During that debate, my noble friend Lady Thornton made it clear that, where it is operationally feasible for service providers to make allowances for the views of their staff, they are free to do so. However, if this amendment were accepted, we would be going even further by requiring service providers, so far as possible, to make reasonable adjustments for the views of their staff in the light of their beliefs on sexual orientation.

It is our view that no one offering goods or services to the public on a commercial basis should be able to discriminate on any grounds. While we understand that individuals may have strong views, in this modern world those views cannot be used as a reason for prejudice or discrimination. As an employer, a service provider can already, when reasonably able, take practical measures to respect the private views of staff.

The noble and learned Baroness and other noble Lords raised the recent case of the registrar. In that case, the Appeal Court handed down its judgment, which confirms that, while everybody is, of course, free to hold personal opinions about sexual orientation, those who are employed in providing a service to the public are legally obliged to treat their gay, lesbian and bisexual customers in the same way as they treat their heterosexual customers. In the case of registrars, that demonstrates that, if an individual registrar does not want to conduct a civil partnership ceremony because of his or her religious beliefs, a local authority could arrange for a different registrar to conduct the ceremony, if there is one available. However, if there is no other registrar available, the local authority can and should require the registrar to carry out the ceremony. That is precisely what happened in the case in question.

The amendment tabled by the noble and learned Baroness would go further by imposing an undefined and burdensome new duty on service providers to accommodate the views of their employees relating to sexual orientation. This would upset the balance that the Bill currently strikes where there are potentially conflicting rights. In this case, that balance is appropriately struck by the prohibition of indirect discrimination, which protects employees against an employer's failure to accommodate their beliefs. This means that, where an employer's policy or practice puts a group of employees sharing a protected characteristic at a disadvantage, that policy has to be objectively justified. In addition, we think that this amendment is not only unnecessary but would introduce uncertainty and confusion in what is expected of service providers, when the main focus should be on ensuring that they provide services to the public without discrimination in accordance with their legal obligations.

Amendment 21 would turn back the clock for adoption and fostering agencies. The proposed new paragraph in Schedule 3 would provide an open-ended, block exemption, allowing faith-based adoption and fostering agencies, for religious reasons, to refuse their services to a person because of his or her sexual orientation, provided that they referred that person to another agency. This Government are committed to adoption for children where this is in their best interests and we have made it clear that we are also committed to ensuring that people are treated fairly, no matter what their sexual orientation. That is why the Adoption and Children Act 2002, and its Scottish equivalent, focused strongly on the needs of children awaiting adoption and widened the pool of prospective adopters to include same-sex and unmarried heterosexual couples. It is also why the Equality Act (Sexual Orientation) Regulations 2007 introduced the right for same-sex couples and single, homosexual or bisexual people to be treated the same as other prospective adopters by adoption agencies. Under the regulations, adoption agencies must offer the same service to all couples or individuals who wish to adopt. Since that time, I have witnessed real joy, as I am sure many noble Lords have, for gay and lesbian couples who have adopted children and who have made a profound difference to the lives of those children.

Children's best interests must remain paramount. All prospective adopters undergo the same thorough and rigorous assessment process, irrespective of their sexual orientation, to ensure that children are matched with families who can best meet their needs. Like the noble Lord, Lord Patten, I pay tribute to the excellent work of all adoption agencies but, unlike him, I see no anomaly between the gentleman that he mentioned being bestowed with an honour for his work with adoption agencies and children and the law as it stands.

The Government made it clear at the time of introducing the 2007 sexual orientation regulations that there could be no exemptions from the regulations for faith-based adoption agencies offering publicly funded services. This was debated at length. We recognise the valuable services that these agencies provide and the vital role that they play in improving outcomes for some of our most vulnerable children.

[BARONESS ROYALL OF BLAISDON]

We also recognise, like the noble Baroness, Lady O'Loan, that adoption agencies work with families over many years.

The noble Lord, Lord Patten asked why, given that the Government were warned that agencies would close, they did not find a way through. We provided a transition period until 31 December 2008 to allow those agencies time to prepare for, and adjust to, the new requirements. We commissioned an independent review to assess the implications and we provided an additional £500,000 to support faith-based adoption agencies in England and Wales to help them to understand the implications of the new regulations.

We have listened to the viewpoints of all groups and carefully considered the views and needs of the sector. When the regulations were introduced in 2007, it was predicted that Catholic adoption agencies would close. I have heard many things around the House today but I believe that the predictions, in the main, were wrong. According to the latest independent assessment panel's reports, the regulations have not led to any significant loss of capacity in the sector. I noted the statistics about adoption agencies mentioned by various noble Lords but, according to the figures that I have, only one Catholic adoption agency closed and all others are operating within the law.

**Lord Patten:** There is obviously a huge gulf between us, which I regret. The obvious discrimination that is coming across against Catholics and other faith-based groups I regret even more. However, on a matter of fact, two Roman Catholic agencies have closed. The noble Lord, Lord Alton, and I have named them both: the Westminster Catholic Children's Society and the Catholic Children's Rescue Society of Salford—both gone. Unless the High Court helps Leeds, that agency will go as well. Maybe those who advise the Minister should look at those statistics again.

**Baroness Royall of Blaisdon:** My Lords, I accept what the noble Lord says and I will look into this again. However, there are still Catholic adoption agencies and they continue to provide an excellent service to those couples who wish to adopt through a faith-based agency. The right reverend Prelate the Bishop of Bradford said that there must be space for Catholic couples to choose to adopt from a Catholic adoption agency. I agree with that, as long as those agencies comply with the law.

The noble Lord, Lord Patten, asked why the rights of those seeking to adopt in the context of a Catholic ethos are thought less important than same-sex couples. This is not about creating a hierarchy of rights. The Equality Bill has to strike a fair balance between religious freedom and the rights of people who are lesbian, gay or bisexual. There is nothing to prevent Catholic agencies from treating heterosexual couples consistently with their beliefs. All that they are prevented from doing is treating people less favourably because of their sexual orientation.

The noble Lord raised the question of the debating time given to the existing regulations. That point was also mentioned by the noble and learned Baroness. The Equality Act (Sexual Orientation) Regulations 2007

were subject to the affirmative procedure and debated in both Houses. I hear what the noble Lord said about four minutes in the other place and I do not wish to comment on that, but I know from my noble friend sitting beside me that the regulations were properly debated in this House.

In the Ladele case, it was not that there was no registrar available but rather that the local authority in question had a dignity and respect policy that required all registrars to conduct both civil marriages and civil partnership ceremonies. The court decided that the application of the policy was legitimate and the means of achieving it proportionate. I apologise if earlier I misled the House when I referred to that case.

The noble Lord, Lord Low, suggested accepting the spirit of the amendment in the interests of tolerance. We would never allow a person to have a conscientious objection on the grounds of race or disability, so why is sexual orientation different? I believe that we are a tolerant Government and a tolerant Parliament and that the law as it stands is a tolerant law. I believe that the new paragraph proposed in the amendment tabled by the noble and learned Baroness, Lady Butler-Sloss, would allow discrimination to embed itself where it has no place and I do not believe that that would be right in a tolerant society. Therefore, I urge the noble and learned Baroness to withdraw her amendment.

6 pm

**Baroness Butler-Sloss:** My Lords, I thank noble Lords very much for their support—it seemed that I had the support of 95 per cent of the House for what I had to say. I strongly support gay rights—I have said so on numerous occasions—and I am a great supporter of Stonewall. However, I believe in tolerance. I was deeply shocked by what the noble Baroness, Lady Murphy, said. I do not think that she attributed homophobia to me—at least, I sincerely hope not—because, if she did, she was wrong. She certainly attributed it to the two amendments that I am putting forward. I am shocked that she should see them as deeply homophobic. I certainly do not see them that way and I do not think that other noble Lords do, either. I put forward two amendments in good faith and I am saddened and, I have to say, upset for that to be accused of being deeply homophobic.

It is quite true that nine out of the 12 Catholic agencies in this country continue to act as adoption agencies, but they are no longer connected with the Catholic Church. I have the names of every one of those agencies; they are no longer Catholic agencies. The absence of discrimination against one group creates discrimination against another group. The balance is not right. I heard what the noble Lord, Lord Low, had to say, with his customary common sense and wisdom, and I had hoped, because it was what I was going to ask them to do, that the Government would take account of what had been said. It seems clear that the Leader of the House is shutting the door. Consequently, I should reflect on what the position should be. I shall ask advice and I may bring back the two amendments at Third Reading. I give that warning to the Leader, but, for the moment, I beg leave to withdraw the amendment.

*Amendment 20 withdrawn.*

**Schedule 2 : Services and public functions: reasonable adjustments**

*Amendment 20A not moved.*

**Schedule 3 : Services and public functions: exceptions**

*Amendment 21 not moved.*

*Amendment 22*

*Moved by Baroness Thornton*

**22:** Schedule 3, page 148, line 15, at end insert—

“(3) Sub-paragraph (4) applies to a person (A) who may, in a case that comes within the Marriage Act 1949 (other than the case mentioned in sub-paragraph (1)), solemnise marriages according to a form, rite or ceremony of a body of persons who meet for religious worship.

(4) A does not contravene section 29, so far as relating to gender reassignment discrimination, by refusing to solemnise, in accordance with a form, rite or ceremony as described in sub-paragraph (3), the marriage of a person (B) if A reasonably believes that B’s gender has become the acquired gender under the Gender Recognition Act 2004.”

**Baroness Thornton:** My Lords, in Committee, amendments were put forward by the right reverend Prelate the Bishop of Winchester and the noble Baroness, Lady Gould of Potternewton, regarding gender reassignment and marriage. These were accepted by the Government, as they made it clear that the Equality Bill would preserve the current position in discrimination law and would not interfere with the changes made to the Marriage Act 1949 by the Gender Recognition Act 2004 or the position regarding other faiths using registered buildings. The amendments now make up Part 6 of Schedule 3.

Paragraph 24 of Schedule 3 covers the majority of legally recognised religious marriages in England and Wales. It covers those who solemnise marriages according to the rites of the Church of England and the Church in Wales, and those persons who give consent to solemnisation in a registered building. However, paragraph 24 does not cover those who solemnise religious marriages under the Marriage Act 1949 but who are either members of a faith not required to marry in registered buildings or clergy or ministers of a faith with registered buildings but not the persons consenting to its use. By contrast, paragraph 25, relating to Scotland, covers all those persons solemnising legally recognised religious marriages

We consider that those persons who solemnise religious marriages under the Marriage Act 1949 but who are not currently covered may also have personal religious concerns about conducting marriages of persons who have undergone gender reassignment. Under current discrimination law, they may refuse to solemnise marriages of such persons without the risk of a claim for unlawful discrimination.

It is only fair, therefore, that persons solemnising marriages from all faith groups are covered by Schedule 3. They should not be put in a position of having to choose between facing a claim for discrimination and their personal religious conviction, and they should be

able to refuse to marry persons who have undergone gender reassignment. Hence, Amendment 22 has been tabled.

Again, this is a permissive amendment that does not place any obligation on those who solemnise religious marriages and it maintains the status quo. I beg to move.

**Baroness Morris of Bolton:** We understand from the letter of the Minister that the amendments are further drafting corrections and clarifications. We welcome the changes.

*Amendment 22 agreed.*

*Amendment 23*

*Moved by Baroness Morris of Bolton*

**23:** After Clause 77, insert the following new Clause—

“Equal pay audit following contravention by employer

(1) In the event that a court or employment tribunal finds that an employer has contravened the provisions of this Act relating to equal pay, the employer shall be required to undertake an audit, to be known as an equal pay audit, and to make the results of this audit available in the prescribed manner.

(2) In this section “prescribed” means prescribed in regulations made by the Secretary of State.”

**Baroness Morris of Bolton:** My Lords, we have retabled our amendments from Committee because we feel that it is important to emphasise our concerns about the Government’s proposals, which will not produce workable or effective solutions to the problem of the gender pay gap. We wish also to facilitate a debate on the metrics of the pay audit, which were unfortunately not available in Committee. We have therefore tabled amendments which would remove Clause 78 and insert our new provision applying a mandatory pay audit to any company found guilty at a tribunal. I shall listen with interest to the Liberal Democrat amendments, but I am sure that they will not be too surprised if we disagree with them.

We are at one with the Government and most people in the wider world who wish to reduce the gender pay gap. This is a shared ambition. The difference is in the method and how we approach it. It is shameful in the 21st century that, as of 12 November 2009, the Office for National Statistics was showing that the mean pay gap between men’s and women’s average hourly wage for full-time work was still 12.2 per cent. All are in agreement that this situation must change.

We on these Benches feel, however, that the Government’s proposals will not achieve this, but, more worryingly, will place onerous burdens on businesses at a time when many are already struggling to stay afloat. The difficulties of producing the relevant data and the resources that will be required to do it place an unfair burden on many employers. Moreover, it is inappropriate for the burden to be shouldered equally by good employers. Under the Government’s proposals, fair employers will suffer just as much as unfair ones. This does not seem just.

Moreover, I am not sure that I understand the reasoning behind the Government’s limiting the proposals to companies which employ more than 250 people, or, as we will hear proposed in the amendment tabled in the name of the noble Lord, Lord Lester, limiting it to

[BARONESS MORRIS OF BOLTON]

100 employees. If, as we all agree, this measure is important to women, surely it must be a policy for all women. A workable solution must therefore apply to all companies and not just to those larger ones.

That the EHRC took such an unaccountably long time to come up with the metrics underlines the fact that this is not as simple an audit as has been suggested. This surely illustrates to the Government that the burden will be greater than anticipated, and that the exercise will be more complicated to complete than might first have been imagined. The very process of creating the metrics also managed to alienate business groups which were involved in the process.

We heard that an agreement was almost reached when, suddenly, an amended draft of the report was sent out in January, with changes that forced business groups to reject it. The Government had therefore lost the consensual engagement of these crucial business organisations. After all, consensus is exactly what is needed in order to achieve the result we are all seeking. Can the Leader of the House tell us what has been done to ensure that business communities and employers are satisfied with the proposals? As they are representative of groups which will be carrying out the audits, it is presumably vital that their input is considered fully and that their agreement is found.

I would like to raise two major problems that we see with the metrics. First, they concentrate almost solely on pay. Obviously they are about equal pay, and while a focus on pay is important, do the Government also accept that a real culture change is required if any progress is to be made? For this reason, there may be other metrics which are important indicators, such as the percentage of women who return after maternity leave, or the amount of available flexible working time that a company provides.

There is also the option of a voluntary narrative of causes of the pay gap. This, however, would only be done in addition to the quantitative measures, as an added extra rather than as one of the main metrics. We therefore believe that Clause 78 will not achieve a narrowing in the gender pay gap.

Secondly, it was suggested that there would be a menu of indicators which would allow companies to choose the ones most appropriate to them. Instead, here we see one narrative approach, and three quantitative measures. That is hardly indicative of a menu of choice, and it will not allow companies the flexibility to choose the metrics which will be most appropriate for them.

Does the Leader of the House concede that there is a danger that the legislation may do the exact opposite of what is intended and encourage companies to chase the best figures or manipulate them to their best advantage? This would be most disappointing. Nevertheless, there is a risk that these figures can be massaged to show the company in a better light. Not only would this not help to solve the gender pay gap, it would also serve to drive it deeper underground, where it is then harder to solve.

The CBI gave us some examples: in one company, you could have as many figures as you cared to have. It looked at salaries, and it came up with a mean annual

salary of 11.3 per cent. However, if you looked at this figure with a bonus, then the mean was 12.2 per cent, and the median was 7.1 per cent. If the same salary was scaled up for full-time equivalent, then the pay gap was 6.4 per cent. The mean pay gap with a bonus would be 7.6 per cent. Most shockingly of all, playing around with these statistics would mean that they could appear brilliant, because the median would be 0.9 per cent. These are boggling figures, but by looking at the figures in different ways, that is exactly what one company was able to do. This would render the figures absolutely meaningless, and could serve to hide the problem.

We therefore believe that a different approach must be taken, and I look forward to the Minister's response. I beg to move.

**Lord Wallace of Tankerness:** My Lords, I speak to the amendments tabled by my noble friends Lord Lester of Herne Hill, Lady Northover, and myself. I share the outrage expressed from the Opposition Dispatch Box by the noble Baroness, Lady Morris, about the fact that after more than a generation since the Equal Pay Act 1970, there are still, as the Office for National Statistics has shown, huge disparities in pay between men and women.

I find it difficult that having highlighted this, the noble Baroness wishes to replace what we on these Benches would argue is an already insufficient Government response with an even less sufficient and even weaker response from the Official Opposition. The Conservative Party appears to be locking the stable door after the horse has bolted—you have to be found guilty of pay discrimination before an audit would be visited upon you. We do not believe that this kind of “stick”, or punishment-based approach, is the best way of dealing with this. We believe that the Government and the Conservative Party should ask—as we do—what, after all these years, this Parliament can do to end the discrimination in pay between men and women which still exists. We regret that the provisions which the Government have brought forward do not adequately answer that question. For a start, the scheme will be voluntary, whereas our amendments would make it mandatory. We are led to understand that the Government will exercise the powers which they are taking under Clause 78 only if there is an insufficient voluntary publication by employers by 2013—some three years away. That means another three years of allowing a situation to carry on which for the past 40 years has not answered the question. One wonders why they believe that in the next three years the gap will be closed, when the experience of the past 40 years would suggest otherwise.

6.15 pm

We also take exception to the proposed limit of 250 employees. We put it at 100 and the noble Baroness, Lady Morris, wondered why. We regularly hear concerns about the imposition of too many burdens on much smaller businesses. We also believe that if you require private sector employers with at least 100 employees to publish information about differences in pay between their male and female employees, this should identify discriminatory differences in pay and therefore encourage

employers to eliminate sex discrimination in pay. They should know what their pay systems are. By the time you get up to a higher number of employees, that detailed level of discrimination in the system may not necessarily have been identified. They may think that they are good employers in terms of addressing issues of sex discrimination, whereas an audit might well prove that they are not. If it shows that particular pay systems are adversely impacting on their women employees, then through negotiation or otherwise, they would be expected to address the situation.

We are as a nation going through difficult times economically—there is no denying that. However, that should not be an excuse for companies in this country to exploit women as a source of cheap labour. I do not believe that anybody in this House believes that that should happen either. That is why it is important that we try to find a way to address the issue more immediately and effectively. We believe that our amendments will provide an answer. I do not suggest that it is the whole answer, but they make a more immediate attempt to address the question of why, after all these years, we have not eliminated the pay gap.

I encourage the Government to go down the road which we are adopting, because it is more likely to produce answers sooner rather than later. After all, we have waited far too long already.

**Baroness Royall of Blaisdon:** My Lords, Amendments 24, 25 and 26, in the names of the noble Lords, Lord Lester and Lord Wallace, and the noble Baroness, Lady Northover, are the same as those which the noble Lord, Lord Lester, moved in Committee. At the outset I should say that, like both noble Lords opposite, we all agree that the current pay gap is unacceptable. We all share the same aim. We all want to reach the same destination, but we differ on the pathways to be followed.

Amendment 24 would mean that the voluntary arrangements for publishing gender pay gap information being sponsored by the Equality and Human Rights Commission were not given any time to work. A Minister would have to make regulations under Clause 78 as soon as the clause was brought into force. The Government appreciate the contribution of the commission and its partners in working out options for measuring the gender pay gap, and of course we regret that the partners were ultimately unable to agree to the menu of options that the commission decided on. We would clearly have preferred employers' organisations still to be engaged with the process. We hope that they and individual employers will recognise that real benefits are to be had in participating and helping to shape the future agenda on pay transparency rather than standing on the sidelines and perhaps having one imposed on them at some point.

The commission is currently developing guidance for employers, which I understand will be published within the next few weeks and disseminated as widely as possible to the target group—some 7,000 private and voluntary sector employers which employ at least 250 staff each. They are on track, and we stand by our policy of giving larger employers the chance to demonstrate their commitment to change on a voluntary basis, thereby making resort to the reserve power in Clause 78 unnecessary.

As I explained in Committee, that power could be exercised so as to require employers to find out where men and women are doing equal work or work of equal value and to collate pay data to identify gender pay gaps. The power could not, however, be used to require employers to analyse the data so as to establish the causes of any gaps identified, not all of which will be due to sex discrimination.

By contrast, Amendment 25 would effectively require employers to have analysed the data they had collated to establish the reasons for any pay gaps identified, prior to publishing information only about discriminatory differences in pay. That is, I suggest, hardly an incentive to make gender pay gaps more transparent.

With the greater transparency that publication of the data under our proposals will bring, employers could be more exposed to claims if the data showed a marked gender pay gap. Accordingly, it would be in an employer's own interests to analyse the published information to establish the reasons for the gap. However, we do not think it appropriate that they should be obliged to do so in all cases or to publish only discriminatory differences in pay.

Amendment 26 would apply the clause to employers with 100 or more employees instead of only to those with 250 or more. The noble Baroness, Lady Morris, asked why the number should be 250 and not 100. We opted for a 250-employee threshold because employers with fewer staff are classed as small and medium-sized enterprises and it is not as simple or as inexpensive for them as it is for larger employers to collate information about their gender pay gaps. I should also say that these employers employ around 40 per cent of those who work in the non-public sector. However, smaller private and voluntary sector employers are free to publish information about their gender pay gaps if they want to, regardless of Clause 78, and we encourage them to do so. I should add that a 100-employee threshold would be lower than that which we propose to apply in the public sector, which would clearly not be desirable. We will require public authorities with 150 or more employees to publish annually details of their gender pay gaps.

Amendments 23 and 27, tabled in the names of the noble Baronesses, Lady Warsi and Lady Morris, are the same as amendments moved in Committee. These amendments would remove Clause 78 and introduce a new clause. We had a full clause stand-part debate on that occasion, so I hope that the noble Baronesses will forgive me if I do not repeat what I said then to explain why Clause 78 is in the Bill. It is on the record.

Amendment 23 would require employers that were found to have breached the equal pay provisions of the Bill to conduct a pay audit and publish the results. I set out in Committee the reasons why the Government believe that this measure would make very little difference in practice to closing the gender pay gap, and our reasons have not changed. The reasons are that very few equal pay claims succeed at tribunal; the proposed new clause would not affect in any meaningful way organisations in the private sector, where the vast majority of people are employed; and more than 98 per cent of equal pay claims that reach an employment tribunal involve public sector bodies, most of which

[BARONESS ROYALL OF BLAISDON] have already conducted pay audits—indeed, the results of these audits are often the reason why a case has been brought in the first place. The proposed new clause also removes any discretion from employment tribunals and would lead to their ordering pay audits where they may be inappropriate—for example, where the employer has recently conducted a pay audit. Of course we agree on the need to close the gender pay gap, but the noble Baronesses’ proposals would make very little difference in practice. We believe that they could be regarded as punitive and arbitrary.

The noble Baroness asked a series of questions. She said that the CBI said that the metrics are capable of being manipulated or varied. That is why the EHRC is producing guidance on how employers should use the assessments in the menu of options. The commission will monitor how employers are deploying the options, which will help us to decide whether these are the right measures to prescribe if it becomes necessary to use the power in Clause 78.

The noble Baroness also suggested that the clause imposes disproportionate, bureaucratic, costly and time-consuming burdens on businesses at a time of recession. Fairness and equality are not things that we drop at the first sign of a downturn and we believe that, at such times, these matters are even more important. I am sure the noble Baroness agrees with me on that point.

As for the metrics proposed by the commission, there are, as the noble Baroness suggested, three options for measuring pay differences plus a narrative approach which would have to be combined with at least one of the three measurement options. The first of the three options for measuring the gender pay gap is to calculate the difference between the median hourly earnings of men and women by reference to all female employees’ median pay and all male employees’ median pay. That is sometimes called the single figure measurement. The second option is to measure the difference between the average basic pay and total average earnings of men and of women by grade and job type. The third is to measure the difference between the starting salaries of men and of women. The narrative approach would explain the context, explore and analyse the causes of any gender pay gaps, describe workforce involvement in addressing the issues, and seek lists of the actions being taken.

It is not for the Government to endorse or criticise a particular metric put forward by the EHRC. The commission has worked hard with its partners to identify options that might work for a particular employer. Our main concern is that the menu of options proves to be fit for purpose so that an increasing number of target employers will take them up over the coming months. However, we will only know if this is the case in the years to come as we and the commission monitor progress.

I recognise the point that we have reached in the discussions which have taken place. However, we hope that employers will see that embracing the EHRC’s menu of options is in their own interests, acting as a means of attracting and keeping a high-calibre and diverse workforce and as a signal to potential clients

that they are forward-looking and progressive concerns with which to do business. I also note that the EHRC has said that there is scope for further consultation, which I welcome. It has said that,

“we will take this forward during the preparation of guidance on the measures that we are proposing, with a view to achieving a greater degree of convergence and we look forward to continuing the dialogue with key stakeholders”.

We hope that that dialogue will continue swiftly. In the mean time, I ask the noble Baroness to withdraw her amendment.

**Baroness Morris of Bolton:** As ever, I am most grateful to the noble Baroness the Leader of the House for her considered response. Perhaps I may say to the noble Lord, Lord Wallace, that we do not see our position as a weaker alternative; we see it as having two great strengths that the Government’s proposals lack. The first is that it would cover women working in companies of all sizes, so it would protect all women. Secondly, it does not place an unnecessary burden on good and fair employers. It sends out a strong signal to all employers. The noble Baroness talked about pathways. We would not walk the Government’s pathway, and it is clear that they would not walk ours. Nevertheless, however strongly we may feel about this issue, we will not press it to a vote. I therefore beg leave to withdraw the amendment.

**Lord Wallace of Tankerness:** My Lords, having heard the response of the noble Baroness the Leader of the House and the indication from the Conservative Front Bench that they would be minded to oppose, I do not want, in the interests of making progress, to cause a Division on this matter in order to take the opinion of the House. However, it should be recorded that we remain unpersuaded by the arguments from both Dispatch Boxes. We on the Liberal Democrat Benches feel very strongly about this issue.

*Amendment 23 withdrawn.*

### **Clause 78 : Gender pay gap information**

*Amendments 24 to 27 not moved.*

6.30 pm

### *Amendment 28*

*Moved by Lord Rosser*

**28:** After Schedule 7, insert the following new Schedule—

“**SCHEDULE**

*Work: seafarers*

*Application of Part 5*

1 (1) Part 5 of this Act applies to a seafarer who works wholly or partly within Great Britain (including United Kingdom waters adjacent to Great Britain) if—

- (a) the seafarer is on a United Kingdom ship and the ship’s entry in the register maintained under section 8 of the Merchant Shipping Act 1995 specifies a port in Great Britain as the ship’s port of choice, or
- (b) the seafarer is on a hovercraft registered in the United Kingdom and is operated by a person whose principal place of business, or ordinary residence, is in Great Britain.

(2) Part 5 of this Act also applies to a seafarer who works wholly or partly within Great Britain (including United Kingdom waters adjacent to Great Britain) and who is—

- (a) on a ship registered in or entitled to fly the flag of an EEA State other than the United Kingdom, or
- (c) on a hovercraft registered in an EEA State other than the United Kingdom,

if sub-paragraph (3) applies.

(3) This sub-paragraph applies if—

- (a) the ship or hovercraft is in United Kingdom waters adjacent to Great Britain,
- (b) the seafarer has attained the age of 18,
- (c) the seafarer is a British citizen or a national of an EEA State other than the United Kingdom, or of a designated state, and
- (d) the legal relationship of the seafarer's employment can be located within Great Britain or retains a sufficiently close link with Great Britain.

2 (1) Part 5 of this Act applies to a seafarer who works wholly outside Great Britain and United Kingdom waters adjacent to Great Britain if—

- (a) the seafarer is on a United Kingdom ship and the ship's entry in the register maintained under section 8 of the Merchant Shipping Act 1995 specifies a port in Great Britain as the ship's port of choice, or
- (b) the seafarer is on a hovercraft registered in the United Kingdom and is operated by a person whose principal place of business, or ordinary residence, is in Great Britain,

and sub-paragraph (2) applies.

(2) This sub-paragraph applies if—

- (a) the seafarer is a British citizen, or a national of an EEA State other than the United Kingdom, or of a designated state, and
- (b) the legal relationship of the seafarer's employment can be located within Great Britain or retains a sufficiently close link with Great Britain.

#### *Interpretation*

3 In this Schedule—

“British citizen” has the same meaning as in the British Nationality Act 2010;

“designated state” means the countries of the African, Caribbean and Pacific Group of States, the Kingdom of Morocco, the Most Serene Republic of San Marino, the Peoples' Democratic Republic of Algeria, the Republic of Croatia, the Republic of Macedonia, the Republic of Tunisia, the Republic of Turkey, the Russian Federation and the Swiss Confederation;

“United Kingdom ship” means a ship registered in the United Kingdom under Part II of the Merchant Shipping Act 1995;

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom.”

**Lord Rosser:** My Lords, discrimination against foreign national seafarers is permitted under the Race Relations Act 1976—I think in Sections 8 and 9. Seafarers have to reside and be recruited abroad for the current exemption to apply. They are recruited abroad on local rates of pay to work on UK-registered vessels. Seafarers on ships trading between UK ports, including UK-registered vessels, can be paid at rates significantly below the national minimum wage.

This discrimination is applied in British workplaces. Other industries employing workers from abroad would, rightly, be expected to pay UK rates of pay when in a UK workplace. The number of UK seafaring ratings has declined from over 30,000 in 1980 to fewer than

9,000 today. In the last decade, the number of British ratings has fallen by almost 20 per cent. One of the primary reasons for this is the use by shipping companies of so many foreign national seafarers on low rates of pay, facilitated by the continued exemption in the 1976 Act.

In addition, foreign national seafarers work longer hours of duty than UK seafarers. For example, the UK seafarers employed by P&O Ferries work for one month followed by a month off. This is due to the long and demanding working hours. On ferries, these are normally around 84 hours per week but can be longer. Portuguese seafarers undertaking the same hours work for two months on and one month off. Filipino seafarers can be engaged for three whole months before they receive one month off.

Discrimination specifically against other EU nationals has of course now been declared illegal by the European Commission. A consultation paper setting out options for reform was finally published in March 2007 but proposals were put off on the basis that changes would instead be introduced alongside other changes in discrimination legislation under the single Equality Bill. Regulations to reform existing seafarer discrimination were published early in December 2009. They do not repeal all the discriminatory provisions of the 1976 Act but represent significant progress.

It is proposed that the current discrimination against EU and EEA nationals be outlawed on UK-flagged ships when a ship is in UK territorial waters. This is also proposed for non-EU and non-EEA nationals. In addition, for EU-flagged ships, discrimination could be outlawed for just EU or EEA nationals if the seafarer's employment had a sufficiently close link to the UK. How this will work needs to be clarified by the Department for Transport. The priority is now to ensure that regulations can become law alongside the Equality Bill. The best way to ensure that this happens and that the regulations stay as currently drafted is through the regulations being incorporated in the Bill. That is the purpose of Amendment 28, which I hope my noble friend the Minister will agree to.

A second issue is the national minimum wage. We are still waiting for action to be taken on enforcement of the national minimum wage for seafarers on ships trading in UK territorial waters or, as a minimum, on all ships trading between UK ports and the UK offshore sector. The Government have attempted in the past to defeat these proposals by referring to the position of the Foreign Office, which says that enforcement cannot be taken on foreign-flagged ships in any circumstances. However, as a result of the matter being raised by the tabling of amendments in the other place, I understand that the Department for Transport has agreed to convene a cross-departmental meeting to consider apparently conflicting legal advice.

The issue is that foreign national seafarers are entitled to the national minimum wage on UK-registered ships only when they are in port or in internal UK waters, as opposed to UK territorial waters. UK-resident seafarers receive the national minimum wage in UK territorial waters provided that the ship is flagged in the UK. UK internal waters include, for example, the Solent, the sea between Scotland and the Inner and Outer Hebrides, the Firth of Forth, the Wash and the Thames estuary.

[LORD ROSSER]

They do not include, for example, UK territorial waters between Scotland and Shetland or between the mainland and the Channel Islands or the Isle of Man.

The national minimum wage does not apply to the foreign national seafarer where the ship goes out of UK internal waters, even if the ship trades between two UK ports—for example, between Liverpool and Belfast or Aberdeen and Shetland. The current law does not give an entitlement to the national minimum wage to foreign national seafarers in these examples, even where employment is on a UK-flagged ship. On top of that, a simple transfer of flag can mean that the ship owner can avoid responsibility for payment of the national minimum wage to foreign national seafarers even where the seafarer is employed on a trip deemed to be within UK internal waters. Under current legislation that could potentially apply to a ferry sailing to one of the isles west of mainland Scotland.

Legal advice to the seafaring unions advises that an amendment limiting coverage of the national minimum wage to all ships trading solely between UK ports or in the UK offshore sector should not infringe the right of innocent and free passage for a ship. Amendment 30 would apply the national minimum wage to ships and vessels of all flags trading solely between UK ports and in the UK offshore sector. Applying the national minimum wage to ships of all flags tackles the usual argument that ships will flag out to avoid any minimum standards. To repeat, the amendment provides for the application of the national minimum wage to all ships trading between two UK ports or working from one UK port—that is, in the UK offshore sector.

I hope that my noble friend the Minister will recognise the unfairness to seafarers of the current situation, in relation to both the Race Relations Act and the national minimum wage, and that the Government will accept these amendments. I beg to move.

**Lord Clinton-Davis:** My Lords, many years ago I had the privilege of dealing with aviation and shipping. I welcome the stance taken by my noble friend Lord Rosser today. We have many interests in common. My noble friend may well succeed me as president of the British Airline Pilots Association, a post that I have had for some 29 years. He has done the House a great service today in outlining the position, to which the Minister ought to reply.

In my day—I am looking back quite a long time—the shipping industry was rather healthier than it is today. My noble friend Lord Rosser referred to the position in 1980. I ceased to be the Shipping Minister in 1979. At that time, one of the key features of my relationship with the industry was that I was not entirely satisfied to accept only the view of civil servants. I had regular meetings with the ship owners and with the seafarers' trade unions. In many ways, that is an imperative, which I hope the Minister will say is still practised today. I do not know the present situation.

Of course, there were disputes between the seafarers and the ship owners and the Government were left in a rather awkward position. However, as a result of the relationship that a Shipping Minister enjoyed with both sides, they were able to come to a reasonable accommodation, which is all that my noble friend is

asking for. I would like to know whether the current Minister with responsibility for shipping has the same sort of relationship that I had at that time.

Although there was some improvement in the situation when the Labour Government took office, that improvement has not been sufficient. We rely on our shipping industry and I am sad that, whereas 30,000 people were employed in the industry in 1980, now there are only 9,000. Although, as I said, there have been some improvements on the position that existed before, nobody would proclaim that with satisfaction. I am grateful for the points made by my noble friend today. They are of immense importance not only to the trade unions but to the ship owners of our country and the people who are served thereby.

**Earl Attlee:** My Lords, I am grateful to the noble Lord, Lord Rosser, for explaining the purpose of his important amendment. However, I thought that he would propose his new schedule and other amendments to primary legislation merely as a probing amendment. I thought that the noble Lord was too experienced to propose amendments that would, at this late stage in the parliamentary process, have the effect of removing the power to make such regulations and of enshrining the extent to which the Bill as primary legislation will apply to ships and seafarers.

To all intents and purposes, the contents of the proposed schedule repeat the draft regulations on which the Government are currently consulting all relevant stakeholders. As this process is not yet complete, it would be odd to enact the provisions now. Of course we look forward to the results of the consultation. The noble Lord makes it quite clear that these are complex issues. When the Minister replies, will she comment on the assertion of the UK Chamber of Shipping that, if adopted, the amendments would massively increase the costs of many ships operating under the UK flag and make their operation uncompetitive, with obvious consequences?

On Amendment 30, will the Minister confirm that the FCO has clearly advised the Chamber of Shipping that to apply the national minimum wage to foreign-flagged vessels when they are on innocent passage within UK waters, including to and from UK ports, would be unlawful under the United Nations Convention on the Law of the Sea and would interfere with collective agreements made between ship owners and mariners' representatives in accordance with the law of the relevant flag state and, as such, would be unenforceable?

**Lord Clinton-Davis:** The noble Lord has expressed the position of the UK Chamber of Shipping, but has he also had conferences or discussions with the trade unions concerned?

6.45 pm

**Earl Attlee:** Unfortunately not, my Lords. I would have liked to have had the opportunity, but the amendment arose at short notice, so I am not as well briefed as I would like to have been.

Because any such requirement is not enforceable against non-UK ships, the amendment would have the explicit effect of making UK-flagged operations

uncompetitive in international markets, which would harm both the economic contribution of the British shipping industry and the employment that it is able to provide British seafarers.

Finally, does the Minister reject the notion that foreign seafarers on UK-flagged ships are being paid poverty wages? Seafarers who live with and maintain their families outside the UK are paid at international rates that reflect the living costs in the countries where they live. Their wages, while in some cases below the UK national minimum wage, can nevertheless be on a par with high-earning professionals such as doctors and lawyers in their home countries. Moreover, they are above the International Labour Organisation's minimum wage level and, in many cases, meet or exceed the levels in the standard agreements of the International Transport Workers' Federation.

The noble Lord, Lord Rosser, touched on working hours. I am extremely concerned about fatigue and safe manning levels, but that is not an equality issue and is therefore outside our discussions this evening.

**Lord Greenway:** My Lords, the Government would be unwise to accept these amendments. After all, this Government brought in the tonnage tax in 2000, thanks to the former Deputy Prime Minister, since when the British-flagged fleet has increased by a factor of six, bringing substantial amounts to the Treasury. Indeed, in the last year for which figures are available, 2008, the turnover of British shipping was more than £13 billion.

The amendments would inevitably, as the noble Earl just said, make the operation of ships under the British flag more expensive. Charges for tankers and bulk carriers would rise by an estimated 130 per cent, for container ships by over 80 per cent and for cruise ships by something over 40 per cent. The inevitable result, with shipping being in a difficult state at the moment as a result of the recession, would be the reflagging of quite a number of ships. It is estimated that as many as 172 ships, making up 43 per cent in terms of tonnage under the British flag, would move abroad. That would have a serious effect on maritime London, which is under threat already, particularly from nations such as Singapore, which only recently offered tax incentives to arbitrators to move there. Maritime London has been the world centre for shipping for many years—not only ship owners, but law, finance, shipbroking and insurance. We should be very careful before making changes to the Bill at this late stage when, as the noble Earl, Lord Attlee, said, consultation is still ongoing with regard to the draft regulations.

**Lord Clinton-Davis:** Does the noble Lord agree with my assertion that, whatever may be included—

**Baroness Crawley:** With respect, my Lords, this is Report and interventions should be kept to a minimum. I ask noble Lords to respect that.

**Lord Greenway:** My Lords, I had virtually finished what I was going to say anyway. The small company with which I work is a tenant of a big Taiwanese shipping company and I know full well that it has been looking seriously at moving its ships to the Singapore registry.

**Baroness Thornton:** My Lords, I feel that we ought to have strong-armed my noble friend Lord Adonis into dealing with this question, given the new cast of noble Lords who have spoken. I turn to Amendments 28 and 29, which were tabled by my noble friend Lord Rosser. I warn him that I am about to disappoint him, but I will also outline some of the progress that has been made on this issue.

Given the nature of shipping, it is necessary to specify how, when and where the provisions in Part 5 apply to work on ships and hovercraft. It is the Government's intention to do so, through regulations which have already been drafted and were published on 30 November 2009. These amendments, however, remove the regulation-making power and seek to replicate the drafted regulations in the Bill, as the noble Earl, Lord Attlee, recognised. The Government would therefore not agree with this approach.

It is common practice globally for seafarers' pay to reflect the country where they are based and where their wages are likely to be spent, as was also mentioned by the noble Earl, Lord Attlee. This practice of pay differentiation is currently lawful in the UK by virtue of the Race Relations Act 1976. While there are economic arguments supporting the practice, many people clearly find it unacceptable. The draft regulations, and my noble friend's amendment, make no reference to differential pay and would make the practice unlawful. The difference is that the regulation-making power allows the legal position to be established, following full consideration of all economic and equity arguments. Secondary legislation also provides greater flexibility, allowing, if necessary, for further regulations to be made as the law develops.

My noble friend Lord Clinton-Davis asked whether the shipping Minister regularly meets industry and unions. I can reassure him that the Minister is meeting the RMT tomorrow to discuss a range of issues, including those that are relevant to the Equality Bill.

The Government must carefully consider the implications of ending the practice of differential pay, including the economic impact. There is no question of any form of differential pay for citizens of the EU, EEA or other designated states, but the possibility of putting UK employers at a significant commercial disadvantage against other employers, and leading them to consider deflagging their ships, has to be given serious consideration.

I appreciate that further delay in reaching a final decision is very frustrating, but following publication of draft regulations in November, the Government called for evidence from stakeholders and received a number of responses. Full consideration must be given to this evidence, so the Department for Transport is commissioning a review. This will allow the Government to make a well informed decision on this issue very soon. They will then be in a position to introduce the regulations for approval as soon as possible after Royal Assent, to ensure that they come into force at the same time as Part 5 of the Bill. These regulations will be subject to the affirmative procedure and will undergo full parliamentary scrutiny.

Amendment 30 would extend eligibility for the national minimum wage to seafarers on a ship of any flag trading solely between UK ports, anchorages,

[BARONESS THORNTON]

roadsteads or offshore installations. The Government have investigated this issue on numerous occasions, each time concluding that extension of the national minimum wage in this way would conflict with international law. The UN Convention on the Law of the Sea, to which the UK is party, grants foreign-flagged vessels the right to innocent passage through states' territorial waters, and limits the ability of states to apply their laws to foreign-flagged vessels. Travel between UK ports, anchorages, roadsteads or offshore installations can require passage through UK territorial waters and in some cases even the high seas. To be clear, applying the national minimum wage, as provided for in the amendment, would breach this international agreement, so my noble friend rightly understood that there is a problem here.

The Government have agreed to meet the RMT parliamentary group on 16 March. This meeting will allow the Government and the RMT to share their respective legal advice on this issue, and perhaps to reach a better mutual understanding. On this basis, I urge my noble friend to withdraw his amendment.

**Lord Rosser:** I find it a little depressing that immediately somebody stands up and seeks to apply the provisions of the national minimum wage on an equitable basis—in this case in respect of seafarers—or makes submissions that the exemptions that apply to foreign seafarers in relation to the Race Relations Act should no longer apply, such a degree of opposition is then expressed. Frankly, one would have thought, on the basis of fairness and justice, that such proposals ought to be implemented.

I am aware of the views of the Chamber of Shipping, but if my amendments had been accepted, or are accepted at some stage, one effect would be that the ease with which more responsible shipping companies—of which there are some—can be undermined by low-cost operations would be minimised around the UK coast. The measures contained in my amendments will, at a minimum, help to stabilise UK seafaring ratings employment; noble Lords have already referred to the significant reduction that has taken place over a number of years. I suppose it depends on your stance, and on the importance you attach to applying the provisions of the national minimum wage and of the Race Relations Act.

I note the Minister's reply. It remains to be seen what, if any, further progress is made in the discussions to which she referred. The reality is that this issue has been around for some years. It has not suddenly been brought up in the later stages of this Bill, but has been discussed in your Lordships' House before. It is a long-standing issue which has not been resolved, where representations have been made for the national minimum wage to apply in the circumstances I have outlined, and for the exemptions from the Race Relations Act 1976 to end. Although I am obviously disappointed by the Minister's reply, in reality I have no option. I beg leave to withdraw the amendment.

*Amendment 28 withdrawn.*

*Amendments 29 and 30 not moved.*

### *Schedule 9 : Work: exceptions*

#### *Amendment 31*

*Moved by Baroness Turner of Camden*

**31:** Schedule 9, page 170, line 22, after “religion” insert “and that given the nature of the particular occupational activities concerned, or the context in which they are carried out, A's application of a requirement under sub-paragraph (4) in relation to the employment, constitutes a genuine and determining occupational requirement, and that the objective of this application is legitimate”

**Baroness Turner of Camden:** I will speak to Amendment 32 as well. This section of the Bill deals with employment and concerns the religious requirements of the employer. A faith school is an obvious example, but there could be other such employers. We had a lengthy discussion on this subject in Committee, and it is not my intention to undermine the decisions taken then. The wording of my amendment is designed not to do that. I respect the decisions taken by your Lordships in that regard, and for that reason I have drafted my amendment in the section dealing with individuals and the way in which requirements may be applied to them.

The wording aims for clarity in regard to the employment in which it would be legitimate for the employer to make requirements of the employee. The wording refers to the nature of the occupational activities and, very importantly, to the context in which these activities will be carried out. It should be a genuine and determining occupational requirement that the individual employee should comply with the religious requirement of the employer, and the objective would need to be legitimate. Of course, in all enterprises there are jobs of a routine character in which it would be unreasonable to require that the occupant should abide by the religious requirements of the employer. There are all sorts of employments of that kind, such as cleaners, gardeners, people concerned with building maintenance, and so on. Nowadays, people do not choose where to work and are only too happy to take whatever work is available.

The objective of my amendment is to make it clear that such people could not be subjected to the requirements of a religious nature, because they, too, have their rights, which should be respected. The wording does not mirror the EU directive which was discussed in Committee, and, as I said, it is not meant to undermine the decisions already taken by this House. I hope that it will therefore receive support.

The other amendment was pointed out to me by one of my colleagues. It was felt that religion and belief were originally intended to be listed among the requirements in the clause and were omitted in error, so I tabled an amendment that would write them back in again, alongside the other requirements that are standard in the Bill. I beg to move.

7 pm

**Baroness Thornton:** My Lords, the first amendment to paragraph 2 of Schedule 9 from my noble friend Lady Turner would add to this exception wording

from the relevant provision of the European directive that underlies the exception: namely, Article 4(1) of the framework directive. Member states are not required to copy the wording of the directive; they have only to achieve its intended result, which is what this exception does. Its wording is not materially different from the existing exceptions that it replaces and harmonises, one of which, Regulation 7(3) of the Employment Equality (Sexual Orientation) Regulations 2003, was held to be compatible with the directive by the High Court in the Amicus case. I hope that that will help to reassure my noble friend that the additional wording is unnecessary.

Paragraph 2(6) expressly refers to the “nature” or “context” of the employment, which includes an appointment to a personal or public office but which is narrower than the expression “particular occupational activities” used in the directive. The words “genuine and determining” in the amendment would not add anything to the natural meaning of the word “requirement”. The question whether being of a particular sex, for example, is or is not a requirement for a particular post will be a matter of fact to be determined in the circumstances of each case. If a requirement is not genuine, the facts will show that. If it is not determining, by definition it cannot be a requirement.

As paragraph 2(1) requires the employer to show that the employment to which a requirement is applied is,

“for the purposes of an organised religion”,

it is not necessary to state that the requirement is “occupational”.

Finally, the exception specifies in paragraph 2(5) and (6) the two narrow objectives of complying with the doctrines of the religion and avoiding conflict with a significant number of the religion’s followers’ strongly held religious convictions. These are both legitimate objectives, and in the Amicus case the High Court thought it clear that a requirement that meets either of the conditions pursues a legitimate aim.

Amendment 32, which is my noble friend’s second amendment to paragraph 2 of Schedule 9, would add, “a requirement related to religion or belief”,

to the requirements to which paragraph 2(4) applies. All the requirements listed in paragraph 2(4) relate to religion or belief in that they reflect matters of religious doctrine. For example, the Roman Catholic Church requires its priests to be men and unmarried. If an organisation with a religious ethos wishes to require an employee to be of a particular religion or belief, it could seek to rely on the specific exception at paragraph 3 of Schedule 9. I therefore hope that I will be able to reassure my noble friend on this.

I also make it clear that, notwithstanding the outcome of the votes on various amendments to this exception in Committee, the law will remain as it is. As my right honourable friend the Minister for Women and Equality put it,

“in anti-discrimination law there is an exemption for religious jobs but not for non-religious jobs”.—[*Official Report, Commons, 4/2/10; col. 468.*]

For all those reasons, I ask my noble friend to withdraw her amendment.

**Baroness Turner of Camden:** I thank my noble friend for that explanation, which I shall study with some care when I have the opportunity. I accept what she said about the existence of the anti-discrimination law, and in the circumstances I beg leave to withdraw the amendment.

*Amendment 31 withdrawn.*

*Amendment 32 not moved.*

### *Amendment 33*

*Moved by Lord Wallace of Tankerness*

33: Schedule 9, page 172, line 34, leave out paragraphs 8 and 9

**Lord Wallace of Tankerness:** My Lords, Amendment 33 is in my name and that of my noble friends Lord Lester of Herne Hill and Lady Northover.

Amendment 33 would remove the default age of retirement, and employers’ ability to dismiss employees, at the age of 65 or over for no reason other than that they have hit the age of 65 or over.

We tabled Amendment 61 after reflecting on the comments of the noble and learned Lord, Lord Mackay of Clashfern, when this issue was debated in Committee. If the amendment were accepted, the default retirement age would exist only until the end of 2011, so it would allow a breathing space of approximately 20 months in which to bring this measure into effect.

When my noble friend Lord Lester of Herne Hill raised this matter in Committee, he indicated that the amendments were probing, but I think there is a widespread belief that their underlying aim to remove the default retirement age has a lot of substance and merit. In the most recent *Equal Opportunities Review*, Michael Rubenstein wrote:

“A fixed retirement age is fundamentally discriminatory. It is based on the assumption that age affects someone’s ability to do their job. Unlike other protected characteristics, age can be used arbitrarily to fairly dismiss people”.

The JCHR, in its report on the Bill, said,

“there are strong arguments to suggest that the current statutory provisions governing the default retirement age unduly restrict the rights of older workers to equal treatment and non-discrimination”. It acknowledged that employers had a legitimate interest in workforce planning, but believed that other methods of workforce planning avoided the age discrimination inherent in a default retirement age.

Indeed, one can go back further than the most recent edition of the *Equal Opportunities Review* and the JCHR’s report to the report of the Select Committee on Economic Affairs of this House, which was published in January 2004. Now more than six years ago, that report recommended,

“that the Government should not permit the continued use of a normal retirement age by employers, whether at age 65 or 70 or 75, unless the employer can provide a reasoned and objective justification for the use of age rather than performance criteria in the determination of employability”.

That goes to the heart of the matter. Rather than seeing retirement as something arbitrary when one hits a particular age, the employer should look at the criteria for determining when a person’s employment

[LORD WALLACE OF TANKERNESS]  
 should be terminated. It should be objective rather than simply an arbitrary application of a birthday milestone, albeit that the age of 65 has been recognised as such for a considerable time. People should be treated as individuals, and the employer should look at the merit of what a particular individual can contribute in his or her place of employment. Many might be able to go on for some years beyond the age of 65.

If we were to be as arbitrary with some of the other protected characteristics, people would see an obvious unfairness. Perhaps we have become so familiar with the age of 65 as the default retirement age that it is not so immediately recognised as being discriminatory. That is why we wish to terminate the default retirement age, but we have set a timescale in which that can happen. I believe that the Government are ultimately sympathetic to reaching the same destination. Perhaps by tabling these amendments we can hurry them along the way. I beg to move.

**Baroness Howe of Idlicote:** My Lords, I certainly support the amendment today, as I did in Committee. It is absolutely crucial that we get rid of this default retirement age at the earliest possible moment. The age of 65 is pretty arbitrary when you consider our life expectancy, and it has a particularly bad effect at the moment on the older generation, who would like to stay in work but are more likely to get their marching orders as a result of the default retirement age. I join the noble Lord, Lord Wallace of Tankerness, in what he has said. If we can help the Government to move more swiftly in the direction of getting rid of it, that would be an excellent outcome.

**Baroness Warsi:** My Lords, our views on this issue are well known and we went through them at length in Committee. I shall therefore not hold up Report stage unduly by espousing them all over again. We on these Benches support in principle the removal of the default retirement age. We have long believed that retirement should be a process and not an event. However, we are concerned that a number of very complicated practical issues need to be taken into account when considering this matter, and that is particularly true in the context of the current economic climate. For example, we are worried that moves to remove the default retirement age might have a further detrimental impact on the large number of young people who are out of work at present.

Under the current law, if the default retirement age were removed, it could be difficult for employers to ask especially older employees who are not able to fulfil their job responsibilities to leave. This is a very important issue which needs careful assessment. Under the current law, it is realistic to suppose that if an employer were to ask an employee to leave, that could result in disciplinary action or claims of wrongful dismissal. We are concerned about that and the fact that it would be damaging to the relationship between employer and employee. As I said in Committee, perhaps there is a case for instigating some kind of neutral discussion in the workplace regarding retirement. Therefore, we on these Benches are concerned that while there is certainly a case for removing the default retirement age in principle, many options need to be

considered carefully to ensure that all the practical issues are addressed. We look forward to seeing the government review which has been promised.

**Baroness Royall of Blaisdon:** My Lords, the intention of these amendments is to abolish the default retirement age or to introduce a sunset clause that would remove the default retirement age at the end of 2011. We believe that these amendments are unnecessary and inappropriate as the Government have clearly set out a process for reviewing the default retirement age. As the noble Baroness, Lady Warsi, said, retirement is a process and not an event. However, I understand the strong views expressed by the noble Lord, Lord Wallace of Tankerness, and the noble Baroness, Lady Howe of Idlicote.

We are committed to a review this year—a year earlier than originally planned—and to implementing any changes necessary, in light of the evidence, during 2011. I stated that very clearly in Committee. In between, there will need to be consultation on the detail of any proposals and an opportunity for businesses to prepare for any changes. However, I want to reassure the House that we will seek to implement changes flowing from our evidence-based review as quickly as reasonably practicable.

We are already collecting information from a variety of sources about both the views and the experiences of older people and their employers. We have recently concluded a call for evidence on the operation of the default retirement age in practice and the costs and benefits of raising or removing it. There were over 200 submissions from a wide range of stakeholders, including the representatives of older people, business, unions and the public sector, and many individuals and individual businesses. We are currently analysing these responses, which will need to be considered alongside the Government's own evidence.

Key pieces of government evidence will include the results of the survey of employers' policies, practices and preferences that was commissioned by BIS and DWP. This involves a representative sample of over 2,000 employers, with results due to be published in summer 2010 although we will be able to consider the raw data earlier. In addition, the BIS-commissioned fair treatment at work survey, with a boosted sample of older workers, will be published shortly. Those surveys and stakeholder evidence will be supplemented by statistics on the labour market, qualitative research on the experience of employees and businesses dealing with retirement, and comparative studies of a range of retirement practices in different countries.

This is a comprehensive look at the issue which will enable the formulation of policy on the basis of wide-ranging and credible evidence. It should be remembered that the review will not only consider whether the default retirement age is still appropriate and necessary but seek to understand best practice around retirement. That includes considering how to encourage flexible retirement and flexible working options and driving culture change. It also means that we can try to anticipate and mitigate any unintended consequences of changing the law. Making policy on the basis of evidence is the key to making good policy.

As consideration of the evidence on the default retirement age is now under way, it is not necessary to make changes to the Equality Bill for evidence-based changes to the law to be made. We have set out a clear timetable. I therefore ask the noble Lord to withdraw his amendment.

**Lord Wallace of Tankerness:** My Lords, I am very grateful to the Leader of the House for that reply. I believe she indicated in Committee that there has been an acceleration of the review. I also think she said that she hoped that the matters emerging from the review could be carried forward during 2011. Although it would be helpful and encouraging for that process to be completed, the difference between us is now probably relatively small. The noble Baroness, Lady Warsi, has also given me an indication that the Conservative Party shares the same objective. I do not wish to test the opinion of the House on this issue. Therefore, I beg leave to withdraw the amendment.

*Amendment 33 withdrawn.*

7.15 pm

#### **Clause 84 : Application of this Chapter**

##### *Amendment 34*

*Moved by Lord Wallace of Tankerness*

34: Clause 84, page 54, line 40, leave out paragraph (c)

*Amendment 34 agreed.*

#### **Clause 85 : Pupils: admission and treatment, etc.**

*Amendments 35 and 36 not moved.*

#### **Schedule 13 : Education: reasonable adjustments**

##### *Amendments 37 to 41*

*Moved by Baroness Wilkins*

37: Schedule 13, page 188, line 31, after "paragraph" insert "  
"

(a) "

38: Schedule 13, page 188, line 33, at end insert ";

(b) the reference in section 20(3) or (5) to a disabled person is—

(i) in relation to a relevant matter within subparagraph (4)(a), a reference to disabled persons generally;

(ii) in relation to a relevant matter within subparagraph (4)(b), a reference to disabled pupils generally"

39: Schedule 13, page 189, line 11, after "is" insert "—

(i) in relation to a relevant matter within subparagraph (4)(a), a reference to disabled persons generally;

(ii) in relation to a relevant matter within subparagraph (4)(b) or (c), a reference to disabled students generally;

(iii) "

40: Schedule 13, page 190, line 9, at end insert ";

( ) the reference in section 20(3), (4) or (5) to a disabled person is—

(i) in relation to a relevant matter within subparagraph (4)(a), a reference to disabled persons generally;

(ii) in relation to a relevant matter within subparagraph (4)(b), a reference to disabled persons generally who are enrolled on the course"

41: Schedule 13, page 190, line 23, at end insert ";

( ) the reference in section 20(3), (4) or (5) to a disabled person is a reference to disabled persons generally"

*Amendments 37 to 41 agreed.*

#### **Clause 104 : Selection of candidates**

##### *Amendment 42*

*Moved by Lord Wallace of Tankerness*

42: Clause 104, page 67, line 2, at end insert ", and

(c) which, subject to subsection (7), are a proportionate means of achieving that purpose."

**Lord Wallace of Tankerness:** My Lords, this amendment stands in my name and in the names of my noble friends Lord Lester of Herne Hill and Lady Northover and the noble Baroness, Lady Morris of Bolton. My noble friend Lady Northover will speak to the substantive new clause on the diversity of candidates and I shall speak to the amendments in this group.

Our purpose in tabling the amendment is to try to determine why Clause 104 does not contain an explicit reference requiring that the action taken by political parties to address under-representation among their candidates must be taken in a proportionate manner. The amendments would introduce an explicit proportionality test which would require that any action taken by a political party in regulating the selection of its candidates to reduce any inequality in the party's representation in a particular elected body must be a proportionate method of achieving that aim. Furthermore, the proportionality test will not apply to Clause 104(7), which contains a provision allowing the use of women-only electoral shortlists.

We believe that this amendment is needed because Clause 104 as drafted contains a very broad power for political parties to take action to support those with a protected characteristic that is under-represented within the party. Effectively, the clause permits a form of disproportionate action that we believe would be at odds with the principle of equality which the positive action provisions are intended to support. For instance, a political party can provide financial and other support to candidates with one form of protected characteristic but refuse any such support to other prospective candidates, even those with a different protected characteristic that was also under-represented within the party. The effect could be to prevent other candidates having a proper chance of getting on an electoral shortlist.

We therefore think that it would be inappropriate for political parties to be able to take forms of action that would not be a proportionate means of reducing inequality in the party's representation, albeit that that is a valid objective. Therefore, we want to import the proportionality test within this clause. By parallel

[LORD WALLACE OF TANKERNESS] argument, it would bring Clause 104 into line with other clauses in the Bill, specifically Clauses 157 and 158, which propose positive action provisions, and each of them contains an explicit proportionality test.

However, we seek to exempt from that test the reference to single-sex shortlists, which should be done for a limited period. I confess that one of the great disappointments of my time as leader of the Scottish Liberal Democrats was that I did not manage to persuade my party in Scotland to go down the road of single-sex shortlists, particularly when the Scottish Parliament was established and there was no problem of incumbency. There was an opportunity then to ensure a much better gender balance. Indeed, the other political parties in Scotland took the opportunity to ensure this. One of the reasons why my own party opposed it—and I hasten to add that it was often opposed as much by women as by men—was the wonderful Liberal Democrat principle that the centre cannot tell the local parties what to do. Furthermore, there were concerns at the time that we could run the risk of legal action. If my memory serves me correctly, I tried to amend the Scotland Bill to enable us to achieve this aim but was unsuccessful.

The other parties, to their great credit, took positive steps to secure a better gender balance among their candidates in 1999. This has resulted in the Scottish Parliament being probably one of the most gender-balanced Parliaments of the democratically elected Parliaments of western Europe. I want to encourage that, which is why we seek to make an exception and introduce the test of proportionality in this case. I beg to move.

**Baroness Northover:** I support the government amendments on diversity. We need to work together across all parties to ensure that those whom we put forward to represent us fairly reflect the society in which we live. We know that Parliament currently does not fairly reflect the diversity of our society. We therefore seek not to discriminate but to flatten the playing field. For some years, outside organisations such as the Fawcett Society have monitored how many female candidates are put forward, and that serves to encourage us all to do better. Within the Lib Dems we have gathered much of the information about candidates which these amendments also propose.

The first step in addressing under-representation of groups is simply to recognise that very fact. The next step is to collect information to see what the patterns are. With that knowledge we can set about analysing why things are as they are, and then how we might address that. There is now huge understanding of, for example, why it has been particularly difficult for women to participate. They have lower earnings, less time, more childcare responsibilities, and they care for elderly relatives, all of which all militates against political participation. It is excellent that the Bill allows positive action so that special measures can be taken to address this; and, of course, the Lib Dems have done it for the European elections.

The Speaker's Conference on greater diversity among candidates more generally was very welcome and its conclusions heartening. I am glad that we have

together found a way of incorporating many of its recommendations in the Bill. I look forward to further discussions on how these things are to be put into practice in due course so that not only are unintended consequences protected against, as the noble Lord, Lord Wallace, indicated, but the principles of greater diversity among those who seek to represent us are taken forward.

**Baroness Morris of Bolton:** My Lords, my right honourable friend David Cameron made clear in his evidence session to the Speaker's Conference that he accepted the principle of reporting candidate data, as, indeed, did all the leaders of the main political parties. He explained that the desire and determination to make progress on the diversity of our candidates means that we monitor closely their gender, ethnicity and any declared disability. He also made clear, however, that we do not ask our candidates about their sexual orientation. For this reason I welcome the new clause and thank the noble Baroness the Leader of the House for taking on board the concerns regarding the sensitivity of collecting data around some of these characteristics, particularly sexual orientation and gender reassignment, and for arranging important cross-party meetings before Report.

I was therefore grateful to hear confirmation—actually, I have not yet heard confirmation, but I look forward to hearing it—from the Minister that the regulations will initially cover only the reporting of gender and ethnicity. In this way, the success of the data-gathering can be judged before any further steps are taken. It is most welcome because it addresses the concerns that were raised regarding more personal data. However, as a party, we accept that there may be benefits in monitoring sexual orientation, and so we will monitor sexual orientation internally, using similar methodology to that used by blue chip companies such as Barclays and Goldman Sachs. However, we remain concerned about the privacy of data, and for this reason the information we gather will be used to help us internally and will not be published.

We also welcome the amendments on proportionality in the names of the noble Lords, Lord Lester and Lord Wallace, to which I have added my name. It is important that action taken in pursuit of a legitimate aim should also be proportionate. I am grateful for the clarity that Amendment 43 provides on the potential use of all-women shortlists, which will be allowed even within the framework of proportionality.

**Baroness Royall of Blaisdon:** My Lords, I shall speak to government Amendments 44, 45, 57, 58 and 59 and to Amendments 42 and 43.

In Committee, in the light of some of the concerns expressed, I decided to withdraw the amendment in order to consider these concerns. Like noble Lords opposite, we believe that the principle of the amendment remains sound. Our intention in this amendment is to identify under-represented groups from the data collected with a view to identifying barriers causing or contributing to that under-representation.

First, in dealing with the concerns raised, I assure noble Lords that the Government will fully consult with political parties and others before the regulations,

which will be subject to the affirmative procedure, are issued. The regulations will cover, among other things, which protected characteristics the duty will apply to, how a party will publish the data and to which parties the duty will apply. In practice this might mean, for example, that depending on the consultation, only information on candidates' gender and ethnicity will be published. However, we must consult on those issues.

Secondly, in relation to smaller parties, concerns were expressed about how individuals could be identified from the published data. The Data Protection Act 1998 imposes strict safeguards about how the party collects, stores and publishes the data in question. These safeguards will apply in full to the data collected under this amendment. The data will amount to personal data, such as gender, or sensitive personal data, such as disability, as defined in the Act. Sensitive data are given a higher level of protection under the Act. However, all data collected under this amendment will be treated as sensitive data, which means that they will be collected and published only if the explicit consent of the candidate has been obtained. A breach of the Act can result in the party being fined. All data provided voluntarily will be aggregated nationally and anonymised. However, in the unlikely event that individuals could be identified, subsection (5) makes it clear that the party will not be required to publish the data.

Thirdly, concerns were raised that this provision could lead to the introduction of quotas by the back door. I take this opportunity to make clear that it does not allow positive action measures that would otherwise be prohibited by the rest of the Bill. However, I appreciate noble Lords' concerns. I am therefore happy to support Amendment 42 and the related Amendment 43, which makes clear that the positive action in candidate selections allowed by Clause 104 must be proportionate. Parliament has already decided that the use of women-only shortlists is proportionate, hence the provisions in the 2002 Act which we are now extending so that they will apply until 2030. However, we agree that nothing else done under this clause should be subject to an express proportionality requirement.

Amendment 45, together with Amendment 59, gives the Equality and Human Rights Commission enforcement powers. Amendment 58 ensures that the regulations will be subject to the affirmative procedure. Amendment 57 provides that the amendment is an exception to the harmonisation provisions since there is no EU law which applies to the amendment.

I note the strong support from the Benches opposite, for which I am very grateful. As I stated earlier, the Government are pleased to accept Amendments 42 and 43.

**Lord Graham of Edmonton:** My Lords, this is a happy occasion in that the measure before us has already been substantially endorsed in principle by the parties through the vehicle of the Speaker's Conference. It is to the credit of all the parties to recognise that in the year 2010, through the vehicle of the Equality Bill, an opportunity has arisen to make progress.

Anyone who has been involved in party matters, especially election and selection, will be well aware of the sensitive nature of this issue. As I see it, the way in

which things have been done in this field has been unaltered for the past 100 years or more. The Government should be congratulated on conceiving the idea of an Equality Bill. When I first heard of the Bill, I certainly knew about inequality in wages and inequality in opportunities, but I did not dream of the range of matters that could be seen to be equal or unequal that has been published here. I think that the safeguards that the Leader of the House has mentioned; that is, adequate consultation—

7.30 pm

**Baroness Royall of Blaisdon:** My Lords, I thank my noble friend for his strong support, but I remind him that this is Report stage and though I was moving the government amendments, I was first disposing of Amendment 42. Therefore, while I am grateful for his support, I think it more appropriate to move back to the amendments.

**Lord Graham of Edmonton:** I rest my case.

**Lord Wallace of Tankerness:** On that basis, my Lords, I thank the Minister for agreeing to these amendments and I think there is consensus in the House with regard to the new clause.

*Amendment 42 agreed.*

#### *Amendment 43*

*Moved by Lord Wallace of Tankerness*

**43:** Clause 104, page 67, line 14, at end insert “; and subsection (3)(c) does not apply to short-listing in reliance on this subsection.”

*Amendment 43 agreed.*

#### *Amendment 44*

*Moved by Baroness Royall of Blaisdon*

**44:** After Clause 105, insert the following new Clause—  
“Information about diversity in range of candidates etc.

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

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

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

- (a) successful applicants for nomination as a candidate at the relevant election;
- (b) unsuccessful applicants for nomination as a candidate at that election;
- (c) candidates elected at that election;
- (d) candidates who are not elected at that election.

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

(5) The following elections are relevant elections—

- (a) Parliamentary Elections;
- (b) elections to the European Parliament;

[BARONESS ROYALL OF BLAISDON]

- (c) elections to the Scottish Parliament;
- (d) elections to the National Assembly for Wales.

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

- (a) marriage and civil partnership;
- (b) pregnancy and maternity.

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

- (a) must (subject to subsection (6)) relate to all protected characteristics or only to such as are prescribed;
- (b) must include a statement, in respect of each protected characteristic to which the information relates, of the proportion that the number of persons who provided the information to the party bears to the number of persons who were asked to provide it.

(8) Regulations under this section may prescribe—

- (a) descriptions of information;
- (b) descriptions of political party to which the duty is to apply;
- (c) the time at which information is to be published;
- (d) the form and manner in which information is to be published;
- (e) the period for which information is to be published.

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

(10) Regulations under this section—

- (a) may provide that the duty imposed by subsection (2) applies only to such relevant elections as are prescribed;
- (b) may provide that a by-election or other election to fill a vacancy is not to be treated as a relevant election or is to be so treated only to a prescribed extent;
- (c) may amend this section so as to provide for the duty imposed by subsection (2) to apply in the case of additional descriptions of election.

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

*Amendment 44 agreed.*

### ***Schedule 15 : Associations: reasonable adjustments***

*Amendment 44A not moved.*

### ***Clause 113 : Jurisdiction***

#### ***Amendment 45***

*Moved by Baroness Royall of Blaisdon*

**45:** Clause 113, page 72, line 3, at end insert—

“( ) Subsection (1)(d) does not apply to a contravention of section (Information about diversity in range of candidates etc.)”

*Amendment 45 agreed.*

### ***Clause 148 : Public sector equality duty***

#### ***Amendment 46***

*Moved by Lord Ouseley*

**46:** Clause 148, page 95, line 39, at end insert—

“( ) To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1).”

**Lord Ouseley:** My Lords, this amendment is necessary to improve the obvious limitations of the public sector equality duty as it is set out in Clause 148. The limitations are evident by the partial success to date of the existing equality duty, with public bodies and authorities now thinking about their statutory equality responsibilities and having due regard to these, but not necessarily going beyond that point, in most cases, to deliver the outcomes required. I commend the Government on introducing the due-regard approach in existing race, gender and disability duties. It has got us to where we are now, but the proposed duty as set out in Clause 148 takes us no further. What we have now are volumes of equality strategies, schemes and policies, but not a great many desired and required outcomes that add up to recorded equality results.

Yes, there are statements of intent, declarations, aspirations, commitments, warm words, policy reviews and mountains of reports, all in order to satisfy the requirement to have “due regard”. Many of our public service authorities will do as much as they have to in order to meet the standard of compliance required to keep the EHRC from enforcement action, but that standard of due regard is, in my view, woefully inadequate. The amendment is not nearly as radical as I would like, or would have hoped for, or as many of the intended beneficiaries would want and need, yet, as drafted, it is absolutely required to give total clarity to all concerned, such as public authorities, private and voluntary bodies carrying out public functions, the EHRC as the lead enforcement agency, the audit and inspection bodies and members of the public, about the proportionate steps they must take across all relevant functions in order to comply with this duty.

If the duty is to achieve its full potential, it is crucial that the Bill should make clear that the obligation to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations includes a requirement to take proportionate steps towards the achievement of those aims. Nothing in the amendment would increase the burden on public authorities; in fact, it would do the opposite, as it provides a specific focus to ensure that a duty is applied appropriately and eliminates any doubt as to what the duty requires in order to meet the essential compliance standards. Nor does it limit what a public authority should do to comply with the duty. It would preclude any possibility of adding to the existing tick-box approach by public bodies, as they would be compliant only by meeting their obligation through taking appropriate and proportionate steps towards equality.

Proportionality is central to the meaning of the equality duty. To have due regard involves giving weight to equality in proportion to its relevance to each of an authority’s functions. Equality will be more relevant to some public functions than others: for example, for an NHS trust, equality will be highly relevant to all aspects of patient care, communications with family members and provision of information,

but may be less relevant to the purchase of sterile equipment or maintenance of trust buildings. Proportionate steps in relation to a particular function of an authority will be steps that are proportionate to the relevance of equality to that function, taking account of the other obligations on the authority, its size and resources.

This amendment has been developed in conjunction with the Discrimination Law Association and the Disability Charities Consortium in collaboration with the Equality and Human Rights Commission. It is fully supported by a wide range of expert equality groups, including Citizens Advice, Unison, Race on the Agenda, the 1990 Trust, the Equality Bill alliance, the National AIDS Trust, the Children's Rights Alliance for England and the Equality and Diversity Forum. This wide support amongst key stakeholders representing all the equality groups is not accidental. It reflects the concerns of people in communities with experience of the existing race, disability and gender equality duties who want to ensure that the new public sector equality duty will amount to more than a paper exercise. They want to see public authorities instituting effective changes to policies and practices to achieve real progress towards equality. Many of these organisations have been disillusioned and frustrated by the failure of public bodies to meet their existing duties across all their relevant functions. They support this amendment because they want the legal obligations on public bodies to be clear from the outset, including a minimum standard of compliance.

The EHRC, which is the enforcement body, will be the sole agency with statutory powers to enforce the Clause 148 public sector duty and it is important that it is clear about what it is enforcing. It can carry out a formal assessment of compliance with this duty and can serve a compliance notice. By putting into the Bill what a public authority, or other body exercising public functions, must do for minimum compliance, this amendment will give the EHRC a clearer basis to challenge any public authority, or other body, with poor evidence of compliance. It should enable the EHRC's enforcement procedures to be faster and more robust. It is very likely that the courts will continue to play a role in enforcing equality duties. This amendment, which builds into the statute a test for compliance, should also assist the courts when they are asked judicially to review certain acts, or omissions, of a public authority in relation to the authority's compliance with its equality duty.

It is also important that we provide a standard for the audit and inspection bodies to measure the equality performance of public authorities. The third aspect of clarity provides for members of the public. The amendment will provide a standard against which equality groups, community organisations, trade unions and members of the public can assess compliance with the equality duty. That is important because, by specifying the basic test of "taking all proportionate steps" towards achieving these matters, this amendment offers a useful baseline for organisations and individuals to hold public authorities to account.

In my view, it would be incomprehensible for the Government not to accept this simple amendment to improve Clause 148. The arguments for it are powerful,

the likely benefits are substantial and support from the experts, practitioners and communities undeniable. I beg to move.

**Lord Low of Dalston:** My Lords, the noble Lord, Lord Ouseley, makes an important point. We are all familiar with the problem of equality duties being complied with, with the boxes being ticked punctiliously, but without any difference being made to the outcome. I hope that the Government can appreciate the risk of the public sector equality duty being prone to this drawback and I hope, therefore, that they will reflect seriously about whether some strengthening of the wording on the public sector equality duty in the Bill might not be called for.

**Baroness Morris of Bolton:** My Lords, as in Committee, we have considerable sympathy with this amendment. We feel that it is of the utmost importance that the public sector equality duty is not allowed to become just vague gesture politics, which encourages a culture of box-ticking rather than real action. Nevertheless, we remain unconvinced that the amendment would add much to the Bill to change that. We believe it is most important to assess the outcomes of the duties contained in this clause, as in this way authorities can be held to account and necessary changes can be made to the duty in order to ensure maximum compliance and effect.

**Baroness Young of Hornsey:** My Lords, I support the amendment, based as it is on a substantial body of opinion and experience of the successes and failures of previous legislation. The term "proportionate" has been mentioned several times this evening and in other contexts in the legislation before us, and it is important that we ensure that "all proportionate steps" are taken.

In my view, the amendment represents an opportunity to ensure consistent compliance with standards across all the bodies covered, discouraging the tick-box mentality, which we all abhor, of some public bodies. These standards will apply not only to public authorities but also to private and voluntary sector bodies in the exercise of public functions. The use of the term "proportionate" ensures that an inappropriate burden is not placed on public authorities. The amendment seeks to provide standards which the EHRC and the courts can use to enforce compliance, and for audit and inspection bodies it gives the necessary guidance for the measurement of equality performance. Of course, I agree with the noble Baroness, Lady Morris of Bolton, that it is very important to focus on outcomes and, although the wording may not be perfect, that is certainly implicit in what we are trying to achieve here.

As my noble friend Lord Ouseley said, the amendment will enable equality groups, trade unions, community organisations and the public to assess the compliance with, and progress of, the equality duty. I re-emphasise the wide and impressive range of organisations that have supported the amendment.

**Baroness Coussins:** My Lords, I also support the amendment for all the reasons set out by my noble friend Lord Ouseley but also because I have given some thought to what the Minister said in her reply to me in Committee when I put forward a similar amendment with a similar purpose. She said that these matters

[BARONESS COUSSINS]

would be dealt with by the specific equality duties that would be set out in regulations at a later date. I have thought about that but I really do not think that that would be adequate, because the public sector equality duty applies to private and voluntary sector bodies when they exercise public functions. However, under the Bill, any specific duties imposed by regulations would, as I understand it, apply only to public authorities listed in Schedule 19 and would therefore not apply to private or voluntary sector bodies that carry out public functions. Increasingly, public functions at local and national level are carried out by private and voluntary sector bodies. This is particularly true in education—I think in particular of nursery education—but it also happens in health, prisons, social care and some aspects of social housing. As well as any equality obligations built into their contracts, such bodies, when taking over the functions of public authorities, should, I believe, be bound in the same way as public authorities to meet their equality duty, and I think that the amendment provides the only way to define for such bodies what they need to do in order to comply.

**Baroness Thornton:** My Lords, Amendment 46 tabled by the noble Lord, Lord Ouseley, and the noble Baronesses, Lady Young and Lady Coussins, is similar to the amendments tabled by the noble Lord, Lord Ouseley, and moved by the noble Baroness, Lady Young, on his behalf in Committee. We have not changed our mind about this amendment. We do not believe that it would improve the Equality Bill; instead, it would disturb the balance achieved by the current wording of the equality duty.

I appreciate that the amendment is intended to clarify Clause 148(1) but it would not have this effect. It would instead create further confusion by introducing additional requirements for public bodies to take all proportionate steps towards the achievement of a number of matters.

I shall try to explain what “due regard” means and how the courts interpret it. The courts have made it clear that having due regard is more than having a cursory glance at a document before arriving at a preconceived conclusion. Due regard requires public authorities, in formulating a policy, to give equality considerations the weight which is proportionate in the circumstances, given the potential impact of the policy on equality. It is not a question of box-ticking; it requires the equality impact to be considered rigorously and with an open mind.

The noble Lord, Lord Ouseley, implied that the only enforcement of the equality duty would be through the EHRC. Clearly, that is not true. The general duty can be enforced through judicial review by individuals and third sector organisations, as well as by the Equality and Human Rights Commission, but only the commission can enforce specific duties. The Bill makes it clear that in certain circumstances the duty will involve taking action to meet the needs of particular groups.

7.45 pm

The purpose of the equality duty is to oblige public bodies to consider equality issues in respect of all their functions. However, the amendment appears to be an attempt to take away an authority’s discretion as to

how it exercises its functions and to require public bodies, and private authorities that exercise public functions, to take all proportionate steps to eliminate discrimination, advance equality and foster good relations in respect of all their functions and in respect of all the protected characteristics, regardless of the circumstances.

If bodies subject to the duty are required to “take all proportionate steps” to advance equality of opportunity in respect of all eight protected characteristics, it is inevitable that public bodies will be required to spread their finite resources more thinly and that some persons with more pressing needs will end up with less.

The general duty will be underpinned by a number of specific duties to assist better performance of the equality duty. The secondary legislation sets out the detailed steps that a public authority should take to meet the duty, and in our opinion that is the right place to set them out.

On 25 January 2010, we published a policy statement in response to the consultation exercise on our proposals for specific duties. We would want public bodies to take steps such as developing and publishing equality objectives and reporting progress against them, and publishing their gender pay gaps and BME and disabled employment rates. We want them to do this in a standardised manner which allows citizens to track progress and compare public bodies. We believe that this package will lead to better policy, better public services and less bureaucracy and that it will be an asset for all. It will increase focus on the equality outcomes which we all wish to see.

Perhaps the noble Lord, Lord Ouseley, could consider that we have been here before. I am surprised that the noble Lord and those supporting this amendment, and indeed all the organisations that they have prayed in aid, have not beaten a path to our door asking for a meeting with us. It is not too late; they can certainly come and talk to us now. However, it seems that we have been in permanent session, meeting people about aspects of the Bill, for months and months. I reflect that the noble Lord and I had one very small exchange in the Cloakroom last week. It occurred to me then that perhaps we could have had a longer discussion had he and his colleagues come to see us to discuss the matter in more detail. Therefore, I invite him to do that.

The structure of a general duty underpinned by specific duties has worked successfully for the current duties. Why change an existing successful structure? We want to build on that, so I ask the noble Lord and the noble Baronesses, Lady Young and Lady Coussins, not to press their amendment.

**Lord Low of Dalston:** Before the Minister sits down, perhaps I may ask her how she responds to the point made by, I think, the noble Baroness, Lady Murphy, that the specific duties do not apply to private and voluntary sector bodies. Could the Minister consider what the Government might do to take care of that point?

**Baroness Thornton:** Certainly we will take on board and consider that point, but I have the feeling that the generality of the legislation applies to everyone. I

think that we shall need to have some discussions about this. I am getting a nod that that is generally the point of view. I probably need to write to noble Lords about that in specific detail, because I think that there are more details to give.

**Lord Ouseley:** My Lords, I thank the Minister for the very thoughtful, and indeed helpful, response, suggesting that those of us who tabled the amendment have a discussion with her and colleagues.

I am disappointed that the Government have not been able to change their mind on this, not even with the persuasion of the three of us or others. It is a closed mind because many of the organisations which support this have been in dialogue with the Government. They have been in dialogue with the Government's equality office and with all those who have been drafting the Bill. They have had discussions and briefings with those who have been drawing up responses to amendments. I find it difficult to accept that there is not an understanding about the importance of this amendment. It could be a lot stronger—I do not think it could be much weaker, but it is appropriate and proportionate. Bearing in mind the urgency of tonight and not wishing to waste anyone's time, I beg leave to withdraw the amendment.

*Amendment 46 withdrawn.*

#### *Amendment 47*

*Moved by Lord Wallace of Tankerness*

47: Clause 148, page 96, line 4, at end insert—

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

**Lord Wallace of Tankerness:** My Lords, as we have heard in the discussion of the previous amendment, Clause 148 brings existing public sector duties in relation to race, disability and gender together into a single duty and seeks to extend the duty to cover age and sexual orientation as well as religion and belief. Under Clause 148(1)(a) the authority must have due regard to the need to,

“eliminate discrimination, harassment, victimisation and other conduct prohibited by or under the Act”,

while Clause 148(1)(c) covers the need to,

“foster good relations between persons who share a relevant protected characteristic and those who do not”.

We find these subsections entirely laudable. For the most part we can support subsection 1(b) as well. However, we wish to draw the line at the inclusion of the protected characteristic of religion and belief in the public sector duty that would be established by subsection 1(b). We find that problematic, hence this amendment. My noble friend Lord Lester has spoken on this issue on Second Reading and in Committee. In Committee other noble Lords raised concerns as indeed did the most reverend Primate the Archbishop of York.

I want to state why we believe that religion and belief is different as a protected characteristic and why we believe that this clause is potentially both unworkable and divisive. The protected characteristic of religion

and belief is different because whereas race, age and gender are very obvious, a person's religious beliefs are for the most part—perhaps not in the case of the right reverend Prelate—not quite so obvious.

The other point is about intrusion. A public body would have to be intrusive to find out people's religions and beliefs. It is a characteristic, which is not innate at birth. Beliefs can change—they are not immutable. Moreover, as I said earlier, to use the phrase that my noble friend Lord Lester regularly uses, one person's belief is another person's blasphemy. Very often beliefs are irreconcilable. That, too, makes it different and in turn can raise very fundamental issues about freedom of expression. So I believe it is a different characteristic.

We want to pursue these amendments because the clause will impose unreasonable burdens and demands on public authorities. If one particular religious group has some provision made in respect in public education, then surely almost every other religious group could come along and expect similar provision from the public authority. In many parts of the country, we look to religious organisations to provide some basic public services. Many care facilities, the length and breadth of this country, are provided by religious organisations. If public funding is made available to help and assist some of these religious groups to make that important provision, might not other religious groups ask for similar public funding? That could lead to an inefficient use of resources.

We could also get some very odd requests coming from people who consider themselves religious. I cannot remember the figure, but, under the question of belief, the most recent census produced a very high percentage of Jedi believers. Do they count for the purposes of this provision? The provision could lead to resentment. In some extreme situations, what is intended to be a very good and purposeful provision in a Bill that is intended to draw people together could end up being divisive, bringing the particular provision into disrepute and, I fear, leading to a silo provision of services. There could be a particular provision for one religion, a different provision for another and a different provision for yet another. That would not be healthy at a time when we want to bring communities together.

It is quite proper that our law prohibits direct and indirect discrimination based on religious identity. However, we believe that Clause 148(1)(b) takes it well beyond that. There is nothing more unsatisfactory in politics than to say, “I told you so”, but I fear that if this comes to pass there will be an opportunity to say that. I hope it will not happen but “I hae ma doots”. I beg to move.

**Baroness Warsi:** My Lords, I have listened to the impassioned speech of the noble Lord, Lord Wallace of Tankerness, with rapt interest and deep attention. It follows from the passionate speech of the noble Lord, Lord Lester, in Committee. We have heard very persuasive language. However, I have to apologise to the noble Lord because my feelings have not changed one iota. I still do not agree with the practical consequences or the intentions behind these amendments and would go as far as to say that perhaps the noble Lord has misunderstood the outcome of what his amendments would achieve.

[BARONESS WARSI]

I wonder if the noble Lord is aware that by removing only religion or belief from the protected characteristics, which will be provided by the public sector equality duty, he is creating an anomalous position. If the amendments were carried and the Bill were to be altered then we would be in a situation where some religions would be covered by the duty because they would also come under the heading of race. For example, the Sikh community and the Jewish community would remain covered by the duty because they are legally defined as races. The same would apply to Hindus who are nearly 99 per cent Indian in origin. Those who would be left out in the cold would therefore be Christians, Muslims and Rastafarians. We would end up in a situation where a public authority charged with providing a service would be legally obliged to take into account Vaisakhi and Yom Kippur but not Friday prayers or Eid. I wonder if this was the result that the noble Lord was looking for.

The noble Lord is already aware of course that Section 75(1) of the Northern Ireland Act 1998 means that public authorities are required to have due regard to the need to promote equality of opportunity:

“between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation ... between men and women generally ... between persons with a disability and persons without; and ... between persons with dependants and persons without”.

I am not suggesting that just because religion or belief is included in one piece of legislation it is a given that it should be included in another. However, the latest research on the impact of this provision provided in the Equality Commission for Northern Ireland’s report *Keeping it Effective—Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998* which was published in 2007, said that the research on the impact of Section 75 on individuals found that the impact and outcomes on individuals had been positive, although partial. In general, the commission concluded that individuals of different religious beliefs will have benefited from the steps taken by public authorities to better understand their needs in terms of service delivery, for example, through increasing accessibility in the delivery of services to take into account times of worship. There are also examples of recruitment and selection policies being amended to mitigate the adverse impact for individuals of different religions.

It would appear, therefore, that the success in Northern Ireland is further evidence to ensure that the public sector equality duty applies to religion or belief as well as other protected characteristics. The report states that it has been particularly helpful in,

“the steps taken by public authorities to better understand their needs in terms of service delivery”.

We on these Benches believe that it is a vital part of the public sector equality duty and it is of the utmost importance to ensure that communities are brought together in social cohesion.

8 pm

If religion or belief were struck out of the Bill, it could mean that specific needs of Muslim women were not taken into account with regard to the local swimming pool, for example. I probably should declare

an interest as a Muslim woman. If that happened and the pool was built and opened without due consideration for religious needs, it would simply mean that, at some point after the event, the local authority would realise the error and be forced to provide specific alternative provision. The noble Lord refers to silo provision. That would be more likely to arise by taking out the provision and adopting the amendment. Indeed, it exists at present.

That will cause difficulties not only in funding but in an acceleration towards segregation. We are opposed to that and believe that a big part of community cohesion comes from providing mainstream resources for all to use. That may mean that special services are provided as part of those mainstream services. To continue with my swimming pool example, it could mean that there are special classes for women, not Muslim women specifically but women generally. All could use the mainstream provision.

I am sure the Minister will go into more depth regarding the need to take into account the different needs of those with distinct religions or beliefs. It is important to note that we would have to implement all these specific demands, which would be beyond the scope of any public authority. However, it would help the process of community cohesion if all needs were at least considered, and if people felt that they were heard and mattered in the provision of local services. The noble Lord, Lord Wallace, talks of funding in silos. I submit that we already have such provision as all beliefs are not taken into consideration when providing services generally. We have a shortfall of services which results in specific silo funding and provision thereafter. I am sure that the Minister will share some of our concerns about these Liberal Democrat amendments and the potentially divisive unintended consequences that I believe will follow.

**The Lord Bishop of Bradford:** My Lords, I have been asked to speak by the Chief Rabbi and by Sir Iqbal Sacranie. It is interesting that Jew and Muslim should come together in asking for this. It makes me wonder whether the noble Lords, Lord Lester and Lord Wallace, and the noble Baroness, Lady Northover, might not have a distinguished role to play in the Middle East.

The original measure is about protecting not religion but people against discrimination. It is important to understand that, and to be careful. The noble Lord, Lord Wallace, is very western in his suggestion that people can just change their religion, but often a group of people are brought together and assumed by others to be one group. The assumption can be made, certainly in Bradford, that all Asian people are Muslim. The Sikhs and the Hindus will then feel that they are being discriminated against and overlooked because of that assumption. I can imagine that happening in other ways in other cities where the demography is different. There needs to be close attention to the faiths of different groups who live together in our cities but who have different needs and concerns.

I hope that we will resist the amendment and allow people of religion—which is so intrinsic and not something that people can change just like that—to be recognised,

and ensure that others do not ride roughshod over what are deeply held and sincere sensitivities in terms of their lifestyles.

**Baroness Thornton:** My Lords, Amendment 47, tabled by the noble Lords, Lord Lester and Lord Wallace, and the noble Baroness, Lady Northover, is similar to Amendment 111, tabled by the noble Lord, Lord Lester, in Committee. I said that we would consider it further, and we have thought very hard about it. In 2008 we held a mini-consultation on applying a second limb of the equality duty, advancing equality opportunity in relation to religion or belief. My noble friend Lady Royall has reviewed responses to this consultation and we have also discussed it further with the noble Lord, Lord Lester, in some of our meetings on the Equality Bill and in other places.

During our consultations, officials from the Government's equality office met representatives from religious and belief groups to discuss our proposals to extend the second limb of the duty to religion and belief. The majority of religion and belief groups supported the proposals, including the Church of England, the Catholic Bishops' Conference and the Evangelical Alliance. Most public bodies also responded in favour of the proposals. The noble Lord, Lord Wallace, said that it would impose an unreasonable burden on public authorities to seek a variety of needs. As was said in our earlier debate, there is a duty to have due regard. Therefore, a public body is required to consider whether a need exists and whether it can meet that need. After carrying out that exercise, there is no requirement to meet a request if it is not reasonable to do so.

As I mentioned in Committee, the evidence available through the Equality and Human Rights Commission and the equalities review states that some people with religious beliefs, for instance Muslim women, or those without religious beliefs, are suffering disadvantage or their needs are not being met. The equalities review identified a Muslim penalty in terms of labour market participation and the fact that Muslim employees are less likely to achieve the same success as non-Muslims with the same qualifications. One in five Bangladeshi and Pakistani women reported experiencing negative comments about, for example, wearing religious dress. The amendment would build a hierarchy of equality into a duty. As this was much more adequately explained by the noble Baroness, Lady Warsi, I shall not go into the fact that Jews and Sikhs also will be covered. That has already been adequately covered in the debate.

I hope noble Lords will agree that advancing equality of opportunity in relation to religion or belief is necessary. I therefore ask the noble Lord, Lord Wallace of Tankerness, to withdraw the amendment.

**Lord Wallace of Tankerness:** My Lords, I am grateful to those who have taken part, and to the right reverend Prelate for suggesting that my noble friend Lady Northover and I might do some useful work in the Middle East. Some of the criticisms are a travesty of what was being proposed. The noble Baroness, Lady Warsi, said that we were trying to write religion and belief out of the Equality Bill. This is a narrow amendment referring to Clause 148(1)(b), which is not exactly

writing religion and belief out of the entire Bill. It is unfortunate that the attack should be made on the basis of a misrepresentation of the proposal.

If a council wishes to take into account different interests when planning a swimming pool, it will not be prevented doing so simply because a specific statutory duty has not been set out. Indeed, it might be good practice to do so. We are concerned about having a specific statutory duty exposing public authorities to judicial review by thin-skinned or zealous people. I am not necessarily talking about mainstream religious groups of different faiths but those who are on the extreme wings who might want to try to pick a fight. That is where the concern lies as the Bill currently stands.

In response to the right reverend Prelate the Bishop of Bradford, there are distinctions between protected characteristics with regard to a person's gender, race, age or belief. It may be that a large number of people do not change their beliefs, but some do. They do not necessarily change between faiths. One of the sad reflections of recent times is the number of people who move from belief to non-belief. I do not think that the right reverend Prelate does believe that that has not been happening, and it probably gives him grief too. This is an important point and I wish to test the opinion of the House.

8.10 pm

*Division on Amendment 47*

*Contents 46; Not-Contents 132.*

*Amendment 47 disagreed.*

## Division No. 2

### CONTENTS

Addington, L.	Neuberger, B.
Alderdice, L.	Newby, L.
Ashdown of Norton-sub-Hamdon, L.	Northover, B.
Avebury, L.	Palmer, L.
Barker, B.	Razzall, L.
Bonham-Carter of Yarnbury, B.	Roberts of Llandudno, L. [Teller]
Chidgey, L.	Rodgers of Quarry Bank, L.
Craigavon, V.	Saltoun of Abernethy, Ly.
Erroll, E.	Scott of Needham Market, B.
Falkland, V.	Shutt of Greetland, L. [Teller]
Falkner of Margravine, B.	Stair, E.
Garden of Frogmal, B.	Steel of Aikwood, L.
Hamwee, B.	Stern, B.
Howe of Idlicote, B.	Teverson, L.
Kirkwood of Kirkhope, L.	Thomas of Winchester, B.
Lee of Trafford, L.	Tonge, B.
Livsey of Talgarth, L.	Tope, L.
Maclennan of Rogart, L.	Tyler, L.
McNally, L.	Wallace of Saltaire, L.
Maddock, B.	Wallace of Tankerness, L.
Mar and Kellie, E.	Walmsley, B.
Miller of Chilthorne Domer, B.	Watson of Richmond, L.
	Wilson of Tillyorn, L.
	Young of Hornsey, B.

### NOT CONTENTS

Adams of Craigielea, B.	Astor, V.
Adonis, L.	Astor of Hever, L.
Afshar, B.	Bach, L.
Alli, L.	Billingham, B.
Andrews, B.	Bilston, L.
Archer of Sandwell, L.	Blackstone, B.

Borrie, L.  
 Boston of Faversham, L.  
 Boyd of Duncansby, L.  
 Bradford, Bp.  
 Bradley, L.  
 Brett, L.  
 Bridgeman, V.  
 Brookman, L.  
 Brooks of Tremorfa, L.  
 Brougham and Vaux, L.  
 Browne of Belmont, L.  
 Buscombe, B.  
 Butler-Sloss, B.  
 Campbell of Surbiton, B.  
 Campbell-Savours, L.  
 Carter of Coles, L.  
 Cathcart, E.  
 Clark of Windermere, L.  
 Colville of Culross, V.  
 Colwyn, L.  
 Corston, B.  
 Crawley, B.  
 Davidson of Glen Clova, L.  
 Davies of Oldham, L. [Teller]  
 Dean of Thornton-le-Fyld, B.  
 Deech, B.  
 Dundee, E.  
 Eames, L.  
 Elystan-Morgan, L.  
 Farrington of Ribblesdale, B.  
 Filkin, L.  
 Fookes, B.  
 Gale, B.  
 Geddes, L.  
 Golding, B.  
 Greenway, L.  
 Griffiths of Burry Port, L.  
 Harris of Haringey, L.  
 Hart of Chilton, L.  
 Haskins, L.  
 Haworth, L.  
 Henig, B.  
 Hilton of Eggardon, B.  
 Hollis of Heigham, B.  
 Howarth of Newport, L.  
 Howie of Troon, L.  
 Hoyle, L.  
 Jones, L.  
 Jones of Whitchurch, B.  
 Lea of Crondall, L.  
 Leitch, L.  
 Lindsay, E.  
 Luke, L.  
 Lyell, L.  
 McDonagh, B.  
 Macdonald of Tradeston, L.  
 Macfarlane of Bearsden, L.  
 McIntosh of Hudnall, B.

MacKenzie of Culkein, L.  
 McKenzie of Luton, L.  
 Martin of Springburn, L.  
 Masham of Ilton, B.  
 Massey of Darwen, B.  
 Mawson, L.  
 Maxton, L.  
 Montrose, D.  
 Morris of Bolton, B.  
 Morris of Handsworth, L.  
 Morrow, L.  
 Murphy, B.  
 Noakes, B.  
 Norton of Louth, L.  
 O’Cathain, B.  
 O’Loan, B.  
 Ouseley, L.  
 Paisley of St George’s, B.  
 Perry of Southwark, B.  
 Pitkeathley, B.  
 Puttnam, L.  
 Quin, B.  
 Radice, L.  
 Ramsay of Cartvale, B.  
 Rendell of Babergh, B.  
 Rogan, L.  
 Rooker, L.  
 Rosser, L.  
 Royall of Blaisdon, B.  
 Sanderson of Bowden, L.  
 Sawyer, L.  
 Seccombe, B.  
 Selsdon, L.  
 Sewel, L.  
 Shrewsbury, E.  
 Simon, V.  
 Skelmersdale, L.  
 Smith of Finsbury, L.  
 Smith of Leigh, L.  
 Stewartby, L.  
 Stoddart of Swindon, L.  
 Stone of Blackheath, L.  
 Symons of Vernham Dean, B.  
 Taylor of Bolton, B.  
 Taylor of Holbeach, L.  
 Tebbit, L.  
 Thornton, B.  
 Tomlinson, L.  
 Tunnicliffe, L. [Teller]  
 Turner of Camden, B.  
 Verma, B.  
 Waddington, L.  
 Wall of New Barnet, B.  
 Walpole, L.  
 Warsi, B.  
 Whitaker, B.  
 Whitty, L.  
 Wilcox, B.  
 Wilkins, B.  
 Young of Old Scone, B.

losses, group relief and distributions. It also rewrites some provisions that are more specialised, for example provisions related to UK real estate investment trusts and other provisions related to avoidance. Its main aim is to make the legislation clearer, better structured and easier to use than the source legislation, which is often dense and difficult to follow.

The Bill has been produced by Her Majesty’s Revenue and Customs Tax Law Rewrite Project. It is the second of two Bills that rewrite corporation tax. Last year, the project completed the first part of the task of rewriting corporation tax when the Corporation Tax Act 2009 was enacted. The Bill will complete the work and mean that substantially the whole of the legislation relating to corporation tax will have been rewritten. This work follows the success of the project’s previous Acts which rewrote the capital allowances and income tax legislation.

I should explain to the House that the Bill has been certified as a money Bill. It was introduced in Parliament in another place in mid-November last year. Under the special procedures applying to tax law rewrite Bills, the substantive debate on Second Reading was held in Committee. The Bill then passed to a Joint Committee of the two Houses where it was considered on 11 January. The Joint Committee included among its members the noble Lords, Lord Blackwell, Lord Goodhart and Lord Newton, and the noble Baroness, Lady Goudie. I am grateful to them for their efforts in scrutinising the Bill. I am also grateful to Mr Andrew Tyrie, the honourable Member for Chichester, who chaired the Committee. The Bill then passed back to the House of Commons to be debated on Third Reading and has now come to this House for its remaining stages, which the rules say can be taken in one day.

It is beyond the remit of the project to make any significant changes in tax policy, and so the project takes great care to preserve the effect of the legislation. It can, however, make very minor agreed changes, for example to remove ambiguity, repeal obsolete material or correct minor anomalies. To ensure that any changes made are within the remit of the project, they are considered during an extensive, detailed and thorough consultation process involving the project’s consultative committee whose members are drawn from the main tax professional and business representative bodies. The work is overseen by an independent steering committee, chaired by the noble Lord, Lord Newton of Braintree, which includes Members from both Houses, the judiciary, business and consumer groups, and the accountancy and legal professions.

The extensive consultation process that I mentioned involved the publication for public comment of papers containing almost all the clauses in the Bill. The Bill was published in draft form for another round of consultation. An updated version was later published, taking account of the consultation responses and the changes made by the Finance Act 2009. In addition, groups of private-sector specialists met with the project to consider the detail of some of the more complex provisions so that the views of those who are the main users of the legislation were taken fully into account.

Throughout the process, proposed minor changes in the law were specifically drawn to the attention of the consultees and no minor changes in the law were

*Consideration on Report adjourned until not before 9.20 pm.*

## **Corporation Tax Bill** *Second Reading*

8.20 pm

*Moved By Lord Davies of Oldham*

**Lord Davies of Oldham:** My Lords, the Bill rewrites a range of corporation tax provisions, including provisions on the computation of profits, small profits relief,

included in the Bill without the considered approval of both the project's committees. The Joint Committee of both Houses heard oral evidence from members of the Tax Law Rewrite Project team. It considered and accepted all the Government's amendments to the Bill, all of which it agreed were of a minor, technical nature. The Joint Committee concluded that the Bill is a welcome clarification of the existing law and, as a result, it will be easier to use and more accessible to Parliament, the judiciary, informed professionals, business people, and other users of the legislation. It was satisfied that the changes to the law in the Bill are of minor significance. The success of the project in improving the accessibility of tax legislation to users has been borne out by independent market research, which has shown that, in the main, users of rewritten tax legislation have warmly welcomed it. It was seen to be of particular help to those newly entering the profession. Consultees have also been positive about the project's work.

It would be wrong of me to conclude without paying tribute to everyone who has taken part in this work. Many consultees have given their time and used their considerable expertise to consider the detail of the rewritten clauses. As with all rewrite Bills, tax professionals who provide expert comment already understand the legislation and, therefore, have the least to gain from the rewritten provisions. Their selfless contribution to the consultation process for the benefit of the wider range of tax professionals who use the legislation is, therefore, particularly welcome. We owe a particular debt to the noble Lord, Lord Newton of Braintree, for his service as chairman of the steering committee, and to the members of both the project's committees for their expert input and guidance.

To sum up, this is an extremely worthwhile project with a track record that shows that it makes our direct tax legislation more modern, clearer and easier to use. The Bill maintains the high standards achieved in the project's previous Acts and will make taxation legislation more acceptable to Parliament, the tax professions, business and the judiciary. I beg to move.

8.27 pm

**Baroness Noakes:** My Lords, I thank the Minister for introducing this Bill. He will be relieved to know that I shall not repeat the speech that I made last week, but I shall summarise the points that I made about the rewrite process.

First, we owe a debt of gratitude to the steering group, the consultative committee and the Joint Committee on Tax Law Rewrite Bills for the whole of the Tax Law Rewrite Project. We owe a particular debt of gratitude, as the Minister has already said, to my noble friend Lord Newton of Braintree, but also to my noble and learned friend Lord Howe of Aberavon before him and, in respect of the more recent detailed work through the Joint Committee, to my right honourable friend Mr Kenneth Clarke and my honourable friend Mr Andrew Tyrie. Secondly, we are content with the Bill and the assurances given in another place as to the use of the Henry VIII powers in Clauses 1178 to 1180. And thirdly, while we have supported the tax law rewrite process and support this Bill, it has done

nothing to make our tax system simpler and we regard that as a major bit of business which needs to be tackled by a new Government.

I shall not repeat the arguments for a simpler tax system today. The Minister has heard my speeches on this more than once in the past. Simplification is, however, on the agenda of pretty well all business organisations and, as I pointed out last week, we have policies to achieve simplification through an office of tax simplification. Last week the Government failed to give a good response on tax simplification and I know from our debates in the past that the Minister has been unmoved by the strength of our arguments, so I hold no hope of a change of heart on that today. Instead, I would like to address my few remarks to tax competitiveness. This Corporation Tax Bill as a rewrite Bill does no harm but I suspect that it will not do anything positive to improve our tax competitiveness. Ministers have recently become rather fond of quoting the World Bank's 2010 *Paying Taxes* report. We heard the report's findings on the time taken to comply with taxes and the number of taxes quoted at quite extraordinary length by the Minister last week when we debated the international provisions rewrite Bill.

There are some problems with the World Bank's analysis, which I referred to last week. First, it is based on hypothetical case studies prepared by PricewaterhouseCoopers of one business with particular characteristics. It does not pretend to be representative of whole business sectors in each country. Secondly, it measures the number of taxes paid and the time taken in compliance. It does not get to the heart of how burdensome a tax system is and does not include an explicit assessment of simplicity.

This should be contrasted with the World Economic Forum's more extensive competitiveness study. The 2009-10 report shows the UK as being 84th for extent and effect of taxation. The nearest comparison in the 1997 survey was for tax burden, where we scored fourth. Something has clearly gone wrong in our tax system in the past 13 years, and most of us know the source of that.

The Government have been quite keen on comparing the UK to the rest of the G7. The figures quoted by the Minister in last week's debate did just that. However, business groups, led by the CBI, have been clear that if we simply measure our tax competitiveness against the G7, we are asking the wrong question and are therefore in danger of getting the wrong answer. When businesses look at locating and relocating, it is not to the G7 that we should look for comparison; it is to the developing countries and their tax systems.

A competitive tax system is at the heart of a competitive economy. We remain disappointed that the Government are content with the occasional favourable comparison or statistic and have not faced up to the changes that our economy needs to create a competitive tax system. But, that said, we support the Bill.

8.32 pm

**Lord Newby:** My Lords, if there was an award to be given for Members of your Lordships' House who have sat through every debate on tax rewrites since their inception, I would win it. However, I would not

[LORD NEWBY]

deserve it; the only people who deserve anything from this process are those who have worked very hard on it over the years. We are deeply indebted to them, although we are not as deeply indebted as the people who will now use the legislation in their day-to-day business. It is a tremendous piece of work and those who have done it are to be congratulated on it. I do not intend to open a debate on tax competitiveness on the basis of this Bill, although I say to the noble Baroness that, if she thinks that the tax competitiveness of the UK will be substantially improved by the Conservative Party's proposals, she is living in a dream world. However, at this time of night, that is not the kind of dream world that I wish to contemplate. Therefore, I wish the Bill godspeed.

8.33 pm

**Lord Davies of Oldham:** My Lords, I am grateful to both noble Lords for their constructive contributions. The noble Lord, Lord Newby, is worthy of the prize. I know that he has done a great deal more than I have with regard to the rewrite Bills and what I have done seems quite enough. Indeed, having two Bills in the space of seven days is quite enough for all of us who are interested in these matters.

I apologise for being unable to introduce, apart from the Corporation Tax Bill itself, any new subject matter to assist my articulation of the case for it, not least because this is a rewrite and all the credit goes to those who have done the hard work and prepared the Bill in such a way that we get the benefits from the clarification and from the succinct nature of the legislation without there being anything controversial to disturb us. That, after all, is their remit, which they have fulfilled so very well. We pay tribute to the noble Lord, Lord Newby—I was pleased that he was in his place last week—for his work as chair of the committee. I am with the noble Baroness today in saying how much we appreciate his work and that of others.

The noble Baroness was kind enough to offer a self-denying ordinance on politics, saying that she would not go through a demolition of the Government's position last week. One of the reasons why I was rather anticipating that she would not go through a demolition of the Government's position on this last week was that the Government's position holds up very strongly to any examination. I am therefore not entirely surprised that she showed a degree of forbearance in that area.

Forbearance was of course not extended to other areas with regard to this issue. I cannot imagine when a Conservative Chancellor is ever likely to have such an opportunity—certainly not the present shadow Chancellor, I would have thought. Let us, however, take the noble Lord, Lord Newby, into his dream world for a moment, or into the dream world of the noble Baroness, Lady Noakes, and imagine that there is a Conservative Chancellor. Can noble Lords imagine him introducing the Bill and saying, "Of course, the House will appreciate that our taxation system bears favourable comparison not with G7 countries or even with G20 countries but with some emerging economies"? Can anyone seriously say that that is how the comparative model works? I do not know what these emerging

economies might be; a Conservative Administration are so far away that it might be the Turks and Caicos, the Cayman Islands or somewhere like that. Certainly, however, that would not bear any great reality in relation to what we should be comparing our taxation system to—namely, our major sophisticated, advanced competitors. That is the evidence that I gave last week, which the noble Baroness disagreed with, and I am having the greatest difficulty in stretching myself to accepting her contention this week.

This is not, however, a moment for political controversy. Let us rejoice in the work of others who have done so very well and let us forgo our normal exchanges in appreciation of that work. We are joined in a constructive enterprise that we all recognise is of value to our fellow citizens. Accordingly, I hope that, with the support of the noble Lords opposite, this Bill may now be read a second time.

*Bill read a second time. Committee negatived. Standing Order 47 having been dispensed with, the Bill was read a third time and passed.*

8.37 pm

*Sitting suspended.*

## Equality Bill Report (Continued)

9.20 pm

### Amendment 47A

*Moved by Baroness Howe of Idlicote*

**47A:** After Clause 148, insert the following new Clause—

"Review of public sector equality duty in relation to age for children

(1) The Secretary of State shall undertake a review of the extent to which public authorities have discharged the duty imposed by section 148 for the protected characteristic of age for persons who have not attained the age of 18, no later than 12 months after its commencement.

(2) Such a review will examine the extent to which public authorities have reduced prejudice and improved behaviour towards persons who have not attained the age of 18.

(3) In discharging subsection (1), the Secretary of State must have due regard to the views of children and of parents, and to organisations representing the views and interests of children and parents."

**Baroness Howe of Idlicote:** My Lords, I thank the Minister for her assurance in Committee that the Equality and Human Rights Commission statutory and non-statutory guidance on the public sector equality duty will give practical assistance to public service providers on how they can implement the age provision for children. That is very welcome, but I am conscious that one element of that duty on age will not apply to under-18s because of their exclusion from the ban on age discrimination in services and public functions. I am keen to ensure that the public sector duty has the greatest possible impact on children and young people and that it addresses the unfair treatment that so many of them experience because of their age.

This amendment would introduce a review of how public authorities have carried out the public sector equality duty in relation to age for children, "no later than 12 months after its commencement".

The review is set to examine how, “public authorities have reduced prejudice and improved behaviour towards”, under-18s and, “must have due regard to the views of children and of parents”, as well as of the organisations representing them. This review will provide an opportunity to assess just how effective the equality duty has been in addressing inequality on the basis of age and will highlight whether further action is required.

Members of the Young Equals group have sent me a great deal of evidence of the unfair treatment experienced by children and young people because of their age in all settings and evidence of the negative impact that this treatment has on family life, particularly on mothers with young children. I have heard, for example, of several instances of buses driving past parents with pushchairs. A local paper recently reported that two young mothers had been unable to get on a local bus at least eight times since having their babies, including during the awful rain and snow that we have been experiencing. On one occasion, this treatment meant that a baby missed his first immunisation injections with the doctor. That is exactly the kind of treatment that one would want to see an end to.

I have heard of cases where emergency services have refused to attend to children. I have also seen evidence of unfair treatment in child protection services, public transport and health services. One mother contrasted the high quality of adult oncology services with children’s services, which were accommodated in cramped wards that were not initially intended for children. There was also a lack of privacy, long walks to access treatment and so on. She said, “It’s so hard to see your child endure painful treatments and distressing tests. But to know that they are getting a service that is inferior to that received by adults is like having salt rubbed into the wound”. Surely this is the sort of treatment that we do not want to continue.

No doubt the Minister has seen the results of a poll published this weekend by the Children’s Rights Alliance for England. Almost half of the 1,000 children questioned had been treated unfairly because of their age. Just under a quarter of seven to 17 year-olds and half of 16 and 17 year-olds had been treated unfairly because of their age when using public transport. More than one in five young people aged seven to 17 and a quarter of those aged seven to nine reported being treated unfairly because of their age when using local sports, leisure or play facilities.

It has been said in this House that children are not adults. I completely agree with that. There are also many times when it will not be appropriate to treat children of different ages in the same way. The Government have already ensured that different treatments, where appropriate, will be permitted, with any necessary additional exceptions spelt out in secondary legislation. This would ensure that children could not buy, for example, alcohol or weapons—I should jolly well hope not—and would still benefit from age-appropriate healthcare screening, child protection and safeguarding services.

I understand, too, that the Government have concerns that legal protection for children from unfair treatment on the basis of their age might lead to a chilling effect

whereby age-specific services would be withdrawn. Frankly, I do not believe that. There has been an Age Discrimination Act in Australia since 2004 and there is no evidence to suggest that age-specific services have been affected. Perhaps the Government would commit to reviewing the Australian age discrimination legislation to see how it has worked in practice.

Will the Government also consider the inconsistencies in their approach to children and young adults in relation to the ban on age discrimination? The Children Act 1989 and the Children (Leaving Care) Act 2000 both make provision for services and assistance to young people to the age of 21. Such service provision for over-18s will not be jeopardised by the introduction of age discrimination protection, so why is this the case for under-18s? I of course listened carefully to the Minister’s arguments in earlier debates for why children are to be excluded from the age discrimination provisions in the Bill. Frankly, I remain unconvinced that protecting one-fifth of the population is not workable.

Ministers in both Houses have indicated that the public sector equality duty provisions on age will benefit children. If the Government are unwilling—however much I wish they were not—to remove the exclusion of children from the age discrimination ban in services and public functions, perhaps they should commit to reviewing how the public sector equality duty has addressed the negative treatment of children and young people that I have highlighted. This amendment would introduce an extra safeguard that is a necessary counterbalance to the exclusion for children of one whole limb of the duty concerning the elimination of discrimination in relation to age. I beg to move.

**Baroness Butler-Sloss:** My Lords, I support this amendment. I failed to do so at an earlier stage—or one similar to it. The Children’s Commissioners for the United Kingdom are united in their view that the UK is not good in its approach to children. The Government and the public treat under-18s not as people but as children. Children are treated less favourably in many ways, as the noble Baroness, Lady Howe, said. It is quite wrong. We must get into a culture of recognising that, although we must deal with them at different ages in different ways, every child, however young, is entitled to be treated as a person with rights. One interesting aspect of the European Convention on Human Rights was that, although it did not refer to children, fairly early on the European Court of Human Rights in Strasbourg recognised that, particularly under Article 8, children had exactly the same rights as adults. That has not permeated into the culture of this country. I strongly support the amendment.

9.30 pm

**Baroness Morris of Bolton:** My Lords, I declare an interest as a trustee of UNICEF UK. We appreciate the point that the noble Baroness, Lady Howe of Idlicote, is making because we tabled amendments in Committee that helped to explore the reasons why the provisions for services and public functions do not apply to people under 18. We therefore have sympathy with the intention of the noble Baroness’s amendments.

[BARONESS MORRIS OF BOLTON]

We accepted that the Government's explanation of the reason behind the exclusion of children from these clauses was reasonable and proportionate. Of course, we hope that the Minister will take on board the concerns raised here and the fact that it would be helpful to keep under assessment the effect of the public sector equality duty in this area and whether it continues to be appropriate for the services and public functions clauses not to apply to under-18s. We must ensure that protection is extended to all for whom it is necessary and it is vital that children too are protected from discrimination.

However, this review may not be the ideal way of exploring the issue. The review would take place no later than 12 months after commencement of the Act. Will that allow enough time fully to assess the implications and effects of the provisions? It appears to be a very tight timeframe and perhaps too tight to produce useful results.

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** My Lords, Amendment 47A, tabled by the noble Baroness, Lady Howe of Idlicote, would add a new duty on a Secretary of State to undertake a review of the extent to which public bodies have discharged the equality duty imposed by Clause 148 in relation to the protected characteristic of age for persons under the age of 18. The review should be conducted no later than 12 months after the commencement of the equality duty. The noble Baroness, Lady Morris, made a reasonable point that that is almost certainly too soon, even if it were something that we would wish to happen.

The amendment revisits the issue of the treatment of children—an issue that we have discussed at some length at each stage of the Bill. Let me first clarify and assure noble Lords that children will be extensively protected under the Bill. Just like adults, they are protected against discrimination because of race, disability, sex, religion or belief, sexual orientation and gender reassignment in both employment and the provision of services and the exercise of public functions. The new equality duty will require public bodies to consider the need to eliminate discrimination and advance equality of opportunity for people of all ages, including those under the age of 18.

Children, parents and children's organisations can contribute to the effectiveness of the duties. The general duty will be underpinned by a number of specific duties in secondary legislation, to assist better performance of the equality duty. These specific duties will require public bodies, including government departments such as the Department for Children, Schools and Families, to consult and involve relevant people in setting equality objectives, including young people and their parents in certain circumstances—for example, when maintained schools exercise some of their functions—and to report annually on their progress. They will be required to review these objectives every three years.

Consultation and involvement are key to our proposals for the specific duties. We believe that involving people from different age groups, including children and their parents, is crucial to understanding problems and tackling them effectively. We want public bodies to be

transparent and accountable and move away from processes to focus on achieving and monitoring equality outcomes. Our proposals for specific duties provide the reporting and reviewing mechanisms that will help citizens track progress and compare public bodies. We aim to consult on the draft regulations for the specific duties in the summer.

There are mechanisms in place to review public bodies' compliance with equality duties. The general duty can be enforced through judicial review by individuals, third sector organisations and the Equality and Human Rights Commission. The commission will enforce the specific duties. If it thinks that a public authority has not complied with the equality duty, it will have the power to serve a compliance notice. Failure to comply with a compliance notice can result in the commission applying to the court for an order requiring compliance. Inspection bodies such as Ofsted can carry out thematic reviews to assess the extent to which young people are protected and will take into account equality considerations in carrying out those inspections. For example, school inspectors will assess the extent to which pupils feel safe from different forms of harassment and bullying.

The EHRC is under an obligation to review progress towards equality and to produce a state of the nation report every three years. The commission is also required to keep under review the effectiveness of equality legislation. If children's organisations are concerned that the protection of children has been insufficient, it is entirely right and proper that they should raise their views with the commission.

The noble Baroness mentioned a survey indicating that young people feel that they have suffered discrimination. The children's rights report says that 45 per cent of young people surveyed felt that they had been unfairly treated because of their age. This is a high figure and reflects young people's strong sense that they are entitled to dignity and respect, a view with which I have great sympathy and which echoes the remarks made by the noble and learned Baroness, Lady Butler-Sloss. However, we have to recognise that poor treatment cannot necessarily be defined as unlawful age discrimination and dealt with by age discrimination law. Many of those reported grievances, for example, amount to a sense that older people do not treat them with enough respect in some circumstances, such as in formal relationships, and these do not fall within the law at all.

The means to review and assess compliance with the duties, and to take account of the views of children and parents, already exist and will continue to exist when the new equality duty is enforced. I therefore ask the noble Baroness to withdraw her amendment.

**Baroness Howe of Idlicote:** My Lords, I thank the noble Baroness for her response. I cannot say that I am very happy. For example, I mentioned Australia, and I wonder whether an assessment has been made of why treating children to the same extent as adults seems to have worked so well in Australia. I am very grateful for the support of my noble and learned friend Lady Butler-Sloss and for the comments of the noble Baroness, Lady Morris of Bolton, even though she was not exactly 100 per cent on the side of having a review within 12 months.

I should like to consider what has been said and I am rather sad that there does not seem to have been any intention of having an overview of how the policies are working. Looking at particular complaints and issues is not the same thing as giving an overview of how it is working for all children. In the circumstances I have no alternative but to withdraw the amendment. However, I hope that the Minister will give more thought as to how the Government might please more than their answer has done those who have put forward the amendment. I beg leave to withdraw the amendment.

*Amendment 47A withdrawn.*

**Schedule 18: Public sector equality duty: exceptions**

*Amendment 48 not moved.*

**Clause 158 : Positive action: recruitment and promotion**

*Amendment 49*

*Moved by Baroness Morris of Bolton*

**49:** Clause 158, page 101, line 42, leave out “as qualified as” and insert “equally qualified to”

**Baroness Morris of Bolton:** My Lords, this is an area in which we have strong views. As noble Lords are aware, we are very much in favour of the clauses on the use of positive action by employers so long as it remains just that and does not descend into positive discrimination. We have therefore tabled an amendment that would change “as qualified as” into “equally qualified to”. We are concerned that the Government’s intention might have changed in this regard and that the clause’s language allows flexibility that looks more like positive discrimination. We cannot support this.

In Committee, the Minister attempted to reassure us by saying:

“It simply allows an employer, when faced with two candidates who are as qualified as each other to carry out a specific job, to use the desirability of widening the diversity of the workforce as the criterion for choosing between them”.—[*Official Report*, 9/2/10; col. 658.]

We have heard different arguments from the Government as the Bill has passed through its stages in both Houses. It would be useful, therefore, if the Minister could tell us whether she sees the clause being used for such tie-breaker situations between two people.

The Minister tried to reassure us further by saying that you cannot set the bar very low simply to pick someone who is less qualified but who has the relevant protected characteristic. She referred to people being 95 per cent qualified or 51 per cent qualified, for example, and we are grateful for this reassurance, especially as this is the situation that we wish to avoid. However, does she concede that it might be difficult to define precisely how qualified people are? This is why the clause remains open to abuse. The bar would not have to be set extraordinarily low before positive discrimination could be used to pick from a pool of

candidates, all of whom were fairly equally qualified—something which the Minister stated she did not want to happen.

We want to ensure that the clause is used only as a tie-breaker. Even if this seems to be the Government’s intention, we argue that the language does not tie down the clause specifically enough. The Minister expressed concern that to make it very specific might discourage employers from using it. We argue the opposite; surely a more specific clause and more precise guidance are the way to encourage employers to use them, as there will be no doubt about what exactly they are allowed to do. The CBI has made it very clear that one of its major concerns is the vagueness of the clause and that it is unsure how it will work in practice. The British Chambers of Commerce has also expressed the concern that the language is “too confusing”. Thus, we argue that the vague nature, rather than the too precise nature, of the clause will be to blame for employers being unwilling to use it. I look forward to the response of the Leader of the House. I beg to move.

*9.45 pm*

**The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon):** My Lords, the amendment would change the current wording of the provisions in Clause 158(4)(a) from “as qualified as” to “equally qualified to”. The amendment was discussed in Committee and in the other place, and, as previously pointed out, while the suggested change in the wording seems very similar to the current wording in the clause, we consider that amending the wording from “as qualified as” to “equally qualified to” may have unintended consequences.

If the requirement was for job candidates to be “equally qualified to” be recruited or promoted, the employer might interpret this as requiring the candidates to have equal academic qualifications or other formal qualifications of a similar nature. However, when we refer to a candidate being qualified for a job, this is not a direct reference to any form of formal qualifications: rather, it is about ensuring that candidates must demonstrate that they meet the employer’s particular requirements for the specific post in question. They are qualified to do the job according to whatever criteria the employer has identified as being appropriate for that job.

Any assessment of candidates’ suitability will depend on a number of factors relevant to the job in question, such as experience, aptitude, physical ability and performance during an interview or assessment. Formal qualifications are only one way in which a candidate’s overall suitability may be assessed and there may be many jobs where there is no need for any sort of formal qualification whatever. How an employer assesses whether an applicant is qualified to undertake a specific job would be up to the individual employer to determine. We are not attempting to interfere with how employers establish who is the most suitable person to work for them.

Any amendment that may make employers focus solely on academic or formal qualifications would be misleading and could cause employers to be reluctant to use those provisions unless they have a situation in which candidates have identical qualifications. The

[BARONESS ROYALL OF BLAISDON]  
 proposed amendment could therefore limit the scope for delivering real equality outcomes for women, people from ethnic minority communities and disabled people, for example, who still experience disadvantage and under-representation in the labour market.

During debates here and in the other place, there were some concerns that employers might set artificially low thresholds for determining suitability for a job in order to be able to claim that a candidate was qualified to do the job although better candidates were identified. We do not consider that these provisions could be misused in that way. Most criteria that an employer uses to establish the best candidate for a particular role within the organisation will establish whether one candidate is better qualified in terms of their ability, competence or experience. We have always been very clear on this matter: where there is a superior candidate then he or she should be offered the job. For example, where the assessment process, in whatever form it takes, evaluates one candidate as having scored, say, 95 per cent and another, say, 61 per cent, those candidates cannot be considered as being as qualified as each other to undertake the job. It is immaterial whether the pass mark was set at 60 per cent, 50 per cent or 40 per cent; the clearly superior candidate must always be offered the job. We are confident that the clause as currently drafted achieves that effect. It is for those reasons that I ask the noble Baroness to withdraw the amendment.

**Baroness Morris of Bolton:** My Lords, I thank the Leader of the House for her very clear explanation. We have probably argued this one out in both Houses and, given the hour and the fact that we still have a number of groups of amendments to debate, I beg leave to withdraw the amendment.

*Amendment 49 withdrawn.*

### *Clause 196 : Age*

#### *Amendment 50*

*Moved by Baroness Morris of Bolton*

**50:** Clause 196, page 122, line 21, at end insert—

“( ) It is not a contravention of this Act for—

- (a) a person or organisation which provides tourism or holiday services to place age limits on group holidays or holidays catering for people of particular ages;
- (b) a person or organisation to design and provide financial products for specific market segments qualified by age or age groups;
- (c) a person or organisation to provide insurance programmes where the calculations of the premiums for such programmes are based on reasonable evidence of the underlying differences in risk based on the purchaser’s age or age group.”

**Baroness Morris of Bolton:** My Lords, I realise that at this late hour there is little appetite for delving back into a debate which we have already fully explored. Therefore, I shall keep my comments almost prohibitively short.

The intention of these amendments is just to gain absolute and certain clarity from the Government regarding their intentions in this area. In Committee, the Government provided helpful reassurances. I should like to pray on the patience of the Leader of the House once more to confirm that the exceptions will be made in regulations, that those regulations will come into force on the day when the age discrimination legislation comes into force and that they will be in one statutory instrument.

These amendments have been re-tabled because the noble Baroness, Lady Thornton, stated in Committee that the Government were “strongly minded”—that is like a definite maybe—to proceed on the results of their consultation. These results showed that age was considered a legitimate factor to be used by those providing financial services. Can the Minister inform the House whether the Government have any more definite reassurance than “strongly minded”? I beg to move.

**Baroness Royall of Blaisdon:** My Lords, Amendment 50 inserts exceptions for age-based holidays, financial services products for particular age groups and insurance based on evidence of risk.

We entirely appreciate how keen noble Lords and businesses are to have certainty about what the ban on age discrimination in services will mean for them and we are equally keen to reassure them about our policy and approach on these matters. Exceptions to the ban on age discrimination will be in secondary legislation, in some cases supported by statutory guidance. The exceptions will come into effect on the same day as the ban itself.

The policy statement we issued on 27 January reiterates that the future of age-related group holidays offered by Saga and other holiday providers will be secure when the ban comes into force. It makes clear that the financial services exception will allow firms to specialise in particular segments of the market by age. It clarifies that it will be possible to use age in financial services where it is relevant to risks or costs provided this is based on evidence.

The policy statement also makes clear that firms will be required to help consumers find a quote for motor and travel insurance through signposting or referring them to another provider, and that there will be publication of some data about how age is used in some products in a form that the non-expert can understand, as is already undertaken for gender.

I understand why there is an appetite for these kinds of exception to be written into the Bill now rather than later, but it is important that we get them right. We do not want any unintended consequences for valuable services or inadvertently to allow unjustified discrimination to carry on. That is why we will consult again in the autumn on a draft order containing exceptions, along with draft Treasury guidance on signposting, referral and transparency. Companies such as Saga and those in the financial services sector will have the opportunity to be involved in what the final legislation looks like, well before it is implemented in 2012.

Amendment 51 closely resembles a new clause that we debated in Committee. It is worth stressing that age used properly is a valid criterion for pricing risk.

Outlawing the use of age as a risk factor could actually mean higher prices or lower quality products for everyone. The research undertaken by Oxera showed that in general prices are fairly based on risk and higher prices are a result of genuinely greater costs. Restricting the extent to which the financial services industry can base prices on risks and costs would distort the market.

The financial services exception to be set out in a draft order will allow financial services providers to treat people of different ages differently, but only where this is proportionate to risks and costs. This amendment focuses only on insurance and aspires to a particular outcome—that no one should lose out—but it does not help deliver it. It would be difficult for an insurer to demonstrate that there is no detrimental effect due to age, when there are so many different factors involved in pricing insurance. Where a complaint is made, it will be for the insurer to demonstrate that the provision does not create significant detriment by reference to age and leaves unanswered what would or would not constitute significant detriment in this area, thereby creating significant uncertainty. This shows how framing an exception is challenging, and why further discussion with stakeholders is required to develop an appropriate exception, and which, in particular, keeps uncertainty to the minimum.

On the basis of these explanations and the reassurance that I have given, I ask the noble Baroness to withdraw her amendment.

**Baroness Morris of Bolton:** My Lords, I thank the noble Baroness the Leader of the House for the clarity and force of her language. I beg leave to withdraw the amendment.

*Amendment 50 withdrawn.*

#### *Amendment 50A*

*Moved by Baroness Meacher*

**50A:** Clause 196, page 123, line 15, at end insert—

“( ) For the avoidance of doubt, section 39(1) shall not apply to discrimination against persons with the protected characteristic of age if they are, or look as if they are, between 18 and 25 years old and the reason for the discrimination is to comply with voluntary or statutory codes of practice which require that people used in marketing communications for alcoholic drinks should be and appear to be over 25 years old.”

**Baroness Meacher:** My Lords, this amendment would add a new subsection to Clause 196, which deals with the general exceptions in the Bill in relation to age. The purpose of the amendment is to try to ensure that we avoid the unintended consequence of undermining one of the ways in which the drinks industry and the Government try to minimise the appeal of alcohol to children.

Several codes of practice, both self-regulatory and statutory, cover alcohol advertising in broadcast and non-broadcast media and the wider marketing and promotion of alcoholic drinks brands. One rule in common to all these codes is that the people used in filming or photography, for example, must be and must look over 25. Even though the legal purchase age for alcohol is 18, there is a general and long-standing agreement that a buffer zone is desirable to prevent undue appeal to under-18s, which is why the rule

about using actors who are over 25, and look over 25, was agreed. When casting for the production of TV or cinema ads for alcohol takes place, this is a very important consideration. In the past, there have been complaints to the relevant regulatory bodies that this rule has been breached and those complaints have been upheld.

I do not want to see the age discrimination provisions of the Bill inadvertently open a loophole that would provide actors who are, or look, under 25 with a legitimate cause for complaint if they were denied work to promote alcohol brands. Neither do I want to see a loophole that would allow unscrupulous brand owners to use images of young people in their advertising and feel that they had the protection of this law rather than the restraint of the codes of practice.

It may be that the amendment does not go far enough—it refers only to Clause 39(1) and the need to make sure that that subsection does not apply in these circumstances. Alternatively, it may be the opposite—this amendment could be unnecessary if, and only if, the Minister can give the House an assurance that regulations will clarify that these circumstances are an example of exactly what is intended by Clause 13(2), which allows discrimination if it is proportionate to achieve a legitimate aim. I hope that the Minister can give the House an assurance that it would be safe to rely on Clause 13(2), supported by regulations. If not, I hope that the Minister will accept this amendment. I beg to move.

**Baroness Thornton:** My Lords, this amendment would provide a specific exemption from age discrimination claims so that those involved in alcohol marketing can use only those people who are, and appear to be, over the age of 25, in compliance with relevant codes of practice. Clause 13(2) makes it clear that, in the case of age, A does not discriminate against B if A can show that A's treatment of B is a proportionate means of achieving a legitimate aim. I hope that noble Lords understood that this late at night.

Further, the Bill does not change the law with regard to age discrimination in employment. In particular, Part 1 of Schedule 9 replicates the existing law. We are not aware of any claims brought by young people who feel that they have been refused work because they do not appear to be over 25, although I realise that the aim of the amendment is the protection of young people. The Government have sought to achieve a legislative balance by setting out a limited number of general exemptions to unlawful age discrimination in employment, such as in relation to the national minimum wage, benefits based on length of service and enhanced redundancy payments. However, to avoid weakening the legislation, these are deliberately limited to broad-based employment practices of particular significance to the economy and the labour market.

When we were developing the age regulations—there will be regulations to address these issues—it became apparent that it was not possible to specify in detail every instance where age discrimination by an employer might be objectively justifiable in pursuit of a legitimate aim. I think that that is the A and B bit to which I referred. Indeed, to attempt to do so might be counterproductive, as it could inadvertently exclude

[BARONESS THORNTON]

practices that could be beneficial. We therefore have Clause 13(2), which was referred to, for situations falling outside the general exceptions in relation to age and employment. Although such justification must be on a case-by-case basis, in the circumstances set out by the noble Baroness the employer is highly likely to be acting within the law, as there is a clear public interest justification in play. Indeed, the employment provisions apply to those making advertisements now and they have the protection that I have just outlined.

Current advertising regulations also contain rules that no one who is, or who appears to be, under the age of 25 may appear in an alcohol advertisement, apart from in adverts showing families socialising responsibly. Therefore, there is already an appropriate regime to ensure that suitable protections are in place to cover the involvement of younger people. I ask the noble Baroness to withdraw her amendment. I should add that, when I referred to regulations, I meant existing age regulations, the effect of which is replicated and repeated in the Bill.

**Baroness Meacher:** My Lords, I thank the Minister for her reply. I am not sure that it is entirely clear that we will not finish up with a confusion between the current codes and this legislation. At this late hour, I am certainly not going to pursue the matter further, but I ask the Minister to take away the point that it is important for regulations to make absolutely clear the points that I made earlier.

**Baroness Thornton:** The noble Baroness is asking about a significant point and I undertake to write to clarify the distinction that she is drawing.

**Baroness Meacher:** I am very grateful for that response from the Minister.

*Amendment 50A withdrawn.*

*Amendment 51 not moved.*

*Amendment 52 had been withdrawn from the Marshalled List.*

10 pm

### *Amendment 53*

*Moved by Lord Alli*

**53:** Before Clause 201, insert the following new Clause—

*“Civil partnerships*

*Civil partnerships on religious premises*

(1) The Civil Partnership Act 2004 is amended as follows.

(2) Omit section 6(1)(b) and (2).

(3) In section 6A, after subsection (2), insert—

*“( ) Regulations under this section may provide that premises approved for the registration of civil partnerships may differ from those premises approved for the registration of civil marriages.”*

(4) In section 6A, after subsection (3), insert—

*“( ) For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so.”*

**Lord Alli:** My Lords, I shall make my contribution short as it is late and I know that others may wish to speak.

The intention behind this proposed new clause is to remove the prohibition on civil partnerships taking place in religious buildings and to put in the necessary regulations to allow religious buildings to be used to host civil partnerships.

From the outset, I want to make one thing very clear. The amendment does not—I repeat, does not—place an obligation on any religious organisations to host civil partnerships in their buildings. We have made that clear by including in the amendment the words:

*“For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so”.*

Let me take a moment to explain why I am moving this amendment. Many gay and lesbian couples want to share their civil partnerships with the congregations with whom they worship, and a number of religious organisations want to allow gay and lesbian couples to do exactly that. What stands between them is the prohibition contained in the Civil Partnership Act.

If no religious organisations had asked for this or wanted this, there would be no issue before us this evening. In the end, it comes down to religious freedom—not the technical proficiencies of my amendment, which I believe is proficient; not an attack on the Catholic Church or the Church of England, which it certainly is not; and not a timetabling issue regarding the Bill, which it clearly is not. In the end, it is all about religious freedom.

We talk a lot about religious freedom, particularly in this place, and it is a much respected principle. I know that it is deeply held; it is a conviction that I hold, too. When balanced against other freedoms, it is an extraordinarily powerful and compelling principle, for we should all respect each other’s beliefs. However, religious freedom requires us to do more: it requires us to let others do things that we ourselves would not do; it requires us to allow others to worship in ways that we do not; and it requires us to respect the right to host ceremonies that we would not. Religious freedom means letting the Quakers, the liberal Jews and others host civil partnerships. It means accepting that the Church of England and the Catholic Church should not host civil partnerships if they do not wish to do so. I know that many in the Church of England and the Catholic Church could do without this issue and I am really sorry to bring it to their door. However, religious freedom cannot begin and end with what one religion wants; it has to be applied equally to the Quakers and to the Church of England, to the liberal Jews as well as to the Catholic Church.

I believe that people want religion in their lives and many gay and lesbian couples are no different. They want their civil partnership to be held in a place where they can celebrate it with the people with whom they worship. It is a simple act of religious freedom to allow the Quakers, the liberal Jews, the Unitarian Church and others to practise their religion in a way that meets their religious needs. I hope that, in that spirit of religious freedom, we can see our way tonight to allow them to do so. I beg to move.

**Baroness Butler-Sloss:** My Lords, I have put my name to this amendment. I hope very much that I am able to demonstrate my liberal views that may not have been so evident earlier this evening.

I strongly support marriage and have enjoyed 51 years of it. However, I do not see this amendment as a threat to marriage. I listened with some concern to my good friend, the right reverend Prelate the Bishop of Leicester, on the “Sunday” programme last Sunday, defending his opposition to this clause, and found him to be less effective than he usually is. I genuinely do not see this amendment as a threat to marriage. It is, as the noble Lord, Lord Alli, has said, genuinely permissive.

I am concerned that the chief executive of Stonewall has suggested that in due course it might become mandatory. However, it becomes mandatory only if this House allows it to be. I hope that this House will not allow it to be because I entirely respect the views of the church to which I belong and indeed the Catholic Church not to wish to allow it to happen within church premises. However, there are those from other religions, as the noble Lord, Lord Alli, has said, such as the liberal Jews and the Quakers who would like to do it.

Same-sex couples can have strong and devoted relationships equal to, but different from, marriage and they may wish to have those relationships sanctified by a religious ceremony. If there are churches and synagogues prepared to do that, why should we stand in their way? They have rights to be loved and rights to have their ceremonies recognised in the way that the noble Lord, Lord Alli, has asked. It is for those reasons that I support this amendment.

**Baroness Campbell of Surbiton:** My Lords, I remain strongly supportive of this change in the law. Believe me, I would not be here at 10 o'clock at night if I did not feel very supportive. I have broken a bad curfew. I view this as a matter of compelling religious freedom and am very happy to add my name to this amendment yet again. In light of views expressed by the Government in Committee, when there was widespread support from all sides of the House, the amendment has been carefully revised and I believe it is much better for it.

Many of your Lordships will have received supportive briefing from a range of bodies, including religious organisations, which are growing in number and feel that they should be able to follow the wishes of all their members in celebrating lifelong committed relationships irrespective of whether they are same-sex unions. Indeed, in a letter to the *Times* last month, a considerable number of Church of England clerics said clearly that religious denominations should be allowed to register civil partnerships on their premises if they wish.

I believe that we should respond to these representations positively. I ask noble Lords to join me in supporting Amendment 53 and, should there be a vote on the new clause tonight, I urge them not to vote against a key equality measure that would benefit many men and women in this country.

**Baroness Noakes:** My Lords, I have added my name to this amendment. I shall be brief but I do want to speak this evening as I was unable to speak in Committee

because of my other responsibilities in your Lordships' House. As a Back-Bencher for the purpose of this amendment, I hope that it will find favour with my Front Bench and that it will confirm that we have a free vote on this, otherwise clearly I shall be in a bit of trouble tomorrow.

I was proud to have joined my Benches and other parts of the House when the amendment to secure religious freedom was successfully pressed to a vote last month by my noble friend Lady O'Cathain. Amendment 53, as other noble Lords have said, is about religious freedom—the freedom of religious organisations to allow civil partnerships to take place on their premises and thereby be linked to some form of faith-based commitment. Most importantly, this amendment, in the revised form tabled by the noble Lord, Lord Alli, for Report, makes it clear that it preserves the freedom of religious organisations not to allow civil partnerships on their premises. No new rights and no new duties are created by this amendment.

I know that some noble Lords accepted the provisions of the Civil Partnership Act only on the basis that civil partnership was a way of conferring a range of civil rights on same-sex partners. But the truth is that civil partnerships are about relationships and commitment. In turn, as my right honourable friend David Cameron said at our conference last autumn, these things are the bedrock of our society. For some, that commitment is enhanced and deepened by an element of religious ceremony.

I believe that if at all possible when making law we should also make people happy. The ability of churches to host civil partnership registration and a service of celebration in some religious form side by side could undoubtedly make some people very happy. I hope that the House will support the noble Lord's amendment.

**Lord Harries of Pentregarth:** I fully support the amendment, first and most importantly because, as the noble Lord, Lord Alli, said, religious freedom is indivisible. If the Church of England claims it for itself it ought to allow it for others. Some people have suggested that it undermines marriage, but on the contrary, it strengthens marriage. The real enemy in our society is promiscuity not permanent, stable, faithful relationships. These strengthen marriage.

Some people might say that it is possible for people to register their civil partnership legally and then move on to other premises for a religious ceremony. But for people entering into civil partnership, as for those entering into marriage, the business of making the commitment and vows that bring about the marriage or civil partnership is the significant act. Those who are religious would like the act that they see as religiously solemn performed in a religious context using religious words. I believe that this strengthens marriage rather than undermines it. I hope that your Lordships will support it.

**The Lord Bishop of Bradford:** My Lords, one of the difficulties in the Church of England, other churches and other faiths is that we are in a society that is preoccupied by rights and choices and that anything we tend to say will appear ungenerous. This is particularly

[THE LORD BISHOP OF BRADFORD] in the context of the especially generous remarks made by the noble Lord, Lord Alli, who kindly smiled in our direction during most of his speech.

While I agree with almost everything and wanted to say “Amen” and even “Hallelujah” occasionally to what has been said before, nevertheless the House is a legislating Chamber. When considering changes to the law we need to be clear what they are meant to achieve and what in practice they will achieve. A phrase that has occurred during this debate this afternoon and evening has been, “unintended consequences”. That is all the more important when dealing with legislation such as the Civil Partnership Act, which has been operating for just over four years. As far as I know there have been no practical difficulties so far.

As we have heard, some religious groups wish to provide a religious context for same-sex couples seeking to register a civil partnership. As the noble and right reverend Lord, Lord Harries, said, they can already do so by way of making provisions for a service in a meeting room, synagogue or chapel before or after the civil partnership has been registered elsewhere. They cannot have a one-stop shop that provides for marriage ceremonies or civil partnership ceremonies within a religious context.

10.15 pm

If they want to, runs the argument, why should the law prevent them? The fundamental difficulty that many churches and faiths will have with this argument is that we, like the Government and the courts, have been quite clear ever since civil partnerships were introduced, that they are not the same as marriages. It is true that they confer nearly all the same legal rights. However, it was because civil partnerships remedied long-standing injustices for gay and lesbian people, who had for far too long been the victims of discrimination and prejudice, that many people in the Church of England were able to welcome their introduction as worth while—a worthwhile addition to the civil law, even though, as is common knowledge, we continue to have very lively debates on issues of human sexuality.

At the moment, however, civil partnerships are not in substance or in form same-sex marriages. There are some countries that have already introduced the possibility of marriage between people of the same sex, and no doubt some of those sympathetic to the amendment of the noble Lord, Lord Alli, favour that direction of travel. I do not, and neither do the majority of churches and faiths in this country. But if people want to argue for that, they are entitled to do so, and it is a debate that we can have. That debate ought to take place in the synods, the convocations, the councils and so on, and the churches as well. The point is simply that we should not muddle up a debate about civil partnerships with a debate on same-sex marriage.

What is proposed here means that it would still be unlawful for a religious service to take place while a civil partnership registrar was officiating at the signing of a civil partnership document. Yet the signing of the document could occur in a place of worship if that place of worship had successfully applied for approval. That seems rather odd. Does it mean that the civil partnership registrar would have to turn up at the

place of worship, conduct the legal part of the business, and then withdraw so that the religious ceremony could take place? Or does it mean that the local minister of religion would be appointed as a civil registrar and would be allowed to preside at the civil partnership formalities so long as he or she did not lapse into any “amens” or anything religious in their own place of worship until that part of the event was over?

Secondly, I want to refer to what a previous speaker said about Stonewall. The suggestion is that this would simply be an available option open to those religious groups that had chosen to avail themselves of it. While I am confident that that is the intention of those who introduced this amendment, I am not so confident about the intentions of others. Let us assume, with the noble Lord, Lord Alli, the noble and learned Baroness, Lady Butler-Sloss, the noble Baroness, Lady Campbell, and the noble Baroness, Lady Noakes, that this is the spirit in which we go forward. Who, then, would have to apply for the place of worship to be approved for the conduct of civil partnerships? The amendment talks of there being no obligation on “religious organisations”. But I am left unclear what “religious organisations” means in this context. In the case of an independent chapel, a synagogue or a church in the Congregationalist tradition, it would presumably be for that local church to apply. But in the case of the Church of England or the Methodist Church, or one of the other larger churches, would the legislation enable the denomination as a whole to decide whether to accept or decline the option, or perhaps to allow local variation? It is not clear from the legislation as drafted how that would work. Certainly, there has been no discussion with the main denominations about this. So there must at least be a question mark over whether the necessary framework could be put into place by regulations when the enabling legislation itself has been drafted at such speed and with no opportunity for discussion and reflection.

I am conscious that for those who see this as a simple matter of choice, rights and religious liberty, what I have said may have sounded too cautious and tentative. However, when Parliament introduced civil partnerships just a few years ago, it drew a clear distinction between the new legal status and marriage. One of the ways it underlined it was by ensuring that registrations could not take place on religious premises or include a religious ceremony. Religious groups that wish to offer blessings and ceremonies on the day of the civil partnership are already able to do so.

My concern is that the amendment would create a muddle in an area that, because it touches on civil rights and religious freedoms, needs complete clarity in the interests of all concerned. I hope that the noble Lord will be willing to withdraw the amendment for a fuller discussion to take place on this matter.

**Lord McIntosh of Haringey:** Before the right reverend Prelate sits down, I am puzzled by his reference to discussions in the synods and congregations of the churches. That seems a good idea, but how can it have any meaning unless the amendment has been passed and the debate is about something that could happen?

**The Lord Bishop of Bradford:** I fear that once the decision has been made, it has already happened. If noble Lords wish to get the church or other churches to move with the legislation, I hope they will realise that it would help to engage them in discussion in the process of reaching a decision.

**Lord Waddington:** My Lords, I hardly need say that I fully respect the views expressed by the noble Lord, Lord Alli, and all those who have supported him. For my part, I cannot support an amendment that blurs the distinction between civil partnership and marriage, particularly when we were all assured when the Civil Partnership Act was going through Parliament that the distinction was crucial and would be maintained, not least by keeping civil partnerships within the secular field. In saying that, I am paraphrasing the remarks made by the noble and learned Baroness, Lady Scotland, on 12 May 2004 at col. GC140.

I am not at all impressed by the argument that all we are talking about is allowing bodies to conduct civil partnerships within their religious premises, with the new clause making plain that no obligation is placed on religious organisations to register civil partnerships. If this amendment were carried, it would only be a matter of time before it was argued that it was discriminatory for a church incumbent to refuse to allow a civil partnership ceremony to take place when the law allowed it.

I hardly need say that subsection (4) of the new clause could not possibly bar a remedy under the Human Rights Act. The Human Rights Act and Clauses 19 and 29 of the Bill would be invoked and the incumbent prepared to register marriages but not to register civil partnerships would be accused of discrimination on grounds of sexual orientation in the provision of services and pressure would be brought to bear on him to pocket his principles and do what he believed to be wrong. I do not call that religious freedom. Without doubt there would be the risk of costly litigation, and even if an action based on the Human Rights Act and the sections of the Equality Act banning indirect discrimination did not succeed, it would not be long before Stonewall was back, demanding repeal of this permissive provision and for a clear duty to be placed on churches to register civil partnerships. Is that not the way Stonewall has always worked? And was not Mr Ben Summerskill of Stonewall hinting just that when recently he said that right now faiths should not be forced to hold civil partnerships although in 10 or 20 years' time things may change.

Finally, it is no light matter to suggest that because a Christian church is used for the solemnisation of marriage, it is perfectly proper to use it for an entirely different purpose. In spite of the support it has received from some clergymen, many Christians in this country would be deeply unhappy if this proposed new clause were to be carried into law.

**Baroness Neuberger:** My Lords, I rise to support the amendment and I speak as president of Liberal Judaism, one of the three faith groupings which have been cited as supporters of it. First, very briefly because we are late, I want to say something to some of the

people who have spoken this evening. There is an old joke that says, "Two Jews, three opinions". Tonight we are hearing, "Two Christians, three opinions". We have to recognise that within each of our religious groupings there is difference of opinion about whether or not this is proper. That is why it is important to stress that this is a permissive amendment. Nobody is saying that those who do not want to do this on their religious premises should be forced to do so. I am probably the only person in this Chamber tonight who has officiated at blessings after a civil partnership but it seems to me that the important point here is that those who wish to do this should be allowed to do so, should the particular religious authorities agree to allow it.

This is not only about religious freedom but about the personal happiness of a lot of people. I wholly agree with the noble Baroness, Lady Noakes. This is about what we in this Chamber can do to ensure the happiness not only of the couples involved but also, as I said in Committee and I speak as a Jewish mother, of the parents involved. It will make a lot of difference to them. We should not underestimate this. This does not weaken marriage. It is not about marriage. It is about civil partnership between people who are religiously faithful and wish to recognise that religious faith after a civil partnership. In my view, we would be morally wrong to block this permissive amendment and I very much hope that everyone around this House will support it.

*10.30 pm*

**Baroness Morris of Bolton:** My Lords, in Committee I congratulated the noble Lord, Lord Alli, on the sensitive way in which he introduced his amendment and I do so again tonight. I acknowledge the trouble that he and those who support him have taken to make sure that it says:

"Nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so".

I also understand only too well the desire for someone of faith to have that faith at the centre of a ceremony when they make a commitment to someone they love.

However, this is a complex issue, even though its permissive nature seems to make it simple, and it requires much careful thought and consideration. I wonder if it is appropriate to address it so late in the passage of this Bill and so late in the evening, although I know that the noble Lord had no say in the timing of this coming up tonight.

In legal terms, civil partnerships are equivalent to civil marriages: neither ceremony can take place on religious premises or involve religion in the service. The corollary of this corresponding status is that if any changes were to be made to the civil partnership ceremony, it would automatically lead to increased pressure to change the civil marriage ceremony. The scope of the amendment, therefore, is even wider than is apparent at first glance. Its effect would be to start unpicking the settlement reached between civil partnerships and civil marriages when the former were introduced. As the right reverend Prelate the Bishop of Bradford said, if the law remains as it is, there is still no prohibition on a gay person of faith having a civil

[BARONESS MORRIS OF BOLTON]

partnership ceremony and, either beforehand or afterwards, going to religious premises to have whatever religious service or blessing they would wish in accordance with their faith. The nub of the issue is that they cannot mix the two together, as is the case with civil marriages. I wonder, therefore, whether there is not a case for some research into the extent of demand for the removal of the prohibition altogether, but we cannot go into that tonight.

Neither of these factors means that the issue is not worth looking at. We are very much in support of civil partnerships and so have some sympathy with the intentions behind the amendment. Nevertheless, we do not think it auspicious to usher in such a change as the midnight oil is burning and at the tail-end of a very long and complex Bill which we all hope to see on the statute book.

Amendment 53 raises some very complicated questions that merit proper attention and sufficient scrutiny to ensure that, if any changes are to be made, they are made well. One issue, for example, is that there can still be no religious content within the civil partnership document as it is being signed, which raises the important questions referred to by the right reverend Prelate the Bishop of Bradford regarding the registrar and registration.

Although we would not rule out changes in the future, we do not think that this is the appropriate time to delve into the myriad complexities that this issue would throw up and that deserve to be addressed. However, I can assure my noble friend Lady Noakes that, should the noble Lord, Lord Alli, press the amendment to a vote, we on these Benches will have a free vote.

**Lord Wallace of Tankerness:** My Lords—

**Lord Lea of Crondall:** I do not know whether this is a Front Bench situation, but I have been waiting to make my contribution. I have one simple point to make, which has been made in one respect by the right reverend Prelate—namely that we are a legislative Chamber and we have to make decisions according to the words on the paper. I am a member of the Church of England and want to be absolutely clear that the Church of England is still in charge of its own liturgy. The Synod has been supported as a democratic organisation in some sense or other. The noble Lord, Lord Alli, has made that clear, so I have no problem with the amendment—although it should be on the record that there is something of an unholy alliance among the people moving it.

Some people think that the amendment somehow puts pressure on mosques and Hindu temples et cetera to do something that they would not otherwise want to do. I think that the amendment will go through this evening precisely because it has a very clear negation provision in subsection (4) stating that there is no obligation on religious organisations to host civil partnerships.

On that basis, as the noble Baroness, Lady Neuberger, said, the amendment is not what some people think it is. It is permissive to religious organisations. We have spoken nearly all the time about Christianity. However,

I can well imagine that if a mosque got into difficulty with legislation because it was in any way compulsory, the balloon would go up and it would be very difficult to prosecute. The same would go for a Hindu temple—we are talking not just about Christianity.

I am happy with the amendment. I take in good faith the words on the paper, which is what the noble Baroness, Lady Noakes, with whom I very rarely agree, told us to do. We should therefore be clear about what we are voting for if the amendment goes to a vote.

**Viscount Astor:** My Lords, I wish to make a brief contribution. I have not spoken on this Bill before but I listened to the debate when the amendment was discussed in Committee. It sparked my interest, and I wish to explain to your Lordships why. Some 34 years ago, when I approached my local vicar about getting married, he was very sympathetic, but he turned me down. It was not, surprisingly, because my fiancée was a Roman Catholic, but because she was a divorcee.

Since then, times have changed, and so has the church, and weddings to someone who has been divorced are now allowed. I think that that is a good thing. This amendment resonated with me because of that, because it allows those who want their proceedings to take place in a church, as I did then, to do so if the church agrees. That is the important point: they do not have to be turned down. This amendment is permissive; it is not prescriptive. It does not force, but it allows. It is based on freedom of choice, and the freedom of choice for the church is to decide.

In Committee, the Minister offered a review. I am not sure whether that was sitting on the fence, or kicking the amendment into the long grass. I am afraid that I suspect the latter. If so, we shall probably hear the next line of defence—that the amendment has unknown legal implications. I have to say to the Minister and to your Lordships' House that we have all heard that before. I have been here too long. I know that parliamentary draftsmen can always redraft a clause for Third Reading without delaying the Bill if it is required.

I am a Conservative. I believe in freedom of choice. It is an important principle that my party supports. Finally, there is nothing in this amendment that can happen unless regulations are then brought back to your Lordships' House, and Parliament as a whole, in order to enact anything before it can happen. I therefore support the amendment.

**Lord Wallace of Tankerness:** My Lords, the noble Viscount, Lord Astor, has made a very important point. He makes the parallel with the cases of some churches which would marry divorcees in church, and some which would not. The church of which I am a member and an elder, the Church of Scotland, has permitted the marriage of divorcees in church for some considerable time. That is a decision that that church has taken, and which it has been free to take. It is a parallel that is well-drawn. The noble Baroness, Lady Morris of Bolton, indicated that if this comes to a Division, the Conservative Peers will have a free vote. This will also be the case on these Benches. Therefore, what I state is my personal view, although I

know that it is shared by my colleague on the Front Bench dealing with the Bill, the noble Baroness, Lady Northover.

The first point of response to the points made by the noble Baroness, Lady Morris, is that the House seems remarkably full, however late at night it is. We have made some decisions on this Bill with far fewer people present. It is also wrong to say that this is something that has suddenly been sprung on us. I recall that this issue was raised at Second Reading. In Committee, it was thoroughly addressed. It is not an issue that has suddenly emerged out of the woodwork. It is an issue which has been given some considerable thought.

It is right to emphasise, as the noble Lord, Lord Alli, did when introducing his amendment, and as was echoed by my noble friend Lady Neuberger, that this is permissive. It does not oblige any church that does not want to do it to go down this particular road. Nevertheless, we have heard that there are religious organisations which do wish to have the ability and the legal authority to allow civil partnerships on religious premises. The right reverend Prelate the Bishop of Bradford indicated that the majority of the larger churches would probably be against it. That is fair enough. If they are against it, then that is a decision that they can take. He indicated that there would be debates in synods and councils. As the noble Lord, Lord McIntosh, indicated, there is not much point having the debate unless there is something to debate. That is the appropriate place for these discussions to take place. This Bill allows these discussions to take place.

I conclude by reflecting that I have sat through many of the debates at Second Reading, Committee stage, and indeed this evening, on Report. There has been much discussion about legalities, detriment, proportionality, and reasonableness. Today, with this amendment, as the noble Lord, Lord Alli, indicated in moving the amendment, as the noble and right reverend Lord, Lord Harries of Pentregarth, indicated in his contribution, and as my noble friend Lady Neuberger also indicated, we are dealing with people and with relationships. We are talking about people who want to celebrate a lifelong commitment in the company of their friends and their congregation. As my noble friend Lady Neuberger indicated, it is important to parents and family. When we talk about legalities, we should remember that people are important. This is a very people-centred amendment. If the noble Lord chooses to test the opinion of the House, I will support him.

**Baroness Howe of Idlicote:** My Lords, I should like to congratulate the noble Lord, Lord Alli, on producing this amendment, which is a real achievement, as is the backing that he has got from all sides of the House. As has been said, it is permissive, fair and proportionate in what it is proposing. As the noble Baroness, Lady Noakes, said, it allows freedom to have a civil partnership in premises which will allow these ceremonies, as well as the freedom not to allow. Above everything else, we should vote on this and I hope that we will, because it needs affirmation.

**Lord Tebbit:** My Lords, it is necessary that the advocates of the amendment in the name of the noble Lord, Lord Alli, should answer the arguments put

forward by my noble friend Lord Waddington. They concern the manner in which, before long, if this amendment is accepted, human rights law would begin to be used in order to compel churches which do not wish to allow civil partnerships to be celebrated within them to do so on the basis that if they do not, they will be discriminating against those people in civil partnerships on the grounds of their sexual orientation. I think that that is a powerful argument.

By nature, as a Conservative, of course I believe in personal liberty, but I do not believe in personal licence. This amendment has a purpose, which is to equate civil partnership with marriage. The noble Lord, Lord Alli, shakes his head, but that is what it would do. Those entering into civil marriages would not have the right to force themselves upon churches. I say “force themselves” because it would be forced and enforced as my noble friend Lord Waddington has explained. We should be utterly, completely and absolutely clear that a civil partnership is not a marriage, cannot be a marriage, never will be a marriage and should be treated entirely separately from marriage.

Marriage is celebrated within a church. That is absolutely clear. Other forms of union between two persons are not celebrated within a church and I do not think that they should be. If we make it a permissive option, sooner or later, the legal proceedings will start to enforce it upon churches against the will of many ministers in those churches. I believe that this amendment is therefore fundamentally ill-founded and should be rejected.

**Baroness Whitaker:** My Lords, the noble Lord referred to the Human Rights Act being used to oblige religious organisations to hold such ceremonies when they did not want to. Which section of the Human Rights Act would be contravened?

**Lord Tebbit:** My Lords, those which prohibit discrimination on the grounds of sexual orientation.

*10.45 pm*

**Lord Fowler:** My Lords, if one former chairman of the Conservative Party may disagree with another—

**Lord Tebbit:** That is not unusual.

**Lord Fowler:** It is rather usual with us. I have one or two brief comments.

I cannot see how a civil partnership is a threat to marriage. It respects the strong wishes and feelings of many of our citizens who happen to be gay or lesbian. That seems to be the point. As a policy aim, we should seek in this country to encourage stable relationships as much as we possibly can, for the reasons that have been set out. That surely is the whole aim of what we are and should be about. This is an issue of religious freedom and justice for some very devoted people. We should respect that.

As for this simply being a step to it all becoming mandatory, I have probably listened to Stonewall, when I was doing HIV/AIDS work in the Department of Health and later, more than many Members of this

[LORD FOWLER]

House. Sometimes I agree with Stonewall and sometimes I do not. However, I have never understood the idea that Stonewall has somehow become the arbiter of what this House and the nation are going to do. The decision rests with us. It is absurd to say that, simply because Stonewall says something, tomorrow the whole thing will become mandatory, particularly as the noble Lord, Lord Alli, has put down such a limiting clause, making it absolutely clear for the avoidance of all doubt that nothing in this Bill places an obligation on religious organisations to host civil partnerships if they do not wish to. Nothing could be clearer than that and I believe that the noble Lord's amendment is worthy of this House's support.

**Baroness Royall of Blaisdon:** My Lords, I am grateful to my noble friend Lord Alli and the noble Baronesses for bringing the important issues dealt with by Amendment 53 back before this House for further consideration. The intention is to remove the express prohibition on civil partnerships taking place in religious premises. This is an important issue and merits serious and careful consideration.

As many noble Lords have rightly stated, civil partnerships, like civil marriages, are entirely secular. These ceremonies cannot take place in religious premises or contain any religious language. The secular nature of these unions clearly separates them from religious unions. Representatives of three different denominations—Quakers, Unitarians and liberal Jews—have raised with us their wish to carry out civil partnership ceremonies in their meeting houses or places of worship. In Committee, a number of noble Lords put forward strong arguments supporting the faith groups that wish to be allowed to perform these ceremonies. The broad debate in Committee also exposed the wide range of views from across faith groups and others on the issue—not least from the chairman of the Conservative Party. In addition, it illustrated the considerable range of issues that would be caused by changing the way in which civil partnerships are registered.

I understand what my noble friend and the noble Baronesses are seeking to achieve. Like many noble Lords, I have great sympathy with their aims and fully recognise that civil partnerships are about commitment and loving relationships. However, while my heart supports the intentions of my noble friend, my head knows that the amendment raises a number of problems. I fear that it would not work in practice. It breaks the important link that we have always maintained between civil partnership and civil marriage. It blurs the line between what is a civil partnership and something that has elements of a religious partnership. It introduces ambiguity into the role of registrars and it is unclear what, if any, religious language would be able to be used during any civil partnership ceremony conducted in religious premises.

There are also significant practical problems with the amendment. For example, it leaves in place Section 2(5) of the Civil Partnership Act, which prohibits the use of any religious service while the civil partnership registrar is officiating at the signing of the civil partnership document. This would mean that, while the amendment might permit civil partnerships to take place in religious premises, those conducting them would not be able to

use any type of religious service, which could include religious language, prayers or readings. My noble friend's amendment would also preclude any changes to the current approved premises regulations for civil partnerships that do not mirror the position for civil marriages in any way, other than to allow for religious venues. That means that the current condition would remain that neither civil partnerships nor civil marriage proceedings can be led by a minister of religion or religious leader.

While I am certain that the religious groups seeking this amendment would wish to celebrate these unions with religious services, that would not be achieved. As there is still a requirement for a registrar to carry out civil partnerships, this amendment could mean that the civil registrar would need to wait outside until all religious aspects of the ceremony were completed, to be brought back in to officiate for the signing of the register, or that the clergy wait outside the church until the civil aspects of the partnership were concluded. That highlights some of the practical issues that we need to deal with.

Further, the amendment would break the carefully established and maintained link between civil partnerships and civil marriages—the foundation of the civil partnership regime. That would lead to the anomalous position where civil partnerships could take place in religious premises but civil marriages could not. This could leave some heterosexual couples feeling at a disadvantage if they wanted their civil union to be held in a church, synagogue or other religious building.

My noble friend made it clear in his introduction that he is intending for this to be a permissive provision. I am also aware that faith organisations would want to be clear from the outset that they could decide whether to allow civil partnership ceremonies on their religious premises or not. However, nothing included in the amended Section 6A would allow the regulations to provide for a denominational opt-in or permit any other way of dealing with differing positions for different religions. It is not clear how we could deal, for example, with a situation where a particular religious organisation does not wish to allow civil partnerships on its premises when their local priest or rabbi, who controls the relevant premises, does.

Finally, we need to consider the position of the civil registrars who would need to conduct these ceremonies. To what extent would or should they be able to opt out of attending at some or all religious premises? While on the face of it my noble friend's amendment looks sensible and logical, it will not achieve what he is seeking, as I have explained. My noble friend and others may think that the potential problems that I have raised are not insurmountable. They may be right.

**Lord Smith of Finsbury:** I am puzzled by the Leader of the House's argument that this somehow puts civil marriage at a disadvantage, because surely a heterosexual couple who wish to get married have the free choice of being able to marry in religious premises with a religious ceremony.

**Baroness Royall of Blaisdon:** My Lords, I hear what noble Lords are saying around the Chamber, but if people have been divorced in certain religions, as the noble Lord said, they are not allowed to be married in some churches.

**Viscount Astor:** I am delighted to inform the Minister that the Church of England has changed its position since that was the case some years ago. The Roman Catholic Church has always allowed divorcees to get married, as has the Church of Scotland.

**Baroness Royall of Blaisdon:** I am extremely grateful for that clarification, but I will come back to my noble friend in writing.

**A noble Lord:** Oh!

**Baroness Royall of Blaisdon:** I will come back to the noble Lord in writing because my notes say one thing and other noble Lords are saying something else. I will give the clear view of the Government, which is the right and proper thing to do. It may be too late if the amendment is passed, but it is still good for people to have clarification on this issue.

This is a complex issue, which we need to consider carefully if we are to be sure that any changes will achieve what they are designed to do and will be workable in practice. Should my noble friend be successful in making his amendment, there would need to be wide discussion and careful consideration of what further measures would need to be put in place and what further legislation would be needed. That is why the Government believe that the most appropriate way forward is to consider the issue further and to solve these problems before any legislative change is made.

The amendment raises issues of fundamental religious conscience. This is not a question about civil rights for lesbians and gay men. Same-sex couples already have the right to legal recognition of their relationship, with the rights and responsibilities which go along with that, thanks to the groundbreaking Civil Partnership Act, which I am proud to say this Government placed on the statute book in 2004. Our record on rights for LGB people is second to none, but this amendment would give faith organisations the freedom to host civil partnerships on their premises, raising fundamental issues for religious organisations, and it is therefore right that they are considered as matters of individual conscience. As my noble friend clearly stated, this is a matter of religious freedom. That is why we want to have a full and open discussion with all those concerned. We can then consider the issues carefully and arrive at the right way forward for this country, which deals with the wide range of matters which will be affected by the change—

**Baroness Butler-Sloss:** Is the Minister proposing that this should be done before Third Reading, or at some undefined stage in the next Parliament?

**Baroness Royall of Blaisdon:** My Lords, it would be unrealistic for me to promise to have a consultation before Third Reading, which we hope will take place in the next few days or weeks. I am therefore thinking in the longer term. We can embark on this consultation quite soon, but clearly it would not conclude until after the election. We want to take the time to listen to the wide spectrum of views, including from the faith communities, LGB representatives, and those who work as registrars. We will consider the whole range of options to gain a clearer understanding of the impact of the issues involved before deciding how to proceed.

On this basis, as noble Lords will know, we have a free vote on this amendment. If it is taken to a vote and the will of the House is to accept it, there will need to be further work to determine the extent of further legislation needed to ensure that it is possible to approve religious premises for civil partnerships. Our preference would be to get this right from the outset.

As we have said before, while we support the intention of my noble friend's amendments, I have today raised our concerns about how this would work in practice. I have made it clear that we are committed to taking the time to consider any changes carefully, and I therefore urge my noble friend to withdraw his amendment.

**Lord Alli:** My Lords, the hour is late so I will restrict my comments. First, let me thank all those who participated in the debate and all those who have given me their support. I single out only one person: the noble Baroness, Lady Campbell of Surbiton. It is well past the time she normally leaves, oxygen is short, and it was incredibly kind and generous of her to support my amendment tonight.

**Noble Lords:** Hear, hear.

**Lord Alli:** I also thank the Bishops, former Bishops and theologians who wrote to the *Times* to add their support to the amendment. I am clearly disappointed by the response from the right reverent Prelate the Bishop of Bradford, but I hear his argument. That disappointment is nothing compared with the words which the Leader of the House uttered, but let me say this to those outside and to everyone in this House; the Leader of the House and the noble Baroness, Lady Thornton, have been supporters of these rights throughout their time in office and on the Back Benches, they have worked incredibly hard to secure us our free vote, and I thank them wholeheartedly for their continued support, whatever small print they were forced to read out. On that basis, I beg to test the opinion of the House.

10.59 pm

*Division on Amendment 53*

*Contents 95; Not-Contents 21.*

*Amendment 53 agreed.*

### Division No. 3

#### CONTENTS

Adams of Craigielea, B.	Clark of Windermere, L.
Addington, L.	Corston, B.
Adebowale, L.	Craigavon, V.
Adonis, L.	Crawley, B.
Alderdice, L.	Dubs, L.
Alli, L. [Teller]	Falconer of Thoroton, L.
Andrews, B.	Farrington of Ribbleson, B.
Astor, V.	Flather, B.
Barker, B.	Fowler, L.
Bilston, L.	Gale, B.
Bonham-Carter of Yarnbury, B.	Greengross, B.
Boyd of Duncansby, L.	Hamwee, B.
Bradley, L.	Harries of Pentregarth, L.
Brett, L.	Harris of Haringey, L.
Brookman, L.	Harris of Richmond, B.
Buscombe, B.	Haworth, L.
Butler-Sloss, B.	Hilton of Eggardon, B.
Campbell of Surbiton, B.	Hollis of Heigham, B.
Campbell-Savours, L.	Howarth of Breckland, B.
	Howarth of Newport, L.

Howe of Idlicote, B.  
 Howells of St. Davids, B.  
 Jones of Whitchurch, B.  
 Judd, L.  
 Kennedy of The Shaws, B.  
 Kingsmill, B.  
 Kirkwood of Kirkhope, L.  
 Lee of Trafford, L.  
 McDonagh, B.  
 McIntosh of Haringey, L.  
 McIntosh of Hudnall, B.  
 Maclennan of Rogart, L.  
 McNally, L.  
 Mallalieu, B.  
 Mar and Kellie, E.  
 Massey of Darwen, B.  
 Maxton, L.  
 Meacher, B.  
 Miller of Chilthorne Domer,  
 B.  
 Morgan of Huyton, B.  
 Morris of Handsworth, L.  
 Neuberger, B.  
 Newcastle, Bp.  
 Noakes, B. [Teller]  
 Northover, B.  
 Norton of Louth, L.  
 O'Loan, B.  
 Pitkeathley, B.

Prosser, B.  
 Puttnam, L.  
 Quin, B.  
 Radice, L.  
 Razzall, L.  
 Rees of Ludlow, L.  
 Rendell of Babergh, B.  
 Rennard, L.  
 Roberts of Llandudno, L.  
 Rosser, L.  
 Sawyer, L.  
 Sewel, L.  
 Shutt of Greetland, L.  
 Smith of Finsbury, L.  
 Steel of Aikwood, L.  
 Stone of Blackheath, L.  
 Symons of Vernham Dean, B.  
 Teverson, L.  
 Thomas of Winchester, B.  
 Thornton, B.  
 Tonge, B.  
 Tope, L.  
 Wallace of Saltaire, L.  
 Wallace of Tankerness, L.  
 Whitaker, B.  
 Wilkins, B.  
 Wilson of Tillyorn, L.  
 Young of Hornsey, B.

#### NOT CONTENTS

Armstrong of Ilminster, L.  
 Bates, L.  
 Bradford, Bp.  
 Brooke of Sutton Mandeville,  
 L.  
 Browne of Belmont, L.  
 Eames, L.  
 Greenway, L.  
 Low of Dalston, L.  
 Luke, L.  
 Montrose, D.

Morrow, L.  
 O'Cathain, B.  
 Paisley of St George's, B.  
 Seccombe, B.  
 Shrewsbury, E.  
 Simon, V.  
 Skelmersdale, L.  
 Stewartby, L.  
 Tebbit, L. [Teller]  
 Waddington, L. [Teller]  
 Wilcox, B.

11.09 pm

#### Clause 201 : Harmonisation

*Amendments 54 to 56 not moved.*

#### Schedule 24 : Harmonisation: exceptions

##### Amendment 57

*Moved by Baroness Royall of Blaisdon*

57: Schedule 24, page 224, line 6, at end insert—

“Section (Information about diversity in range of candidates etc.) (election candidates: diversity information)”

*Amendment 57 agreed.*

#### Clause 206 : Ministers of the Crown, etc

##### Amendment 58

*Moved by Baroness Royall of Blaisdon*

58: Clause 206, page 128, line 8, at end insert—

“( ) regulations under section (Information about diversity in range of candidates etc.) (election candidates: diversity information);”

*Amendment 58 agreed.*

#### Schedule 26 : Amendments

##### Amendment 59

*Moved by Baroness Royall of Blaisdon*

59: Schedule 26, page 230, line 8, at end insert—

“( ) an act which is unlawful because it amounts to a contravention of section (Information about diversity in range of candidates etc.) of that Act (information about diversity in range of candidates etc.);”

*Amendment 59 agreed.*

#### Clause 210 : General interpretation

##### Amendment 60

*Moved by Lord Low of Dalston*

60: Clause 210, page 131, line 4, at end insert—

““substantial” means more than minor or trivial;”

*Amendment 60 agreed.*

#### Clause 214 : Commencement

*Amendment 61 not moved.*

*House adjourned at 11.10 pm.*

# Grand Committee

*Tuesday, 2 March 2010.*

## Arrangement of Business

*Announcement*

3.40 pm

**The Deputy Chairman of Committees (Baroness Pitkeathley):** My Lords, before the Minister moves that the first statutory instrument be considered, I remind noble Lords that in the case of each statutory instrument, the Motion before the Committee will be that the Committee do consider the statutory instrument. I also make it clear that the Motions to approve the statutory instruments will be moved in the Chamber in the usual way. Noble Lords will all be aware that if there is a Division in the House, the Committee will adjourn for 10 minutes.

## Welsh Zone (Boundaries and Transfer of Functions) Order 2010

*Considered in Grand Committee*

3.41 pm

*Moved By Lord Faulkner of Worcester*

That the Grand Committee do report to the House that it has considered the Welsh Zone (Boundaries and Transfer of Functions) Order 2010.

*Relevant Document: 8th Report from the Joint Committee on Statutory Instruments.*

**Lord Faulkner of Worcester:** My Lords, the draft order does two things. First, it sets out the boundaries of the Welsh zone. Secondly, it transfers the exercise of fisheries functions in that zone from Ministers of the Crown to Welsh Ministers.

I will set out some background to the establishment of the zone before turning to the rationale for the change. The Marine and Coastal Access Act 2009 amended the Government of Wales Act 2006 to include a definition of the Welsh zone and allow the transfer of ministerial functions connected to fisheries, fishing and fish health to Welsh Ministers in that part of the zone that is outside territorial sea limits. The 2006 Act, as amended, defines the Welsh zone as the sea adjacent to Wales which is, first, within British fishery limits, and, secondly, specified in an Order in Council under Section 58, or in an order under Section 158.

This order is brought forward under Section 58 of the 2006 Act. The boundaries of the zone are defined in Article 3 and the co-ordinates in the Schedule to the order. To the north of Wales, points 1 to 8 in Part 1 of the schedule replicate the boundary between England and Wales in the Dee estuary by following the line that was defined in the National Assembly for Wales (Transfer of Functions) Order 1999. At the end of those points, the boundary follows a simplified median line between Wales and north-west England until it makes contact

with the Isle of Man territorial sea at point 11. The Isle of Man territorial sea limit is then followed in a westerly direction until the point where contact is made with the boundary of the Northern Ireland zone. From that point, the boundary follows the Northern Ireland zone in a south-westerly direction until point 12, where the Northern Ireland zone meets the extent of British fishery limits.

Similarly, the southern boundary of the Welsh zone begins by following the boundary between England and Wales in the Severn estuary and the Bristol Channel, along the line that was defined in the 1999 transfer of functions order. It then follows a simplified median line in a south-westerly, and then westerly, direction until the boundary reaches the extent of British fishery limits at point 22 of Part 2 of the Schedule. The western boundary of the zone is the British fishery limit.

I draw the Committee's attention to the fact that the Welsh zone includes both the territorial sea adjacent to Wales, out to 12 nautical miles, and the sea outside the territorial boundary but within the defined limits. Welsh Ministers already exercise fisheries functions within the boundary of the territorial sea, and this order merely extends the area in which they may exercise those functions to include the area of the Welsh zone outside the territorial sea—in other words, beyond 12 nautical miles.

Functions that can be transferred to the Welsh Ministers by an Order in Council under Section 58 of the 2006 Act are, in that part of the zone beyond the territorial sea, limited by Section 58(1)(a) to functions connected with fishing, fisheries or fish health. The fisheries functions that are to transfer from Ministers of the Crown to the Welsh Ministers are listed in Article 4 of this order.

The functions are to be vested in the Welsh Ministers on the same basis that they are exercisable by them at present in the territorial sea adjacent to Wales. The functions to be transferred include powers under the Sea Fish (Conservation) Act 1967, the principal Act used for the regulation of commercial fishing throughout England and Wales. It includes the power to restrict fishing for sea fish, including regulating the fishery for a specific species at a specific time or a specific location, and regulating the size of the fish that can be caught or landed and the methods by which that fishing is undertaken. The Welsh Ministers will also be able, under the Fisheries Act 1981, to make provision for the enforcement of EU restrictions and obligations relating to sea fish.

The duty on Welsh Ministers under the Sea Fisheries (Wildlife Conservation) Act 1992 to have regard to the conservation of marine flora and fauna in discharging functions under sea fisheries legislation will also be extended to cover the whole of the zone.

While most functions are being transferred entirely to the Welsh Ministers, in cases where a function is at present exercisable by them concurrently with UK Ministers in the territorial sea, it will also be exercisable on a concurrent basis in the rest of the Welsh zone. These concurrent functions are listed in Article 5 and include further functions under the Sea Fish (Conservation) Act 1967 in relation to the licensing of

[LORD FAULKNER OF WORCESTER]  
fishing vessels. The concurrent nature of the UK licensing functions is central to the principles of a single UK fishing licence. Also included are powers under the Sea Fisheries Act 1968 to regulate the conduct of sea fishing operations with regard to the identification and marking of fishing boats, as well as functions under the British Fishing Boats Act 1983 relating to the qualification for British fishing boats to be used in fishing, trans-shipment and the landing of sea fish.

I will now move briefly to the policy underpinning this order. Noble Lords might like to note that, as set out in the Explanatory Memorandum that accompanies the order, the Welsh Ministers' overriding policy aim is to create viable and sustainable fisheries in the waters around Wales, as described in the Wales fisheries strategy.

The creation of the zone will simplify the jurisdiction, better reflect practical realities and enable the more coherent management of fisheries off the Welsh coast. The vast majority of the Welsh fishing fleet operates within the zone, and its creation would put Wales on a similar footing to the other devolved Administrations, each of which already has a fisheries zone.

I draw the Committee's attention to the fact that Parliament has already agreed the principle of the Welsh zone by virtue of its inclusion in the Marine and Coastal Access Act 2009. The order simply gives the zone practical effect.

A further effect of establishing the zone is to define the boundaries of the Welsh offshore region, one of the eight marine planning regions in UK waters created by the Marine and Coastal Access Act. The Act provides for the Welsh Ministers to be the marine plan authorities for both the Welsh offshore and inshore regions, and to prepare marine plans for these regions. The Welsh offshore region would not be defined in the absence of this order.

The draft order has already been approved by the Welsh Ministers, and I commend it to the Committee.

**Lord Glentoran:** My Lords, I thank the noble Lord for making this order so clear. I took part in the debates around the Marine and Coastal Access Bill and this order is a logical follow-up. I remember asking questions at that time about how the various borders would be set up and agreed. I am delighted to hear that, although we have waited some time for this order, it is being made as a direct result of consultations with the Scottish, Irish and, presumably, the English.

Before I go any further, I point out that point 22 of Part 2 of the Schedule does not exist. It exists on the map, but not on the list of longitude and latitude in the Schedule.

**Lord Faulkner of Worcester:** It is at the top of page 6.

**Lord Glentoran:** I apologise for that and withdraw my remarks. I had turned the page, but missed it.

We clearly had good negotiations with the other parties concerned—the Irish, the Northern Irish, the Isle of Man, Scotland and wherever. A sizeable chunk

of our local seas—St George's Channel and the Irish Sea—is the responsibility of Wales. From the beginning of proceedings on the Marine and Coastal Access Bill it was made clear that Welsh Assembly Ministers wished to take direct control of the management of this part of the sea fisheries of the United Kingdom. Given the scale of things, that seems to be eminently sensible.

However, I have a few questions. First, what consultation is anticipated between Ministers of the Crown and Welsh Ministers in relation to the functions that are concurrently exercised? As I understand it, that includes areas directly beyond the Welsh zone up to the international zone between the limits of the UK and Ireland.

Secondly, Article 6 provides that:

"Any provision of section 4 or 4A of the Sea Fish (Conservation) Act 1967 requiring the consent of the Treasury to the exercise of a function does not apply in relation to the exercise of the function by the Welsh Ministers".

Why is this?

Thirdly, Article 8 provides that:

"Paragraph 1(1) of Schedule 4 to the Government of Wales Act"—

it relates to the transfer of property and so on—

"does not apply to any documentary or electronic records to which ... a Minister of the Crown is entitled in connection with any function exercisable by the Minister of the Crown and transferred by this Order".

What arrangements, if any, will be put in place for access by Welsh Ministers to such records?

Those are my key questions. In summary, this is an eminently well thought-out statutory instrument. I hope that the Welsh Assembly will take this on board—it is a big task, involving licensing of fishing boats, management of sea fisheries, protection and all sorts of things that come to us from Europe and central government. I am sure that Welsh Ministers will need support, we wish them good fortune in carrying out their responsibilities and I hope that they will get stuck in right away. I support the order.

**Lord Jones:** I thank my noble friend for his lucid explanation. I rejoice at the finding of point 22. The Welsh Assembly cares greatly for the future of what remains of the fishing industry. Does the order enable any measures to enhance a Welsh fishing industry that is currently under considerable and major pressure? What does the industry comprise of? This information would help us to understand the objective of the order. Is it concerned with deep-sea fishing for cod and herring? What is encompassed here?

Can the Minister tell us where in Wales there is a fishing industry today; that is, which ports relate to this order—one that I fully support and welcome? Would I be right to assume that there is a small and viable fishing industry in far flung Pembroke, probably based at Haverfordwest? Further, can he define the difference between the Welsh zone and the seaward boundary of the territorial zone? Does my noble friend know that when I had the honour to work in what was then the Welsh Office with ministerial responsibilities, while deciding the route of the A55 expressway from Chester to Holyhead, I found it necessary to obtain navigation rights to the west of Conwy and the east of Bangor so as to put the

highway into what is now called the Irish Sea but which locally might be considered to be the bay of Conwy?

**Lord Roberts of Llandudno:** It is privilege to take part in the discussion of this order, and in particular to follow my compatriot the noble Lord, Lord Jones, who speaks with a wealth of experience of the fishing industry, the routing of roads and so on, in north Wales. I appreciate his words. I do not know if anyone else present had family who were a part of the fishing industry. My great-grandfather was a trawler-man in Conwy. He drowned in 1869, so we go back a long way in the fishing story of north Wales. But I know that others come from coastal areas as well.

**Lord Jones:** This is very Welsh, but is my friend the noble Lord, Lord Roberts, aware that my ancestors were boat-builders in Conwy and then migrated to the boat-building industry in Flintshire at Connah's Quay? Together, we can make some historic references.

**Lord Roberts of Llandudno:** I thank my cousin for that intervention, and I am only sorry that my other cousin here today, my noble friend Lord Livsey, has to leave us or he would be leading on this order.

The order specifies the boundaries of the Welsh zone and brings certain functions that deal with fishing, fisheries and fish health under the control of Welsh Ministers. As part of the Marine and Coastal Access Act 2009, the Welsh Assembly Government wanted to bring fisheries functions in-house under the control of Welsh Ministers, hence the establishment of the Welsh zone under the 2009 legislation. It makes sense for Wales to have a zone and so bring it in line with Scotland and Northern Ireland. We on the Liberal Democrat Benches welcome the new powers over fisheries for the Welsh Assembly Government and want to see them work well. The order makes the boundaries of the Welsh zone clear, and I welcome that. Again, I am grateful to the Minister for giving us such a lucid explanation of what is involved, and to the team backing him on this order.

The boundaries of the Welsh zone have been negotiated between the UK Government and the Welsh Assembly Government. Welsh Ministers will be able to exercise all the functions they need within the zone, so it is very much a tidying-up exercise rather than the transfer of new powers. We understand why the boundaries of the zone were left to an order, but perhaps I could ask, first, if any consideration was given to transferring these functions as part of the 2009 Act? Secondly, are the Government sure that they have transferred all the functions referring to Wales to the Welsh zone? Has anything somehow been left out of the transfer?

The Explanatory Memorandum states that the Welsh Assembly Government are confident that the creation of the Welsh zone will not weaken the UK position in European Union fisheries matters. We agree, but have any procedures been put in place for cross-governmental working to ensure that the Welsh voice is heard, and heard loudly, at the European level? My final question is this: will additional resources be allocated to the Welsh Assembly Government to enable them to carry out their new responsibilities? Other than those questions, we welcome the order.

**Lord Roberts of Conwy:** My Lords, I have only one basic question to ask the Minister about the order, and that is in regard to the cost of its implementation as far as Wales is concerned. We are talking about the accretion of responsibility by Welsh Ministers for functions relating to fishing, fisheries and fish health over an extensive area. Yes, they have been responsible for the functions previously and currently, either on their own or concurrently with Ministers of the Crown, but within a limited area, which I understand is up to what is described as the "seaward boundary of the territorial sea". In common parlance, that means up to the 12-mile limit. However, this zone is far bigger. As the Minister explained, it extends to the boundaries of the British fishery limits, as defined by the latitude and longitude co-ordinates in the Schedule, and reaches towards the Isle of Man in the north and St George's Channel in the south.

Paragraph 10.2 of the Explanatory Memorandum states:

"The administrative burden for the Welsh zone will transfer from the Department for Environment, Food and Rural Affairs to the Welsh Assembly Government. There will be no budgetary transfer from the UK Government to the Welsh Assembly Government in connection with this Order".

What exactly is the administrative burden? How many people are involved in carrying it and at what cost? Will there be staff transfers from Defra? How many people are involved in exercising the functions performed currently in the limited area and how many will be employed in connection with the bigger zone, which will obviously involve more work? There is a transfer of functions from Ministers of the Crown to Welsh Ministers under Article 4. The take-up of these functions will involve costs and it would be interesting to know what they are or are likely to be. These questions need to be asked and answered because Civil Service numbers have a habit of growing even in the midst of a recession and we should at least be aware of them.

**The Duke of Montrose:** My Lords, it was interesting to hear the noble Lord, Lord Roberts of Llandudno, speaking of the powers that will be transferred to the Welsh Assembly Government. However, given the sad state that things are in at the moment, very few powers will be gained. This is a general look forward to when powers might be transferred from Europe. The main powers the Assembly will wish to exercise relate to conservation, the designation of marine protected areas and so on, but I wonder whether, as in so many other parts of the United Kingdom, historic overseas fishing rights are being exercised within the six to 12-mile limits. Where that occurs in other parts of the United Kingdom, we have less control in the six to 12-mile limit area, and perhaps the same will be true for the Welsh Assembly.

**Lord Faulkner of Worcester:** My Lords, I thank all noble Lords who have taken part in this short debate. I congratulate them on the interest they are taking in the order and the support that they have given for it. I also congratulate them on the perspicacity of the questions they have put to me, which I will do my best to answer. Obviously if I leave things unsaid at the end of the debate, I shall write to noble Lords and put that right.

[LORD FAULKNER OF WORCESTER]

I am pleased that the Committee takes the view that the Government do—that the change proposed in the order is sensible and will make the management and enforcement of fisheries around the Welsh coast simpler, and make a sustainable marine environment easier to achieve. We certainly take the view that it is right for a single Administration—Welsh Ministers—to become responsible for fisheries around the Welsh coast rather than the current rather cumbersome arrangements whereby five organisations are responsible for managing Welsh waters. The order helps to achieve that aim by establishing the Welsh zone, within which the Welsh Ministers will be responsible for fisheries functions.

The noble Lord, Lord Glentoran, asked specifically about consultation. The Welsh Assembly Government consulted all relevant UK government departments about the proposal and received positive feedback from them. They then canvassed the other United Kingdom fisheries administrations to provide lists of relevant parties and, in May 2008, wrote directly to over 300 individuals and organisations. Sadly, only 13 responses were received. Of those, only two were against the proposal. One was from the National Federation of Fishermen's Organisations, a body that—given the existence of national federations in the other UK nations—broadly represents the English fishing industry. The second respondent was the South Wales Sea Fisheries Committee, whose major concern was that the Welsh Ministers' gaining responsibility for the offshore area would divert resources away from inshore fisheries. That is not our view, and it is not the view of the Welsh Assembly Government. We and they feel that the creation of the zone will not require extra resources or necessitate the reallocation of resources away from the inshore area.

The other point of the question asked by the noble Lord, Lord Glentoran, was about consultation continuing. There will be regular dialogue between the Welsh Assembly Government and Defra on concurrent functions as part of the existing arrangements. Both the Welsh Assembly Government and the United Kingdom Government would need to agree before concurrent functions were exercised. In practice, therefore, licensing arrangements will continue as at present. There will be formal dialogue at ministerial level to agree such matters. Similar arrangements are already in place between the United Kingdom Government and Scotland and Northern Ireland.

The noble Lord, Lord Glentoran, also asked whether Welsh Ministers would require Treasury consent to exercise functions under the 1967 Act. Treasury consent or approval will cease where the Welsh Ministers issue licences to fishing boats or for the trans-shipment of fish under Sections 4 and 4A respectively of the Sea Fish (Conservation) Act 1967. The way in which Treasury consent or approval will cease or continue on those functions transferring to the Welsh Ministers under the order reflects how those same Treasury consent or approval requirements do or do not apply to the current exercise of those functions by Welsh Ministers within the territorial sea limits. That reflects the corresponding provision in the National Assembly for Wales (Transfer of Functions) Order 1999.

The noble Lord, Lord Glentoran, asked what arrangements were in place for access by the Welsh Ministers to records of a Minister of the Crown and whether that would be transferred to them. Administrative arrangements will be in place to ensure that, if needed, the Welsh Assembly Government can have access to retained records—for example, for disclosure in any court proceedings. That provision is a common feature in orders transferring ministerial functions to the Welsh Assembly Government.

My noble friend Lord Jones asked whether the order would enable measures to be taken to enhance the fishing industry. The Welsh Ministers will have the same powers in the Welsh zone as currently afforded in the territorial seas. These enable Welsh Ministers both to manage and to develop fisheries in line with the aims of the Wales fisheries strategy. There are many ports in Wales. Milford Haven and Holyhead are the main ones, but there is smaller inshore fishing all around the Welsh coast, from the Gower to Anglesey. Such fishing takes place mainly in the Welsh zone.

My noble friend also asked about the difference between the Welsh zone and the seaward boundary of the territorial sea. The territorial sea extends to 12 nautical miles from the baselines. The Welsh Ministers already have functions within its boundaries. The Welsh zone extends their jurisdiction to the British fishery limits and this order draws the boundaries where the zone meets the sea, which is the responsibility of the United Kingdom Government, the Northern Ireland Government, the Isle of Man and the Republic of Ireland.

The noble Lord, Lord Roberts of Llandudno, asked whether all functions in the zone have been transferred to Welsh Ministers. The answer is yes: all fisheries functions have been transferred. He also asked—an interesting question—whether these functions could have been transferred by the 2009 Act. As the noble Lord well knows, an Act can, in theory, do anything that Parliament decides, but we felt—and, indeed, the Welsh Assembly Government felt—that the detail of the precise functions was more appropriate to an order. The existing functions of the Welsh Ministers were devolved by a transfer of functions order.

The noble Lord also asked whether the Welsh voice will be heard in Brussels. I think he asked that because he is aware that international negotiation is a reserved matter, on which Defra leads for the United Kingdom Government. However, there is always close consultation with the devolved Administrations to ensure that matters which are of concern to them are taken into account. It is certainly my experience in this House that the Welsh voice has never gone silent or unheard. I am sure the same applies in Brussels.

The noble Lord, Lord Roberts of Conwy, asked about resources and the cost to the Welsh Assembly Government of implementing the zone. The Welsh Assembly Government are confident that the changes will not result in an extra administrative burden. The zone will be cost-neutral and should not displace resources currently used to manage the inshore region. Enforcement in this area is currently undertaken by the Royal Navy. Its costs are met proportionately by the relevant fisheries departments on the basis of the

relative size of the industries of each nation. The Welsh Assembly Government will continue to use the Royal Navy to undertake enforcement in the Welsh zone under the current contract. Under the current arrangements, where UK enforcement results in prosecution, many of the vessels are escorted to Welsh ports and the prosecutions are led, administratively, by the Assembly Government's officials at courts in Wales.

The noble Lord, Lord Roberts of Conwy, also asked how many people in the Welsh Assembly Government were working on the zone and whether any would transfer to the Welsh Assembly Government as a result of the order. Around 25 people in the Welsh Assembly Government work on fisheries matters. Ten of these transferred into the Welsh Assembly Government from Defra in 2008 in anticipation of this change.

The only person I have not answered is the noble Duke, the Duke of Montrose. I do not know whether I have guidance that will allow me to do so. If he will forgive me, I will write to him.

**Lord Roberts of Llandudno:** I have just one question which I do not think the Minister has answered. What extra resources will be made available to the Welsh Assembly Government to carry out these functions?

**Lord Faulkner of Worcester:** My Lords, the answer is that none were sought and none are required.

*Motion agreed.*

## Code of Audit Practice 2010 for Local Government Bodies

*Considered in Grand Committee*

4.15 pm

*Moved By Lord McKenzie of Luton*

That the Grand Committee do report to the House that it has considered the Code of Audit Practice 2010 for Local Government Bodies.

*Relevant Document: 7th Report from the Joint Committee on Statutory Instruments.*

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton):** My Lords, the Audit Commission, in accordance with its obligations under the Audit Commission Act 1998, has prepared codes of audit practice to prescribe how auditors must carry out their statutory functions when auditing local government and local National Health Service bodies. The codes are to be used by the independent professional auditors that the Audit Commission appoints to audit local government and NHS bodies.

The commission, as previously, has prepared separate codes for local government and the NHS. This reflects the different accounting, corporate governance and performance management frameworks in the two sectors.

The codes prescribe the way in which the external auditors of local authorities and NHS bodies should discharge their statutory duties when auditing the

accounts of those bodies. The codes must be approved by affirmative resolution by both Houses of Parliament every five years, and the end of the five-year period for the current codes is 9 March 2010. These draft codes have already been debated in another place.

In preparing the codes, the commission has worked closely with and consulted key stakeholders, including the representative associations of local government and health bodies, finance directors, the accountancy profession and their partner firms. The preparation of separate codes has facilitated the process of agreeing the NHS code with the Care Quality Commission. In line with the Audit Commission Act, the commission has obtained the agreement of the Care Quality Commission to the changes made in the NHS version of the code.

The codes are high-level documents that prescribe the way in which auditors of local government and of local NHS bodies carry out their audit functions. They omit material that simply summarises the requirements of professional auditing standards. Changes to the codes are minimal, reflecting legislative and technical changes since the current codes were approved, including the abolition of the audit of best-value performance plans for specified local government bodies and the replacement of the Healthcare Commission by the Care Quality Commission. Consultation on the draft codes has seen the proposed changes to the codes endorsed by stakeholders.

The codes set the scope of the audit and auditor's objectives, and the general approach to be adopted by auditors in meeting their responsibilities. They also underline the need for auditors to preserve their independence and to ensure the security and confidentiality of data received or obtained in the course of the audit. In addition, they prescribe how auditors should carry out their statutory functions in respect of the audit of financial statements, the core of the audit process. They cover the auditor's responsibilities to satisfy himself or herself that the audited body has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources—in other words, value for money.

The codes also cover reporting the results of the audit work to the audited body, including through the published annual audit letter and, where appropriate, how auditors should exercise their statutory reporting powers. Public reporting by auditors is a powerful way of holding public bodies to account.

Lastly, the local government code sets out how auditors should engage with local electors who choose to exercise their rights to ask questions about local authorities' accounts.

The codes come into effect when they have been approved here and in another place and, once in place, will continue to provide assurance that public bodies will be subject to effective independent audit.

The codes are very important documents, being key elements of the accountability framework for local government and the National Health Service at a time when there is intense interest in spend by public bodies, where there is a drive to stretch every public pound and to cut waste. I beg to move.

**Earl Cathcart:** My Lords, I thank the Minister for his comprehensive explanation of the two codes. I declare at the outset an interest as chairman of my parish. As my honourable friend Bob Neill said in another place yesterday, we on these Benches take no great issue with either of the codes, which have received only minor adjustments since Parliament last approved them in 2005.

I have three questions that I would like the Minister to address. As he explained, the changes to the code include the abolition of the audit of best-value performance plans for specified local government bodies. What is the rationale for this? Will the Minister set out why best-value performance plans need no longer be audited? Is this simply a red-tape cutting measure?

Secondly, I turn to the question of fees for having audits done. Local authorities are statutorily obliged to be audited, and the cost of compliance must be met from their funds; yet even the smallest authorities must stump up for an audit. If the turnover of a small body is anything up to £200,000 per annum, it will require a basic audit. There is concern that the cost of the audit may be out of all proportion to the sums that are being audited. I would appreciate it if the noble Lord would comment on the cost of these small audits, and say whether he believes that the auditing of those financial statements really adds value.

With this in mind, in recent years Governments in several parts of the world, notably Europe, have repeatedly raised the turnover threshold below which businesses and organisations can exempt themselves from statutory audits. In several member states the threshold is set at £6.5 million in turnover, or £3.9 million in gross balance-sheet total assets, which allows a significant swathe of businesses and organisations to exempt themselves from statutory audits.

My third point picks up on the theme of section 5 of the local government code, which gives electors the opportunity to scrutinise for themselves their local government grants. We welcome the measure as a step towards greater openness and transparency. However, perhaps the noble Lord will explain why that openness is not extended to the accounts of NHS bodies. I welcome the Minister's response.

**Lord Rennard:** My Lords, these codes are not controversial. I thank the Minister for explaining their purpose and the degree of consultation that has taken place. The principles of external audit require independent and robust examination, and the codes provide for that. My understanding is that the Local Government Association has no issues that it wants to raise in relation to the codes, and that the Care Quality Commission is satisfied with the code that relates to local NHS bodies. However, it is important that the codes are reviewed every five years.

I looked back at the discussion on these orders in 2005, when we broadly welcomed them. I noted the comments of my noble friend Lady Scott of Needham Market about the valuable work of the Audit Commission in acting as an external auditor. The principle must be that people should have confidence that local authorities and NHS bodies are properly subject to such auditing. These regulations enable the Audit Commission to do its work. We support the approach outlined in the codes.

**Lord Adebowale:** My Lords, I declare my interest in this matter because I am a member of the board of the Audit Commission, which is responsible for approving the codes before they are submitted to the Secretary of State for laying before Parliament.

It is true to say that nearly all public comment about the work of the Audit Commission focuses on our high-profile national value-for-money reports on our inspection and assessment work—particularly the comprehensive area assessment or its predecessor, the comprehensive performance assessment or CPA. There is relatively little comment about the work of the commission's appointed auditors. Yet, as the commission's name implies, audit is its core business. It is easy to take the audit process for granted. It occurs mostly behind the scenes and is generally regarded as an unexciting, and some would say even boring, activity. Having spent two days with auditors in a local authority setting, I have sympathy with that idea.

However, audit in the public sector is an essential element in the process of accountability for public money and the proper conduct of public business. The fact that we in this country enjoy very high standards of financial probity and propriety across the public sector is in large part a result of the strength of the public audit regime.

These codes of audit practice are an important part of that regime. They prescribe how independent auditors appointed by the commission should meet their statutory and professional responsibilities. They underpin the statutory independence of auditors, which enables them to speak without fear or favour. The codes are deliberately pitched as high-level principles, and that is a good thing. They are principles-based documents rather than "how to do" manuals. This enables the commission in the guidance and advice that it gives to auditors, and auditors themselves, to focus audit work on emerging risks. That is surely a matter of great importance these days. This ensures that our public audit regime can adapt and respond to developments in the operating environments of local government and NHS bodies.

The commission made some fundamental changes to the codes in 2000 and 2005, but this time around it has decided to make only minor changes to reflect legislative change since the code was last approved and various tidying-up amendments. This approach has been welcomed by stakeholders. In summary, these are important documents underpinning an important, if unsung and often boring, activity, and I hope that the Committee will support them.

**Lord McKenzie of Luton:** My Lords, I am grateful to the three noble Lords who have spoken in support of these codes of practice. The noble Lord, Lord Adebowale, spoke about the importance of audit. He is absolutely right; it is part of the accountability process for local government and the NHS. He rightly explained the history of these proposals and the fact that only minor changes have been made between the previous set and those before us this afternoon. The noble Lord, Lord Rennard, talked about the importance of independent audit in giving us confidence in local government and its expenditure of public funds. I very

much support the noble Lord in that. Particularly at this time, when there will be pressure on public finances, it is important that people are assured that money is spent in best-value terms and is properly accounted for through audit processes.

The noble Earl, Lord Cathcart, raised three questions for me. In the first, he talked about section 5 of the local government code and asked why there was no equivalent for NHS bodies. The rights of electors of local government bodies reflect the fact that those bodies are funded by local taxation and date back to the mid-19th century. NHS bodies are of course funded by national taxation. The noble Earl may well point out that, given the range of support that comes from central to local government, perhaps there should be some qualification of that; but that is the history of why that process is in place. He asked about the abolition of reporting on best-value performance plans. This is about reducing the burden on local authorities and the Government legislated to remove the statutory requirement.

So far as small bodies are concerned, I should say first that the code of audit practice itself does not address any thresholds; it simply provides for the approach for small audits. The thresholds are set out in other legislation. At the moment, the requirement for the audit of small bodies is when there is a turnover of less than £1 million. That is specified in the regulations. Schedule 1 to the code specifies a proportionate approach to the conduct of the audit, but the commission is discussing with CLG raising the threshold for small bodies to align with small companies—the £6.5 million level. In terms of the importance of that on fees, the code continues to specify separate audit arrangements for smaller audited bodies such as parish and town councils, and the new, lighter-touch audit regime has established itself well. The new code maintains that. While the commission has reduced the burden of audit on small parish councils, it has done so recognising that there continues to be a need for appropriate and proportionate audit of bodies spending public money and potentially taking on new responsibilities. The limited assurance arrangements have significantly reduced audit costs for smaller bodies, and the number of complaints regarding audit arrangements for parish councils. The previous approach had become unsustainable and disproportionate.

I hope that dealt with each query that the noble Earl raised. If there are no further points, I will simply commend the codes to the House.

*Motion agreed.*

### **Code of Audit Practice 2010 for Local NHS Bodies**

*Considered in Grand Committee*

*Moved By Lord McKenzie of Luton*

That the Grand Committee do report to the House that it has considered the Code of Audit Practice 2010 for Local NHS Bodies.

*Relevant Document: 7th Report from the Joint Committee on Statutory Instruments.*

*Motion agreed.*

### **Environmental Permitting (England and Wales) Regulations 2010**

*Considered in Grand Committee*

4.32 pm

*Moved By Lord Davies of Oldham*

That the Grand Committee do report to the House that it has considered the Environmental Permitting (England and Wales) Regulations 2010.

*Relevant Document: 7th Report from the Joint Committee on Statutory Instruments.*

#### **The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham):**

My Lords, the regulations are being made to streamline and simplify our environmental permitting arrangements while—this is important—continuing to safeguard the environment and human health. Noble Lords will know that many potentially polluting activities, such as incinerators, sewage treatment plants and radioactive waste discharges from nuclear power stations, need a permit. When the Environment Agency or the local authority grants an environment permit, they are permitting an activity, subject to conditions to control pollution. The regulations cut red tape and provide an easier and more flexible way of doing that. They are consistent with the Government's policy on better regulation, allowing us to focus on protecting the environment at a lower cost. That is vital at a time when we must be mindful of the impacts of climate change, and must not be deflected by unnecessary bureaucratic processes.

Back in 2005, the Better Regulation Task Force challenged my department, Defra, to improve our permitting regulations, saying that,

“various licensing requirements are set out in different pieces of legislation and may impose different administrative requirements on industry ... yet their objective, to protect the environment, is the same”.

We responded with the environmental permitting regulations 2007, which came into force in April 2008. They, with guidance, were the key product from the first phase of a productive partnership between Defra, the Environment Agency, the Welsh Assembly Government and other stakeholders—a partnership now expanded to include the Department of Energy and Climate Change. The regulations we are debating today build on the sound base of the 2007 regulations, integrating the permitting systems for radioactive substance regulation, discharges into groundwater and water discharge concerns.

Furthermore, we are taking this opportunity to consolidate into the regulations the permitting parts of the mining waste directive and the batteries directive, along with the outcome of the waste exemptions review. These have already been subject to parliamentary scrutiny. We estimate that these regulations will save £45 million, which when added to the savings of the first phase of the programme will mean a total saving of £121 million for business, regulators and others over the next 10 years. While we are still in the early days of implementation of the programme, savings

[LORD DAVIES OF OLDHAM]

from standard permits have already allowed the Environment Agency to lower its fees. I am sure that it will bring solace to the Committee when I say that the regulations are more than 170 pages shorter than previous law. They repeal and re-enact much of the Radioactive Substances Act which is basically 1950s legislation, part of the Water Resources Act 1991, the Groundwater Regulations 2009 and the 2007 regulations. They also replace a number of other statutory instruments that are now redundant.

As I have already said, but which bears repeating because it is key, the regulations still deliver the environmental and human health protection we care about. For example, in the new EP regulations offence for water discharge and groundwater activities, the terms “cause” and “knowingly permit” have the same meaning as in previous legislation. The majority of businesses that are low-risk will face fewer forms, fewer inspections and simpler guidance. Speaking in the debate on the 2007 regulations, the Minister, my right honourable friend Joan Ruddock, the Member for Lewisham Deptford, said that,

“businesses will no longer be burning the midnight oil dealing with overly complex systems”.—[*Official Report*, Commons, First Delegated Legislation Committee, 26/11/07; col. 9.]

That may add to an improvement in the environment as burning the midnight oil is not the most attractive of ministerial activities. Under these regulations and subject to national security considerations relating to radioactive substances, an operator requires only a single environmental permit for activities on the same site, thus making it cheaper, quicker and easier to apply for permits while continuing to protect the environment.

Before I close, I must draw noble Lords’ attention to an error in the regulations, which was unfortunately spotted after they were laid and for which I apologise. It relates to the storage limits for waste oils that are allowed under a waste exemption. Where the current limit says 400 cubic metres, it should say three cubic metres. An amendment will be made to correct the error before the regulations come into force.

In future, we intend to implement the results of the radioactive substances exemption orders review through the environmental permitting regulations. We will continue to look for other suitable regimes that could be integrated into the new permitting system, if the costs and benefits add up. For now, this new permitting system will make it easier for regulators to do their job of safeguarding the environment and easier for business to comply. This can only be a good thing, when we must focus our energies on combating the threat of climate change. These regulations have been widely supported and accordingly I commend them to the Committee.

**Lord Taylor of Holbeach:** My Lords, I thank the Minister for his presentation and introduction of the regulations. They are indeed a blockbuster, by any standards, of mind-boggling detail. I suppose that I should not grumble, because I remember that when we were discussing the previous lot of permitting regulations, among other considerations we had the whole question of lion faeces, only to discover that the noble Baroness,

Lady Barker, knew of spontaneous combustion of lion faeces. The reason that they were limited to five tonnes was obvious to us all as a result. It shows the virtues of our debates that we find out so much about the background. I accept what the Minister said: it is extremely useful to have so much of the environmental legislation in one volume to try to ease the burden on those who have to seek permits.

The regulations are empowered under the Pollution Prevention and Control Act 1999, and bring under one roof, as it were, 18 directives. The Explanatory Memorandum summarises the European scrutiny history for six of those 18 directives, but does not contain scrutiny details for the rest. I wonder why not. It seems to be an anomaly that the background to those directives is not available to us.

This has obviously been a magnum opus. It was passed to Committee on 24 February and brought to us exactly one week later. Frankly, it is difficult for noble Lords to get their minds around such detail in that short a time, so I may have missed some things. I seek clarification on specific points covered in the regulations, but first I ask why a document of this size and such detail does not carry on each page an indication of its subject matter. I know that legislation is different from an ordinary working document, and I understand why, but even an index would be helpful. It is a huge working document, and I wonder whether we are allowing previous form to dominate how we put such documents together. If it were properly annotated or indexed, it would be much easier for people to use it; it would make it much more user-friendly. Headings on the top of pages, supplementing the index at the beginning of the document, might help enormously, and a detailed contents list of subjects might also be useful.

How many local authority recycling schemes will exceed the quantities specified in Chapter 3 of Part 1 of Schedule 3? That will clearly be important for existing recycling plants. Am I correct in supposing that, were the volume of waste to expand beyond the quantities specified, it would be sufficient to remove a certain proportion of it to another site? Could people avoid falling foul of the regulations by just setting up another site? Is that really in the public interest?

Fluorescent tubes have a paragraph to themselves in Schedule 3 at page 113, with reference made to mercury concentration. I have not been able to find a specific reference to eco-friendly light bulbs, although I understand that environmental specialists are increasingly concerned that they are likely to pose a threat to the environment on disposal. What plans are in preparation for the treatment of such bulbs?

Chapter 4 of Schedule 3 deals with the disposal of waste and, on page 122, the conditions for exempting disposal by incineration. Will those considerations result in the exemption of 600 or so farm incinerators that were caught by the original transposition of the EU waste directive, or will they be covered by Section 6.8 on page 78?

I now turn to page 128, in Part 2, paragraph 2(e) and, on page 129, Part 3, paragraph 2(f). They specify that all maintenance on small sewage treatment works is to be recorded and the records kept for at

least five years after the work is done. Can the Minister confirm that those requirements will apply only to work carried out after 5 April this year? Regulation 62, on page 35, allows the Secretary of State or the Welsh Ministers to reserve for themselves the decisions on permits for a particular application or class of application. Will the Minister please give an example of each?

4.45 pm

Regulation 65 on page 36 relates to fees and charges, and gives the appropriate authority the duty to ensure that they cover a regulator's expenditure. Is there anywhere a requirement that such expenditure has to be reasonable and comparable with equivalent work in the private sector, or are these fees self-determined by the regulator itself?

Regulation 71 on page 40 requires local authorities to review all existing groundwater permits by 22 December 2012, to assess compliance with the terms of the permit, and to take steps to remedy any failure. According to table 1 of the impact assessment, there are 8,104 of these permits. Can the Minister assure me that these are spread evenly across all local authorities? If he cannot, will he supply a breakdown of the totals for the 10 most burdened authorities? There may be a considerable concentration of problems because of the nature of groundwater permitting.

Regulation 74, also on page 40, relates to septic tanks and small sewage treatment plants with a discharge to ground of less than two cubic metres per day. We discussed these issues only recently in Grand Committee. They are to be exempted from effluent discharge controls, but after 1 January 2012 will have to be registered as exempt facilities. Will the Minister supply the detailed reference in the EU directive that demands such registration? Will he confirm that the French Government are introducing an identical requirement?

Under Regulation 105 on page 49, mining operators are effectively given 13 months to sort out a permit for existing mining waste operations. I suspect that the Minister will know that the Associate Parliamentary Minerals Group has been much exercised on this matter, and I suspect that one or two of my noble friends might wish to speak on it. Is that period sufficient to encompass both the work and the information gathering required from the operator and the work, inspections and planning required from the regulator?

That is especially important in the light of Regulation 31(4)(b), which removes the right of appeal against the refusal of a permit on the grounds that the information necessary for the construction of an emergency plan has not been supplied in time. How long will the emergency planner be allowed for his work? Are there any sanctions under UK legislation that the mining operator may invoke against a third party who is unwilling to supply necessary information within that given time span? This has put the industry under considerable pressure, and I hope that the Minister appreciates the concern that has been expressed.

If a regulator refuses a permit under paragraph 14(2) of Schedule 20, which deals with the lack of an emergency plan, what is the timetable from that point to the serving of a closure notice under paragraph 10(2) of Schedule 20? Why does the list of operators interviewed

as part of the cost-benefit research not include anyone from the extractive industries? On page 7 of the Explanatory Memorandum it states that final guidance will be published early in 2010. Has that happened? Page 10 refers to a provision that is not required by European legislation. Is there an exhaustive list of this and, if so, how may it be accessed?

Paragraph 3.8 on page 33 of the Explanatory Memorandum covers the key assumptions in the cost-benefit modelling for small sewage treatment plants. It contains the following statement at sub-paragraph b:

"The baseline accounts for 40 minutes of industry time for permit applications as conducted by a conveyancer during house sales. However, significant sensitivity surrounds this assumption. It is possible that the application process may match that for a simple standard permit, in this case four hours may be expected".

Paragraph 3.23 on page 39 states:

"It is estimated that around 250,000 SSTPs ... will come under regulation, but it may be nearer 500,000".

The Explanatory Memorandum contains an estimate that there are some 20,000 sales per annum in the UK of new SSTPs. In the light of these figures, it is important to be assured that the entirety of the rules governing the registration of discharge exemptions is mandated by the European directive. It is also imperative that the registration system is as simple and as quick as possible.

Although the Explanatory Memorandum contains pages of cost calculations and savings estimates, there is not much to indicate the complexity or otherwise of the systems in use. However, on page 50, table 15 shows how the savings of implementing these regulations are reached. My eye was taken by the Environment Agency's set-up costs, which show in detail the personnel required to do this for the four sites currently subject to the permitting requirements of the batteries directive. Taken on its own, the set-up costs for a year comprised half a project manager, a half of each of finance, communications, policy and process experts, and a third of a legal person. There is also a cost of £36,800 for the input of a project board. These are substantial figures and give some idea of the costs that may be involved for authorities in implementing these regulations.

Integrating the batteries permits with others under these new regulations apparently reduces the set-up to a third of each of a policy expert and a process expert and reduces the ongoing personnel requirement from a whole policy and a whole process to a quarter of each. None the less, it gives one an idea of the scale of the operations that lie behind this substantial volume. I hope I am not alone in feeling that the services of a good method-study engineer would not go amiss in assessing the way in which these regulations could be handled to reduce the cost on the public purse that may well be involved.

The reduction of the burden of these regulations is welcomed by all. However, I remain uneasy that these regulations contain some unnecessary elements. I am even more concerned that some may have been subject to cost analysis as though they are required in order to improve the cost-benefit figures, above all to Schedule 2.

**Lord Rennard:** My Lords, I, too, thank the Minister for his explanation of the regulations. I have a few questions about mineral extraction. He will be aware that the UK minerals industry and the china clay

[LORD RENNARD]  
industry in particular are very concerned about aspects of the regulations. They argue that the regulations could have a severe impact on their operations, without providing the additional protection for health or the environment that would justify them.

First, is the Minister satisfied that the balance between imposing further regulatory burden and safeguarding public health and the environment is correct in the regulations? Secondly, and perhaps more specifically, are we imposing a higher degree of regulation here than other European Union countries are imposing? I understand that Germany and Sweden have decided that their existing regulations are sufficient. They see no need to change their regulatory systems in the light of the mining waste directive, so is it necessary to place additional burdens, with which their European competitors will not have to comply, on UK-based firms? Finally, I note from the Minister's opening remarks that the draft regulations were subject to significant consultation. Does he now feel that the regulations broadly satisfy the concerns of those who responded to the consultation?

**Baroness Gardner of Parkes:** I declare an interest as a member of the all-party minerals group. I agree with every word that the noble Lord, Lord Rennard, said; he has obviously been approached in the same way that I was about this matter. I also attended the meeting of the all-party group where the issue was discussed by people directly involved in mineral recovery and operations. The china clay industry, in particular, was mentioned and it is the most adversely affected.

As a parliamentary candidate more than 30 years ago, I visited the china clay industry in Cornwall. At that time china clay was for producing ceramics—that is, fine china. That has changed dramatically over the years and the china clay industry now plays an important role in the manufacturing of paint; the processing of paper—it is one of the biggest fillers in paper; the processing and manufacturing of rubber and plastics for the automobile industry; ceramics, which are still produced; and pharmaceuticals. Some of these are very important to our economy. To damage anything which is producing, for example, parts in the form of plastics for the automobile industry, is absolutely short-sighted. Why should we throw away an industry that we are happy with and is producing good money for this country, to force its products to be made in some other country that does not comply with any of these regulations?

As the noble Lord, Lord Rennard, has mentioned, Germany and Sweden have already decided that the existing regulations are enough and they do not need them. It is very worrying. I also agree with the noble Lord that the measure would not protect the environment and health. It would have a damaging effect in many cases, in particular because there is no right of appeal. If a right of appeal was written into this directive, it would make a vast difference and would mean that the mineral industry would have a fair opportunity. At the moment its only option would be to go to judicial review, which is very costly and might not be effective. It is only just that there should be a right of appeal. I present this today and I depend on the Minister's

answer. Unless the Government can see their way to suggesting something like this, I may wait until the regulations are put before the full House and raise an objection at that time.

5 pm

**The Earl of Selborne:** I make no apology for following my noble friend Lady Gardner on the same point. We all recognise that the local authority emergency planning services have a responsibility put on them by these regulations. It is perfectly fair that plans must be put in place in case of an emergency. To get those plans in place, the co-operation not only of the extractive industry is needed, but that of other third parties as well. It is this issue that lies at the heart of our concern. Paragraph 14(2) of Schedule 20, set out on page 162, is quite explicit that the Environment Agency as the regulator must refuse an application relating to a category A mining waste facility on receipt of a notice from the emergency planner, the local authority, stating that the operator has not provided the necessary information. It might not be the operator; it might be other people or third parties.

The local authorities will be unsure, when taking on these new responsibilities, whether they know precisely what they are asking for. There is only a matter of months until the permit dates so in that situation one would expect there to be collaboration with the local authorities and the extractive industries to determine just what information is needed. I am quite convinced that the china clay industry and any other extractor would wish to provide the information required. If, however, the local emergency planning services are not yet clear, their instinct will invariably be to cover themselves by putting in a precautionary note saying that they are not sure they have the information required. Therefore, under paragraph 14(2) with no ability to appeal or mediate, the regulator—the Environment Agency—simply has no option but to refuse a permit, which effectively closes a business down.

Members of the Committee will recognise that that is draconian. It is reasonable to ask the Minister to assure us that some reconsideration could be given to this in the timescale, recognising that we are not asking for the extractive industries to be exempt from emergency planning. That is not the point. It is simply that if there is uncertainty as to what is required and time runs out, it seems unreasonable for the business to be closed down. I hope the Minister can give us those assurances.

**Lord Teverson:** My Lords, I am privileged to live in Cornwall, between St Austell and Truro. When I walk out of the back of my garden, I look across to what are known as the Cornish Alps. They are called that because they are white. They have been even whiter than usual this winter. They are white because they are china clay waste. When people talk about Cornwall they think of the coves, the almost long-gone fishing industry and the rural areas, but they forget that it was once the heart and genesis of much of Britain's Industrial Revolution. Trevithick invented the steam engine on rails there. We have not just an important industrial past, but a future.

That is why, like many noble Lords, I am particularly concerned about one aspect of this legislation, which generally I welcome as productive and good. My concern is about the section on waste. As the noble Earl has just said, the wording of paragraph 14(2) concerns me greatly. It says that the regulator “must refuse”. There are no two ways about it; there is a statutory obligation for the regulator to make a refusal if the information necessary to complete a relevant emergency plan or draw up an external plan is not there. It does not give a definition, rather it leaves the onus of deciding what information is necessary completely with the authority, the emergency planners and the Environment Agency.

What is also of concern—I should declare an interest as a member of Cornwall Council, which would be an emergency planner in this process—is that all bureaucracies are inevitably conservative and cautious in what they do. If a piece of secondary legislation says that they must do something but does not make it clear, that puts the emphasis on them not crossing the line so they are tempted to make a refusal in cases where there is any doubt. The outcome of that refusal may be that an important facility has to cease operation immediately. This would be in the not-so-distant future, on 1 May 2012, if the regulations have not been complied with. This is an unreasonably onerous provision that almost tempts its own fulfilment, and a cessation of operations. As has been pointed out, there is no appeal mechanism except perhaps that of judicial review, which would be amazingly expensive and onerous for a responsible producer and employer, and would take a lot of time as well. Therefore I, too, would like an assurance from the Minister. I was going to ask for a test of reasonableness to be applied, but the regulations do not allow for that, which is why I am particularly concerned.

I was interested and encouraged by the Minister’s initial remarks. He pointed out humbly that there was a mistake in the regulations that would be put right by the time that they were put to the House. Perhaps I might suggest a way out. Perhaps we have discovered a mistake in the word “must”, which was not meant by the secondary legislation Bill team. Perhaps we could keep it within this room and decide that this, too, was a typographical error, and look forward to seeing a change not just in the three cubic metres or whatever it was, but also in this area when the legislation comes back to the Grand Committee. It is important because this is a safe industry. There have been no major accidents involving mineral waste tips since the tragedy of Aberfan, and there is already good environmental health and safety legislation to ensure that the standard of emergency planning, health and safety and environmental protection in this industry is very high.

**Lord Davies of Oldham:** My Lords, I am grateful to all noble Lords who contributed to this relatively short debate. The noble Lord, Lord Taylor, said that this was a blockbuster of a document. It is, but, as has been widely appreciated, it brings together and simplifies what has gone before to produce a document of greater assistance to all those who need to be aware of their obligations and so must use it. It is preferable to the diverse regulations from different sources that we had in the past.

I will attempt to answer the detailed questions that have been asked, but I will emphasise the broad overall position. First, the principle is clear: we want both to protect the environment and human health, and nothing in the document in any way detracts from the previous provisions with regard to those important objectives. Secondly, the regulations are 170 pages shorter than existing law, so if the noble Lord finds some of this complex, that goes to show that even when one makes every effort to improve, one is still justifiably open to criticism if not every requirement is met. I emphasise that the purpose behind the document is one that all noble Lords would subscribe to.

With his microscopic analysis, the noble Lord, Lord Taylor, was bound to cause me to fall short in certain respects. I confess that I fall short in relation to the department’s material and archives. He asked why the European Union scrutiny is not available for 12 of the 18 directives and why we provided it for only six. This is because the information that we have within the files of the department covers only the six. However, that does not mean that there will be no scrutiny. If further scrutiny data are required by any Member of the Committee, I shall take steps to obtain and provide them. I am sure the noble Lord will appreciate that the resources of the department are not limitless and that we illustrated the European documents as far as we were able to within our resources. However, I shall take steps to meet any request relating to the 12 other EU scrutiny documents.

The noble Lord, Lord Taylor, also asked about incinerators. The regulations covering the level of environmental protection are unchanged by this document. They are not affected by these regulations and will continue. This is because we consider that incinerators are properly controlled.

I winced temporarily when the noble Lord asked why there is no mention of eco-friendly light bulbs and plans for the treatment of such bulbs. The issue is not relevant to these regulations. However, the noble Lord is right to identify that there is an issue with regard to eco-friendly light bulbs. The issue is complex enough for me to crave his indulgence and allow me to write to him on how we are tackling it. I merely state that eco-friendly light bulbs were not included in these regulations because of different provisions. I shall certainly write to him on that.

He also asked how many recycling schemes there were. I shall have to do research on that question because I certainly do not have the figures in my head and, from what I can see, neither do any of my expert advisers immediately attendant upon me. I hope he will indulge me on this. I shall try to meet his request.

On the question of the maintenance of small sewage works and record keeping, the requirements apply only after 6 April this year and so there is a timescale in which a response to this can be met. The noble Lord also asked about groundwater permits and whether they are spread evenly across local authorities. Noble Lords will have sympathised with me when they saw my sharp intake of breath when I heard that question. First, they will not be spread evenly across local authorities, if that was the process; and, secondly, I would not know the answer in detail anyway. I can assure the

[LORD DAVIES OF OLDHAM]

noble Lord, Lord Taylor, that this is not a question for the local authorities. These permits are granted by the regulator, the Environment Agency, so the question of differential impacts upon local authorities does not arise.

The noble Lord asked me about the impact assessment and the fact that the list of operators does not include anyone from the extraction industry. The impact assessment for the mining waste directive has been used in formulating this impact assessment. We have not consulted the industry again because we were able merely to incorporate the existing impact assessment for the industry into the analysis provided.

5.15 pm

Issues were raised regarding mining waste and I am grateful to noble Lords who emphasised the importance of this industry, including specific issues on china clay, which I shall come to in a moment in respect of Cornwall. What the noble Lord, Lord Taylor, was exercised about—and I quite understand his proper anxiety—was whether the period for operators to apply for permits was long enough. The deadline is set by the mining waste directive which requires existing buildings to have a permit by May 2012. This should allow sufficient time for operators to apply for their permits. May 2012 is not just around the corner. I entirely appreciate that the work involved in complying with any regulations is onerous, but there are more than two years before compliance is required.

The noble Lord also raised questions on mining waste and sanctions against third parties when they do not supply the requisite information to mining waste operators regarding off-site emergency provisions. The information requirements for mining waste operations regarding off-site emergency areas relate to the information held by the operator. An operator would not be in breach of the regulations if the information was held by a third party and not by him. I think that I can give that degree of reassurance to the noble Lord on what I recognise are justifiable anxieties about the need to comply, although he will forgive me if I emphasise again that we are making compliance more straightforward and, as I have indicated, with less cost than has been the case. He will give due credit for that.

The Environment Agency applies fees that are sufficient to cover the cost of providing the service, and no additional surcharge is involved. The agency's job is to fulfil its functions, to command the resources that enable it to do so, and no more. The noble Lord asked when the guidance would be published. Following the consultation in spring last year, the majority of government guidance will be published on 11 March this year—in nine days' time—and will be available on the Defra web page. This includes guidance documents on EPP1 regimes which have been updated to refer to the EP regulations of this year.

He also asked me another question which I found stunningly difficult to respond to, although I suppose that I should have anticipated that it might be asked, as there were one or two references to the international position. What is France doing about small sewage treatment works? I have to say that I am stumped for an answer at this point. I have quite enough problems

mastering the degree of detail with regard to England and Wales without looking at the French. I have not looked at the French position and I do not have an answer. I shall provide the noble Lord with one when we have carried out the necessary research.

I should emphasise the other aspect that the noble Lord raised. The noble Baroness, Lady Gardner, and the noble Earl, Lord Selborne, were also concerned about why there was no statutory right of appeal if a mining waste facility were to be refused. A statutory right of appeal, as noble Lords will readily appreciate, would mean that a category A site could continue to operate without being in breach of Regulation 12(1), which prohibits operating without a permit. This would mean that an operator could continue to operate without having to ensure that the facility complied with the waste directive. For a site of any category, let alone one that poses the greatest risk of harm to the environment, it would not be tolerable for us to build in the length of time that inevitably would be involved in any right of appeal.

In the event of a permit being refused on the grounds that the operator has not provided the necessary additional information required by the emergency planning authority, the operator would have the right to apply for a judicial review of the planners' decision to issue the notice to the Environment Agency—or they could complain to the ombudsman. I appreciate from the tenor of the noble Baroness's remarks—and she was supported by the noble Earl, Lord Selborne—that my reply will not be satisfactory. However, that is the constraint on those who are taking the decision: they could be subject to the scrutiny, while balancing this against the obvious need to protect the public from difficult and dangerous waste by not allowing an appeal mechanism that could encompass what we would regard as a dangerous and deleterious delay. I recognise that these balancing factors are judgment calls on what needs to be done. I hope the noble Baroness, the noble Lord, Lord Taylor, and the noble Earl, Lord Selborne, will give credit to the Government by acknowledging that it is neither by omission nor arbitrariness that we alight on this approach: it is because we must have in mind the key principles of health and the environment.

**Lord Taylor of Holbeach:** The reason for our concern is that the implementation of almost all secondary legislation requires a sense of fair play and co-operation between those being regulated and the regulators. Obviously, there is considerable concern that the way in which these regulations are impacting on mineral extraction, which is a major industry in this country, could put the industry under considerable pressure if the regulators were dilatory or did not play their part in the process by assisting in the proper regulation of these sites. The industry is not looking for an exemption, but for a way of handling its obligations under the law. Are the Government truly tuned in to that sensitivity?

**Lord Davies of Oldham:** My Lords, indeed I am—as are the Government. We recognise the issues that arise around compliance. I say to the Committee that the industry has its interests, but we also have an obligation to the country that we serve to get these things right.

I shall merely mention the disasters that have occurred in the past and are never to recur because we have the necessary controls and requirements. To take the most obvious one, Aberfan was a tragedy of the most appalling kind because we did not have sufficient control over the regulation of waste management from the extractive industries. I know it is a long time ago now, and because it is in the distant past it may be thought that it is always straightforward to guard against such an event in future, but for that to be true the safeguards need to be in place. I recognise that on all fronts we have moved on a great deal from that time and we have regulations in place; I am merely indicating to the Committee that, in seeking to fairly represent the interests of the industry, we must take the greatest care that we do not in any way dilute the overall objectives of ensuring that practices are entirely safe. The Government are bound to recognise that as their major obligation and duty.

On the issue of the china clay industry, which the noble Lord, Lord Teverson, raised, we think that we have the balance right with regard to regulation in these circumstances. This partly relates to the question that the noble Lord, Lord Rennard, also raised about our comparative position to that of other states. I do not say for a moment that because Germany and Sweden, for example, have not seen any need to change their regulations, they are upholding lower standards than we are; they may meet the European directives and requirements and meet the standards that we do because they were already operating standards at that level so did not need to change. However, we are not in the business of comparative analysis with other countries, unless they can identify that the way that they are going about things is more cost-effective as well as meeting the standards of safety both for the environment and for people, which is what we ourselves are seeking. I say to the noble Lord, Lord Rennard, on this issue and on the point that the noble Lord, Lord Teverson, raised about china clay, that we think that we have the balance right, which is why we have presented the regulations in these terms.

I appreciate the concerns that have been expressed today. I will look at the record, and where I may have been remiss in responding—some of the points were very detailed—I will ensure that proper responses are made to Members. However, I emphasise once again that these regulations meet the standards that we expect with regard to our objectives. They do so as a streamlining exercise. They help us to protect the environment and human health and they are risk-based and proportionate, but they are considerably less diverse, less bulky, less onerous and easier to follow—despite the reservations that the noble Lord, Lord Taylor, identified—and less costly. We estimate that the regulations will save business and the regulators £45 million over the next 10 years, and they may save both those in the industry and indeed parliamentarians some time in reading fewer pages than was the case with the regulations that they have replaced. They are also the product of partnership. We therefore feel that, after considerable consultation, we have the balance right.

*Motion agreed.*

## **Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010**

*Considered in Grand Committee*

5.30 pm

*Moved by Lord Davies of Oldham*

That the Grand Committee do report to the House that it has considered the Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010.

*Relevant Document: 3rd Report from the Regulatory Reform Committee.*

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham):** My Lords, the draft order reforms the Dangerous Wild Animals Act 1976, which governs the private keeping of dangerous wild animals, by reducing the administrative and financial burdens imposed on local authorities, who are responsible for enforcing the Act. The keepers of dangerous wild animals will also gain from the changes made through the effective halving of application fees and associated vets' bills over a two year period and a reduction in the frequency of form-filling and inspections.

Further to an independent review of the Act's effectiveness in 2001 and subsequent consultations, the following proposals, intended to be in line with the Government's intention to deregulate whenever we can, were included in the draft order now before the Committee. The proposals extend the period of validity of a licence from a maximum of one calendar year to two, and provide that licences, other than licence renewals, will come into force immediately on their being granted rather than, as was previously the case, from either the date of grant or the beginning of the following year.

A further proposal to remove the mandatory requirement for inspections to be carried out in respect of certain applications for a replacement or second licence and to allow instead discretionary, targeted inspections was challenged by the Delegated Powers and Regulatory Reform Committee of this House when the original draft order was laid. The committee, which we hold in the greatest respect, was not satisfied that that proposal would preserve sufficiently well the Act's existing protections to the public.

We share the Committee's concern that all necessary protections in the 1976 Act should be maintained; indeed, a legislative reform order is not permitted to remove any such protection. Following further consultation with local authorities on that challenged proposal, it was clear that there was less appetite than previously thought for the flexibility the proposal was intended to provide. Of course, we have accordingly dropped the proposal and the revised draft order is before the Committee.

The surviving proposed changes contained in the draft order are ones with which the scrutinising committees of both Houses have pronounced themselves content as being changes that will lead to a reduction in the administrative and financial burden on both local authorities and the keepers of such animals while

[LORD DAVIES OF OLDHAM]

retaining the public safety and welfare provisions of the Act, together with all the necessary protections contained therein. I beg to move.

**Lord Taylor of Holbeach:** My Lords, I thank the Minister for presenting the draft order. My notes also start with the interesting history of how it has come to be adjusted. Normally, we would welcome deregulation and the Government's intention in this respect, but it is clear that concern was expressed by local authorities that there would be no real saving to them if the original proposal went through. To give credit where it is due, the department took those opinions on board and dropped that proposal from the order. The most controversial element of the order has therefore disappeared from the table and I can see little to object to in the remaining two proposals.

We should join in congratulating the Delegated Powers and Regulatory Reform Committee on its eagle-eyed scrutiny of the original draft. However, I should like the Minister to give us a little more detail about the consequences of proposal 2. The maximum period of a licence will be doubled to two years but, while I applaud the efforts to reduce red tape and bureaucratic interference, what efforts will the Government make to ensure that suitably rigorous standards of animal welfare and public safety are upheld under the new inspection regime?

I have two further forensic points to make; the Minister knows that I like to pick out a few queries. On page 2, under proposed new subsections (3) and (3A)(a) and (b), the licence validity is to be extended from one to two years. A further extension consequent to allowing a licence to continue beyond its expiry date because the renewal permission is not received before expiry should surely be limited to a fixed period. In other words, in a situation where the licence expiry period has overrun, it would start again from the renewal date and not from the date on which it should have originally expired. That seems to be anomalous.

Section 1(6)(a)(iv) of the Dangerous Wild Animals Act 1976, which is to be found on page 20 of the Accompanying Statement, concerns insurance. At the moment, a licence lasts for a year and one of the conditions for it is that an animal keeper shall have insurance. We know that all insurance policies are renewed on an annual basis. How can local authorities ensure that a second year of insurance is in place? Will there be some sort of arrangement whereby the licence holder has to provide evidence that the animals have been reinsured? How does the new regime operate? I am all in favour of the two-year period of renewal, but we should be mindful of this provision for insurance. Other than for those points, we welcome the order.

**Lord Rennard:** I, too, thank the Minister and his team for the careful explanation of the process by which changes have been made to these orders. Having looked at the report, it seems that there is little to say beyond what is in it. However, we should note that the Select Committee on Regulatory Reform has done its job, the Government have listened, and so I shall say simply that the revised order has our support and we welcome it.

**Lord Davies of Oldham:** I am grateful to both noble Lords, although perhaps a little more grateful to the noble Lord, Lord Rennard, because he has not asked me any awkward questions. No doubt, however, he wants to hear the answers. First, I endorse entirely the remarks of the noble Lord, Lord Taylor, about the Delegated Powers and Regulatory Reform Select Committee and its eagle-eyed approach to all regulations, not just these. I hope that I paid due respect to the committee in my opening remarks. We are particularly grateful to the committee because its position was justified. On reflection, having looked at this matter again and after consultation, we could see the value of the points being made and have changed the position accordingly.

There are obvious anxieties about lengthening the period between inspections from one year to two. I assure the noble Lord, Lord Taylor, that the renewal date of a new licence, if granted, will commence from the original expiry date of the licence it replaces. Otherwise, as the noble Lord indicated, we would effectively be granting somewhat in excess of two years for the continuation of a licence. We accept that point entirely. Possibly I could have set out the position a little more explicitly in my opening remarks. If I did not, I apologise to the Committee and I am grateful to the noble Lord for drawing my attention to the matter.

We certainly want to bring the benefits of reduction of the impact of regulation to this area, not least because we have little cause for anxiety. I say this against a background where, not long ago, colleagues of mine playing the 17th hole of their favourite course were somewhat aghast to discover that what looked like a rather large Alsatian standing a little above them on a raised path beyond the green was not an Alsatian but a real live wolf. The wolf was subsequently arrested having done no harm to the golfers—who would harm a golfer? But then, who would harm a horse rider? The wolf disturbed a horse, which threw its rider. The Committee will recognise the anxiety expressed locally that the owner of two wild animals—which were kept near to a zoo but had nothing to do with it; the zoo is perfectly safe and has never given the slightest cause for anxiety—permitted one to escape. The Committee will be delighted to know that sufficient sanctions were enjoined to make sure that it does not happen again.

When I discussed this with my officials, they were full of the proper reassurances from recent documentation that no such mishap had occurred. However, there was a mishap a little further back and that is why these regulations are important. We need to make sure that animals are kept in good order and are looked after properly. By the same token, wild animals need to be kept under the necessary constraints to prevent them causing the most appalling harm if things go wrong.

The noble Lord also asked me for clarity on the issue of insurance. Following the last consultation, local authorities are clear that they are obliged to take their responsibilities under the Act seriously. Our emendations, which are designed to reduce regulation, do not mean that local authorities should be less rigorous in meeting their obligations on inspection; those obligations remain. As far as insurance is concerned,

it is for the keepers to take out proper public safety liability; that is their responsibility. I have no doubt that keepers do so in circumstances where the keeping of wild animals, particularly those which are a potential danger to the public if not kept properly, could have such disastrous consequences.

*Motion agreed.*

## **Extradition Act 2003 (Amendment to Designations) Order 2010**

*Considered in Grand Committee*

5.44 pm

*Moved by Lord Brett*

That the Grand Committee do report to the House that it has considered the Extradition Act 2003 (Amendment to Designations) Order 2010.

*Relevant Document: 8th Report from the Joint Committee on Statutory Instruments.*

**Lord Brett:** My Lords, the Extradition Act 2003 has played a vital role in ensuring that the UK's extradition relations with countries around the world work efficiently and effectively. Today, in an effort to further improve international co-operation, we seek to add Libya to the schedule of territories designated as extradition partners under Part 2 of the Act.

We are concerned here with further secondary legislation required to amend the Extradition Act 2003 (Designation of Part 2 Territories) Order 2010. This instrument affects the UK's extradition arrangements with Libya. This order reflects the fact that the UK and Libya have signed an extradition treaty and exchanged instruments of ratification. Designation of Libya as a category 2 country will enable the advantages of this agreement to be given full effect in the United Kingdom.

The extradition treaty between the UK and Libya, signed by the then Foreign Office Minister and the Libyan Minister for European Affairs in November 2008, is one of a package of measures designed to increase co-operation between the law enforcement agencies of our two countries. The package of measures also includes agreements on mutual legal assistance in criminal matters, on prisoner transfer and on mutual legal assistance in civil and commercial matters. The measures will play an important role in improving judicial co-operation between the UK and Libya. They were an integral part of wider discussions with Libya to improve diplomatic relations between our countries.

The extradition treaty allows extradition to be requested for any offence that attracts a maximum penalty of at least 12 months' imprisonment in both the UK and Libya. The evidential requirements set out in the treaty mean that both the United Kingdom and Libya must provide a prima facie evidential case against any person whom they wish to extradite.

There are currently no formal extradition arrangements between the UK and Libya, outside a number of international conventions, to which we are both party, which deal with a limited number of specific offences concerning serious criminal conduct such as terrorism or drug smuggling. The introduction

of a formal basis for extradition for conduct covered by the bilateral extradition treaty will lead to a more efficient and effective process of extradition between our two countries. This is preferable to relying on the ad hoc provisions in domestic extradition law for the many serious offences such as murder and rape that do not fall under the international conventions to which I have referred.

One key advantage of the new arrangements is that they will improve our ability to achieve justice for British victims of serious crimes. The extradition treaty between the United Kingdom and Libya will provide both Governments with a sound formal framework for future co-operation. We are clear that we will not allow criminals to escape justice by crossing international borders, and we are committed to assisting our international partners to do the same.

The amendments are necessary to ensure that the United Kingdom can comply with its obligations under the bilateral extradition treaty with Libya. That is what the order seeks to achieve, and I urge noble Lords to support it. I beg to move.

**Baroness Neville-Jones:** My Lords, I thank the Minister for explaining the order. Does he agree that it is hardly acceptable that although the extradition treaty between the UK and Libya was signed on 17 November 2008 and ratified in April 2009, the Home Office was not informed until January of this year? That seems an extraordinary delay. Has the delay meant that the treaty has not taken effect up to this point? Presumably that must be the case. Have any extradition requests have been received from Libya since November 2008? If so, what has been their fate?

I turn to the substance of the order. The Minister will be aware that concerns have been expressed by Members in this House and another place about the designation of countries as category 2 territories under the Extradition Act; and in particular the standard of proof that those countries are required to provide to justify their extradition requests. This is an area that I would like to probe. Under Sections 71(2) to 71(4) of the Extradition Act, a judge may issue a warrant if he has reasonable grounds for believing that there is evidence that would justify the issue of a warrant under his jurisdiction. However, in respect of category 2 countries, the Act specifies that information, rather than evidence, is to be provided.

Later, the Act states that, at the extradition hearing itself, the judge must decide,

"whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of information against him".

The Minister mentioned the prima facie evidence requirement. However, Sections 84(7) and 86(7) qualify that for designated category 2 countries. Those sections state that in relation to requests from category 2 countries, the judge must ignore the efficiency of evidence or information test.

I am concerned and confused. At the extradition, may the judge take into account only human rights considerations and bars to extradition such as double jeopardy, passage of time and extraneous consideration? If that is the case, what is the meaning of "information"?

[BARONESS NEVILLE-JONES]

In practice, there seems to be no clear requirement in the Extradition Act for the information provided by designated category 2 countries to satisfy what seems to be a normal requirement—that of the UK’s domestic courts.

My further point concerns the interplay between the Act and the treaty in this context. Paragraph (2)(b) of Article 6 states that the requesting state must provide,

“such evidence as would justify committal for trial under the laws of the requested State”.

Likewise, the Explanatory Memorandum states:

“The evidential requirements set out in the Treaty mean that both the United Kingdom and Libya must provide evidence establishing a prima facie case against any person whom they wish to extradite”.

My question is: which takes precedence? Does the treaty have precedence over the Act in referring to evidence rather than information? It is crucial to have clarity from the Minister about that.

Can the prima facie case be re-established at the extradition hearing? Your Lordships’ House debated these issues at length during the passage of the Policing and Crime Bill, and I will not rehearse the detail of old arguments, but at that time, I asked the noble and learned Baroness the Attorney-General whether a judge should not be able, at the point of the extradition hearing itself, again to establish the information being provided by category 2 countries in order to meet domestic standards. I fear that she did not, at that moment, give me an answer, but in this context, in relation to Libya, I would be grateful if the Minister could be explicit on that point. That is a simple check and safeguard, such as would increase public confidence in the extradition process. That would itself be valuable.

The Minister will be aware that another concern of many is the mission creep of extradition treaties. This treaty is limited to any offence which attracts a maximum penalty of at least 12 months both the UK and Libya, or where a sentence of at least four months’ imprisonment has been imposed on conviction, as the Minister rightly said. However, Article 2(3) states that:

“For the purposes of this Article it shall not matter whether or not the laws of the Parties place the relevant conduct within the same categories of offences or denominate the offence by the same or similar description”.

Where does that leave us? That seems to make nonsense of the previous requirement. How, in such circumstances, will the UK authorities make an appropriate assessment of an incoming extradition request in the context of two other requirements of the treaty—first, paragraph (2)(a) of Article 6, which requires Libya to provide,

“a statement of facts of the offence(s), of their legal classification and reference to applicable law in that instance”,

and,

“the relevant text of the law prescribing punishment for the offence for which extradition is requested”;

and, secondly, paragraph (2)(c) of Article 4, which states that extradition can be refused if,

“legislation is enacted in one of the states rendering the act unpunishable”?

Can the Government explain the apparent contradictions in that?

Many Members of your Lordships’ House will be aware of the human rights concerns about conditions in Libya. The United States’ State Department’s most recent annual human rights report was critical of Libya for torture, arbitrary arrest, lengthy pre-trial and sometimes incommunicado detention, poor prison conditions, the denial of fair public trial by an independent judiciary and a lack of judicial recourse for alleged human rights violations. Will those aspects be taken into account when the Government consider extradition requests? In practice, despite the lack of definition in the Act about what constitutes a human rights consideration, would such consideration be regarded as covering the dangers of mistreatment for the person who might otherwise be extradited?

That is not an academic point. The fate of political prisoners and the disappeared who have never been accounted for is on record. There is an example in the father of the novelist Hisham Matar, who disappeared in 1990 and has not been seen since. He may have been imprisoned. That reminds us that Libya does not have a spotless record. That case was some time ago, but in the light of the commitments that HMG are entering into, and particularly in the light of what the Minister himself said about judicial co-operation, it would be helpful to know whether the Government have taken and are taking active measures to help Libya to improve its criminal justice system and abide by international human rights obligations.

For example, has there been any training that would support reform of Libya’s criminal justice system? If so, has it had any discernible impact? Have the Libyan Government shown any willingness to improve the openness to scrutiny of their system to make it more accountable? These are important points in the operation of an extradition system that is likely to command public acceptance and respect in this country.

The assent of these Benches to the designation of Libya as a category 2 country under this order is extremely conditional on its satisfactory operation, which we shall monitor rigorously. Indeed, on a more general point, as the Leader of the Opposition said in another place, in our view the workings of the Extradition Act need to be reviewed. So we have some concerns about the order, but we will watch its operation and take a view on whether it is satisfactory.

**Baroness Hamwee:** My Lords, I, too, thank the Minister for his introduction of this order.

The Explanatory Memorandum on the treaty, on the Foreign and Commonwealth Office website, describes it as,

“one element in a package of judicial co-operation measures”, which will,

“enhance our ability to work in close co-operation with ... Libya on a range of judicial co-operation issues”.

There is an obvious question: have we missed out because of the eight-month delay? Are there any consequences from that?

I had thought that there was a good deal of coverage of the treaty at the time. My memory may be serving me wrongly, but there has been particular interest in Libya and our relations with that country. Indeed, in preparation for this afternoon, I read an announcement issued by the Ministry of Justice in the summer, at the time of the controversy surrounding Mr al-Megrahi, that the agreement was now in force. Obviously it has not quite noticed either. However, we are where we are and one does not want to spend too much time on criticisms of the administrative problems. Following on from this, is there anyone in this country whose extradition is currently sought by Libya? Is there anyone in Libya whose extradition the UK currently seeks?

The central question—the point on which the noble Baroness finished—concerns the safety of extradition to Libya. Amnesty International—which is not permitted to visit—has described this in damning terms and I intend to quote a number of extracts from its most recent report because it is important to put them on the record. The report states:

“Libya’s human rights record and continuing violations cast a shadow over its improved international diplomatic standing. Freedom of expression, association and assembly remained severely restricted in a climate characterized by the repression of dissident voices and the absence of independent human rights NGOs. Refugees, asylum-seekers and migrants continued to be detained indefinitely and ill-treated. At least eight foreign nationals were executed. The legacy of past human rights violations remained unaddressed”.

It continues:

“The government did not tolerate criticism or dissent and maintained draconian legislation ... political expression and group activity is banned and those who peacefully exercise their rights to freedom of expression and association may face the death penalty. The authorities continued to take action against anyone who openly addressed such taboo topics as Libya’s poor human rights record or the leadership of Mu’ammarr al-Gaddafi”.

The report refers to the State Security Court,

“whose proceedings do not conform to international fair trial standards ... The defendants did not have access to court-appointed counsel outside the courtroom and ... were not allowed to appoint counsel of their own choosing”.

It further states:

“The right to freedom of association was severely curtailed ... The authorities failed to address the long-standing pattern of impunity for perpetrators of gross human rights violations ... There were persistent reports of torture and other ill-treatment of detained migrants, refugees and asylum-seekers”.

It refers to the mass expulsions of nationals of various countries and states:

“At least 700 Eritrean men, women and children were detained and were at risk of forcible return despite fears that they would be subjected to serious human rights abuses in Eritrea”.

I do not find the report reassuring.

I am aware of the provisions of the Extradition Act and the “procedural safeguards”—the term used—in place to protect against extradition in particular circumstances. I have given the Minister notice of my question—although not long notice, I accept—about how this works. Does the court consider the regime in general terms or can it consider only the circumstances of the individual in question? Does the individual have to persuade the court of his vulnerability? To put it another way, what is the presumption, what is the burden, on the individual? I find it difficult to imagine

how an individual who is seeking to persuade a court that he is in particular danger because of the human rights attitude of the country which is seeking his extradition can provide evidence of that.

I also have a technical question. Am I right in thinking that the order, and the treaty that is the context for it, supersede the memorandum of understanding for protection against torture that this country had with Libya? Does that now apply only to deportation?

**Lord Brett:** I thank both noble Baronesses for their contributions. As ever, the noble Baroness, Lady Neville-Jones, was forensic in her questions. Answering them is always at least uncomfortable for a Minister. I will start with what is almost a disclaimer: if I do not do justice to the questions, I will certainly look at *Hansard* and ensure that I send fuller replies to both noble Baronesses.

The first question was about whether the delay has had any impact. There have been no extradition requests from Libya nor any in the other direction, so, whatever the unfortunate nature of the delay, it has not on this occasion caused major problems.

Both noble Baronesses were rightly concerned about safeguards and evidence, and about what is meant by prima facie evidence and what the requirement is. Prior to issuing a warrant for arrest, a district judge would have to consider if there was evidence providing reasonable grounds. Libya has not been designated as a country that need only provide information, as opposed to evidence. During the extradition hearing, Libya would have to establish a prima facie case and could not be relieved of the burden of establishing such a case. Therefore, there could be no question of inconsistency between the treaty and the Extradition Act.

Both noble Baronesses were rightly concerned about the human rights record in Libya and how we will build in safeguards to protect both our own citizens and others from misuse of the treaty. We see human rights as extremely important. The judge in question must consider several facts. The first is identity. Extradition will be barred if the judge is not satisfied that the person before him is the person being sought. It will be barred if dual criminality is not established. The evidence must pass the test of reasonable suspicion. Extradition will be barred if the request is made for improper reasons—that is, if the judge decides that the request has been made to persecute or punish a person, or that the person will face prejudice at his or her trial on the grounds of race, religion, nationality, gender, sexual orientation or political opinion.

I understand the concern about mission creep. It is something that we must be constantly on guard against, because it applies in so many areas of international corporation, and in international treaties. The treaty does allow extradition offences that are not described in exactly the same way; the noble Baroness was correct in making that statement. It has long been clear that, in extradition cases, the key consideration is whether the conduct underpinning the extradition request constitutes a crime in the state receiving the request. If the question were whether the conduct was criminalised in exactly the same way in both countries, this would prevent extradition solely because of differences between countries in the drafting of laws, which is common. It

[LORD BRETT]  
is important to be clear that this is not an extension of the principle that has covered extradition for many years, namely that of dual criminality. Nothing in the treaty changes that.

The noble Baroness, Lady Hamwee, raised a number of questions. The easiest one to deal with is whether the treaty subsumes previous international obligations. The answer is that it provides for the first time a comprehensive framework for extradition between the two countries. Prior to the conclusion of this, as has been rightly stated, extradition relations were piecemeal under international multilateral agreements and discrete areas of criminality. The multilateral agreement will continue to apply between the countries but, in view of the more comprehensive agreement which now exists, and even though the previous agreements still exist, we expect any extradition requests to be made under this agreement, rather than under the international obligations entered into by both countries.

Another key question was: who has to supply evidence when there is a request for the extradition of someone from the United Kingdom? Within the framework of the new Libyan extradition treaty, and under the Extradition Act 2003, it is for the requesting state—in this case, Libya—to establish the evidential case justifying extradition. It would be for the Libyans to convince a UK court that there was evidence against the person in question that established, as I said previously, a prima facie case of guilt of the relevant offence. It would be for the authorities in Libya to assemble the evidence, which would then be presented and judged in a British court.

The other question that has been raised is the broader issue of human rights. The noble Baroness read extracts from Amnesty International reports which deal with issues as broad as freedom of association, which are constrained in a whole series of countries, not least Libya. She asked what we are doing. Such rights are a broader issue. We are strong supporters of the European Union's attempts to negotiate a framework agreement with Libya that will provide a platform for dialogue on co-operation in the wide area of human rights and fundamental freedoms.

What have we done to assist the Libyan authorities in any way? Since 2004 the Foreign and Commonwealth Office has funded a large prison project, which is being implemented by the International Centre for Prison Studies in King's College. Clearly, there are advantages to the United Kingdom in assisting Libya. Although there are rightly still criticisms of the Libyan record on human rights, it is a fact that it has improved. The Libyan media is not as free as we would wish, and domestic political opposition is clearly not as free and open as it should be. However, those issues can be better addressed in an ongoing, collaborative new relationship with that country. In that sense, the more we can build in treaties, milestones and even cornerstones, the easier it will be to build normal relationships—not only as we understand them in this country but as they are understood, and will be understood in the future, in many parts of the world where, at the moment, perhaps they are not.

To the extent that I have failed to answer the questions, I shall certainly look at *Hansard* and give both noble Baronesses a detailed reply. I commend the order to the Committee.

**Baroness Hamwee:** I obviously did not make myself clear. I was not asking about the prima facie evidence of the alleged crime, or about general improvement of human rights in Libya. It was a narrower question. The legislation refers to a person; I do not know whether he is the accused, an appellant or someone else in a particular situation. If that person seeks to rely on the provisions of the Extradition Act, to which a judge must have regard in considering whether to grant the extradition order, what must the individual do? Is he able to point only to the general human rights situation and argue that because of that context he would be in danger; or must he go further and give evidence of his own position and particular threats against him and people who have done what he is alleged to have done? I suggested that some of that might be very difficult. If the Minister can answer this now, that would be helpful. If he cannot, I just want him to be clearer than I have obviously been able to make it about what my question is.

**Lord Brett:** The noble Baroness is absolutely right and I apologise to her. I did not understand the point and that must be down to my stupidity rather than her putting it unclearly.

**Baroness Hamwee:** I did not suggest that.

**Lord Brett:** In truth, that is the case because the noble Baroness gave me notice of the question and I managed to misinterpret it in my own mind, and then in seeking expert opinion, I misled the experts.

When looking at the ECHR and other issues, the important thing I have been asked is whether the district court will have to look at the regime generally or at the specific circumstances of the case. That is the question as I now understand it. The answer is that it will have to consider both. The person whose extradition is being sought will be able to draw the court's attention to the circumstances in Libya generally. If it concerns a crime with a sentence of more than 12 months for something that we may not recognise in the United Kingdom as being an offence, such as freedom of association, the rights of the media and so on, that can be brought to the attention of the court. Moreover, the person can bring in their personal circumstances in terms of whether they would be in danger and whether it is likely that they would be given a fair trial. A case could be made on the ground that extradition would risk a breach of the judgments reached by the European Court of Human Rights. That would be a factor that had to be taken into account by the district judge. I hope that my rather clumsy attempt to answer the question is sufficient. For my own conscience, if nothing else, I will write to the noble Baroness with a more articulate and expanded version of this response.

*Motion agreed.*

## Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2010

*Considered in Grand Committee*

6.17 pm

*Moved By Lord Davies of Oldham*

That the Grand Committee do report to the House that it has considered the Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2010.

*Relevant Document: 4th Report from the Joint Committee on Statutory Instruments.*

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham):** The purpose of these regulations is to increase the maximum participation fee for prize gaming in bingo premises and the maximum amounts that may be paid in prize money in respect of such gaming. The regulations we are debating today refer to a type of gaming where players are notified of the prizes in advance rather than where the winnings are made up from the stakes of the participants.

Prize gaming forms an integral part of the business model for the bingo industry. Many operators have traditionally offered what is referred to as “prize” or “interval” bingo under prize gaming rules; that is, smaller, faster games run in between sessions of mainstage bingo. The industry generally regards prize or interval bingo as an essential revenue stream that can account for up to 20 per cent of bingo sales in some clubs.

The Committee will be aware that in June last year, the Government introduced the Gambling Act 2005 (Limits on Prize Gaming) Regulations 2009. The regulations increased the limits on participation fees and prize levels for prize gaming in a number of different types of premises. It was the Government’s original intention that all venues entitled to offer prize gaming should benefit from an uplift in stake and prize levels. However, prize gaming in relation to bingo premises is regulated under a separate framework within the Gambling Act and is governed by a separate parliamentary procedure. I know that the noble Lord, Lord Clement-Jones, will recall this from our deliberations on the Gambling Bill that we so much enjoyed a number of years ago. As a result, the 2009 regulations could be applied only to adult gaming centres, family entertainment centres and fairs, and not to bingo halls.

Since June 2009, therefore, the Government have held discussions with a number of stakeholders about whether these new prize gaming limits ought to be applied to prize gaming in bingo halls. Following the completion of those discussions, there is no reason why not. Throughout the discussions there have been three key points for the Government to consider: first, whether the economic and social case for increasing prize gaming limits in adult gaming centres, family entertainment centres and fairs could equally be applied to the bingo industry; secondly, whether any new

limits could translate straight across into the bingo industry’s business model or would need to be refined in order to meet its needs; and, thirdly, whether increasing limits for prize gaming risked undermining the character of bingo premises as softer gambling environments.

When the Government reviewed stake and prize levels for category C and D gaming machines in 2008, they included proposals for prize gaming. That was in response to a number of compelling points made by stakeholders. The Government could not ignore the fact that issues raised around prize gaming and the needs of small businesses such as seaside arcades were comparable to those raised in connection with the category C and D machines.

In June 2009, following two public consultation exercises, the Government duly increased the participation fee and prize levels for prize gaming in certain venues accordingly—that is, to a maximum £1 participation fee and £70 prize. It soon became clear in discussions with the industry that a similar case existed in relation to bingo, in terms both of the needs of the industry and of the risk to the licensing objectives.

Many bingo premises continue to feel the effects of a severe long-term economic downturn across the industry, and while the Government have stepped in to help where they can—most notably when in February last year we increased the number of B3 gaming machines that bingo premises could offer—many operators still appear to be facing difficult trading conditions.

Prize bingo generates significant levels of income for many bingo clubs, and the Government want to see these businesses benefit in the same way as adult gaming centres and family entertainment centres did in June 2009. The regulations that we are debating today will therefore not only allow bingo operators to retain an important revenue stream but also enable them to develop and maximise that revenue to its fullest potential.

We should be aware that the current regulations governing prize gaming limits in bingo premises operate on a slightly different basis from those in respect of other types of premises. They specifically distinguish between premises where games are played in the presence of children and where they are not. This allows the operators to offer different maximum prize limits accordingly, thus reflecting the different levels of risk that each type of premises poses in relation to the licensing objectives of the Act.

At present, bingo clubs can offer a maximum stake of 50p and a maximum prize of £35 where children are permitted on the premises, and a maximum prize of £50 where they are not. Following discussions with a number of stakeholders, we have concluded that this difference in maximum prize levels between games played in the presence of children and those that are not should indeed be preserved; in our view, to do otherwise would run the risk of undermining an important revenue stream, especially for many smaller and medium-sized clubs.

These regulations will introduce a new maximum stake of £1 and a maximum prize of £70 where those under 18 years of age are permitted on the premises when a game is being played. Where under-18s are not

[LORD DAVIES OF OLDHAM]

present, we propose a maximum prize of £100. Of course, the Government are keeping the licensing objectives at the forefront as well as the risks that the new limits might pose to them.

As the Committee will know, the prize gaming limits implemented through the Gambling Act are intended to reflect Parliament's view that prize gaming should remain a low-risk gambling activity suited to venues that are more oriented towards the family or the wide community. The limits were considered necessary in order to mitigate the effects of any significant commercial exploitation of the prize gaming rules that might undermine the nature and character of prize gaming as a low-level gambling activity.

Such concerns were paramount when the Government's original proposals regarding prize gaming were included as part of the two public consultation exercises carried out in 2008. None of the responses to these consultations raised any issues that would suggest problems with these similar proposals, so the Government wrote to stakeholders informing them of their plans and, following further discussions, we are confident that these new limits for bingo balance the needs of the industry with the Government's commitment to consumer protection.

The regulations will ensure that the bingo industry can, in these difficult economic times, secure established revenue streams and develop further a product that is highly popular with players, while retaining the character of prize gaming originally intended through the Gambling Act. We are confident that these regulations do not prejudice the licensing objectives and in particular the protection of children and the vulnerable.

The regulatory framework implemented by the Gambling Act recognises that gambling is not a homogenous activity. Rather, it covers a range of experiences. As a result, the cornerstone of the Government's gambling policy is to regulate gambling premises based on the levels of risk that they pose to the licensing objectives of the Act. Bingo is, of course, a low-risk gambling activity. Indeed, the Committee will appreciate the important social functions that bingo clubs perform within their areas and many other local communities. The bingo industry continues to face significant economic pressures. Given the valuable role that bingo clubs play in many people's lives, the Government believe it is right for them to benefit from a similar increase in prize gaming limits to those which other types of premises benefited from in June last year. I commend these regulations to the Committee and I beg to move.

**Lord Howard of Rising:** My Lords, given that this order merely brings into line the limits between one establishment and another of similar nature, and that these regulations have been debated in relation to establishments that already have these limits, I see no point in objection.

**Lord Clement-Jones:** My Lords, I thank the Minister for his full introduction, which was a bit of a contrast to the response of the noble Lord, Lord Howard. Just to add to the Minister's regulatory pleasures, I shall be fairly brief, but perhaps not as brief as the noble Lord, Lord Howard.

The key question on the issues faced by the bingo industry is: what has taken the Government so long to come up with these regulations? Between 2003 and 2009 some 115 bingo premises closed, with a loss of 4,000 jobs. Since April last year, it is estimated that a further 24 have closed. The Explanatory Notes explain that an affirmative resolution such as that which we are debating is needed to approve an increase in participation fees for prize gaming in bingo premises—but the opportunity was there last March, when stakes and prizes for category C and D machines were increased, as the Minister said. Why could not this consultation—he called it a “discussion”, which was interesting—have taken place at the same time as that for category C and D machines? That is rather strange and does not appear to be the action of a Government who are concerned to nurture a valued form of gambling which is enjoyed by more than 3 million people in this country.

The Government have done some good things in this area. They have removed VAT on participation fees and they have permitted the doubling of the number of category B machines allowed on bingo premises. However, they then proceeded to fiddle with GPT, which cost the industry some £1.5 million. They do not have a completely blameless record in that respect. The Minister should answer the question about the uplift in stakes and prizes for category B machines. This is of great significance to the bingo industry and to the seaside arcades that he mentioned.

The wait for this review has been agonising. The commitment to it was made 18 months ago. What is the situation? What is the hold-up? Where is it coming from? However, we support the regulations and, in fact, we strongly welcome them. I look forward to the Minister's reply.

6.30 pm

**Lord Davies of Oldham:** My Lords, I am grateful to both noble Lords for their contributions. If I am slightly more grateful to the noble Lord, Lord Howard, I am sure that the noble Lord, Lord Clement-Jones, will understand why. Brevity being the soul of legislation, the noble Lord, Lord Howard, was succinct enough for me to limit my response to him to expressing my gratitude for his support for these benign and constructive regulations.

I hear what the noble Lord, Lord Clement-Jones, says about the regulations; would that they had been introduced earlier. The bingo industry has benefited from actions taken by the Government over the past few years. The increase in stake and prize levels for category C gaming machines that we introduced in June last year has benefited the industry, and in February 2008 we doubled to eight the number of B3 gaming machines that bingo clubs could offer.

We have the interests of the bingo industry very much in our minds and we recognise the pressures on it. However, the noble Lord, Lord Clement-Jones, with his usual standards of fairness, will recognise that most industries are under pressure in a period of recession, and certainly those industries that cater for leisure time and somewhat limited surplus funds are bound to feel the impact more than others.

The consultation that we held last year led to improvements for the industry. I accept the noble Lord's point that Governments can always act more rapidly on consultations, but we have to be assured about the issues. The whole construct of the Gambling Act—on the preparation of which he and I spent many happy hours in distant years gone by—contained very clear principles, particularly in relation to gambling where children are present; and when introducing actions to liberalise and extend limits in the industry, we have to go back to the first principles that govern the Act.

Bingo halls are an important part of the social fabric of many areas. We want to see them flourish and sustained but, by the same token, we do not want their social ethos to change and we certainly do not want them, in any way, shape or form, to represent any conceivable risk to social life, either in terms of gambling or its effect on children. That is why we are so careful with this industry.

I accept the noble Lord's criticism. It is always easier in opposition to suggest that the Government could do things more adroitly if only they followed the principles of the opposition parties, which have good ideas every second day and then discover that they take rather longer to implement. In government, the responsibilities are such that we have to measure matters with some care. However, given that noble Lords are prepared to give a fair wind to these regulations, we have reached our major objective of parliamentary consent to beneficial orders.

**Lord Clement-Jones:** Does the Minister have any comfort for me on category B machines?

**Lord Davies of Oldham:** My Lords, as regards category B machines, I know that the noble Lord is concerned about undue delay. However, the review of these machines is bound to be controversial. The key issue for many stakeholders will be the high street bookmakers and their concern to protect a significant revenue stream. Parity with bookmakers is a serious issue.

The casino sector is also seeking government intervention in relation to stake and prize levels for category B machines in existing casinos. Its chief concern is the impact of the current economic climate on its position. Unlike in the 2008 review of C and D machines, with its focus on seaside arcades, there is not the same economic case to justify our intervention to increase stake and prize levels for category B machines. Industry opinion is not uniform on this. Earlier, I freely acknowledged the strength of the bingo industry's case, but that is not the case with regard to category B machines. Of course, that reflects the fact that the different sectors of the industry have different concerns. Community groups express anxieties in these areas, but not with regard to bingo halls.

I hear what the noble Lord says on the matter. We are concerned about all sections of the industry that are going through difficult times. No doubt some in the industry can express the obvious case that it would improve their business position if we altered our position on category B machines, but there is not the same unity of position as is represented by the bingo halls. That is why I concentrated on bingo halls today.

*Motion agreed.*

*Committee adjourned at 6.37 pm.*



# Written Statements

*Tuesday 2 March 2010*

## Bangladesh

### *Statement*

**Lord Brett:** My honourable friend the Parliamentary Under-Secretary of State for International Development (Mike Foster) has made the following Written Ministerial Statement.

The Government of Bangladesh held a high-level Bangladesh Development Forum (BDF) meeting in Dhaka on 15 and 16 February 2010. It was the first such event since 2005, and it took place one year after the current Government took office. The objective of the forum was for the Government to share, and discuss with development partners, their long-term plan to reach middle income status by 2021 (Vision 2021); the content of their new national strategy for accelerated poverty reduction; and their proposed reforms and delivery priorities.

The forum was widely hailed as a success. The Prime Minister, Sheikh Hasina, opened the event, her speech referring specifically to the need for healthy democracy, decentralisation, transparency and anti-corruption. She highlighted the climate change challenge, called for speedy action on Copenhagen “fast start” finance and emphasised the importance of women’s empowerment and gender equity. Her presence increased the profile of the event, attracting substantial national media attention.

Six business sessions covered development strategies, governance and human development; power and energy; agriculture, food security and water resources; environment and climate change; transport and communications; and digital Bangladesh and ICT development. The Minister of Finance AMA Muhith chaired all six business sessions, supported by economic adviser to the PM Moshior Rahman and a number of Cabinet Ministers and Secretaries. The event was well attended by development partners, including 36 development agencies and donors, and more than 80 civil society and private sector representatives. Bangladesh was congratulated on its progress towards the millennium development goals, on its sustained economic growth, and on its climate change strategy.

Improving delivery was at the heart of all discussions, with governance issues (the need for institutional and policy reforms, local government strengthening, improved implementation capacity and reduced corruption) and climate change featuring prominently. The importance of regional links in power, trade, transport and communications, and the need to create a better investment climate in Bangladesh were emphasised. The Finance Minister reaffirmed the Government’s determination to increase domestic revenue mobilisation and improve budget implementation.

Commitments were captured in a BDF agreed action plan outlining 25 concrete actions for the Government to be supported by development partners. The potential for increased transparency and aid effectiveness was

boosted by the Government’s endorsement of the joint co-operation strategy, produced collectively by 32 development partners operational in Bangladesh and centred around the Paris declaration on aid effectiveness and Accra agenda for action.

The themes emerging from the BDF endorsed the direction the UK’s country plan for Bangladesh (2009-14) is already taking, with our development efforts focused on building effective government systems and strengthening the political system; improving the delivery of services; working with the private sector to create jobs; and helping the country live with climate change. Future programme direction and ongoing implementation of the existing portfolio will be guided by the BDF outcomes and framed by the joint co-operation strategy.

The Government of Bangladesh used the event to dismiss reports—in the UK and Bangladesh—of a dispute over climate change funding. The Government confirmed their desire to establish a climate change multi-donor trust fund, with grant funding committed from the UK, the European Union and Denmark. The fund will be led by the Government with the World Bank providing technical back-stopping and fiduciary management.

As co-chair of the local consultative group, which represents development partners in Bangladesh, the UK played a central strategic role in preparing for the forum and steering the event. We will continue to work closely with the Government of Bangladesh to ensure that the next steps outlined in the action plan are implemented.

## Bernard Lodge Inquiry

### *Statement*

**The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach):** My honourable friend the Parliamentary Under-Secretary of State (Claire Ward) has made the following Written Ministerial Statement.

I have today laid before Parliament the Government response to the report of the inquiry into the death of Bernard Lodge, who died at HMP Manchester on 28 August 1998. I published the report of the inquiry on 15 December 2009.

The National Offender Management Service is committed to learning lessons from all deaths in prison custody.

## Energy: Efficiency

### *Statement*

**The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath):** My right honourable friend the Secretary of State for Energy and Climate Change (Ed Miliband) has made the following Written Ministerial Statement.

Together with my right honourable friends the Secretary of State for Communities and Local Government and the Minister for Housing, I am today publishing “Warm Homes, Greener Homes: A strategy for Household Energy Management”, which sets out the strategy for

improving energy efficiency in people's homes through to 2020. Copies of the document will be placed in the Libraries of the House.

Improving domestic energy efficiency helps people to make their homes more comfortable, save money on their energy bills and reduce greenhouse gas emissions. This strategy sets out a comprehensive approach to helping people do that across all tenure types.

The strategy will deliver greenhouse gas emissions savings of at least 4 million tonnes of CO<sub>2</sub> per annum by 2020, ensuring the UK hits its target of cutting emissions from households by 29 per cent by 2020.

The strategy sets out our commitment to support people to install cavity wall and loft insulation in every home where practical to do so by 2015 while increasing the volumes of more significant insulation measures. We will help people to install eco-upgrades to their homes—which go beyond basic measures to include solid wall insulation and/or micro-renewable energy generation—in up to 7 million homes by 2020, on the way to ensuring that all homes have benefited from energy efficiency measures by 2030. There will be particular support for vulnerable groups.

To deliver against these objectives the strategy sets out a new policy framework. This reflects the fact that the existing obligation for suppliers to support energy efficiency measures is due to expire at the end of 2012 and also the new challenges that need to be overcome to meet our stretching ambitions.

The strategy has four elements:

an enhanced role for local authorities including a requirement on energy companies to partner with councils to deliver local area-based programmes and further support for district heating;

new financing mechanisms, including an obligation on energy companies to support people to improve their energy efficiency and plans for legislation to enable households to install measures without upfront costs, with repayments made out of the savings in energy bills;

universal standards for the rented sector, including a new warm homes standard for social housing to complement decent homes and plans for regulation of the private rented sector; and

support for consumers in understanding their options, including a universal advice service, new standards for installation, and plans to make better use of the energy performance certificate.

We estimate that the implementation of this strategy will help support around 65,000 jobs in 2020 in the installation and manufacture of insulation and micro-generation, with further jobs created in the wider supply chain.

The proposals in this strategy signal a step change in the level of ambition for the household sector over the next decade that will put the country on track to meet our carbon targets while at the same time saving families money on their fuel bills, creating jobs and helping to secure our energy supplies.

## EU: General Affairs Council

### Statement

**The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead):** My honourable friend the Minister for Europe (Chris Bryant) has made the following Written Ministerial Statement.

The General Affairs Council (GAC) and Foreign Affairs Council (FAC) were held on 22 February in Brussels. My right honourable friend the Foreign Secretary (David Miliband) represented the UK.

The agenda items covered were as follows:

#### *Foreign Affairs Council*

The full text of all conclusions adopted, including "A" points, can be found at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/112999.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/112999.pdf).

#### *Haiti*

High Representative Ashton gave a positive assessment of the EU's contribution and announced that she would travel to Haiti soon, together with Humanitarian Commissioner Georgieva. The Commission said it would release €5 million (£4.39 million) in budget support within the next few days, rising to €50 million (£43.9 million) in the remainder of 2010; and was committing a further €90 million (£79.1 million) in humanitarian assistance, on top of the €30 million (£26.4 million) already committed, probably primarily for areas outside Port-au-Prince.

The high representative proposed that the March FAC agree conclusions giving her the mandate to represent the EU at the donors' conference in New York in late March; and that the EU should offer a significant long-run reconstruction package at the conference. Ideas for increasing EU visibility would also be discussed. The Government broadly welcome this approach.

#### *Iran*

At the high representative's request, the Foreign Secretary introduced the discussion. He highlighted that the EU needed to pursue the dual track policy and also increase the pressure in relation to human rights, while the E3+3 pursued work on the new UNSCR. Ashton concluded that there was a high degree of consensus around several recommendations: including that the dual track policy should be pursued calmly and steadily; and that the EU should be ready to support the UN track. The Government strongly endorse this approach.

#### *MEPP*

This item was dropped from the FAC agenda.

#### *Ukraine*

The high representative welcomed the conduct of the Ukrainian presidential elections. The Commission presented initial proposals for engagement with the new president that set out the reforms required and the EU support on offer. Following a discussion of these proposals, the high representative noted the support from many member states to engage strongly with the new Ukrainian team, but also the need for progress with reforms on the Ukrainian side. The Government strongly support this approach.

*AOB: Afghanistan*

The high representative gave an update on the appointment of an EU special representative to Afghanistan. Once the process is completed, the successful candidate would be double-hatted as the head of the EU delegation in Kabul.

*AOB: Belarus*

Poland raised the ongoing repression of Belarus' Polish minority. The Commission noted that it had already lobbied the Belarusian Foreign Minister. The high representative said that the FAC would return to this issue.

*AOB: Dubai/passports*

Ministers agreed a statement on the killing of Mahmoud al-Mabhouh in Dubai on 20 January. It condemned the fact that those involved in the operation had used passports and credit cards which had been fraudulently acquired through the theft of EU citizens' identities. The Government strongly support the statement. The Foreign Secretary said that the EU needed to think hard about how it could promote peace and stability in the region, because the longer this was left unaddressed, the greater the risk of individual incidents such as this spilling over.

*AOB: Libya/Switzerland/visas*

Malta, Italy and Spain briefed Ministers on the Libya/Swiss bilateral dispute, which had prompted Libya to refuse visas to citizens of all Schengen countries, including many EU member states. The high representative concluded that Libya's actions had been disproportionate, encouraged the Swiss to resolve the matter diplomatically.

*AOB: Madeira*

Portugal briefed Ministers on the recent flooding and landslides in Madeira. The high representative said that she was keen to offer Portugal such assistance as possible.

*AOB: Niger*

The council discussed briefly the coup d'état in Niger on 18 February and called for the swift restoration of democracy and constitutional order.

*General Affairs Council*

The full text of all conclusions adopted can be found at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/112998.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/112998.pdf).

*Preparation of the European Council, 25 and 26 March*

The European Council agenda will consist of the Europe 2020 strategy for jobs and growth and climate change. The Government welcome the presidency's choice of topics. The UK agreed that leaders needed continuously to pay attention to economic policy—but in order to make sure that a strategic view and assessment of progress could be made, a dedicated annual economic summit was needed; otherwise, the risk was that strategic consideration of economic policy would be derailed by events. The presidency expressed the need for progress on Europe 2020 at the Spring European Council, to show that the EU could deliver for its citizens.

*Climate change*

The new Climate Action Commissioner, Connie Hedegaard, set out her intentions for European climate policy in the wake of Copenhagen, placing particular emphasis upon the need for better co-ordinated outreach to the major international players. Many member

states called for the maintenance of the EU's ambition on climate, for the speedy operationalisation of the Copenhagen accord, and for delivery of the promised fast start funding, all of which are in line with the UK position.

*Dinner with President van Rompuy*

The discussion covered the 11 February informal European Council and preparations for the Spring European Council. President van Rompuy expressed satisfaction with the 11 February summit, although the dominance of economic issues had left work unfinished on climate change and Haiti, which the GAC and European Council would need to follow up.

*"A" points*

The council adopted the following conclusions or decisions without discussion:

council conclusions on Zimbabwe;

council conclusions on the Republic of Moldova: restrictive measures against the leadership of the Moldavian region of Transnistria;

council decision extending restrictive measures against the leadership of the Transnistrian region of the Republic of Moldova;

relations with Morocco: adoption of the EU position in view of the EU-Morocco summit; and relations with the Kyrgyz Republic: establishment of the EU position for the 11th meeting of the EU-Kyrgyz Republic Co-operation Council.

**Health: Nursing and Midwifery***Statement*

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** My right honourable friend the Secretary of State for Health (Andy Burnham) has made the following Written Ministerial Statement.

Today, on behalf of the Government, I formally welcome the report from the commission on the future of nursing and midwifery in England.

The commission, chaired by my honourable friend the Parliamentary Under-Secretary of State (Ann Keen), was established by the Prime Minister in March 2009 to take a visionary look at how to maximise the contribution of nurses and midwives to the health of the nation in the future.

It undertook an extensive engagement exercise, hearing the views of many thousands of nurses, midwives, patients, and members of the public across England and its report, *Front Line Care*, sets out proposals to ensure that the nurses and midwives of the future are at the heart of designing and delivering 21st century health services.

I welcome the messages in the report that the fundamentals of patient care should always remain the core responsibility of nurses and midwives, but also that responsibility for care needs to go right through to the board.

I would like to place my thanks on record to the commission for the work that has led to this report.

My department and I will consider the contents of the report in detail, and will formally respond in due course.

I am placing a copy of the report in the Library and copies are available to honourable Members from the Vote Office.

## **Pensions**

### *Statement*

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton):** My honourable friend the Minister of State for Pensions and the Ageing Society (Angela Eagle) has made the following Written Ministerial Statement.

Today is another important milestone for the delivery of workplace pension reform. The Personal Accounts Delivery Authority (PADA) has completed its procurement for the Scheme Administration Services for NEST, and will award that contract to Tata Consultancy Services Limited (TCS) later today. PADA plan to sign the contract with TCS later this month.

The 10-year contract has two stages. The first stage runs to October 2010, and enables TCS to begin the activity required to set up and administer NEST. A further decision will be made by October on whether to proceed with the second stage contract for the remainder of the contract term. The contract also includes possible extensions for up to a further five years.

NEST is a critical part of the Government's pension reforms and, as one of the pension schemes employers will be able to use to fulfil their automatic enrolment duties, will play a major role in supporting low to moderate earners in saving for their retirement.

PADA's priority has been to secure value for money for future NEST members. I am satisfied this contract achieves that objective, and we remain on track to deliver the reform package from October 2012.

## **Transport: Urban Challenge Fund**

### *Statement*

**The Secretary of State for Transport (Lord Adonis):** My right honourable friend the Minister of State for Transport (Sadiq Khan) has made the following Ministerial Statement.

I am today announcing the Government's plans for a new Urban Challenge Fund designed to support local authorities in delivering economic growth and improving the health and environment for local communities in urban areas.

The Prime Minister's Strategy Unit report on urban transport and the DfT response "The Future of Urban Transport" published in November 2009 identified a range of transport challenges faced by our cities. It estimated the cost of congestion, in delays and unreliability suffered by road users, to be of the order of £12 billion a year. The PMSU report also indicated that the

measurable costs to society of poor air quality, inactivity leading to obesity and road accidents in urban areas are each similar to those of congestion. The evidence from the PMSU report is that initiatives geared to tackling the various challenges simultaneously would better achieve "triple win" outcomes in terms of economic growth, improvements to health and improvement to the urban environment. This new fund will support forward-looking cities and local authorities in delivering these outcomes.

The aim of the new fund will be to deliver clear and measurable benefits for urban areas in terms of:

- enhanced mobility through offering people wider choices for their journeys;
- reduced congestion and increased journey time reliability;
- better health as a result of improved safety and much greater levels of walking and cycling;
- streets and public spaces which are enjoyable places to be, where exposure to harmful emissions is reduced and where quality of life is transformed;
- improved safety; and
- reduced level of carbon emission from transport.

The fund will support packages of measures designed to deliver all of these benefits. The packages are likely to include a combination of sustainable travel measures, investment to encourage modal shift and better bus services alongside demand management measures, better and city-wide traffic management and improved street design. Acting together, these measures will deliver a step change in the local economy, the health of urban residents and the environment they enjoy.

The new fund will replace the Transport Innovation Fund. Work by a number of authorities showed that a combination of measures was necessary to tackle the problem of congestion and could deliver wider benefits to local communities, the urban economy and environment. TIF also encouraged new thinking in a number of areas, for example on a phased and incremental approach to demand management. Its weaknesses lay in its too narrow focus on the issue of congestion, the failure to win public acceptance for the more challenging proposals and inability to transform governance at the same time as delivering radical change. The new fund will draw on the lessons from TIF and the new ideas that have come forward.

Sustainable travel measures will be a key component of the packages supported by the new fund. The sustainable travel towns initiative has shown that small-scale relatively inexpensive measures can deliver significant reductions in car trips, increases in bus use, walking and cycling and consequential improvements in health. In order to achieve best value from available resources, the sustainable travel programme for cities will be absorbed into the Urban Challenge Fund. While there will be no separate fund for cities, we would expect these sorts of measures to form part of a wider package of interventions and deliver even greater benefits than those already achieved through the sustainable travel towns initiative.

The department will be considering the future of our current congestion performance fund and targets with a view to ensuring there is an integrated approach to addressing all of the challenges in urban areas.

Funding for the Urban Challenge Fund will be top-sliced from the department's overall funding allocation following conclusion of the next Comprehensive Spending Review.

I am also publishing today a discussion paper inviting comments on the new Urban Challenge Fund. Copies of the discussion paper are being placed in the House Libraries and will also be available on the Department for Transport's website.

## **Vehicles: Private Hire**

### *Statement*

**The Secretary of State for Transport (Lord Adonis):** My right honourable friend the Minister of State for Transport (Sadiq Khan) has made the following Ministerial Statement.

The department has today published a revised version of its best practice guidance for taxi and private hire vehicle (PHV) licensing authorities.

A copy has been placed in the Libraries of the House.

The purpose of the guidance is to assist licensing authorities in carrying out their taxi and PHV licensing functions.

The key aim of the guidance is to ensure that the decisions which licensing authorities make deliver a good and safe service to the public having taken account of all the factors involved, including for example the effect on the supply of taxis and PHVs of unnecessary rules and restrictions.

Publication of guidance was initially recommended by the Office of Fair Trading in the context of its market study in 2003. The first guidance was published in 2006. This revised version takes account of comments received as part of a consultation exercise in 2009.



## Written Answers

Tuesday 2 March 2010

### Airports: Body Scanners

#### Questions

Asked by **Lord Sheikh**

To ask Her Majesty's Government how they will address public concerns that the images created of those who go through body scanners may be too graphic. [HL2131]

#### **The Secretary of State for Transport (Lord Adonis):**

The image produced does not show any distinguishing features such as hair or skin tone and it is not possible to recognise people from their facial features.

In addition extensive safeguards have been developed to ensure passengers' privacy is respected. Images are viewed remotely from the machine, and are deleted immediately after analysis. Images cannot be recovered at a later date from the machines or printed.

An interim code of practice has been produced for the initial deployment of body scanners. It is available via the Department for Transport website. It will ensure that the implementation and application of body scanners will be proportionate to privacy rights.

The department will be launching a full public consultation shortly on the interim code of practice and will consider all representations carefully before preparing a final code of practice later in the year.

Asked by **Lord Sheikh**

To ask Her Majesty's Government how they will deal with women who do not wish to be scanned by body scanners. [HL2132]

**Lord Adonis:** If an individual selected for scanning declines to be scanned, they will not be offered an alternative method of screening, and will not be allowed to travel. Individuals are able to request that their image is viewed by a screener of the same gender if that is their preference.

Asked by **Lord Sheikh**

To ask Her Majesty's Government what steps have been taken to ensure that airport security equipment is not used to discriminate unfairly against any social or ethnic group. [HL2200]

**Lord Adonis:** As stated in the interim code of practice for the initial deployment of body scanners: "Passengers must not be selected on the basis of personal characteristics (ie on a basis that may constitute discrimination such as gender, age, race or ethnic origin)".

Asked by **Lord Sheikh**

To ask Her Majesty's Government what safeguards they will put in place to ensure that proper care and respect for cultural differences are taken into account when using anti-terrorism body scanners. [HL2201]

**Lord Adonis:** The Government have published an interim code of practice for the initial deployment of body scanners. It is available via the Department for Transport website. It will ensure that the implementation and application of body scanners properly respects privacy rights.

The department will be launching a full public consultation shortly on the interim code of practice and will consider all representations carefully before preparing a final code of practice later in the year.

Extensive safeguards have been developed to ensure passengers' privacy is respected. Only security-vetted and trained security staff employed by the airport will be able to view the images. Images are viewed remotely from the machine, and are deleted immediately after analysis. Images cannot be recovered at a later date from the machines. In addition individuals may request that their image is viewed by a screener of the same gender.

Asked by **Lord Sheikh**

To ask Her Majesty's Government what course of action will be taken if a person declines a full body search on the ground that it challenges their dignity. [HL2204]

To ask Her Majesty's Government what action they will take to ensure that passengers who decline a full-body search will not be banned from flying. [HL2205]

**Lord Adonis:** In that circumstance, an alternative method of screening will not be offered and the individual will not be allowed to travel.

An interim code of practice has been produced for the initial deployment of body scanners and is available via the Department for Transport website.

The department will be launching a full public consultation shortly on the interim code of practice and will consider all representations carefully before preparing a final code of practice later in the year.

### Alcohol

#### Questions

Asked by **Lord Brooke of Alverthorpe**

To ask Her Majesty's Government how many alcohol licences were revoked in each year in England between 1994 and 2010. [HL2171]

**Lord Davies of Oldham:** Since the implementation of the Licensing Act 2003, the Department for Culture, Media and Sport has been collecting alcohol, entertainment and late night refreshment statistics on an annual basis by financial year from licensing authorities in England and Wales.

Under the Licensing Act 2003, premises licences and club premises certificates are not confined to authorising the sale or supply of alcohol; they can also provide regulated entertainment and/or late night refreshment. DCMS does not collate data specifically on alcohol licences.

The following table lists premises licences that were revoked or club premises certificates withdrawn for the financial years 2006 to 2008 following a completed review, in England and Wales.

<i>Financial year</i>	<i>No. of premises licences revoked or club premises certificates withdrawn</i>	<i>Licensing authorities responding to the question (%)</i>
2006-07	92	85%
2007-08	155	95%
2008-09	154	100%

Prior to the 2003 Act coming into force in 2005, statistics for liquor licensing in England and Wales were published on a triennial basis and contained statistics on liquor licences issued under the Licensing Act 1964.

During this period alcohol licensing statistics were compiled from returns submitted by magistrates' courts in England and Wales and had a reporting period of 1 July to 30 June. These data were collated by the Home Office up until 2001 and from 2004 the Department for Culture, Media and Sport had responsibility for publishing these data.

The following table lists the number of licences revoked under the 1964 Act between 1995 and 2004.

<i>Year to 1 July to 30 June</i>	<i>Total no. of on- and off- premises licences revoked</i>
1995	378
1998	317
2001	183
2004	354

*Asked by Lord Brooke of Alverthorpe*

To ask Her Majesty's Government what was the total income generated from alcohol licence fees in England in each year since the introduction of the Licensing Act 2003. [HL2172]

**Lord Davies of Oldham:** The information requested is not held centrally by DCMS and fee income is collected by individual local licensing authorities.

The Licensing Act 2003 amalgamated the alcohol, regulated entertainment and late night refreshment licensing regimes and individual licences may cover one or more of these permissions.

Accordingly, licensing authorities are unlikely to record fee income for alcohol licences only.

The department keeps fee levels for individual licensing processes under review and before proposing or implementing any changes a full survey of actual income from licensing fees as a whole would be necessary.

*Asked by Lord Brooke of Alverthorpe*

To ask Her Majesty's Government how many alcohol-related attendances there were at accident and emergency departments in each primary care trust in England in each year between 1994 and 2010. [HL2173]

To ask Her Majesty's Government how many attendances there were at accident and emergency departments as a result of alcohol-related assault in each primary care trust in England in each year between 1994 and 2010. [HL2174]

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** The information requested on alcohol-related attendances in accident and emergency departments is not collected centrally.

## Armed Forces: Languages

### Questions

*Asked by Lord Astor of Hever*

To ask Her Majesty's Government what incentives are in place to increase the number of Pashtun speakers serving in HM Armed Forces. [HL2231]

To ask Her Majesty's Government what incentives are in place to increase the number of Dari Persian speakers serving in HM Armed Forces. [HL2235]

**The Minister for International Defence and Security (Baroness Taylor of Bolton):** Both Pashto and Dan are mandated operational languages, entitling Armed Forces linguists with current language skills, confirmed by means of MoD Languages Examinations Board (MODLEB) examinations, to financial awards under the Defence Operational Languages Award Scheme (DOLAS).

DOLAS was implemented on 1 December 2009 to replace the previous Pilot Operational Languages Award Scheme (POLAS) which ran from 1 October 2005 to 30 November 2009.

## Broadcasting: Impartiality

### Question

*Asked by Lord Tebbit*

To ask Her Majesty's Government what statutory obligations to ensure objectivity and fairness, impartiality or balance, are laid upon (a) the BBC, (b) other broadcasters, and (c) other elements of the media. [HL2210]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham):** All broadcasters, other than the BBC, are required to comply with Ofcom's broadcasting code, which includes requirements as to (among other matters) the fairness, accuracy and impartiality of broadcast content. The BBC is required to comply with all requirements under Ofcom's code other than those relating to accuracy and impartiality which, in the corporation's case, are subject to regulation by the BBC Trust. The BBC agreement includes a number of specific obligations relating to the accuracy and impartiality of the corporation's output.

Newspaper publishers must, of course, abide by the law, but they also sign up to a code of practice overseen by the independent Press Complaints

Commission. The editors' code of practice sets a benchmark for the standards the press is expected to maintain.

As with all lottery distributors, the UK Film Council (UKFC) is required by the National Lottery Act (s26 (1)) to comply with any directions given to them by the Secretary of State concerning the manner in which they distribute money. The statement of financial requirements requires UKFC to operate within the principles of administrative law, which include fairness, openness and transparency.

## Buying Solutions

### Question

Asked by **Baroness Northover**

To ask Her Majesty's Government how much was paid by the Department for Transport and its agencies to (a) PricewaterhouseCoopers, (b) KPMG, (c) Deloitte, (d) Ernst & Young, (e) Grant Thornton, (f) BDO Stoy Hayward, (g) Baker Tilly, (h) Smith & Williamson, (i) Tenon Group, (j) PKF, (k) McKinsey and Company, and (l) Accenture, in each of the past five years for which information is available; how they monitor contracts with those firms; and how the department reports (1) during, and (2) at the end of, contracts to Buying Solutions. [HL2091]

### The Secretary of State for Transport (Lord Adonis):

The Department for Transport and its executive agencies have spent the following amounts with the firms listed over the past five years:

	2004-05	2005-06	2006-07	2007-08	2008-09
Pricewaterhouse Coopers	£1,655,104	£1,810,356	£3,551,639	£3,020,304	£6,371,369
KPMG	£2,833,463	£115,374	£325,024	£1,742,309	£2,137,547
Deloitte	£2,993,838	£3,099,554	£8,295,914	£7,215,610	£3,958,835
Ernst and Young	£974,842*	£802,081	£49,071	£2,569,377	£1,096,088
Grant Thornton	£4,830	£0	£0	£21,360	£26,703
PKF	£623,658	£586,250	£614,823	£973,538	£82,630

\* Figures exclude Highways Agency spend of £11,844 in 2004-05 with Cap Gemini Ernst and Young Plc.

There are no records of spend with BDO Stoy Hayward, Baker Tilly, Smith and Williamson, Tenon Group, McKinsey and Accenture.

There are no records held for the Maritime and Coastguard Agency for 2004-05 and 2005-06.

For DVLA, figures exclude expenditure for the implementation of the shared services centre.

Contracts are managed by designated contract managers in accordance to the department's procedures which includes monitoring and measuring supplier performance in line with the specification, service levels/key performance indicators and the terms and conditions of the contract. The procedures for monitoring a contract would depend on the nature of that contract. However, all contracts would make some provision for regular review meetings with a supplier to raise, discuss or escalate any performance issues.

The department does not report contract spend or performance to Buying Solutions, unless there is a specific problem with a supplier's performance.

## European Parliament: Hereditary Peers

### Questions

Asked by **Baroness Rawlings**

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 4 February (WA 66), whether there is discrimination between life Peers and excepted hereditary Peers in respect of their ability to return to the House of Lords after ceasing to be members of the European Parliament. [HL2189]

**The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach):** The position of hereditary Peers was given full consideration by the House of Lords during the debate held on the European Parliament (House of Lords Disqualification) Regulations 2008 on 14 October 2008. We do not consider that these regulations are discriminatory in nature. The regulations were an interim measure in response to a particular issue that had arisen prior to the European parliamentary elections in June 2009.

Asked by **Baroness Rawlings**

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 4 February (WA 66), whether they will table an amendment to repeal the European Parliament (House of Lords Disqualification) Regulations 2008 in the Constitutional Reform and Government Bill currently before Parliament, or table an amendment to that bill extending the scope of the regulations to excepted hereditary Peers so that life Peers and excepted hereditary peers can serve as Members of the European Parliament on the same basis. [HL2190]

**Lord Bach:** The Government have no plans to table such amendments to the Constitutional Reform and Governance Bill, as the Bill includes provision to allow a person who is a life Peer or an hereditary Peer who is a member of the House of Lords to resign at any time from the House of Lords.

## Health: Medicines

### Questions

Asked by **Earl Howe**

To ask Her Majesty's Government which external bodies they consulted in preparing their impact assessment report in respect of the consultation on automatic generic substitution of branded medicines in the National Health Service. [HL2158]

To ask Her Majesty's Government whether they will publish the evidence on which they built their view in the impact assessment report regarding automatic generic substitution of branded medicines in the National Health Service that the effects of the policy on (a) safety, (b) liability in the event of adverse events, and (c) job losses, would be negligible. [HL2159]

**The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):** In developing the proposals and analysis set out in the consultation document *The Proposals to Implement "Generic Substitution" in Primary Care, Further to the Pharmaceutical Price Regulation Scheme (PPRS) 2009* and its associated partial impact assessment, published on 5 January 2010, the department was informed by information from stakeholders. During 2009, the department undertook a series of meetings with key national stakeholders, representing general practitioners, community pharmacists, and manufacturers, to discuss the commitment in the PPRS agreement in England. These national stakeholders were the General Practitioners Committee of the British Medical Association, the Pharmaceutical Services Negotiating Committee, the Association of British Pharmaceutical Industry, the British Generic Manufacturers Association and the Ethical Medicines Industry Group. We also received written representations from a number of other stakeholders, such as individual manufacturers and patient groups, for example those representing people with epilepsy.

The department will publish references to the key articles reviewed to support the partial impact assessment on its website. We recognise that further evidence may be available in relation to these issues, which is why we are holding a full public consultation, to which all those with an interest can input. The consultation document and partial impact assessment can be found on the department's website at [www.dh.gov.uk/en/consultations/index.htm](http://www.dh.gov.uk/en/consultations/index.htm).

Copies of the consultation document have already been placed in the Library. Details of the consultation events can be found on the NHS Primary Care Commissioning website at [www.pcc.nhs.uk/events](http://www.pcc.nhs.uk/events).

## Pensions

### Question

Asked by **Lord Taylor of Holbeach**

To ask Her Majesty's Government further to the Written Answer by Baroness Crawley on 10 February (WA 165), what is the total cost of employer pension contributions for non-departmental public bodies.

[HL2188]

**Baroness Crawley:** The information requested is not held centrally. Employer pension contributions for those non-departmental public bodies that participate in the Principal Civil Service Pension Scheme are accounted for in the Cabinet Office: Civil Superannuation Resource Accounts.

## Shipping: Piracy

### Question

Asked by **Lord Tebbit**

To ask Her Majesty's Government what progress has been made on the trial of the suspected pirates arrested by HMS "Cumberland" in November 2008.

[HL2104]

**The Minister for International Defence and Security (Baroness Taylor of Bolton):** The eight suspected pirates detained by Royal Navy forces in November 2008 remain on trial in Kenya. The defence case has now been heard by the court, with final submissions still expected from both the prosecution and defence. The UK continues to monitor progress. It would be inappropriate to comment further while the trial continues.

## Stateless People

### Question

Asked by **Lord Lester of Herne Hill**

To ask Her Majesty's Government how many stateless people there are in the United Kingdom; and how they are categorised for the purpose of national statistics.

[HL2118]

**Baroness Crawley:** The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

*Letter from Stephen Penneck, Director General for Office for National Statistics, to Lord Lester of Herne Hill, dated March 2010.*

As Director General for the Office for National Statistics, I have been asked to reply to your recent Parliamentary Question concerning how many stateless people there are in the United Kingdom; and how they are categorised for the purpose of national statistics.

The information requested is not available.

Tuesday 2 March 2010

## ALPHABETICAL INDEX TO WRITTEN STATEMENTS

	<i>Col. No.</i>		<i>Col. No.</i>
Bangladesh .....	165	Health: Nursing and Midwifery .....	170
Bernard Lodge Inquiry .....	166	Pensions.....	171
Energy: Efficiency .....	166	Transport: Urban Challenge Fund.....	171
EU: General Affairs Council .....	168	Vehicles: Private Hire .....	173

Tuesday 2 March 2010

## ALPHABETICAL INDEX TO WRITTEN ANSWERS

	<i>Col. No.</i>		<i>Col. No.</i>
Airports: Body Scanners .....	335	European Parliament: Hereditary Peers.....	340
Alcohol.....	336	Health: Medicines.....	340
Armed Forces: Languages.....	338	Pensions.....	341
Broadcasting: Impartiality.....	338	Shipping: Piracy.....	342
Buying Solutions.....	339	Stateless People.....	342

## NUMERICAL INDEX TO WRITTEN ANSWERS

	<i>Col. No.</i>		<i>Col. No.</i>
[HL2091] .....	339	[HL2174] .....	338
[HL2104] .....	342	[HL2188] .....	341
[HL2118] .....	342	[HL2189] .....	340
[HL2131] .....	335	[HL2190] .....	340
[HL2132] .....	335	[HL2200] .....	335
[HL2158] .....	340	[HL2201] .....	335
[HL2159] .....	340	[HL2204] .....	336
[HL2171] .....	336	[HL2205] .....	336
[HL2172] .....	337	[HL2210] .....	338
[HL2173] .....	337	[HL2231] .....	338
		[HL2235] .....	338

---

## CONTENTS

Tuesday 2 March 2010

### Questions

Health: Alcohol .....	1315
Israel and Palestine .....	1317
Sport: Clubs .....	1320
NHS: Staff .....	1322

### Child Trust Funds (Amendment) Regulations 2010

Health and Social Care Act 2008 (Regulated Activities) Regulations 2010

Health and Social Care Act 2008 (Consequential Amendments No. 2) Order 2010

Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010

Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010

Service Voters' Registration Period Order 2010

<i>Motions to Refer to Grand Committee</i> .....	1325
--	------

### Business of the House

<i>Motion to Refer to Grand Committee</i> .....	1325
---	------

### Child Poverty Bill

<i>Order of Consideration Motion</i> .....	1325
--	------

### Equality Bill

<i>Report</i> .....	1326
---------------------	------

### Corporation Tax Bill

<i>Second Reading</i> .....	1409
-----------------------------	------

### Equality Bill

<i>Report (continued)</i> .....	1414
---------------------------------	------

### Grand Committee

Welsh Zone (Boundaries and Transfer of Functions) Order 2010 ..... GC 359

Code of Audit Practice 2010 for Local Government Bodies ..... GC 367

Code of Audit Practice 2010 for Local NHS Bodies ..... GC 371

Environmental Permitting (England and Wales) Regulations 2010 ..... GC 372

Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010 ..... GC 384

Extradition Act 2003 (Amendment to Designations) Order 2010

<i>Considered in Grand Committee</i> .....	GC 387
--	--------

Written Statements..... WS 165

Written Answers..... WA 335

---