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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
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# House of Lords

*Wednesday, 17 July 2013.*

*3 pm*

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

## Royal Assent

*3.06 pm*

*The following Acts were given Royal Assent:*
Supply and Appropriation (Main Estimates) Act,
Finance Act,
Marriage (Same Sex Couples) Act.

## Afghanistan
*Question*

*3.06 pm*

*Asked by* ***Lord Clark of Windermere***

To ask Her Majesty's Government what plans they have for British troops in Afghanistan after 2014.

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever):** My Lords, as part of the United Kingdom's commitment to the Afghan National Army Officer Academy, the UK will initially contribute around 90 of the 120 mentors. This will diminish over time as the Afghans increasingly work independently. In addition, we will retain sufficient force numbers to ensure that we properly protect our adviser footprint after 2014. Until NATO planning has matured, it is premature to speculate what other residual military presence the UK will have after 2014.

**Lord Clark of Windermere:** I thank the Minister for that Answer. Although I fully support the withdrawal of combat troops after 2014, I can understand the Government's reluctance to be absolutely precise about the numbers remaining thereafter. However, does he accept that the new, large Afghan army will still be short of a number of military facilities, such as close air support, fuel and food delivery, and medevac? If we are to ensure that the sacrifices of our soldiers are not in vain, will the Government ensure that we help the new Afghan army in those areas in which it is short?

**Lord Astor of Hever:** My Lords, I am very grateful to the noble Lord for his support for our moves post-2014. We are fully aware of the issue of enabling support to the ANSF. Last year, this priority switched from growing the forces to professionalising and developing their ability to support themselves post-2014 as ISAF draws down. In addition to taking the coalition lead in supporting the officer academy, the UK will maintain its current development assistance of £178 million a year until 2017, and we will also contribute £70 million a year until at least 2017 towards sustaining the ANSF.

**Lord Lee of Trafford:** In terms of medical support, following on from the noble Lord's question, are there any plans to leave any specialist medical equipment in theatre in Afghanistan, and are there any plans for our medical personnel—those with particular specialisms—to stay there to work alongside the Afghan medics?

**Lord Astor of Hever:** My Lords, leaving medical equipment in Afghanistan is being discussed at the moment and no decision has been taken on that. By the end of 2013, the ANSF are due to have developed sufficient medical capabilities to take over responsibility for dealing with their own casualties with non-life-threatening injuries, known as category B casualties. By the end of 2014 they will take over responsibility for all their casualties, including the most serious types of injuries. ISAF continues to monitor ANSF progress towards an independent medical capability, and the UK is supporting it to deliver surgical capability in Helmand through the provision of medical advisors to Afghan medical personnel.

**Baroness Coussins:** My Lords, will the Minister update the House on what plans there are for the locally employed interpreters, who are likely to be in greater danger following the withdrawal of British troops, particularly the interpreters who are based in Kabul and elsewhere who I understand are not currently eligible to apply for the resettlement package that is being offered by Her Majesty's Government?

**Lord Astor of Hever:** My Lords, we want to support those local staff who will be made redundant so that they can go on contributing to a brighter future for them and their country. This support is based on a generous in-country package of training and financial support, available for all staff, or a financial severance payment. For those who are eligible—patrol interpreter Foreign Office equivalent staff—there is the opportunity to apply for relocation to the UK.

This is a redundancy scheme and is not to be confused with our existing provisions for staff safety and protection. Any staff member who is threatened and at genuine risk due to their employment with us will be supported. In extreme cases, via our intimidation policy, it may be appropriate to consider relocation to the United Kingdom.

**Lord Selkirk of Douglas:** My Lords, will the Minister say whether military equipment, including vehicles and containers that are needed in Europe, are being satisfactorily withdrawn and that the plans are proceeding as intended?

**Lord Astor of Hever:** My Lords, as I understand it, the redeployment is progressing well. As of 30 June, we have redeployed 797 vehicles and pieces of major equipment, and 1,234 20-foot containers' worth of materiel from Afghanistan.

**Baroness Farrington of Ribbleton:** My Lords, I declare an interest: a close member of my family will be in Afghanistan until the withdrawal in 2014. Will the Minister give an assurance that the protection equipment

[Baroness Farrington of Ribbleton]
that is available to protect our troops will be absolutely up to standard and adequate to protect them during what may be a difficult change period?

**Lord Astor of Hever:** My Lords, I can assure the noble Baroness on that point. While we remain part of the ISAF combat mission in Afghanistan, UK forces will continue to maintain the military means and legal authority to defend themselves in the event of an attack. We will retain sufficient force numbers to ensure that we can properly protect our adviser footprint up until 2014 and afterwards. We will also ensure that we have sufficient access to enable this, such as medical facilities and support helicopters. I assure the noble Baroness that the answer is yes.

**Lord Ramsbotham:** My Lords, anyone who has had the privilege of visiting our troops in Helmand will have realised the great appreciation shown by the Afghan army for the British troops and the way that they are being trained. Currently, a Select Committee in this House is examining soft power, and soft power includes the military influence in training and spreading the British influence into other countries. I know that we are talking about the officers' training academy, but are there intentions to carry on lower-level training, which does so much to increase our influence in Afghanistan after we have left?

**Lord Astor of Hever:** My Lords, the noble Lord is quite right about how much the ANSF appreciate the work we are doing to mentor them. I saw that for myself when I was last in Afghanistan and talked to a number of Afghans who are hugely appreciative of what we are doing. As the Prime Minister has said, the UK has played a very big part in the ISAF military campaign but we have also played a very high price. It is therefore right to focus on the officer academy, which is the one thing we have been asked to do by the Afghans, rather than looking for ways to go beyond that.

## Forestry: Independent Panel Report

*Question*

*3.14 pm*

*Asked by* ***Baroness Royall of Blaisdon***

To ask Her Majesty's Government what further developments there have been since the publication of their response to the report of the Independent Panel on Forestry.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** My Lords, we have made good progress in implementing the commitment set out in our *Forestry and Woodlands Policy Statement*, which was issued in January this year. An updated report was published on 3 July that highlighted progress in all areas, including establishing a new body to run the public forest estate, maintaining a core of forestry expertise in government and supporting the forestry sector to improve its economic performance. We are also giving greater priority to plant health.

**Baroness Royall of Blaisdon:** My Lords, I am grateful to the Minister for that Answer. How will the Government ensure that the board of the proposed public forest estate management organisation will be inclusive, taking into account the views of users and community groups such as my own HOOF, which are instrumental in safeguarding our public forests and understand every aspect of our forests, including the commercial aspects? The Minister may say that they will be among the guardians, but I firmly believe that they must also have a voice and a vote on the board. I understand that the consultation on the new structure will end in October, so can we expect legislation to be announced in the next Queen's Speech?

**Lord De Mauley:** My Lords, there were quite a lot of questions in there. I can assure the noble Baroness that stakeholders will be comprehensively involved in the process. She refers to HOOF; to dispel some misunderstanding, it is worth saying that, far from reviving the spectre of privatisation, or placing Ministers in total control of our forests, as has been suggested, our proposals involve the legal transferral of ownership of the entire estate from Ministers to a new operationally independent public body. I say to the noble Baroness that there is some misunderstanding; if it would be helpful to her, I would be very pleased to have a meeting with her—and a representative of HOOF, if that would suit her—to see if we can get rid of the misunderstanding.

**Baroness Fookes:** Will my noble friend expand on the issue of plant health, given the very worrying plant diseases that are affecting ash, oak, chestnut and other trees?

**Lord De Mauley:** My Lords, yes, this is a very important matter. We have a plant and tree health task force, which has reached the conclusion of its report. It has recommended that the Government develop a UK plant health risk register and provide strategic and tactical leadership for managing those risks. It has also recommended a number of other courses of action, including developing and implementing procedures for preparedness and contingency planning to predict, monitor and control the spread of pests and diseases. We have accepted both of these recommendations and are making progress on them. It has also recommended a number of other courses of action, which we are actively considering. I had a meeting last week with stakeholders from across the interested parties to discuss those recommendations.

**Lord Hylton:** My Lords, I declare my interest as on the register. Do the Government have a policy for increasing manufacturing capacity for all kinds of wood products, not forgetting poplar in particular?

**Lord De Mauley:** My Lords, the noble Lord has reminded me that I should have declared an interest as a woodland owner. He essentially asks what we are doing to make the woodland industry more creative. There is a new concept called Grown in Britain, which is creating a new and stronger market pull for the array of products derived from our woodlands and

forests. We are developing private sector funding that supports the planting and management of woodlands and forests through funding from corporates, as part of their corporate social responsibility, and we are connecting together and harnessing the positive energy and feelings towards our woodlands and forests that many in our society share to create a strong wood culture.

**Lord Clark of Windermere:** My Lords, in the Government's response, the Secretary of State wrote on the subject of forest acquisition:

"We will focus particularly on woods close to our towns and cities where the greatest number of people can enjoy them".

Can the Minister advise us whether there has been any success in this? If not, will he consult with the Forestry Commission England to help it bring forward some of its plans to achieve that laudable objective?

**Lord De Mauley:** I agree with the noble Lord that that is a laudable objective. It is early days, but we are making progress on those things. If I may, I will take the noble Lord's suggestion back to the department.

**Lord Greaves:** My Lords—

**Lord Framlingham:** My Lords—

**The Lord Bishop of Norwich:** My Lords—

**The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford):** We will hear from the right reverend Prelate first.

**The Lord Bishop of Norwich:** My Lords, can the Minister assure us that the Government will keep faith with the recommendation to establish guardians of the public forest estate and, if so, tell us what their role will be in relation to the new management organisation that is being established?

**Lord De Mauley:** My Lords, before I answer that perhaps I should reiterate my thanks to the right reverend Prelate the Bishop of Liverpool and his independent panel for the work that they did for us on this.

We envisage that there will be a group of guardians who will draw on the interests and expertise of public forest users and will be able to advise and support the delivery of the new body's remit. The guardians will be focused on the outcomes that the management body delivers, such as environmental biodiversity and social benefits, and any questions of significant land acquisitions and disposals.

**Lord Greaves:** My Lords—

**Lord Framlingham:** My Lords—

**Lord Greaves:** My Lords, I am grateful. Will the Minister, with me, step back a little, think about the situation two years ago and consider how different it is now? Two years ago we were talking about the Government wanting to flog off most of the forestry estate. How different it is now. The Minister has congratulated the right reverend Prelate and his independent panel. Will he also congratulate the ministerial team in Defra on the way that they responded to the views of people throughout the country, in particular to the fantastic campaigns that existed? Is it not a win-win situation all round, with my honourable friend David Heath, as the Agriculture Minister, absolutely at the forefront of it?

**Lord De Mauley:** My Lords, I could not have put it better myself.

## Territorial Army

*Question*

*3.22 pm*

*Asked by* ***Baroness Seccombe***

To ask Her Majesty's Government, in the light of the planned expansion and reorganisation of the Territorial Army, whether they have plans to close any Territorial Army Centres.

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever):** My Lords, my noble friend will recall the Statement I made on 3 July, which stated that to maximise the potential for future recruitment, the Army will rationalise its presence by merging small, poorly recruited sub-units into larger sites, frequently in the same conurbation or in neighbouring communities. The overall number of Army Reserve bases will reduce from the current total of 334 to 308, a net reduction of 26 sites.

**Baroness Seccombe:** My Lords, the cadet movement, which one could say is the corn seed of our services, offers an exciting taste of service life and often provides a discipline that has not been part of young people's lives. There are many alternative attractions on their doorstep. Does the Minister agree that it is vital that the cadet detachments are situated locally? Many of those detachments at present are situated within the existing territorial centres. Given the recently announced closure of some TA centres, can the Minister confirm that there will be no loss of cadet locations in the short and long term?

**Lord Astor of Hever:** My Lords, I agree with my noble friend. Defence has well established, challenging and vibrant cadet programmes with very high reputations, which will continue to be fully supported. Cadet units provide an important link with local communities. Where cadets are co-located on a site for which there is no longer a defence requirement, I can confirm that we will pursue reprovision of the facilities for the cadets to ensure that a local cadet presence is maintained.

**Lord Rosser:** My Lords, on two occasions recently the Minister has declined to give an undertaking that the size of the regular Army will not be reduced to 82,000, as intended, unless the size of the trained Army Reserve has been increased to 30,000, as intended. Since it would be a serious failure of government responsibility if the implications of this possibility

[LORD ROSSER]
had not been considered, will he spell out what the impact would be on the capability of our Army if the size of the regular Army were reduced to 82,000 but the size of the trained Army Reserve had increased to only 25,000 or even fewer, not to the 30,000 intended?

**Lord Astor of Hever:** My Lords, we intend to maintain an appropriate force level to meet our planning assumptions. We will continue closely to manage the growth in the reserves and the reduction in regular numbers. These numbers will be kept under continuous review as we move beyond the end of operations in Afghanistan. Mitigation strategies are in place to ensure that we can take early action to maintain an appropriate force level. These include innovative recruiting campaigns and measures to improve retention.

**Lord Rogan:** My Lords, if any TA centres currently owned and administered by regional RFCAs are closed and subsequently sold, can the Minister assure us that the proceeds of these sales will be retained by the local RFCAs, thus enabling them to improve their remaining stock?

**Lord Astor of Hever:** My Lords, 38 sites are no longer required for defence forces, of which 35 have been vacated by the Army. This does not necessarily assume that every surplus site will eventually become a disposal. The future of each vacated site will be taken forward on a value-for-money basis in consultation with the interests of the local communities involved. If the site is owned by the MoD, once vacated it will be handed over to the Defence Infrastructure Organisation and offered to other government departments. If no other use is found, it will be disposed of.

**Lord Addington:** My Lords, will the Minister give us a little more information about the nature of the local centres of recruitment for this new territorial reserve? Unless you can get to them easily, the idea that people will become a part of it voluntarily will be damaged.

**Lord Astor of Hever:** My noble friend makes a good point. Working with local communities is vital. We are very grateful for the support that reservists and, indeed, regulars receive from their local communities, and we hope that this will continue. While we are vacating a small number of sites, we will retain more than 300 locations across the UK where individuals can undertake service in the Army Reserve.

**Lord Foulkes of Cumnock:** My Lords, I declare an interest as a former member of the Territorial Army. I know that that surprises some people opposite. I may be a bit simple, but could the Minister explain the logic, when the Government are seeking to increase the number of members of the Territorial Army, of closing TA centres?

**Lord Astor of Hever:** My Lords, I am not at all surprised that the noble Lord was in the Territorial Army. He has that military demeanour, and cut a fine dash when he came into the Ministry of Defence the other day. We need to expand the Army Reserve to reflect the future liability of 30,000 trained reservists. To deliver that, the supporting structure needs to be changed. We are confident that the Army Reserve will continue to demonstrate its ability to adapt to new requirements.

**Lord Brooke of Sutton Mandeville:** My Lords, how many of the 35 sites that will no longer be used are in Scotland?

**Lord Astor of Hever:** My Lords, there are seven sites in Scotland where there is no longer a requirement for Army Reserve basing as a result of structural change. These are Wick, Bothwell House in Dunfermline, Sandbank, Keith, Kirkcaldy, Carmunnock Road in Glasgow and McDonald Road in Edinburgh. One site, Redford cavalry barracks in Edinburgh, will be reopened.

**Lord Clark of Windermere:** My Lords, how are the Government to expand the provision of officer training courses in groups of universities?

**Lord Astor of Hever:** My Lords, I am not briefed on officers at universities but I think that the answer is yes; we want to continue that and grow it because it is an important source of officers for the reserves.

## Whole-life Sentences

*Question*

*3.29 pm*

*Asked by* ***Lord Lloyd of Berwick***

To ask Her Majesty's Government what is their response to the decision of the European Court of Human Rights in the case of *Bamber and others v United Kingdom*.

**The Minister of State, Ministry of Justice (Lord McNally):** My Lords, the Government are disappointed with the court's ruling. We are making a full analysis of the judgment and will provide our considered response in due course.

**Lord Lloyd of Berwick:** My Lords, the noble Lord will be aware that the Grand Chamber of the European Court of Human Rights recently decided by 16 votes to one that the 49 prisoners currently serving whole-life sentences in the United Kingdom are entitled to a review after 25 years. A review does not mean that they will necessarily be released. Can he confirm that whole-life prisoners had always been entitled under our law to a review after 25 years until they lost that right in 2003, it seems almost as a result of an oversight? Will he therefore ensure that the right to a review after 25 years is restored to all our whole-life prisoners as soon as possible in accordance with the court's decision?

**Lord McNally:** My Lords, first, I am grateful to the noble and learned Lord for setting out the chronology very accurately. The right to review was there until 2003. Whether its removal was by an oversight, I do not know, but removed it was. All that I can say about the court's judgment I said in my Answer—we are analysing it and will provide a considered response in due course.

**Lord Thomas of Gresford:** Are the Government aware that the suggestion made by the noble and learned Lord, Lord Lloyd, was part of the judgment of the British member of the court, Judge Mahoney, who unreservedly subscribed to the conclusions and reasoning of that judgment? Ought not the Government give extra weight to the views of the British judge in that regard?

**Lord McNally:** My Lords, I am not sure whether in an international court one would take cognisance of one judge over another—I am not sure of the protocol of such courts. I do know that it was a considered judgment that merits careful study by the Government, which is exactly what we are doing.

**Lord Morgan:** My Lords—

**Lord Tomlinson:** My Lords—

**Lord Morgan:** My Lords, does not this judgment raise the very important legal principle of rehabilitation? It does not say that whole-life prisoners should be released or that the British Government should take any action, but it does suggest that they retain what the court called the right to hope, the possibility of atonement and the possibility of a review, as in many other countries. Is this not a very serious issue of penal philosophy that should be considered as such?

**Lord McNally:** My Lords, I fully agree with the noble Lord, and I think that both interventions have helped to clarify something that is not necessarily clear in coverage by the media. This judgment did not say that anybody should be released immediately or that whole-life tariffs may not be imposed, but it did say that we should look at such sentences in the light of what was described as penological purpose—punishment, rehabilitation and prevention. The court held that the system in England and Wales, which provides only for compassionate release, was not sufficient.

**Lord Elystan-Morgan:** My Lords, does the Minister accept—

**Lord Tebbit:** My Lords, it is this side.

**Lord Elystan-Morgan:** Cross Benches!

**The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford):** My Lords, it is this side. Then I am sure we will have time if we get a crack on.

**Lord Tebbit:** My Lords, can my noble friend perhaps read out a list of the names, nationalities and legal qualifications of the judges who interfered in our affairs?

**Lord McNally:** I think the best thing that I can do is place a list in the Library. Over the years, the court has held against Britain in about 3% of cases. During that period, we have had the great benefit of being part of a continent-wide concept of upholding human rights, of which we should be proud.

**Lord Elystan-Morgan:** Does the Minister accept that implementing faithfully a decision of the European court is not a peripheral luxury but something that binds us in law and in honour, and that the greatest architect of this institution was in fact Sir Winston Churchill?

**Lord McNally:** There are a number of architects; Sir David Maxwell Fife was a notable originator. However, what the noble Lord said is absolutely right. That is precisely why, given the importance of this judgment, we intend to give it a full analysis and will provide our considered response in due course.

**Lord Tomlinson:** Does the Minister agree that we do incredible damage to our international reputation for upholding the rule of law when, every time we get a judgment from the European Court of Human Rights, there is a knee-jerk reaction from Members in another place, calling for us to abrogate our responsibilities under the European convention?

**Lord McNally:** My Lords, that is why my Answer to this House is that we are making a full analysis of the judgment and will provide our considered response in due course.

## Hereditary Peers By-Election

*Announcement*

*3.37 pm*

*The Clerk of the Parliaments announced the result of the by-election to elect a hereditary Peer in the place of Lord Reay in accordance with Standing Order 10.*

*Three hundred and thirty-four Lords completed valid ballot papers. A paper setting out the complete results is being made available in the Printed Paper Office. That paper gives the number of votes cast for each candidate. The successful candidate was Lord Borwick.*

## Delegated Powers and Regulatory Reform Committee

*Membership Motion*

*3.37 pm*

*Moved by* ***The Chairman of Committees***

That Baroness Farrington of Ribbleton be appointed a member of the Select Committee.

*Motion agreed.*

## Draft Deregulation Bill Committee

*Membership Motion*

*3.37 pm*

*Moved by* ***The Chairman of Committees***

That the Commons message of 11 July be considered and that a Committee of six Lords be appointed to join with the Committee appointed by the Commons to consider and report on the draft Deregulation Bill presented to both Houses on 1 July (Cm 8642) and that the Committee should report on the draft Bill by 16 December 2013;

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

B Andrews, L Mawson, L Naseby, L Rooker, L Selkirk of Douglas, L Sharkey;

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

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

That the Committee have power to appoint specialist advisers;

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

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

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

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

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

## Armed Forces (Retrial for Serious Offences) Order 2013

## Armed Forces (Court Martial) (Amendment) Rules 2013

*Motions to Approve*

*3.38 pm*

*Moved by* ***Lord Astor of Hever***

That the draft orders laid before the House on 17 June be approved.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 8 July.*

*Motions agreed.*

## Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2013

*Motion to Approve*

*3.38 pm*

*Moved by* ***Lord De Mauley***

That the draft regulations laid before the House on 13 June be approved.

*Relevant document: 5th Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 8 July.*

*Motion agreed.*

## Mesothelioma Bill [HL]

*Report*

*Relevant documents: 1st, 2nd and 6th Reports from the Delegated Powers Committee.*

*3.39 pm*

***Clause 1 : Power to establish the scheme***

*Amendment 1*

*Moved by* ***Lord Freud***

**1:** Clause 1, page 1, line 3, after "may" insert "by regulations"

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** My Lords, I thank noble Lords once again for their commitment to this Bill and for their amendments. Before dealing with this group of government amendments, I will make some general remarks and explain some of the work that has gone on since we last met in Committee.

In Committee, many noble Lords expressed concern at the close working with the insurance industry that this Bill has necessitated. The noble Baroness, Lady Masham, expressed particular concern that the appointment of a scheme administrator was already a done deal with insurers. I offer my assurance that this is not the case and that we intend to run an open competition for the contract of scheme administrator, which will be chosen through the open tender process according to our commercial criteria. I hope this reassures noble Lords.

Turning to the issue of poor record-keeping practice in the industry, I think we all agree that we must work not only to support those who have fallen foul of poor record-keeping and tracing in the insurance industry but to correct it and stop it happening in the future. The creation of the Employers' Liability Tracing Office—ELTO—was a step in the right direction, but there are still insurers that are not tracing as they should be. Since we last met, I have had a very positive meeting with the Financial Conduct Authority. I have since received a very informative letter from the FCA. I found the following extract particularly positive:

"We are further strengthening our existing rules with new requirements for firms to have effective processes for conducting tracing searches for historical policies upon receipt of a request from a consumer or a consumer's representative. These new rules will become effective from 4 December 2013. We therefore expect any firms that do not currently have adequate tracing mechanisms in place to develop them in advance of that date".

In brief, if an insurer is expelled from ELTO for not tracing as it should or the FCA receives other intelligence suggesting poor or non-existent tracing, this will serve as an immediate red flag to the FCA. It will then put into place its enforcement action, which can include a supervision visit from the FCA.

One further step that the FCA is taking, which was detailed in the letter, gave me particular confidence that the appropriate mechanisms are in place to ensure compliance. The letter states:

"We also look to gather market intelligence to assist us in taking a risk-based view. We are exploring the possibility of a memorandum of understanding with ELTO that, subject to the legalities of this, would allow the FCA to access the data from ELTO's own auditing process. This would allow us to concentrate our supervision resources on higher-risk categories of firms".

I hope that noble Lords who have been following this so intently can agree that this represents very positive progress.

Another issue that we discussed in Committee was the establishment of an oversight committee. We welcome this proposal and have been exploring with stakeholders how it might operate. As ever, there is a range of options that we need to consider, and we continue to do so. We would prefer a non-legislative solution if possible but we are aware that noble Lords may wish to see something on a more statutory footing. I ask noble Lords to consider the issues associated with trying to establish a new non-departmental public body as we discuss oversight further.

*3.45 pm*

Another issue that rightly received significant attention in Committee was that of the rate of payments to be made. Perhaps it will help if I outline how we have arrived at where we are on this matter. Insurers have made it clear that paying an amount equal to 3% of employer's liability gross written premiums is affordable, to the extent that they should not then need to pass these costs on to employers. The costs of the scheme in the first few years will be higher because all eligible people diagnosed between 25 July 2012 and the start of the scheme will be paid alongside people diagnosed at the time—contemporaneously—so we have introduced a four-year smoothing period to ease that initial spike in cost.

The ABI's analysts advised it that paying people 70% of average civil compensation equates to the 3% of employer's liability gross written premiums which they maintain it can absorb, whereas our analysis shows that the 70% tariff equates to less than 3% of written premiums. This is because the ABI's analysts and our own forecasts on numbers of applicants coming to the scheme also differ, and we have been unable to reconcile these discrepancies. I should mention at this point that when we refer to a percentage of average civil damages, the figures we are using are those published by the National Institute of Economic and Social Research. We have already published an ad hoc statistical report, setting these figures out.

In Committee, the Government proposed that the scheme should start paying people at the rate of 70% of average civil compensation. I stated previously that our intention was that the figures obtained from this equation will be uprated annually, in line with CPI. In addition, I have agreed that the amounts of civil compensation in mesothelioma cases must be current if we are expressing scheme payments as a percentage of civil compensation. I suggested that a review of the data every five years would enable meaningful trends to appear, given the relatively low volume of such cases. We will certainly be reviewing the level of civil compensation in mesothelioma cases on a regular basis and amending scheme payments accordingly. Nevertheless, I understand noble Lords' desire to pay people at a rate higher than 70% of civil compensation.

Following the debate in Committee, I have been in further discussions with insurers and have been able to secure an agreement to pay 75% of average civil compensation. This is more than the industry wanted to pay but, using the government analysts' figures, it halves the gap in the percentage of employer's liability gross written premiums between what was originally offered and the full 3%. I take this opportunity to thank noble Lords and to acknowledge that the pressure in this House on this matter has been a key driving force in achieving the increased rate. I know that noble Lords would like the scheme to pay even more than the 75% we have now achieved. However, we need to be certain that the industry can afford to pay more without passing disproportionate costs on to employers. The insurance industry guaranteed to us that if we keep the levy within proportionate limits, it will not increase premiums. We would need more clarity on the numbers of applications to and costs of the scheme as a percentage of gross written premiums.

Since we last met, we have been working on a proposed review process for the scheme, which I know noble Lords will welcome. I expect to be able to present firm details of such a process when we take this Bill to the other place but, for the time being, I will outline my ideas. We intend to look at the actual number of applications and real costs once the scheme has been running for long enough to give us reliable data. As I indicated when we previously discussed increases in average compensation payments, looking at numbers too soon would not provide us with stable data, nor would it show us much by way of trends.

The initial four-year costs-smoothing period would give use an ideal opportunity to collect actual numbers and costs. We would then be able to see what the real cost of the scheme is, compared to the current expectations about the percentage of gross written premium it will take up. We would also be able to assess whether or not costs had been passed on to industry and to what extent. That would put us in much better position to carefully consider whether we have set scheme payments at the right level and how far current actuarial assumptions have been borne out in practice. We have to be prepared for the fact that the ABI's analysts may be nearer the mark here, as we are dealing with behaviours in making applications to the scheme which are not easy to predict. We also need to bear in mind that costs to insurers will eventually reduce anyway as the numbers coming to the scheme will fall as time passes and fewer people are diagnosed with mesothelioma.

To summarise, we intend that scheme payments will rise in line with CPI each year. In addition, if the level of civil compensation also changes, we need to look again at the amount of the scheme payment to see if it should be changed in line with that of civil compensation. The initial four-year costs-smoothing period gives us an ideal opportunity to collect actual numbers and costs and to look at the level of scheme payments in a much clearer light. It will also give us an opportunity

[LORD FREUD]
to assess any reaction by the insurance industry that there might have been over the first four-year period. These proposals show that the current level of scheme payments strikes the right balance between paying people with mesothelioma and levying an amount from insurers that will not inevitably be passed on to employers. I also trust that I have reassured noble Lords that the Government are committed to considering necessary changes when an increase is justified.

I reiterate that the Government's intention is to support eligible people suffering from this terrible disease and to start making payments as soon as humanly possible. Indeed, timing is paramount. Mesothelioma deaths are expected to peak in 2015 and we aim to have a scheme in place by April next year. I ask noble Lords to keep this in mind during today's debate. Any delays will affect the very people we are trying to help. I hope noble Lords will forgive me for taking up time on these issues but they are critical as we consider the detail of the Bill.

**Lord Browne of Ladyton:** If your Lordships' House will permit me to intervene, I do not intend to engage in debate with the Minister at this stage on any aspects of his commendable "pre-statement", for which I thank him. It is consistent with the attitude that he has shown to this legislation and his handling of it in the course of our consideration. However, there is another matter which, as he knows, I have been discussing with the Bill team, which is not reflected in the proposed amendments on Report and which, therefore, will not be directly raised.

My concern is about the clarity of the drafting of Clause 2 and the interaction of parts of it. Without going into the detail of that, I have been in discussion and correspondence with the Bill team, and I am grateful to the Minister for allowing that to happen. We did not bottom-out our discussions about the fundamental issue but we revealed a number of things about the interaction between the draft rules and Clause 2. Before I came into the Chamber this afternoon, I got an e-mail saying that there was a recognised tension in relation to the issue of limitation between the draft rules and the current drafting of Clause 2. If the Minister is not in a position to say anything about this now, perhaps he will make time to say something on Report so that it will be on the record and will go to the other place to be considered.

**Lord Freud:** My Lords, I know that the noble Lord does not want me to go into detail, but I can commit to going on working with him on this issue, which is very technical. If we work out that something needs to be adjusted, we will have time to do it in the other place.

**Lord Wigley:** I express my appreciation for the increase from 70% to 75%, although a lot of us would have liked to see 100%. I would like clarification on the new matter that the noble Lord introduced with regard to the review. The mechanism for this might be introduced in another place. Will he shed some light on the means by which any changes could be implemented? Will order-making procedures be available, or will it be a matter of going back to primary legislation whenever such changes are needed in the light of developments?

**Lord Freud:** My Lords, I think that how we do this will go into secondary legislation. We are well covered. If we need to make an adjustment at primary level, clearly we will have an opportunity in the other place. However, my desire here, for reasons that noble Lords will understand, is not to have ping-pong between the two Houses, because I do not want to lose the extra weeks that could be taken up. If I am wrong in saying that this does not need primary legislation, I will write to the noble Lord. However, that is my view, without checking.

I turn to Amendments 1, 3, 7, 9, 10, 14, 31 and 33.

**Lord Wills:** I, too, thank the Minister for the work that he has done so far on the Bill. It represents an enormous step forward, for which the House is extremely grateful. The noble Lord, Lord Wigley, raised a very important point. It is infinitely preferable not to have to resort to primary legislation in future should changes be necessary under the review process. If the Minister feels that the Bill is not adequate in giving powers to the then Secretary of State to introduce any changes by secondary legislation, will such provisions be introduced at Third Reading or in the other place?

**Lord Freud:** Perhaps noble Lords will indulge me and allow me to reply to that question a little later this afternoon. It is a very technical question and I will double-check that my answer was reliable. I will come back to it. We will have another chance.

If there are no further interventions, I will turn to the rather drier amendments in this group. A number of noble Lords present today tabled amendments in Committee to require the rules establishing the payment scheme to be made by statutory instrument rather than having them simply published by the Secretary of State. The amendments in this group are aligned with a recommendation of the Delegated Powers and Regulatory Reform Committee. Again, I acknowledged the concerns behind these approaches. Today I am pleased to announce that this set of amendments aims to establish the diffuse mesothelioma payment scheme by statutory instrument rather than by publication by the Secretary of State.

Having made this change, a number of consequential amendments fall to be made to other clauses, so that previous references to "regulations" will now refer to "the scheme". Before noble Lords suggest that I am taking a backward step by amending the Bill so that it refers to "the scheme" instead of "regulations", I should add that the combined effect of the amendments will be that where "regulations" has been changed to "scheme", it will mean the scheme as set up by regulations.

We have also removed the ability of the Secretary of State to amend, replace or abolish the scheme, or publish the scheme as amended from time to time, as these matters will now be dealt with in regulations—as will the definition of a "specified payment" in Clauses 2 and 3. In addition, provisions for the amount of a scheme payment, for payment amounts to be dependent on age, and for the division of scheme payments between dependants are all now to be determined in accordance with scheme regulations. The same applies to the circumstances in which a person is or is not to

be treated as able to bring an action against the relevant employer or any relevant insurer for civil damages. These will now be dealt with in scheme regulations.

Amendment 31 provides for the first regulations setting up the scheme under Clause 1 to be subject to the affirmative resolution procedure, where the regulations must be approved by a resolution of both Houses of Parliament and for subsequent regulations to be subject to the negative resolution procedure. This approach follows a recommendation from the Delegated Powers and Regulatory Reform Committee. I thank noble Lords for their well informed views when we addressed this matter. I beg to move.

*4 pm*

**Lord Avebury:** My Lords, I thought it was best to defer my thanks until after the Minister had completed his remarks on this group of amendments. I express my warm appreciation for the considerable work that he has done on the Bill, resulting in his welcome announcement this afternoon that the payments will increase from 70% to 75% for civil compensation claims. Although that falls well short of what some of us had hoped for originally, I have to say it compares with the estimated £1 billion of cost that would have been paid by the insurance industry if the employers had not gone out of business and the employers' liability insurance policies had not been lost or, in some cases, possibly deliberately destroyed. That £1 billion is estimated by the Asbestos Victims Support Groups Forum UK as the amount that has been forgone over the years by victims, who have not been able to formulate claims for the suffering that they endured. At this stage, however, we have to be grateful and I echo the thanks expressed by others to the Minister for achieving this improvement in his discussions that he had with the insurance industry.

I should also like to take the opportunity to ask the Minister about a discrepancy in the DWP's July 2013 analysis, which has been circulated to noble Lords. Column 6 of table 5 relates to the total amount of the levy from the start of 2010 to 1 July this year. On the assumption that that is based on 100% of average civil compensation, the figure would have been £118.9 million. The amount that individuals would have received directly from the scheme over this period, according to column 5, is £98.5 million. Adding the £20,480 estimated cost per claimant—

**The Countess of Mar:** My Lords, I am sorry to interrupt the noble Lord, but we are debating Amendment 1, which the noble Lord, Lord Freud, has moved. Would the noble Lord, Lord Avebury, care to address that?

**Lord Avebury:** I thought that this was the appropriate opportunity to raise a point about the document that has been circulated and, if nobody objects, I shall continue with my remarks, which I can assure the noble Countess will be very short. This is the only opportunity that I will have to ask this question about the discrepancy in the figures that have been circulated by DWP. As I was saying, adding the £20,480 estimated cost—

**The Countess of Mar:** I am sorry, but the noble Lord is not speaking appropriately to the amendment that the noble Lord, Lord Freud, has moved. Would he address that, or would he prefer to sit down and ask his questions when we have later amendments on the subject?

**Lord Avebury:** If the Minister is prepared to listen to my question, we shall come to an end in a few minutes.

**The Countess of Mar:** This is Report stage and we should be addressing the amendments of the noble Lord, Lord Freud.

**Lord Ahmad of Wimbledon:** Perhaps I may clarify matters. The noble Countess is quite correct. This is Report and we should be addressing the amendment. I would ask my noble friend to make his point when we reach the relevant amendment.

**Lord McKenzie of Luton:** My Lords, I start by thanking the noble Lord for the amendments, which we support. Putting the scheme on a statutory basis responds to the debate that we had in Committee and to the recommendations of the Delegated Powers Committee. I thank him for that.

Perhaps I may be allowed the opportunity to pick up a few points from the noble Lord's opening statement—again, the thrust of which we are very happy with and supportive of, particularly the open competition for the scheme administrator. That is a very positive move. In addition, the improvement to the record-keeping, the progress of ELTO and the engagement of the FCA are to be welcomed. We knew the Minister's view on the oversight committee and hoped that it would be possible for him to table amendments for today. However, as that has not proved possible, we hope that there will be a commitment to do so when the Bill goes to the House of Commons.

We support the 75% as an improvement on the opening position. I hope that the noble Lord will not misinterpret subsequent amendments that we have tabled as being ungrateful for the efforts that he has made but I think that we have an obligation to pursue the matter further. The noble Lord put an important issue on the record concerning the scheme, its uprating and the review. The CPI uprating is to be welcomed, as is the review based on the practice and outcomes of the smoothing period. The key issue here, certainly after the initial—

**The Countess of Mar:** Again, I am sorry to interrupt the noble Lord but I wonder whether he will address Amendment 1 moved by the noble Lord, Lord Freud.

**Lord McKenzie of Luton:** My Lords, I have addressed it and was simply taking the opportunity to pick up a few points from the Minister's opening statement, with which I think he was trying to be helpful in setting the scene for this. I was also trying to be helpful by saying what our position is on that. It seems to me that that is my responsibility at this Dispatch Box on

[Lord McKenzie of Luton]
behalf of the Opposition. We have tabled an amendment, so we can pick that up in due course. The key thing for us is whether the levy rate will be reduced at the end of that four-year period or whether it can be maintained at its opening level. Obviously that will have beneficial implications for the rate of payments in due course, but perhaps we will come to that on some of our later amendments. However, I support the amendment moved by the Government.

**Lord Freud:** My Lords, perhaps I may quickly touch on some of those issues. The point raised by my noble friend Lord Avebury will be dealt with in the third group of amendments, but, as he shrewdly spotted, the figure of 75% comes out at £75 million of costs.

**The Countess of Mar:** I am sorry to interrupt the Minister but would he please address his amendments and not the bits between?

**Lord Freud:** I have very little to say because very few points have been raised about the amendments, but I do want to make one point. I was asked whether the review needed primary legislation and I said that it did not. I confirm that it can be done in regulations, as I was fairly sure it could.

I would not call any Member of this House ungrateful. I have genuinely always gained an awful lot from noble Lords when we go through these really complicated matters, whether in relation to the Welfare Reform Bill or the Mesothelioma Bill. In this case, in Committee I gained an awful lot from what people were telling me and I did my very best to act on that. That said, and with the intention of satisfying the noble Countess, Lady Mar, I hope that noble Lords will agree the amendment.

*Amendment 1 agreed.*

*4.15 pm*

*Amendment 2*

*Moved by* ***Lord Alton of Liverpool***

**2:** Clause 1, page 1, line 6, at end insert ", and

"( ) fund research into mesothelioma (through the research supplement under section (Research supplement))"

**Lord Alton of Liverpool:** My Lords, in moving Amendments 2, 20, 21, 22, 23 and 24, I join other noble Lords who have expressed their thanks to the noble Lord, Lord Freud, the Minister, for doing an incredibly tough job over the last year or so. It has been very well done. I am very grateful for his remarks earlier.

The Minister said that if the Bill were delayed—none of us intended to do that—it could cause further problems in due course. Nevertheless, I just hope he accepts that that is no reason for curtailing due parliamentary process in any way. Of course, it is up to the Government to decide what to do in another place. If your Lordships decide to include amendments to the Bill here, it will not be Members of another place who precipitate the ping-pong; it will be the Government.

With those words, I refer the noble Lord to the all-party support for this group of amendments, and to the letter that was sent to him and other Members of your Lordships' House, signed by some 22 Members. They include some of the leading authorities on medical research and the law and others with first-hand knowledge of a fatal disease that claims 2,400 lives annually and is predicted to kill a further 56,000 British citizens between 2014 and 2044. Dr Mick Peake, the clinical lead at the National Cancer Intelligence Network, is right when he says, "We must make every effort not to miss this opportunity to lead the world in this area and to finally make significant inroads into this dreadful disease for patients and their families".

The amendments before your Lordships seek to impose a levy of no more than 1% to raise funds to support research into the causes and treatment of mesothelioma, and have the wholehearted support of the British Lung Foundation. I thank it, and especially my noble friends Lord Walton of Detchant and Lord Pannick, and the noble Lord, Lord Avebury, who are co-sponsors of the amendments, and noble Lords who spoke in Committee and who through constraints of time might be unable to do so again today.

At the conclusion of Committee, it was the Minister who encouragingly said:

"Well, my Lords, I feel like adding my name to the amendment".

As recently as Monday, I met the Minister again—once again, I am grateful to him and his team of officials for the time and courtesy they have unfailingly given—to see whether we could find a way for him to translate that desire into a reality. I have offered to withdraw this amendment if the Government undertake to introduce their own at Third Reading, or indeed in the other place, and that offer still stands. Although I feel that the noble Lord has been a victim of the Whitehall curse, I want to put on the record that he has been deeply committed to ensuring more support for research. However, as he told us in Committee:

"I have hit a brick wall at every turn".

It is Parliament's job to demolish such brick walls.

Although new figures published yesterday show that the MRC has made a helpful increase in funding for mesothelioma research, the sums are still very modest and should be seen in the context of years and years of virtually no state funding. When viewed alongside the two cancers of closest mortality in the UK—myeloma and melanoma—the funds for mesothelioma still lag considerably behind. Unlike many other forms of cancer, rates of mesothelioma are still rising. The United Kingdom already has the highest mesothelioma mortality rates in the entire world, yet there is little by way of effective treatments and at present no chance of a cure.

This shocking situation was underlined by the Minister himself, who candidly told us in Committee:

"Something very odd is happening here when so little money has gone into research in this area".

In Committee he agreed that,

"There needs to be a kick-start process to get research going".—[*Official Report*, 5/6/13; col. GC250.]

That is precisely what this amendment does. It is a kick-start.

In a letter sent by his department to all Members of your Lordships' House on Monday, the Minister reiterated his support for increased support for research, but said that, "unfortunately, the mechanism proposed is just not viable".

With the assistance of the British Lung Foundation, I took the precaution of asking Daniel Greenberg QC to draft this amendment with me. I did so not simply because he is the editor of *Craies on Legislation*, *Stroud's Judicial Dictionary*, *Jowitt's Dictionary of English Law*, *Westlaw UK Annotated Statutes* and editor-in-chief of the *Statute Law Review*, but perhaps most importantly because he was parliamentary counsel from 1991 to 2010. Clearly, he knows a thing or two about drafting legislation, and presumably the Government would not cast doubt on the viability of the reams of legislation that he drafted for them.

The Minister will forgive me but in the nearly 35 years since I entered Parliament, I have heard the phrases "not viable" or "technically defective" as the refuge of last resort whenever we run out of good arguments. If the argument for a levy lacked viability, it would cast doubt on the whole principle that underpins this Bill, which is based on the imposition of a levy.

The Minister will recall that before Committee he was briefed to oppose the amendment on the grounds that there was no precedent for hypothecation and to raise that other old bogey of "legal obstacles", the Human Rights Act. To answer those objections, noble Lords gave the noble Lord the precedent of Section 123 of the Gambling Act 2005, Sections 24 and 27 of the Betting, Gaming and Lotteries Act 1963, the HGV Road User Levy Act 2013, and other industry levies, including the fossil fuel levy, the levy on the pig industry to eradicate Aujeszky's disease and the Gas Levy Act 1981. As my noble and learned friend Lady Butler-Sloss and my noble friend Lord Pannick made abundantly clear, the idea that such a levy was an infringement on the Human Rights Act is, frankly, risible. Indeed, my noble friend Lord Pannick said:

"It would be quite fanciful to suggest that there is a legal reason not to support an amendment".—[*Official Report*, 5/6/13; col. GC 247.]

None of those shadow-boxing parliamentary arguments will do. They are simply not worthy of an issue that has lethal consequences for so many of our countrymen. Why has mesothelioma research had this Cinderella status? Why does it require Parliament to put it right? Why has it for so many years received little or no state funding? In Committee, the Minister provided clues. He said that mesothelioma,

"was an unfashionable area to go into and therefore the people who wanted to make their careers in research turned to other cancers. As a result, good-quality research proposals were not coming in and therefore the research council did not feel that it could supply funds. That is the reason and it has been the reason for decades".—[*Official Report*, 5/6/13; col. GC 253.]

The advisers to the Minister at the DWP have written that there is no lack of necessary skills for research into asbestos-related diseases but that there are perverse incentives to tackle what are perceived as more tractable research questions or tumour types that are considered easier to study and, where possible, to build on past progress. They said that research bids that were seen as likely to fail were not being presented. Therefore, it is not a lack of capacity in the field that is the problem; as my noble friend Lord Kakkar outlined in Committee, many eminent researchers are interested in mesothelioma research. High-quality bids have been in short supply in the past decade precisely because leading academics knew that it was pointless putting time and effort into preparing a bid that was unlikely to succeed.

Dr Robert Rintoul, consultant respiratory physician at Papworth Hospital and chief investigator of the recently launched mesothelioma tissue bank, told me that if more funding is made available, big labs will suddenly get interested in mesothelioma, which will increase the quality of research grants. Dr John Maher, honorary consultant immunologist at King's College Hospital, said, "As I write, we have a clinical-grade viral vector ready for use, an optimised and patentable manufacturing process and a recently licensed GNP manufacturing facility available to generate cell products. However, there are no realistic prospects of obtaining funds to undertake such work in mesothelioma in the near future". There clearly is no question that further investment in mesothelioma research is urgently required.

We have heard from the Minister that this will peak in two years' time, but listen to this stark warning from Dr Stefan Marciniak, the honorary consultant physician at Cambridge University's Institute for Medical Research, who told me that there will be a continued increase in cases worldwide well into this century owing to the ever-increasing use of asbestos in the BRIC countries, and that carbon nanotubes share frightening similarities with asbestos-like minerals and could lead to a second wave of mesothelioma. That is why we need urgent research

I am delighted to see the Minister and his noble friend Lord Howe on the Front Bench today. The Minister will be sponsoring a reception later this month on mesothelioma research for an invited audience of some 40 people. I know that he will agree that such meetings, welcome though they are, are not enough and certainly not a substitute for statutory obligations. By themselves, such initiatives are unlikely to lead to the sea change in investment that is needed to ensure that the recent advances in mesothelioma research are sustained. If we do not seize this legislative moment, all the talk will vanish into the ether. It will be the informal approach that lacks viability, not this amendment.

As my noble friend Lord Walton of Detchant suggested in Committee, the amendment proposes that the funds be administered by a competent third party, which would have no difficulty in investing in all the different types of research that are so urgently required. We need both a statutory levy on the insurance firms and a greater effort from our public research institutions in dealing with a disease that will kill more than 2,000 people every year in the United Kingdom. It is vital that we as legislators grapple with the source of so much misery and suffering, which is the reason, after all, for the millions of pounds of compensation payments for which the Bill provides.

The amendment proposes a commendably simple approach and, crucially, has not been opposed by the insurance industry, whose representatives I met last

[Lord Alton of Liverpool]
week. No letter has been received by Members of your Lordships' House from the industry opposing this very modest amendment.

Having listened to suggestions made in Committee by the noble Lord, Lord McKenzie, and others, we explicitly provide in the amendment for the scheme—a levy of no more than 1%—to be proportionate. The supplement reflects insurers' market share, as the main levy contained in the Bill already does.

In the face of a vicious disease that according to the Government's figures will claim the lives of some 56,000 more British citizens and the lethal nature of which we have known about since the Merewether report of 1930, it would be nothing short of a national scandal if we did not seize this rare legislative chance to offer those who have faced the blight of this horrific disease something better than what has gone before. I beg to move.

**Lord Walton of Detchant:** My Lords, I have been pleased to add my name to this amendment, so forcefully and ably proposed by my noble friend Lord Alton. This is an appalling and tragic disease. Although my specialty was never respiratory medicine, in the course of my professional career I saw many people suffering from mesothelioma and recognised to the full its utterly devastating effects. Indeed, one such person was a professional colleague of mine who was a consultant neurologist. One of the disease's most unfortunate features is that, after exposure to asbestos, particularly blue asbestos, the incubation period is extraordinarily long. People sometimes do not develop the disease for many years after exposure. Indeed, I recently learnt of an 87 year-old man who had developed mesothelioma for the first time, having worked at the age of 40 as carpenter cutting up sheets of asbestos. That is one of its appalling features, and its effects are utterly distressing. It is not a localised cancer that grows in a single location where a surgeon can remove it; it is a diffuse involvement of cancerous tissue that grows over the surface of the lung, between the lung and the chest wall. It gradually begins to strangulate the lung and eventually causes respiratory failure. It is a devastating disease—I need say no more.

However, as my noble friend has said, research on this topic is extraordinarily limited. I speak as someone who had 14 years' involvement with the Medical Research Council, ending up as a member of the council for four years. At that time, we received research grant applications from a huge number of notable doctors and scientists seeking to research particular conditions.

The MRC, as part of its policy, used to identify priority areas which it saw as requiring further research effort, but it did not identify single diseases such as mesothelioma. It talked about problems of mental health, and about problems of ageing. Even the notable Cancer Research UK campaign, which has been a massive contributor to research in cancer in the broadest sense, has not identified single-disease conditions as having a particularly high priority in its programmes.

It is interesting that the British Lung Foundation and four leading insurance firms three years ago reached an agreement under which they collectively granted £1 million a year for three years to invest predominantly in mesothelioma research. The results were impressive. New researchers from other fields who had never thought of working on mesothelioma started to take an interest. This led to the creation of Europe's first mesothelioma tissue bank, storing biological tissue and funding work to identify the genetic architecture of the disease.

My experience as a doctor, having been involved with a huge number of different charities funding research over the years, is that the existence of charities that are established to support research on single diseases has been immensely valuable and important in attracting new scientists into the field for which they have provided funds. One has to think only of the British Heart Foundation, which has given a massive impetus to work on heart disease. Without the money which the Multiple Sclerosis Society has collected over all the years, we would never have had the same effect.

In my research field of neuromuscular disease, had it not been for the work of the Muscular Dystrophy Campaign there is little doubt that we would not have reached the stage that we now have, where research on exon skipping has led to the introduction of a drug for the treatment of the most severe form of the disease. Those are massive developments, but they came about because funds had been raised by individual charities and groups specifically for research in that disease.

As my noble friend said, until this recent initiative by the British Lung Foundation, the funding for research on mesothelioma had been miniscule. Unfortunately, the funding by the BLF and others has now run out. The sole purpose of the amendment is to persuade the Government to accept that a tiny percentage of the levy which they already lay on insurance companies for the support of patients with this condition and their families should be specifically devoted to research. That could make a massive contribution to the future of patients with mesothelioma and to the development of an effective treatment in the foreseeable future.

The Government cannot protest on the grounds of hypothecation, because the levy under Clause 13 is already hypothecated. They cannot just say that people working on mesothelioma can apply to the Medical Research Council. Of course they can, but the crucial point about the levy is that it would provide funds that will attract scientists to work on that highly intractable problem. The fact that it is intractable is not an excuse. It deserves more attention, it deserves funding, and this group of amendments is one way to make certain that that funding will be made available and that scientists will be attracted to work in this field.

*4.30 pm*

**Lord Selsdon:** My Lords, I thought that the death sentence was cancelled many years ago, but I almost seem to have heard my own death sentence now. I worked with asbestos for many years. I picked up Cape blue. Every now and then, when you get a cough in your throat, you think, "Oh, have I caught this disease"—I cannot even pronounce it—"Is there something wrong with me?". That was during a period in industry. I came out of the Navy, where of course we had masses of asbestos protecting ships, in repairs and elsewhere. I worked with it. It was to some extent a mystical product because it was the only fire protection kit available.

I then went into industry because of the new developments. These were the new plastics, which were suddenly to replace the whole of the construction industry. I learnt about polyurethane, formaldehyde, polytetrafluoroethylene, poly this, poly that. I would work on the shop floor without a mask, because when you are young you do not have a mask, and when sent out to do roofing materials, lay asbestos cement, cutting and so on, of course we did not wear heavy boots with protective caps; one wanted to be flexible. We did not have safety ladders; we slid down the outside. When I was working on the Blyth Colliery project as a young rep up in the north, I learnt about mining diseases—silicosis and all those things that I could not pronounce.

However, that was another period of time. Now, quite suddenly—and, I think, correctly; I have been impressed by what I have heard today—out of this something has been identified. I have tremendous regard for what the noble Lord, Lord Alton, does, but it is the right thing in the wrong place. This Bill is the right one to go through, and it could have gone through years ago. As I tried to look at the figures, I suddenly realised that I am even more grateful to your Lordships' House because 50 years ago, when I first came here, I would not have left the asbestos and the plastics world without having to be in your Lordships' House. I changed my job and went into building and industrial research and I have learnt, over many years, an enormous amount from noble Lords and have great respect for them.

I think that my noble friend Lord Freud and his colleagues have got it right. The question that I ask is: why was this not done a long, long time ago? What is being done about all those other historic diseases that may have come from chemicals of one sort or another? As we have new research developments, those who develop a particular product never think of the future. They do not understand what smells and other things can do. I never wore a mask and now I feel that I am starting to cough a bit, but I have learnt a trick. In your Lordships' House, when you stand up to speak, many people need a glass of water or need to clear their throat. That may lead them to believe that they have one of these industrial diseases. However, it is strange but there is a little trick that you can do: wiggle your toes. That gets the circulation going and stops you having a dry throat and having to look to the Doorkeepers to ask for water.

I say to the noble Lord, Lord Alton, that I will help in any way that I can to raise money for a research fund and others. I think that the way to approach it is to look at those who may have had great success in property development or things of this sort. Located in their buildings—probably in almost every building in London—are likely to be unacceptable levels of asbestos. However, the levels are not unacceptable until you find it. It may be behind every board. We used to make a product called asbestolux, which was a fire-proofed, simple board used in all homes instead of plywood, which was too expensive at that particular time.

Throughout the land, from our colonies, asbestos, such as the Cape blue asbestos, is virtually everywhere. The danger is, once you try to move it and destroy it, you create dust and some of the research has not yet managed to identify how you screen it. Perhaps your Lordships have been in a block where someone is redeveloping a flat and before you know it, in comes an enormous team of people with large fans that suck and circulate. You wonder whether that is taking out some of the micro ingredients that come with asbestos.

Obviously, you will find that in the building trade, people do not necessarily follow what are called "building regs". Therefore, many accidents have happened with saws and so on that could have been solved. Therefore, to the noble Lord, Lord Alton, and to others, I say: let us just get on with this Bill and get it through. It can do a lot of good as it stands. Do not hold it up and I will see what we might be able to do to encourage some support anywhere else. I am grateful to your Lordships for listening to me and I feel that perhaps I will not fade away quite as early as I thought.

**Lord Pannick:** My Lords, I have not wiggled my toes but I have added my name to the amendment of the noble Lord, Lord Alton. In his compelling speech, the noble Lord referred to the letter that the Minister sent on Monday. In it the Minister expressed his support for increased research, but he added that,

"unfortunately, the mechanism proposed is just not viable".

The letter does not provide what we lawyers call further and better particulars as to why the Minister believes that the proposal is not viable; nor did the Minister throw any light whatever on this matter in Grand Committee. Indeed, in his opening remarks this afternoon the Minister very helpfully referred to a number of other matters, but he did not give any explanation in relation to this issue.

In Grand Committee, the Minister focused on a concern that research funding was the responsibility of the Department of Health, while this was a DWP-sponsored Bill. I hope that we will not hear that argument again today. As a matter of law, of course the Government are indivisible, and, as a matter of efficiency, government departments talk to each other. I am encouraged to see the noble Earl, Lord Howe, in his place today.

What other reasons, therefore, could there possibly be for the Minister to suggest that the proposal of the noble Lord, Lord Alton, is not viable? The Government must be satisfied that Clause 13 of their own Bill is viable in providing a levy. These amendments simply provide for a research supplement on this levy, which would be clear as to those who are obliged to pay, the amount and the purpose. Nor can it be that the Minister thinks that these amendments do not reach their target. As the noble Lord, Lord Alton, mentioned, the amendments have been drafted by Daniel Greenberg, a former parliamentary counsel of distinction, who is editor of the authoritative work *Craies on Legislation*.

Nor could it sensibly be suggested by the Minister that the amendments are not legally viable because they might be the subject of some legal challenge under the Human Rights Act or the European Convention on Human Rights. The Bill contains a levy and there are many other examples of statutory levies introduced by Parliament to advance good causes. The noble Lord, Lord Alton, has given a number of examples;

[LORD PANNICK]
I mentioned in Grand Committee the levy on bookmakers under the Betting, Gaming and Lotteries Act 1963 for the purpose of improving horse racing in this country. If, as Ministers must believe, the levy in Clause 13 is legally viable and those other levies are legally viable, I cannot understand why the amended levy of the noble Lord, Lord Alton, is not equally viable. Any legal action to challenge an amended clause—amended in the terms of the noble Lord, Lord Alton—would be a legal action, to coin a phrase, that is not legally viable.

There is a vital need for research and research funding to combat this awful disease. To include these amendments in the legislation would encourage research. I do not accept for a moment the concern expressed by the noble Lord, Lord Selsdon, that for us to do our job and improve the Bill would somehow hold it up. There is ample time for debate on such matters if—I hope it will not be the case—the other place disagrees with us. When it comes to a choice between liability on the insurers and the Minister's concerns about viability, I am with the noble Lord, Lord Alton.

**Lord Howarth of Newport:** My Lords, I, like all noble Lords, want to see more research into mesothelioma, above all into ways to prevent people developing this terrible and lethal disease. Noble Lords may be aware that quite recently Russia, leading a group of another six countries —Kazakhstan, Ukraine, Kyrgyzstan, Zimbabwe, India and Vietnam—blocked a move to have white asbestos listed under the UN convention that requires member countries to decide whether or not they should risk importing that substance. I fear that asbestos-related diseases, including mesothelioma, will long remain with us; we will need research for the long term.

I am entirely sympathetic to the purposes of the noble Lord, Lord Alton, his co-signatories to the amendment and the larger number of co-signatories to the letter that they were kind enough to send to us. I congratulate the noble Lord on his dedication in this matter. However, I have some difficulties in accepting the precise proposition of the noble Lord. I have no problem about hypothecating part of the levy for the purpose of research; I accept that precedents are there in the Gambling Act, the Betting, Gaming and Lotteries Act and other measures. I would not presume to take issue with the noble Lord, Lord Pannick, on the question of viability as he has just expounded it. In Committee, I heard noble Lords who are eminent in the fields of medicine and academic research support the case made by the noble Lord, Lord Alton, and I applaud them for that.

However, there is a problem. The insurance industry has told us that it is a willing funder on the basis that the Government will fund the major part of the costs of research. The employer's liability insurers see themselves as very much the junior partner in that partnership with the state. It was probably not the case with the gambling legislation and the other measures that have been referred to that the Government were expected to more than match the funding that the relevant industry should supply.

These amendments omit to state the implication for government funding of what they would impose on the insurance industry. I wonder why that is so. I can imagine that there are good reasons why the amendments do not require the state to commit itself to fund mesothelioma research specifically.

At one time I was Minister for Higher Education and Science; that experience confirmed me in my very strong belief in the arm's-length system. If we were to abandon that, it would be only a few steps to the relationship between Stalin and Lysenko. The arm's-length principle is essential for the maintenance of academic freedom and for research quality. Of course, it is legitimate for the Government to take a strategic view and, indeed, for the Department of Health and the National Institute of Health Research to set priorities and make broad allocations. As the noble Lord, Lord Walton of Detchant, told us, when he was a member of the Medical Research Council, the council identified broad priority areas, although it did not think it appropriate to identify individual diseases for which it was determined to fund research. That was because the criterion for making specific awards must be, above all, that of quality. Peer review, not Parliament or the Government, should determine who receives publicly provided funding for research. It follows from that that funding from the state cannot be guaranteed in perpetuity in any particular field of research.

Ample funding has already been provided by the state for which mesothelioma researchers are eligible to bid. The employer's liability insurers have already provided funds for research and have indicated that they are willing to continue to do so. Therefore, the problem of finding money for research into mesothelioma is not a lack of money on the part of the state or a lack of money forthcoming from the insurers. The problem must be that there has been a lack of high-quality proposals for research in this field. There may have been some quite good proposals; I think that some 80% of bids to the National Institute of Health Research are unsuccessful. Such is the competition for funding from that source that only the very best receive it, so it is not only people who care very strongly about mesothelioma who are disappointed about the lack of funding in any particular field.

Are we to legislate simply to compel the employer's liability insurers to do what they are already doing and have stated that they are willing to do? If, for good reason, we are not specifying an obligation on the Government, is the Minister none the less proposing to legislate thorough these amendments to place a moral, if not a legal, obligation on the state to fund mesothelioma uniquely, notwithstanding how weak academically particular proposals might be, and notwithstanding the needs that there are for research funding in other fields?

I am left feeling that these amendments, although I completely sympathise with their intention, do not yet articulate a satisfactory position. I think that in a moment the Minister will report to us on his conversations with the noble Earl, Lord Howe, who it is very good to see here listening to this debate, but I suspect that the noble Lord, Lord Alton, ought primarily to be addressing himself to the scientists rather than to the Government.

*4.45 pm*

**Lord Wigley:** My Lords, I support the amendment. I shall address in a moment the points made by the noble Lord, Lord Howarth, but I want to signal my support for Amendment 2 and the associated amendments, which will allow a very small percentage, some 1%, of the levy on active insurers to go towards a supplement for further research into mesothelioma. As we heard from the noble Lord, Lord Alton, a few moments ago, any way of encouraging new people to come into this area of research must be worth while, and that is something that the noble Lord, Lord Howarth, did not address in his remarks. At present the mechanisms are not generating enough research and the research that is currently being undertaken is in danger of being eroded, if not ended. I am also glad that Amendment 24 specifies that the Secretary of State must consult insurers, medical charities and research foundations before making regulations in this respect. I congratulate the noble Lord, Lord Alton, on his perseverance on the matter.

As has been mentioned, in 2011 the British Lung Foundation invested £850,000 in research into mesothelioma, and £400,000 was invested by other charities. In Committee the indications were that it did not appear that much money was coming from the Government. Now, if I understand it correctly, the Medical Research Council has found some rabbits to come out of the hat, and that is all to the good. However, more work clearly needs to be done. If we give due credence to the figures that have been quoted and requoted about the 56,000 people who are in danger of dying from this, if any progress can be made by way of research to reduce the likelihood of those people dying, that is something that we as a House have a duty to undertake. Whether or not this is the appropriate vehicle to do so, it is the vehicle that we have to hand at the moment and we should not lose this opportunity.

The agreement brokered by the British Lung Foundation has meant that over the past three years four large insurance firms have collectively invested £1 million a year into research in this area. I warmly welcome that initiative. It has seen concrete results, as has been mentioned, such as the creation of Europe's first mesothelioma tissue bank. However, that funding will soon be coming to an end and we need to ensure that the research goes on. The firms that were involved in the initial agreement have indicated that the industry as a whole should be involved in funding future research—that idea comes from them—and that a voluntary agreement would be unworkable. If we are to secure the breakthrough that we need in this area, funding must be made available for research. If that needs legislative underpinning, so be it. Perhaps the Minister can indicate that if the amendment passes, or if he finds another way to reach the same objective when the debate goes on to another place, he will consider including the possibility of a short annual statement on the amount of funding going into mesothelioma research from all sources and the progress that is being made.

**Lord Lester of Herne Hill:** My Lords, I greatly look forward to the Minister's reply. I just want to say one sentence. The very first thing I had to do when I came to the Bar in 1964 was to act in relation to the Industrial Training Act 1964, which, as I recall, imposed a levy on the building industry in order to subsidise training within the industry, and it worked perfectly well.

**The Lord Bishop of Norwich:** My Lords, I support this group of amendments and I thank the Minister for his work, which was well illustrated at the beginning of this debate. I knew very little about mesothelioma until I saw its debilitating effects on friends, including the former Bishop of Peterborough, Ian Cundy, who some Members may recall died in 2009. The knowledge that the cause of this cancer has been lurking in one's body for 20 years or more of active life may suggest in itself that more research into detection and treatment may prove valuable. There is nothing that can be done to rewrite someone's life history, which may include often unwitting exposure to asbestos while young, but much can be done to promote research into a disease that will kill 2,400 people in the UK this year—the equivalent of wiping out one of Norfolk's smaller market towns within 12 months. If that sort of tragedy happened it would be front page news but this passes us by too easily.

I am not sure that even now I fully understand why mesothelioma is such a Cinderella of cancer research but this amendment provides a practical way of providing a corrective. The levy proposed is practical and proportionate and it might even stimulate more high-quality researchers to think that this is a worthwhile and reliable area in which to have a sustained work programme over many years. I recognise too that it may even stimulate more voluntary contributions to such research, quite apart from what the Government may give. I also understand that it has some support within the insurance industry. Although I have no expertise in this area, from all that I have read—I am very grateful for the way in which the proposers of this amendment have circulated the House with such material—I hope the Minister will look on this proposal or something like it sympathetically.

**Baroness Masham of Ilton:** My Lords, I congratulate the Minister on his hard work on this Bill and I am pleased he understands what an awful condition mesothelioma is. It seems this condition has almost been written off as far as research is concerned. However, there are so many developments and advances in modern research that there should be research into all types of tragic conditions. There should always be hope. Research into one condition can often find a cure for another by chance. My noble friend Lord Alton of Liverpool explained the need for research so well. I hope your Lordships will support these amendments. It is good to see Ministers from two departments coming together. This is very hopeful. I support these amendments.

**Lord Stoneham of Droxford:** My Lords, I start by giving apologies from my noble friend Lord German who should be standing in my place today but is at a family funeral. I join in the praise for the two Front-Bench spokesmen for the dedication and commitment they have given to this legislation.

[LORD STONEHAM OF DROXFORD]

The amendment is worthy and I have admiration for the persistence of the noble Lord, Lord Alton. However, this is quite an easy target to win support for medical research and we have to question whether it is an effective amendment. All the evidence we have heard today suggests that it is not necessarily the lack of funding that is the problem but the lack of effective research proposals. That is what we should be addressing. If the insurance companies thought there was effective research to be supported, they would be the first to support it because it would reduce their liability. That is what we need to address. The Minister in his response should help us.

The other important thing is that this levy has been arrived at by negotiation and agreement. It is not just a statutory levy that we are putting in place because we think that it is appropriate. It has been arrived at through agreement and negotiation. Are we saying that we have to start these negotiations again as we will be putting a supplementary payment on the people who have agreed to this levy? We need to know whether this will mean a serious delay to the legislation and its implementation. The Minister should give us answers to the complications that these amendments could cause. We are interested in getting the benefits into the hands of the families who have suffered from this disease.

We also have to ask what we are arguing over. What are the sums of money that we are arguing over? They do not seem to me to be very large. The Minister should therefore tell us—I am sure that he will in his closing remarks—what efforts the Government are going to make to meet some of the requirements for funding if we can find effective research.

This issue seems worthy and worth support and it is very easy to argue for it. But what is the reality and effect of the amendment and what sort of delay will it cause to this legislation? Those are the key issues that the House should be looking at this afternoon.

**Lord Deben:** My Lords, the noble Lord, Lord Howarth, made an important contribution to this discussion. As a former Minister, I understand precisely the difficulties in which Ministers find themselves, particularly in the medical area, because there are many diseases that are extremely distressing and which, when specifically singled out, can cause all of us to feel that we ought to do something about it. There are few as distressing as this, but there are others in parallel.

It may be that what the Minister has said so far is the right answer, distressing and difficult though it is, particularly in terms of the danger that arises if we start deciding politically which diseases are properly sought after and which are not; this is a dangerous area to be in. My problem is slightly different. I hope that, in his response, my noble friend the Minister will not rely on the Treasury argument of hypothecation. One of the disastrous themes in this country's legislation is the refusal of the Treasury to accept that hypothecation is an essential part of sensible financial arrangements. Many things would be much better done if there was a clear connection between what people pay through tax and what happens.

I speak with an interest in mind, as a passionate believer in the environment. We will not get people to understand why they should pay congestion charges, for example, if the money is not clearly spent on reducing congestion. In other words, there needs to be hypothecation. I remember when I fought hard for and got the first hypothecated tax, the landfill tax, which few would now deny was very important. My noble friend the Health Minister remembers that as well as I do. It was a battle against a theology. I hope that, when the Minister comes to speak, he will do so in the terms of the noble Lord, Lord Howarth, and not in the terms of those who deny this kind of response—not on the basis of ensuring objective decisions by independent judgment, but on the basis that there is something inherently unacceptable about hypothecation.

If this country moved to greater hypothecation, it would be signally more democratic—although it might mean that the Treasury would have less opportunity to get its fingers on the money on its way to that for which it was needed. That is a wholly admirable aim: the effort to ensure that there is a link in the public's mind between what they pay and what they get is an essential part of our democracy. I hope that, of all the arguments my noble friend uses, he will eschew that one. I would not like to be pushed over the edge to not support him because of the importance of upholding the fine principle of hypothecation.

*5 pm*

**Lord Empey:** My Lords, the debate has been very interesting and, at many times, very moving. There is a general consensus that this is a terrible disease on which no proper research has been carried out. We all want to see that fixed. These amendments represent one attempt to achieve that; perhaps the Minister can direct us towards another mechanism.

The right reverend Prelate said that it was a Cinderella of a disease, and I think the arithmetic explains why. Some 56,000 people in this country are expected to die with it over the next number of years, but it is deemed by many drug companies—I suspect, and perhaps some academics—as a disease of the past. Therefore, what is the point of researching it and spending money when it is dying out, literally? Wrong—this is a disease of the future, not of the past. If somebody takes a moment to search the internet for ship-breaking in Bangladesh, Chittagong and all those places, there are whole generations who have yet to develop this disease because the exposure of those people began only in the mid-1980s. They probably would not even have got to the stage of actually developing the disease.

However, we have a dilemma. As the noble Lord, Lord Howarth, rightly said—I have had some responsibility for this area myself—research is a unique area. It is built up around individual institutions, where academics, particularly postgraduate students, are attracted to pursue research, and there are just not enough of them around. We are delighted to see the noble Earl, Lord Howe, on the Front Bench—I have to say that the concept of a brick wall, the term that the Minister used in Committee, and the noble Earl do not go together. Can the Minister and his colleague advise us whether there is any administrative mechanism that either department could use to encourage people to come forward, such as offering specific sums of money for a particular type of research—in other words, offer a carrot—so that there would be something

for academics to aim for? Is that one solution? I do not care whether it is through legislation or an administrative mechanism—I do not think any of us do—but there is a general feeling that this has to be fixed.

I come from a city that must be close to being the UK capital—maybe after Liverpool—of this disease because of its industrial past. I do not want to delay the Bill because we have made great progress, the Minister has done a good job and we have had a very welcome announcement today. We want to keep the momentum going but the issue remains unresolved. Something must be done, be it through legislation, administrative mechanisms or all government departments working together to encourage the research councils. Has the Minister had a negative response from the insurance companies or any other source to this proposal? Are they threatening that if this were to happen, it may cast a shadow on the whole scheme? I think the House would very much welcome his response. Perhaps, in his winding-up remarks, the Minister could tell us. None of us wants to delay things. I do not think that there is an appetite for any particular scheme, but we want a solution. If the Government can bring it about by another mechanism, I think we would all be pleased.

**Lord Kerr of Kinlochard:** I had not intended to speak but I am moved to do so by the austere and Robespierre-like logic of the noble Lord, Lord Howarth. He was supported by the noble Lord, Lord Deben, who I strongly agree with in his advice to the Minister to eschew the hypothecation arguments. My advice would be to also eschew the Robespierre argument advanced by the noble Lord, Lord Howarth. The Minister is actually in such a good mood today that I rather hope he is going to accept this amendment.

I do not think that the noble Lord, Lord Howarth, is right. From my passing experience of being involved with and watching the noble Lord, Lord Tugendhat, who I see is in his place, playing a principal part in a university medical research programme, medical research does not seem to have any difficulty in accommodating well placed money from foundations, trusts, charities or private philanthropy. I do not see why a levy should be any different and I reject the reference to Stalin. It seems that this levy could go direct, but if the research councils need to be involved in this at all, it does not follow that the awards displaced would necessarily have been of higher quality.

I do not accept that the purity of the system is affected if money comes in from other streams. Universities seem to have managed to cope with that very well over the years, so we do not need to follow such an austere argument as that of the noble Lord, Lord Howarth. Although I accept that there is a worrying logic to it, in practice it does not work like that.

**Lord McKenzie of Luton:** My Lords, this has been a wide-ranging debate. I do not think I will be drawn into issues of hypothecation, although it is a tempting subject for debate. Throughout our deliberations on the Bill and before, the noble Lord, Lord Alton, has been passionate and convincing about the case for funding mesothelioma research. He has been supported in this by many noble Lords, including those who have added their names to his amendments, particularly the noble Lords, Lord Walton and Lord Pannick.

The case that the noble Lord makes is thorough and incontestable. Despite knowledge of this terrible disease and its long latency over many decades, research spending by Governments has been derisory. The noble Lord contrasted the levels of research on diffuse mesothelioma with other cancers to reinforce his point but he acknowledges, as does the noble Lord, Lord Walton—and as indeed do we—that the insurance industry has funded such research in the past. The ABI has made it clear to us in discussion that it stands ready to do so again in the future, if the Government are prepared to play their part. They had said that they would match-fund. I hope that we will hear from the Minister in a moment that the Government will play their part, and how they will do so.

We all recognise that the noble Lord, Lord Alton, has made his case about the need for a national research effort, so the issue is not whether but how this outcome is to be achieved. His approach is focused on the insurance industry's contribution, which, as he explained, is set down by Amendment 24 as a "Research supplement" raised under regulations under the levy provisions. That supplement could not exceed 1% of that required for payments under the scheme. The proposed regulations must cover how such amounts are to be applied and the role of the scheme administrator. Of itself, the amendment makes no reference to the Government's obligations. I think that we will hear a different approach from the Minister about the plans that he would wish to develop to attract quality research funding for mesothelioma. If this is right, we need to understand the parameters of this: how much is involved and what is expected of the insurance industry. We also need to understand whether the approach is inconsistent with that of the noble Lord, Lord Alton, which is to raise a levy on insurers.

We have thought long and hard about this and which is the best way forward. Our shared objective is, I believe, to get properly funded research under way as quickly as possible and on a sustainable basis. We all acknowledge the commitment and integrity of the Minister and his desire to fulfil this objective. After hearing the Minister again, the noble Lord, Lord Alton, may consider that he has sufficient reassurance that his objectives will be met, albeit by the administrative route rather than the legislative one. Perhaps he has already concluded that from the extensive discussions he has had to date. If the noble Lord, Lord Alton, is not reassured, and presses his amendment, we are minded to support him in the Lobby.

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** My Lords, it may be a slight surprise to see a Minister from another Department of State responding to this amendment. However, my noble friend Lord Freud has asked me to speak to it as a reflection of the importance that he and I place on promoting research into mesothelioma. We are both sympathetic to the view that more money should be put into research on this disease. Indeed, before this amendment was tabled, my noble friend and I spent some time exploring possible routes for funding. It is the fruits of those discussions that I shall now cover. However, the mechanism proposed in this amendment is not the best way to achieve the objective that the noble Lord, Lord Alton, is aiming at.

[Earl Howe]

There are a number of reasons for this. In Committee, my noble friend set out some technical but none the less important arguments as to why the Government are resistant to the idea of a supplementary levy for mesothelioma research. I will not rehearse those arguments again and my noble friend Lord Deben need not worry as I am not going to rely on them at all. I need to stress that any additional research charge of the kind proposed by the noble Lord, Lord Alton, would, like all taxation, have to be paid into the Consolidated Fund and, if hypothecated, would then have to be paid out by the Treasury for a specific purpose. The Treasury does not normally handle tax income in this way, and there would need to be more convincing arguments before it could consider doing so for mesothelioma research.

The more substantive problem with the amendment is to do with research policy. As noble Lords will be aware—and the noble Lord, Lord Howarth, pointed to this—there is a fundamental, widely accepted principle that the use of medical research funds should be determined not just by the importance of the topic but by the quality of the research and its value for money. There is a good reason for this. There will always be more proposals for high-quality medical research overall than there are resources available for funding, and it is arguably unethical to support second-rate work in a particular area at the expense of higher-quality work in another equally important one. Noble Lords will understand that this is why, as a rule, public sector funders of research do not ring-fence funds for particular diseases. It was the same principle that prompted Dame Sally Davies to restructure the research funding that the Department of Health was putting into the NHS over many years, so that funds would flow, as they now do, to the most important, highest-quality research.

In the case of mesothelioma, the real issue is not just the money; it is the quality of the research being proposed. How can we try to ensure that the research proposals in this field reach the quality threshold required to secure funding? If that threshold is reached, funding is much less of a difficulty; indeed there is no need to think about the forcible gathering of funds from insurers. If noble Lords agree, the goal is how we stimulate high-quality research proposals without undermining the country's strategic research mechanisms.

**Lord Kerr of Kinlochard:** We have heard from Robespierre. I hope we are not now hearing from Danton. Will the Minister accept that most foundation, trust, charity or philanthropic money for medical research is earmarked for particular diseases or research topics? What is the difference between that and a levy from the industry for this disease?

*5.15 pm*

**Earl Howe:** My Lords, I accept that fully and I will come to that point in a second.

Certainly there was a blockage in the research process, but it was not total. There is good news. As the noble Lord, Lord Alton, informed us, spending on mesothelioma research is not as low as noble Lords might believe from the discussions in Committee. The latest figures from the Medical Research Council show that its annual spend on mesothelioma research rose from £0.8 million in 2009-10 to £2.4 million in 2011-12. We should not belittle those figures. That is in addition to the research supported by the £1 million a year donated by insurance companies to the British Lung Foundation, and research supported by the National Institute for Health Research. Therefore, on the ability of the system to support publicly funded mesothelioma research, we are not knocking at a closed door.

My noble friend Lord Stoneham is right that the issue that is holding back progress on research into mesothelioma is not lack of funding but the lack of sufficient high-quality research applications. This is an issue that we in the Department of Health, working with the National Institute for Health Research, have been seeking to address. I will now set out what we propose. There are four elements to it.

First, the National Institute for Health Research will ask the James Lind Alliance to establish one of its priority-setting partnerships. This will bring together patients, carers and clinicians to identify and prioritise unanswered questions about treatment for mesothelioma and related diseases. It will help target future research, and, incidentally, will be another good example of where patients, the public and professionals are brought into the decision-making process on health.

Secondly, the National Institute for Health Research will issue what is called a highlight notice to the research community, indicating its interest in encouraging applications for research funding into mesothelioma and related diseases. This would do exactly what the noble Lord, Lord Alton, wants, and what the noble Lord, Lord Empey, suggested. It would make mesothelioma a priority area.

Thirdly, the highlight notice would be accompanied by an offer to potential applicants to make use of the NIHR's research design service, which helps prospective applicants to develop competitive research proposals. Good applications will succeed.

Finally, the NIHR is currently in discussion with the MRC and Cancer Research UK about convening a meeting to bring together researchers to develop new research proposals in this area. The aim is for the event to act as a catalyst for new ideas that will further boost research into mesothelioma. I was very interested in what the noble Lord, Lord McKenzie, told us about the offer of matched funding from the ABI. I look forward to hearing more about that.

As my noble friend Lord Freud mentioned, on 25 July in the Palace of Westminster precincts, he and I will co-host an event run by the British Lung Foundation that will focus on mesothelioma. I will take this opportunity to invite noble Lords to join us to hear about current research and to get a family perspective on the disease.

The four steps that I have set out offer a better and much more realistic way of achieving what we all want to see happen. The problem with the remedy that the noble Lord proposed is that it will not of itself deliver that objective. I could sum up the issue by saying that the availability of funds does not guarantee the spending of funds. Nor does it guarantee the quality of research on which such funds would be spent. It is also worth

making the point that it would create a precedent that might encourage other and perhaps less deserving interest groups to seek special treatment for a disease about which they care passionately.

I hope the noble Lord will recognise that his amendment has galvanised the Government into action. He can credit himself with having achieved a valuable outcome by tabling it. I hope that he will consider not pressing it. I have given undertakings today that I will be keen to take forward with him and with all relevant stakeholders.

**Lord Wigley:** May I ask the noble Earl to respond to my earlier question on whether, in the context of the four proposals that he has brought forward, there might be a mechanism for some form of annual report on the progress of mesothelioma research so that we do not lose focus on this important issue?

**Earl Howe:** I think that there is scope for that, whether it is a stand-alone report or is built automatically into the report that is produced by the department or the MRC. I would be happy to take that idea forward.

**Lord Walton of Detchant:** Before the Minister sits down and before my noble friend responds, perhaps I may ask the Minister this question. Let us suppose that, in the light of the developments and proposals that he has outlined, the insurance industry—the ABI—decides, in the goodness of its heart and bearing in mind the importance of this problem, that it wishes to make an ongoing and regular contribution to research in this field. Would the National Institute for Health Research be precluded from accepting non-government funds or would such funding have to be channelled, for example, through the cancer research campaign?

**Earl Howe:** A very great deal of the research conducted in this country is funded by different sources. It is funded by the Government, charities, universities, and industry. Nothing in the arrangements that I have outlined precludes a joint arrangement for funding mesothelioma research, which is why I welcomed the indication that the noble Lord, Lord McKenzie, gave about the ABI and the possibility of augmenting whatever funds are forthcoming from the MRC or the NIHR. That is an important point to make. I think I have said enough. The ball is in the noble Lord's court.

**Lord Alton of Liverpool:** My Lords, I am always grateful to the noble Earl and I know that the House will appreciate what he has said about the four steps that he intends to take. I think he would agree, though, that there is nothing incompatible in taking those very welcome steps and supporting the spirit of this amendment. I made it clear when I spoke at Second Reading, in Committee and again today that if the Government—during the many discussions that the noble Lord, Lord Freud, and I have had about this—had been willing to accept the principle and come forward with their own amendment, I would have been happy to withdraw my own. The principle that I have been trying to underline is the need for a statutory requirement to step up to the plate to deal with this killer disease, which we all agree will take any number of lives—an estimated 56,000 before the disease completes its first wave. We heard in the quotations I presented to the House earlier today that there is a possibility that, in the BRIC countries and with new forms of asbestos being used worldwide, it will not be 56,000 who die, but many more.

The noble Earl has suggested that if such a levy were imposed, it would be swallowed up into Treasury funds and there would be no guarantee that it would then be used for its intended purpose. I do not think that any of us really believe that that would be possible. If Parliament has legislated that a levy of up to 1% should be imposed—that is all; it is a levy inside a levy and what this entire Bill is about—there is no reason why that money should not then be used for this specific purpose. The noble Lord has already said that this should be a priority area.

The noble Earl has said that there should be competitive research proposals; very good research proposals have been put forward but, unfortunately, have not gained traction because the funding has not been available for them. It has been a Catch-22 situation. It was also said that it would be unethical to support second-rate work. Nobody in your Lordships' House would suggest otherwise—of course we accept that there should be no second-rate work and, through the Medical Research Council and specified outside bodies, an evaluation would be made of the quality of that work and of the proposals that have been put forward.

The noble Earl said that around £2 million will now be made available, and that is welcome. However, the House should just bear in mind, for example, the £22 million being made available this year for bowel cancer, the £41 million for breast cancer, the £11.5 million for lung cancer and the £32 million for leukaemia. Those comparisons show the position in which mesothelioma still appears in this terrible league table.

The noble Earl also said, quite rightly—and the noble Lord, Lord Howarth, touched on this, too—that we should protect the purity of the system, but my noble friend Lord Kerr of Kinlochard dealt admirably with that argument and I can add nothing more to what he said. No one wishes to pollute the process but the Bill before the House is about one specific disease, and that is why this amendment is before your Lordships. It is not that we are being asked to set a precedent for any number of other things. Mesothelioma has a unique characteristic. The reason that the noble Lord has been able to negotiate with the ABI and the industry is that, for instance, smoking cigarettes cannot lead to mesothelioma. This disease is specific and that is why the industry has accepted its responsibilities in this regard. Therefore, it is different from other diseases, and that is why we were able not only to have this Bill but to exclude from it even other asbestos-related diseases, which cannot be said to be specific, as mesothelioma is. I think that that is a perfectly good reason for attaching to the Bill an amendment that deals specifically with this disease.

I am extremely grateful to everyone who has participated in this debate. I am sure that we listened with great care to my noble friend Lord Walton of Detchant, who said that this could make a massive contribution and that it could pave the way for a cure. The noble Lord, Lord Selsdon, was right when he

[Lord Alton of Liverpool]
asked why it was not done a long time ago. As long ago as 1965, the *Sunday Times* reported on work that had been done by the London School of Hygiene and Tropical Medicine. In cities such as Belfast, Liverpool, Glasgow and other epicentres of the disease, it had identified the nature of mesothelioma, as well as its very long hibernation period, alluded to by the right reverend Prelate the Bishop of Norwich, before it had its terrible impact.

I doubt that there are many of your Lordships who have not come across people who have contracted this disease and died within the two years—that is all it takes—from the time that it is diagnosed until death. The right reverend Prelate referred to the late Bishop of Peterborough. When we dealt with the LASPO legislation last year, the noble Lord, Lord McNally, told a deeply moving story at the Dispatch Box about his sister, who had died as a result of washing the dungarees and overalls of her husband, who had worked in the industry. This is something that can affect us all and we need to do something about it urgently.

The noble Lord, Lord Pannick, said that it might be claimed that the amendment is not viable. That has not been said in the debate today, yet it was said in the letter that was distributed on Monday. The amendment deliberately mimics Clause 13 of the Bill so that it does nothing that the Bill itself is not doing. It cannot possibly be challenged under the Human Rights Act, but perhaps we could be challenged under that Act by victims of mesothelioma if we fail to do enough or take the opportunity to provide for proper research to deal with this disease.

The noble Lord, Lord Wigley, said that the mechanisms that we have at the moment are not generating the research but he said that this vehicle is at hand. There is no reason at all why this should delay the legislation. As I told your Lordships in my opening remarks, I met with the ABI. The industry had expressed no opposition; indeed, it has been generous in providing what funds there have been in the past towards dealing with this disease. Therefore, there is already a precedent here. I am certain that if the Government were to say that they would make available matching money, even more funds would be made available by the industry. The noble Lord, Lord Howarth, touched on that point, and rightly so. Yes, there is a moral obligation. Because of the privileges issue, it would not be appropriate to include that here, but there is no reason why it could not be attended to in another place and there is no reason at all why this should become a matter for ping-pong.

The mortality rate for most cancers is falling while it continues to rise for mesothelioma. There are humane and altruistic reasons for supporting funding for mesothelioma research, but for the Government and the insurance industry there are straightforward financial considerations, too. It would be impossible to eradicate all asbestos from our homes, schools, hospitals, factories and offices.

The Bill represents a genuine desire to act justly to those who have been afflicted with mesothelioma, which is why I have supported the noble Lord, Lord Freud, throughout in placing the Bill before the House. However, the one certain way to prevent deaths from mesothelioma will be to find a cure. That will not happen without adequate resources and that in turn requires political will. That is why I thank all those who have spoken today in the debate and who have supported the amendment. I would like to test the will of the House.

*5.30 pm*

**Earl Howe:** Before the noble Lord finally decides what to do with his amendment, may I just explain why the Government have not brought forward their own amendment, which was one of his criticisms? We do not believe that a legislative route is necessary. We believe—as the noble Lord, Lord Empey, indicated—that we can do this in other ways. We can give the process exactly the kind of kick-start that was referred to in the debate much more effectively than can this amendment. Funders for research build areas for research by bringing researchers and clinicians together, not by throwing money at a problem, which is, I am afraid, what this amendment would do.

**Lord Alton of Liverpool:** My Lords, this is not about throwing money at problems. That is certainly something that I have always eschewed throughout the whole of my time in politics. You have to demonstrate the case and there is a case here. If 56,000 of our countrymen are going to die of this disease over the next 30 years or so, we have to find adequate resources to tackle mesothelioma. That is not being done by this Bill. We have a rare opportunity to do something about it.

**Lord Walton of Detchant:** Before my noble friend sits down and eventually decides what action he proposes to take, I wish to ask him whether he feels that the important developments referred to by the noble Earl, Lord Howe, relating to forthcoming meetings between the Medical Research Council, the NIHR and other organisations, might not—at the moment—be a useful way forward?

**Lord Alton of Liverpool:** I am grateful to my noble friend and yes, of course I am delighted that those meetings are going to happen. The noble Earl was kind enough to say that perhaps the debates that have been precipitated on this issue in Committee, at Second Reading and again today have helped to bring that about. However, the moment will pass and all of us who sit in this House know that once the legislative vehicle has moved on, the opportunity to make something happen disappears into the ether. That is why I intend to press this to a vote and to test the will of your Lordships' House.

*5.32 pm*

*Division on Amendment 2*

*Contents 192; Not-Contents 199.*

*Amendment 2 disagreed.*

**Division No. 1**

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*5.44 pm*

*Amendment 3*

*Moved by* ***Lord Freud***

**3:** Clause 1, page 1, line 7, leave out subsections (2) and (3)

*Amendment 3 agreed.*

***Clause 2 : Eligible people with diffuse mesothelioma***

*Amendment 4*

*Moved by* ***Lord McKenzie of Luton***

**4:** Clause 2, page 1, line 17, leave out "25 July 2012" and insert "10 February 2010"

**Lord McKenzie of Luton:** My Lords, the amendment stands in my name and that of my noble friend Lady Sherlock. I shall also speak to Amendment 8. The two amendments are linked, and we see Amendment 8 as being consequential.

The amendment addresses one of the major bones of contention with the legislation: its start date. The payment scheme, which we all applaud, is applicable only to those first diagnosed with diffuse mesothelioma on or after 25 July 2012. This is, as we know, the date when the Government responded to the consultation published by the previous Government. It was more than two years after the consultation closed. Over that period, some 600 individuals will have died from diffuse mesothelioma without them or their dependants receiving proper compensation.

We were told in Committee that it took so long to move from consultation to response because of the complexity of the issues and the intense work with stakeholders, including the insurance industry. We accept this, but it can hardly then be argued that the insurance industry did not know what was coming. It would surely have been on notice as to the likely parameters of the scheme, because it was a key participant in the negotiation, which in effect required some degree of agreement. It is not as though the scheme was somehow sprung on the industry from out of the blue.

We had some debate in Committee about the date on which insurers could reserve against liabilities. As my noble friend Lady Sherlock exposed in her usual forensic analysis, it is not a matter of reserving against liabilities. The levy is apparently a tax and should be provided for in the usual way when it arises.

It has been suggested that the February 2010 date, the date on which the consultation document was issued, was insufficient notice to create the expectation of the introduction of a scheme that would have to be funded by the insurance industry. We disagree. It is an entirely appropriate start date. Paragraph 60 of the document states clearly:

"Having considered this carefully, the Government are persuaded that an ELIB"—

an employer liability insurance bureau—

"should form part of the package of measures to improve the lives of those who, for whatever reason and through no fault of their own, have been injured or made ill",

by work.

That was clearly putting people on notice that the then Government were intent on introducing an ELIB broadly on the terms of the Motor Insurers' Bureau. Moreover, this intent was not limited to a scheme to cover diffuse mesothelioma; it was a broader intent to cover those more generally who were missing out on justifiable compensation. Although a very valuable scheme, what is now provided for in the capital is a smaller, less costly scheme than was signalled in the February 2010 consultation. It should have been no surprise for insurers. The arguments in favour of a July 2012 commencement are flimsy to say the least. In its briefing for today, the Law Society states: "There is little justification for disqualifying cases diagnosed between the announcement of the consultation in February 2010 and July 2012".

Of course, the Minister will tell us that there is greater cost, that it could tip all this finely balanced negotiation over the edge, and that co-operation from insurers would recede, but the cost originally presented to us for a February 2010 start date was an extra £190 million. It is now transpired that that assumes payment at 100% and presumably took no account of any additional compensation recovery that might ensue and assist with smoothing. It would be dependants rather than sufferers who would mostly benefit from this, because many of the latter would, sadly, not have survived, but that is no reason to deny justice. I beg to move.

**Lord Howarth of Newport:** My Lords, the common theme of the amendments in this group is that they increase eligibility with a view to increasing justice. I add my personal thanks to the noble Lord, Lord Freud, for all his personal commitment to achieving just outcomes through the legislation, and I hope that he will be willing to contemplate the amendments that I have added to this group.

First, I entirely support my noble friends Lord McKenzie of Luton and Lady Sherlock in their amendments which would bring forward the start date for eligibility to 10 February 2010. Amendment 5 in my name would extend eligibility to a person diagnosed with diffuse mesothelioma who was self-employed at the time of exposure to asbestos. Amendment 6 would extend eligibility to a person who is a member of the same household as a person exposed to asbestos in the course of their work.

The employers' liability insurers have bluntly and, I feel, rather brutally, expressed their view that the self-employed should not be eligible. As they have explained to us:

"As employers' liability insurers will be funding the untraced scheme, payments from the scheme will only be made to those who would have been covered by employers' liability insurance".

The ABI has, however, made one small, decent concession, saying that under the untraced scheme, if someone has been negligently exposed during employment and self-employment but is unable to find an employer or insurer to claim against, they will be able to receive a payment from the untraced scheme without a deduction for the period they were self-employed.

In Committee, my noble friends Lord Browne, Lord Wigley and Lord McKenzie explained that on the kind of industrial and construction sites where people were negligently exposed to mesothelioma, there was frequently no real distinction between employed and self-employed status. In many cases, it may have suited employers to classify people as self-employed who were, to all intents and purposes, employed. Indeed, in Committee the noble Lord, Lord Freud, himself accepted that,

"some people will appear to be self-employed where the reality is that that was an artificial, tax-driven construct. In that case, if they can demonstrate that in practice they were acting like an employee, they would be eligible for a payment under the scheme.".—[*Official Report*, 5/6/13; col. GC 220-221.]

I am very grateful for what the noble Lord said then, but we need to go a bit further. We need to ensure that everyone, whether they were nominally, technically or otherwise self-employed, is covered and is eligible to receive payments from the scheme.

What is the position of those who were genuinely self-employed, did insure, but whose documentation has gone missing? Should they not be included? The ABI itself admits:

"There will only be a very small category of people who have been solely self-employed and therefore not eligible for a payment from the untraced scheme".

The Minister undertook to ask the ABI for its figures, but unfortunately, he then had to write to us to say that it did not have any reliable figures. What is clear, by the ABI's own admittance, is that the numbers are very small.

The suffering of self-employed people who contracted diffuse mesothelioma, and the suffering of their dependants, is no less than the suffering of people who were employed in the technical sense. I believe that it would be wrong for us to abandon them, and I believe that it would cost very little by way of an addition to the levy, to embrace them in the scheme.

In Committee there was extensive concern expressed by noble Lords on all sides about the predicament of members of the household of someone who had been exposed to asbestos in the workplace, who were diagnosed with mesothelioma, when the person who was actually employed had not been diagnosed. Indeed, a household member might have predeceased an employee who has not, or not yet, been diagnosed. The noble Lord, Lord Alton, reminded us of one particular instance, movingly described to us in our proceedings on other legislation, of the sister of the noble Lord, Lord McNally. Other noble Lords in Committee were aware of individual cases where this had happened. In particular, the most frequent instances were when a wife, or perhaps a daughter, was regularly doing the laundry and washing the contaminated overalls.

In writing to us, the noble Lord, Lord Freud, gave us an estimate that an average of 214 cases of mesothelioma would be caused by environmental exposure in the years 2014-24. I take it that that is a wider category that would include household members; indeed, the friend of the noble Lord, Lord Walton of Detchant, the consultant neurologist who died, might have been included. We are talking of a significant, though not a huge, group of people. Is it right to abandon them on the technicality that they were not themselves employees?

The term "secondary exposure" was used in Committee, but I think we are really talking about the direct effect of employers' negligence. It is the same lethal fibres in the same workplace that will have caused the disease to hit a person, whether self-employed or a household member in the circumstances I have described. Surely it was through employers' negligence that employees were allowed to come home wearing their contaminated workwear; they should not have done so. On this, the ABI has been silent. Perhaps even it cannot contrive presentable reasons as to why it should not pay out of a scheme which, after all, is not based on precise legal liability.

This scheme deals with the situation of claimants who, by definition, cannot avail themselves of their legal rights. I do not think that the employers' liability insurers ought to hide behind legal technicalities. If, however, the employers' liability insurers are adamant, and if the Minister remains reluctant to compel them, then I hope that he will consider levying the public liability insurance. He was as good as his word; he discussed the question of public liability insurance in this context with the Association of Personal Injury Lawyers and with the ABI. He wrote to us following that discussion to say that, in the main, it would be the public liability policy that would apply when the affected person was not directly employed by the liable employer. In many cases, I think it is the same insurer.

I have not tabled an amendment relating to public liability insurance because, as I take it, this is already covered by Clause 13(1), which states:

[LORD HOWARTH OF NEWPORT]

"The Secretary of State must make regulations requiring active insurers to pay a levy".

It does not specify active employers' liability insurers, and in Clause 13(7) I do not see that the definition of the term "active insurer" excludes the public liability insurers. I would be grateful if the Minister would confirm that the legislation as drafted does give him the power to levy the public liability insurers. If that is not the case, I am sure that there will be no difficulty in tabling an amendment for Third Reading.

The Government's 2008 scheme does not worry about who in particular was responsible for cover; it simply compensates people who have contracted mesothelioma. This new scheme should do the same, and in particular, should embrace mesothelioma victims who are self-employed or household members. The scheme is intended belatedly to make amends, and it should do so fully and generously. If the employers' liability insurers would accept that, then that would be gracious on their part. I beg to move.

**Lord Wigley:** My Lords, I support these amendments and I will pick up the important points made by the noble Lord, Lord Howarth of Newport. I entirely support his emphasis on the need to ensure that those who suffered at second hand—whether it was the wives, daughters, or sometimes mothers of people in the industry who have been infected by the particles from washing clothes—should most certainly be covered if they have suffered a loss of health as a result.

The implication is that the insurance policies that were provided for the employees in case of negligence by the employer only relate to the employee in a very narrow sense. That needs to be explored in depth because there is a category of people who have undoubtedly suffered ill health and some who have died, and there may well be many more that come through from that avenue.

However, I return to the generality of these amendments. It has been noted in this debate that the scheme proposed by the Bill has its roots in the consultation announced by the previous Labour Government in February 2010, which is the date in these amendments. However, the scope of the assistance proposed in that consultation was, of course, significantly wider than what we have ended up with in the Bill.

*6 pm*

The Employers' Liability Insurance Bureau—ELIB—which was proposed by that consultation, would have compensated all industrial disease victims in situations where their employers' liability insurer cannot be traced. The consultation ended in May 2010, but no announcement on any scheme came forward until this other date—25 July 2012. There is no magic in that date, but it has now become a fixed date that will have a tremendous effect on those who are cut off by the way it will be implemented.

Under the proposed scheme, victims will be protected if they were diagnosed after 25 July 2012. Those who were diagnosed between 9 February 2010 and that date will be, for completely arbitrary reasons, excluded from this scheme. The person who is diagnosed on 26 July 2012 will qualify, but if he is diagnosed on 24 July he will not. This is utterly unfair, which is why I urge noble Lords to support Amendments 4 and 8, which would bring this wronged group back into the scope of the scheme. That would be only logical. Not only is the insurance industry excused liability for all claims prior to July 2012, but is costs are also reduced, since in giving average compensation it will not need to enter into negotiations on a case-by-case basis. The insurance industry is, no doubt, the winner in this instance.

I contrast this package with that of industrial workers suffering from other forms of lung disease, who were compensated by the Pneumoconiosis etc. (Workers' Compensation) Act 1979. Under that Act, workers who had suffered—if I remember correctly, going back to the 1950s—were taken on board. Why is there such a difference between the very generous treatment of sufferers in that instance, and this instance, where people are cut off in such an arbitrary manner?

We have all, no doubt, had messages from the families of those who have died from this horrendous disease. I will quote from two of them very briefly. Jean Kenyon says, simply, "My husband is a victim diagnosed in 2011. Why is he not included? It is a gross injustice". John Gordon writes, "My late wife was diagnosed with mesothelioma in January 2012. Does this mean she suffered a horrendous death, which included a great deal of pain and mental anguish, which could only be recognised after 25th July 2012?". In fact, it will not be recognised at all as things stand.

This is wrong, unfair, illogical and insensitive. I urge noble colleagues to support the amendments in the names of the noble Lord, Lord McKenzie, and the noble Baroness, Lady Sherlock.

**Lord Browne of Ladyton:** My Lords, I support this group of amendments. In the interest of the efficient use of our time I shall do so principally by adopting the arguments that have already been advanced by my noble friends in support of them, and will seek only to reinforce one point and augment another in relation to Amendments 5 and 6.

The quotations which my noble friend Lord Howarth deployed from the ABI's brief come from the brief that the ABI provided to some of us—in a discriminating fashion, I recollect—in anticipation of the Committee stage on 5 June. On that occasion I deployed these very same quotations; I do not think that the noble Lord, Lord Howarth, had them at that stage. I made this point then, and I wish to repeat it: the ABI's argument in relation to self-employed people seems to be, "This was a very small number of people". I felt that that argument read that since we were leaving behind only a small number of people, we could be justified in doing so. I deployed the argument that that increased the injustice substantially and that extending the scheme to this very small number of people would have a very limited effect on the total cost of the scheme and on its administration. I also argued that it would be a deep and disproportionate injustice to leave those people behind because they were probably victims of the same negligence; they probably picked up the fibres that caused this dreadful disease in exactly the same workplaces as employed people did,

but just happened to be working in them at the time. I repeat that point as there is some significant merit in it.

In relation to the group of people who are referred to in the Minister's letter of 4 July as those who are infected by environmental or secondary exposure, there is a more compelling argument as to why these persons should be included in this scheme. It relates to the way in which public liability insurance and compulsory employers' liability insurance—or employers' liability compulsory insurance, which I think is its proper title—was sold historically. It may still be sold this way, but I know that it was sold in this fashion. I explored this argument in Committee—I am grateful to the Minister, who, in his characteristic fashion, addressed comprehensively in his letter those issues that he did not have a briefing to address in Committee—and I have now had it confirmed, from the information in the Minister's letter, that it is right.

Almost invariably, employers' liability compulsory insurance was sold in a package, with, among other things, public liability insurance. Consequently, it is invariably the case that the insurers, who carry the employers' liability risk, also carry the public liability risk. It is the behaviour of exactly the same insurers, in either destroying their records or failing to be available to those who identified them as the insurers who carried these risks, that has caused this deep failure in the insurance market. Therefore, there is no difference in relation to the mechanism of insurance and its failure to provide compensation for people who have been exposed to environmental or secondary exposure, compared with those who were employed in the first instance.

It is almost incontrovertibly the case that were an employer to have been sued by the person who was exposed at the secondary level, that person would have been able to establish that they were owed a duty of care and that there was a direct causal connection between the exposure of their relative or loved one and their contracting the disease. Had they had somebody to sue, they would have been able to get compensation. If the employer does not exist and the insurer cannot now be found, they are in exactly the same position as the relative who was exposed to the fibres and carried them home. I made that argument, and from the way I read the very carefully worded letter from the Minister, that appears to be what his researchers have revealed: that this group of people would have been covered by public liability insurance and that almost invariably the same insurers would have carried that risk.

There is no argument, therefore, that has any merit, that those people who were in the category of secondary exposure should be excluded from this scheme. The opposite is the case. Given that exactly the same players would have been involved in the processes that caused their contracting this disease and dying from it, we should honour the experience they have had by including them in the scheme.

**Lord Stoneham of Droxford:** My Lords, I will comment on a number of issues to which these amendments give rise—and they are very sensitive issues. Any start date is arbitrary, and there will always be people who are caught by a start date, so whether it is 2010 or 2012, there will inevitably be feelings of unfairness. However, the earlier the start date, whatever the cost—perhaps the Minister will clarify the cost, but we were told it was £119 million, and if it is 70% of that it will come to £80 million—agreeing to that concession would cause a 25% increase in the cost of this scheme. Where is the money going to come from? Will it come from a new negotiation, or from reduced benefits and compensation for those who will receive money from the scheme? That question has to be answered by the movers of the amendment.

On the issue of coverage, there are obviously concerns about the self-employed and people from the same household, but are we saying that we are going to complicate this legislation and hold it up while we have an argument about public liability insurance versus employee insurance? That would be a recipe for severe delay. The great advantage of this legislation is that we have kept it simple and we have an agreement. It is a balancing act to get to that agreement and to get the legislation through so that it benefits the people who were in employment. Once this settles down, we could consider coming back to this—I hope the Minister will do so at some stage—and look again at how we might cover the self-employed and people from the same household, but if we start that discussion now we will be here until 2015 or 2016 before we have legislation to benefit the families for whom it is intended.

**Lord Alton of Liverpool:** My Lords, I will speak briefly to these amendments, in particular to support what the noble Lord, Lord McKenzie, argued in Committee and what these amendments call for today. We had a long debate on 5 June, in which I spoke at some length. The point I made then, which partly answers what the noble Lord, Lord Stoneham, has just said about the arbitrariness of dates, was that the original consultation period is surely the point from which this scheme should kick in, not the date of July 25 last year, the last day of the Session, when a welcome announcement was made that there would be a Bill along these lines and a scheme of this kind.

The consultation date of February 2010 is, for me, a seminal date. For those affected it represented a promise waiting to be fulfilled. The eligibility date should be at the commencement of the consultation. After all, the Association of British Insurers began the discussions at that time. It can hardly have woken up on 25 July last year, shocked at having failed to make contingency plans or reserves. Therefore, applying the date of February 2010 is the right and fair way to go about this. It is the date that people anticipated and expected. In law, as well, it is far more consistent. After all, there will be people who were diagnosed with mesothelioma during that period and it is important that they are accepted as part of this scheme.

I know that the Minister will not be in a position to share the legal advice that he has been given within the department, but we might well leave ourselves open to claims because of the consultation document that was issued and the clear indication that this scheme would probably begin from as long ago as February 2010, rather than 25 July last year. For those reasons alone, I am happy to support the noble Lord, Lord McKenzie.

**Lord Wills:** My Lords, I, too, support these amendments and endorse everything that has been said. On Amendment 4, as my noble friend on the Front Bench has said, little credence should be attached to arguments that insurers could not reasonably have expected in February 2010 that a scheme such as this could not have been brought forward in the foreseeable future. Indeed, it is highly likely that the only reason for the selection of that date is that it reduces costs. That is not a negligible consideration, but, as we have heard, those costs are likely to be relatively small. We have heard that they represent a considerable percentage increase, but with all respect that is not the concern here. The issue is the absolute sums that are involved, which are relatively small. They ought to be easily affordable by insurers, particularly in light of the long period in which insurers have got away without paying sums that they should have been paying. In my view, those costs are unlikely to have to be passed on to employers.

**Lord Howarth of Newport:** My noble friend was making the point that for many years insurers got away with not paying compensation. I believe that the figure is that some 6,000 mesothelioma sufferers died uncompensated in the years since 1968. That would have saved the employer's liability insurers £1 billion. They are very well able to do a little more for mesothelioma sufferers now.

*6.15 pm*

**Lord Wills:** My noble friend makes an extremely important point. In Committee, he made some very telling points about all the ways, not just the direct financial ways that he has just calculated, in which insurers have benefited during the very long period when legislation such as this was not in place.

We then have to ask whether these increased costs can be justified. We should be looking at the expectations not of insurers but of victims. Victims certainly expected that the start date of a scheme such as this would be in February 2010. I hope that the Government will now satisfy the expectations of victims, not insurers.

I will speak briefly to Amendment 6, to which my noble friend Lord Howarth spoke very powerfully. We have heard all sorts of moving stories in this House, in Committee and elsewhere, of tragedies that have happened in precisely the way that he has described. I heard them in my own constituency surgeries when I was the Member of Parliament for North Swindon. My noble friend said—I hope I am quoting him correctly—that this amendment is necessary because the exposure of these people is a direct result of negligence by employers. I agree with him. It is a matter of common decency that these people should be covered by the scheme, and I hope that the Government will agree with this amendment.

**Lord Freud:** My Lords, I thank noble Lords for these amendments, which all share the same broad aim: to widen the scope of the scheme to get more people into it. I will take the amendments in turn and address first those tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Sherlock, regarding the start date for eligibility. I will then address the amendments tabled by the noble Lord, Lord Howarth, on the self-employed and household members.

We discussed the start date of the scheme at some length in Grand Committee. Clearly, it has received a lot of focus and continues to do so today. Under Amendments 4 and 8, once the scheme comes into force all living people who were diagnosed with diffuse mesothelioma on or after 10 February 2010 would be eligible for a payment from the scheme. They would also provide that any living dependant of a person with diffuse mesothelioma who had died on or after 10 February 2010 would be eligible for that payment.

Although it hurts to do this, I have to reject these amendments and ask that the noble Lord and the noble Baroness do not press them. I say that in the knowledge of the strength of feeling among all of us in this Chamber that the Bill should go as far as possible to help as many people as possible. The core issue is that this Bill was the subject of intensive negotiation. On top of that, it has been shaped by what I have felt to be innumerable obstacles that we have had to work around, and I need to restate why we cannot move the date as the amendments propose.

The start date of 25 July 2012 has been criticised for being arbitrary, but it is the date on which we announced that a scheme would be set up and it is the most legitimate date on which to commence eligibility. It is from that date that eligible people and insurers alike could expect that the scheme would be set up.

The proposed date of 10 February 2010 relates to the date when the previous Government published their consultation paper, *Accessing Compensation: Supporting People Who Need to Trace Employers' Liability Insurance*. If noble Lords will allow me to correct myself, in Committee I said that that was published on 11 February, but other noble Lords were correct and it was in fact published on the 10th of that month. This was a consultation, not a decision in any particular direction, and did not create any expectation that people would be likely to get any sort of payment over and above what the Government provide for people with diffuse mesothelioma. I therefore cannot see that it is an appropriate start date for eligibility, and I fear that, were we to use it as such, it could be more reasonably criticised for being arbitrary than the existing start date.

We touched on the reasons why it took so long from the consultation being published to the scheme being announced to Parliament, so I will revisit them only briefly. I would have liked to have announced the scheme much sooner than 25 July 2012, but the issues involved were complex. We worked closely with stakeholders, including the insurance industry, claimant groups and solicitors, and all in all the process took longer to deal with than I had hoped. In addition to creating an expectation among people with mesothelioma, the announcement gave insurers notice that we intended to bring forward the scheme. From that date, those insurers will have had to factor the cost of the levy into their financial forecasts and plans.

There is one more point to mention that supports using the date of the announcement. Given that the insurers who are paying the levy to fund the scheme are not necessarily the same ones who took the premiums that paid for the historical insurance policies, we have to be able to demonstrate that the costs to them are

fair and proportionate. Simply put, the earlier the start date, the higher the costs. If the scheme started on 10 February 2010, the extra costs, as I said earlier in response to the question from my noble friend Lord Avebury, would be £75 million.

Again, I need to take noble Lords from the figure of £119 million that I used in Committee. That figure was based on paying 100% of average civil damages to all claims, regardless of age. The £75 million figure that I am providing now is based on a tariff of 75% of average civil damages, which I have already talked about today, and takes the age of those making a claim into account. I think I owe noble Lords an apology to the extent that I have created any confusion.

I have spoken before about the risk that we take in raising the costs of the scheme. A litigious industry such as the insurance industry could easily delay the scheme with legal challenge if the costs were perceived as unfair. The other risk is that higher costs would be passed on to employers. I know that noble Lords would like us to do more, and indeed the Government would like to do more, but we cannot ignore these risks.

**Lord Howarth of Newport:** The Minister is worried that the employer's liability insurance will default to the position of litigious opposition to the scheme if we attempt to improve it in these modest ways. Given that insurers have accepted the principle that they should fund a scheme, surely they would have no strong legal case to make in objection. Should he not simply say, "See you in court."?

**Lord Freud:** I have tried desperately hard not to end up in that position, because the "See you in court" line would just end up by tying us up for years with uncertain outcomes and would stop us getting payment to the people who need it from next July, which is when I want the payments to go out. I want this scheme up and running and working in April next year so that we can start making the first payments. I have tried in every way to ensure that we do not run into that kind of problem. The noble Lord may accuse me of not being robust enough, but I assure him that even to get to where we are it could be said that we have had to be as robust as possible.

The real problem is the technical difficulty with the four-year smoothing period that we have to use. We are going to have much higher costs in the first year as it in effect bundles up two years already and one year of running costs, so we are going to have substantially elevated costs in the first year that we have to find a way of smoothing, and we are doing that over a four-year period. If we extended that smoothing back even further to work in another two years' worth of money—that £75 million—into the scheme, that would open up the whole agreement not just with the insurers but within the Government. On our assumptions, that would in effect push the levy rate up to approximately 4% in that period. That in itself would undermine what we are trying to achieve, which is to ensure as much as we can that these costs are not just passed on to British industry through higher current employer liability rates. That is the core reason. This is always about how much money you can get safely to people, and the adjustment in the amendment would undermine that.

Of course, any start date that we choose will exclude some people. The best possible way forward is to pin eligibility to the date when people with diffuse mesothelioma had a reasonable expectation of a payment and insurers knew that they would need to start factoring in the cost of the levy as an additional business cost.

I need to remind noble Lords again that the existing provision for sufferers of mesothelioma will remain in place for those who are not eligible to come to the scheme. I thank the noble Lord and the noble Baroness again for these amendments. I understand the reason behind them, but I have given the reasons why I would like them not to press them.

I turn to the amendments tabled by the noble Lord, Lord Howarth. These seek to be helpful to a wider group of sufferers, but we cannot extend the legislation to people who are self-employed or who were secondary-exposure cases. The Bill addresses a specific failure of insurers and employers to retain adequate records of employer's liability insurance, and would provide payments to those affected by this failure who cannot trace a liable employer or employer's liability insurer against which to bring a civil claim.

Following our discussion in Grand Committee, we talked with the Association of Personal Injury Lawyers, which advised us that an employer would have had to have specifically added elements to their employer liability policy to cover families of their employees. The association was not able to identify any specific cases where this has happened, which leads me to suggest that this is not a common occurrence. Family members who contract mesothelioma through coming into contact with asbestos as a result of someone working with it may have recourse to civil damages through public liability insurance, but our scheme is funded by the companies currently selling employer's liability insurance and not by insurers more widely.

*6.30 pm*

Picking up the noble Lord's more technical point about the Bill, Clause 13(7) specifies the meaning of active insurer as,

"a person who, at any time during the reference period, was an authorised insurer within the meaning of the compulsory insurance legislation".

That means in practice that employer's liability insurers are specified. I sympathise with the noble Lord that that is not immediately apparent on first reading the Bill. I am grateful to my team of lawyers, who understand this rather better.

We cannot expect companies to fund cases when they have never received premiums. The proposed amendment imposes a disproportionate burden on the employer's liability insurers, who will fund the scheme through the levy. In answer to the point raised by the noble Lord, Lord Browne, employers had to have asbestos cover in their employer's liability policies, but we are aware of no requirement for a public liability policy to cover asbestos.

**Lord Browne of Ladyton:** My more fundamental point is that the insurers that sold employer's liability compulsory insurance were the same insurers that sold public liability insurance to individual employers, because they were sold in a package. That was my experience

[Lord Browne of Ladyton]
when I was the Minister for employment between 2003 and 2004 when, the noble Lord will remember, there was a significant failure of the employer's liability compulsory insurance market that had to be resolved. His letter of 5 July to me and others confirms that that is still the case, according to his research. These insurers are not separate insurers, they are the same insurers, and I suggest that the requirement to carry cover in relation to the specific risk of asbestos would have been irrelevant to public liability.

**Lord Freud:** I have just made the point that the public liability may have been bundled up with employee liability but it did not necessarily cover asbestos risk. That is the issue. If we start going into this, we are just blasting open and widening the position in a way that is very complicated and difficult to deal with under the timelines we are dealing with.

Moving to the second group about the self-employed, here the matter is not so clear-cut. Some people may appear to have been self-employed but if they are able to demonstrate when making their application that in fact they were employees, they may be eligible for a payment under the scheme. There is considerable case law amassed on this and we will ensure—I can commit to the noble Lord, Lord Howarth—that the scheme will reflect this when assessing applications.

I know it is not fashionable but I should point out that there is a technical problem with the amendment, which is cumulative, but I will not go through it. As drafted, this amendment does not work because you have to be an employee and self-employed. In our spirit of co-operation, if we wanted to take it we would adjust it, but there are good reasons in both cases why we do not want to.

**Baroness Masham of Ilton:** My Lords, what happens to the wife who has been contaminated by her husband's dungarees? Will she get anything?

**Lord Freud:** Yes, my Lords. That specifically is what the state provision is there for. In particular, the 2008 mesothelioma scheme was set up to make payments to people, such as wives, who worked with asbestos. It is a smaller payment but that is what it was designed to do. I ask the noble Lord to withdraw his amendment.

**Lord McKenzie of Luton:** I thank the Minister for his response, and all noble Lords who spoke in favour of Amendments 4 and 8. I also thank my noble friends Lord Howarth and Lord Browne for addressing the issues in Amendments 5 and 6.

To pick up the Minister's reply, if the response to everything we have discussed tonight is basically that the scheme is locked down and there have been negotiations—this point was made by the noble Lord, Lord Stoneham as well—we might as well go to the bar because I am not sure that we are going to shift anything tonight. We pay tribute to the Minister—

**Lord Freud:** I must come in on that. The group—huddle?—of noble Lords who have been working on this Bill have made enormous changes to what we are doing. Noble Lords' concerns have fed straight in and we have made a series of changes. I do not want any Peer to feel that their views and the work they have done has not been taken, absorbed, acted on and gone to right to the edge of what is possible. I assure the noble Lord that the bar is not the place for him.

**Lord McKenzie of Luton:** I am grateful to the noble Lord for that explanation although it is a pity about not being allowed to go to the bar. I want to make it clear that we have acknowledged, I hope fulsomely, the work the Minister has done on this. I acknowledge also the acceptance that what we have deliberated on in Committee and in meetings has influenced the Bill but if we are now saying that in a sense we have come to a full stop, I wonder what progress we can make. However, I will carry on with the argument.

As far as the start date is concerned, I simply do not accept the point that the insurers did not know until July 2012 that there was the expectation that a scheme would be set up. From what the Minister has told us, there have been two years of intense negotiations, generally with the ABI, which has had to discuss matters and negotiate with a range of insurers. There was an intense process under way, as we understand it, and therefore it must have been very clear to insurers that something was very likely to come from this and that was going to be the sort of scheme that has now emerged. I do not accept that the first insurers knew about it was the point when we said: "Here is the document. This is what we are going do".

**Lord Freud:** I just want to clarify the point about the expectations or otherwise of the insurance industry. From our negotiations, which went on for a long time —more than a year; I cannot remember exactly—it would have been anticipating that the specific insurers with historic liability would have been pinned down in a completely different way from this levy. We spent an enormous amount of time working on that. As I have already told the House, my first instinct was to try to get the actual insurers that wrote the liability to find the money out of their balance sheets. I judged that the legal risks to that approach were high—not impossible, but high—and we therefore switched to this other approach. Actually, the expectations that the industry might have had would not have been set anything like as early as noble Lords might think.

**Lord McKenzie of Luton:** Again, I am grateful to the Minister for that explanation, but it seems to me that the expectations were not set only at the point of July 2012. On the cost that the Minister has outlined, I understand that it has reduced from the original figure of £119 million. I do not think that the figures that the Minister has given reflect any additional benefit recovery potential that would come from having two more years in the scheme, or know whether that was fed in to any analysis of how it might impact on the spreading that would arise from that. Maybe we will have to have that discussion on another occasion. I do not think that we are going to see eye to eye on this.

On Amendments 5 and 6, the noble Lord prayed in aid a technical deficiency of the drafting. I have done it myself; I think it was the noble Lord, Lord Deben,

who advised generally against that. The thrust of the point made by the noble Lord, Lord Browne, was that, basically, whether it is the employer liability route or the public liability route, you are basically coming back to the same insurers. Obviously, the Minister's point about there being some hope for the self-employed —being able to argue that in certain circumstances they were de facto employees—is helpful.

We do not accept the proposition that the start date should be the 2012 date. February 2010 is a better date. That was when the expectation was effectively created. In fact, when you look at it, the insurers ended up with a lesser scheme than was proposed in February, so their expectation should have been of a higher obligation arising from that. A broader bureau was consulted on at that time. Having said all that, I wish to test the opinion of the House.

*6.42 pm*

*Division on Amendment 4*

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*6.54 pm*

*Amendments 5 and 6 not moved.*

*Amendment 7*

*Moved by* ***Lord Freud***

**7:** Clause 2, page 2, line 19, leave out "regulations made by the Secretary of State" and insert "the scheme"

*Amendment 7 agreed.*

***Clause 3 : Eligible dependants***

*Amendment 8 not moved.*

*Amendment 9*

*Moved by* ***Lord Freud***

**9:** Clause 3, page 2, line 47, leave out "regulations made by the Secretary of State" and insert "the scheme"

*Amendment 9 agreed.*

*Clause 3 agreed.*

***Clause 4 : Payments***

*Amendment 10*

*Moved by* ***Lord Freud***

**10:** Clause 4, page 3, line 4, leave out "regulations made by the Secretary of State" and insert "the scheme"

*Amendment 10 agreed.*

*Amendment 11*

*Moved by* ***Lord McKenzie of Luton***

**11:** Clause 4, page 3, line 4, at end insert "but shall be not less than 100% of the average damages recovered by claimants in mesothelioma cases"

**Lord McKenzie of Luton:** My Lords, I shall speak also to Amendment 13. Amendment 11 requires that those diagnosed with diffuse mesothelioma and eligible under the scheme should receive payment of an amount no less than 100% of the average actual damages recovered in mesothelioma cases. Because the scheme under consideration is a payment scheme rather than a strict compensation scheme, it has been agreed that a tariff based on average compensation levels taken over recent periods should be taken as a reasonable proxy for compensation amounts. The tariff, which we will discuss in subsequent amendments, is comprised of bands depending on age at date of diagnosis. It is understood that the starting tariff is accepted by the Government, the insurance industry and the Asbestos Victims Support Groups. What is not agreed is the percentage of the tariff that should be paid.

The amendment proposes that it should be 100%, a full compensation equivalent. Hitherto, the Minister has referred to payment levels of 70% of the tariff and today we heard the good news that he has been able to negotiate this a little higher with the ABI, with the proposition that it now be 75%. These amounts are of course separate from the payments towards legal costs and any research supplement, should that re-emerge. We should make clear again that we consider that the Minister has done a first-rate job in bringing the scheme thus far. We have no doubt that he has had to endure many painful engagements with the insurance sector, whose failure—or market failure in his terms—is at the root of the problem that this Bill seeks to address. I wish him to go further. I do not wish to seem ungrateful for these efforts but we have an obligation to speak to the victims to see it from their point of view.

The payment scheme provided for in this Bill operates when somebody has been negligently exposed to asbestos and has consequently contracted diffuse mesothelioma. This is, as we have heard, a terrible disease, invariably fatal, which inflicts untold suffering on those who contract it and also on their families. In Committee, a number of noble Lords spoke of their own harrowing experience of witnessing the awful pain that mesothelioma causes. The only thing that prevents individuals in these circumstances getting proper compensation—the government schemes fall far short—is the inability to trace the employer that caused negligent exposure to asbestos or the insurance company which provided employer liability insurance cover. No blame can be attached to mesothelioma sufferers for this. It is not their fault that, because of the passage of time, records have been lost or destroyed. Many can trace those responsible and the new tracing office will help more in the future. That is good news. That is as it should be. However, for those who cannot, why should they not be treated in an equivalent manner? They are the victims. If I may, I will quote from an e-mail received from Tony Whitston, who, as many will know, has been a tireless campaigner for asbestos victims. Tony said:

"For mesothelioma sufferers and their families, compensation isn't about money per se. For mesothelioma sufferers, compensation provides solace that their loved ones will have some financial security when they die. For their families, compensation is about justice. No one will stand in the dock and answer for the terrible suffering and loss of life, past, present and to come. Compensation stands in for justice. To diminish compensation is to demean the pain and suffering families have witnessed and cheapens the justice they thought they had obtained".

If we are encouraged to look at this through the eyes of the insurance industry, we will be told, as we have been, that a discounted payment is necessary to encourage individuals to trace an employer or insurer. We will be told that not all employers in the employer liability market will have been in the market or on risk over the years when people were exposed. That is notwithstanding that tracing or accessing the scheme has to follow the same routes. References to public liability policies not being traced are, by and large, a red herring. Collectively, over the years, the industry would have had premiums for liability that it has not had to meet, and it still has the benefit of premiums for other exposures that remain outside this scheme. If there has to be some rough justice at the edges of these arrangements, clearly the justice should go to the sufferers. The insurance industry should make amends for its failures of the past.

Our Amendment 13 seeks to take the insurance industry at its word. It has expressed concern that a levy rate of more than 3% could tip matters over to a situation where the levy costs would have to be passed on to industry. The noble Lord referred to that in his opening remarks. We are sceptical about whether pricing of employer liability policies would work collectively for all 150 or so market players in this way. However, accepting that 3% is a tipping point for the sector, Amendment 13 requires that the levy is a minimum of 3% or such lower sum as would provide for 100% of the tariff.

For the initial four years of the scheme, the industry would doubtless claim that at 75% of the tariff it is already at 3%, or perhaps above it, in which case the amendment should not cause it a problem. On the Government's figures, the levy would be close to 3% for a 75% payout over the initial four years of the scheme but below 3% for the latter six years if the tariff is to be paid in full. Given that no one, we hope, is arguing that the percentage levy will reduce in future, except to the extent of avoiding paying more than 100% of the tariff, the amendment should be readily acceptable.

If the Minister is unable to accept the amendment as it stands, could he at least confirm that it is not the intention to reduce the levy rate in real terms after the smoothing period unless that produces more than 100% of the tariff? Amendment 13 sits perfectly well with that in the name of my noble friend Lord Browne and the noble Lord, Lord Wigley. I beg to move.

*7 pm*

**Lord Howarth of Newport:** My Lords, Amendment 16 is in my name. Again, the common theme is that the amendments in this group seek to maximise the amount that will be paid to mesothelioma victims and their dependants. I will come in a moment to my own amendment but I would like to say a few words in strong support of the amendments in the names of my noble friends Lord McKenzie of Luton and Lady Sherlock. It was certainly not the fault of the claimants that the documentation went missing and it is very hard to see why they should bear the burden. The Minister has spoken of the dangers of a disproportionate burden on the employer's liability insurers, but is it not a disproportionate burden on the mesothelioma victims?

The ABI has put forward various arguments as to why payments under the scheme should not be at the same level as the average of court awards. The first is that an incentive must be provided for claimants to go to court. If they could just as easily get 100% by going to the scheme, why would they bother to go to court? With respect to the ABI, this argument is nonsense. This will not be a matter of choice for the claimants. The Minister's letter to us of 4 July made it clear that the scheme is designed as a,

"last resort where all routes to civil action against the relevant employer or insurer are closed to the individual".

The procedures under the scheme will make that a compelling reality. There will be the single portal and the identical search for documentation. Whether someone is on their way to having their case heard in court or considered by the administrators of the scheme, they will have recourse to the scheme only if they are unable to have recourse to the court, so the incentive argument is nonsense.

The ABI has also said that it is important to ensure that the overall cost to insurers is sustainable in the long term. I believe that the overall cost of a somewhat improved scheme—we have been debating today a variety of ways in which that scheme might be improved—would indeed be affordable. Apart from the fact that the insurers did very well for decades in being able to invest the premiums of mesothelioma sufferers whose documentation could not be found and who therefore could not bring a case, we have to remember in addition that between 1979 and 2008 the employer's liability insurers were effectively subsidised by the taxpayer to the tune of hundreds of millions of pounds, as they

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were allowed to keep the amounts paid out under the Government's pneumoconiosis scheme to offset against the cost of the liabilities of the insurers.

Even now, because the Minister declined in Committee to incorporate in the Bill the possibility of creating parallel and comparable schemes for other diseases such as asbestosis, asbestos-related lung cancer or pleural disease, only some 50% of sufferers from asbestos-related diseases stand a possibility of being compensated under this scheme. Those other 50% will in effect be subsidising the insurers. Those are a handful of reasons why I take with deep scepticism the proposition that the insurers could not afford to improve the scheme. We know, indeed, that their case load will fall, so even if it was a little pricey for them in the early years it would rapidly become more affordable. The Government are also going to smooth the way over the early years.

It is unlikely that the cost of these improvements would cause the cost of the scheme to creep above the 3% of gross written premiums. I prefer the DWP's calculations on this to the ABI's. However, if that were to happen it would not be a disaster and is not terribly relevant, because it is other factors that move premiums. The Minister's fear that any improvements to the scheme would lead to the point at which additional burdens were placed, by way of higher premiums, on employers and industry is misplaced. The premiums that are charged in this market are the product of multiple factors and paying the beneficiaries-to-be somewhat more generously would not have an effect on the premiums. I do not believe that the percentage of gross written premiums has any bearing on what premiums are sought in the marketplace. The employer's liability insurers pitch their premiums at the maximum that competitive market conditions allow. They will always do that, so the Minister's fear is misplaced and he should call their bluff on that.

Finally, the third reason that the ABI gives is to stop people getting more than the courts would award. In its briefing, it said to us:

> "As the payments will be made … on a straightforward tariff, some people will receive more compensation under the scheme than they would have received in civil compensation, and the aim is to set the tariff at a level that means this will only happen in a small number of cases".

Elsewhere, it told us that the intention is for the tariff to be set "a little below" the average of awards made in civil cases. A little below? The proposition is that 30% should be docked from the average of court awards in the payments provided under the scheme. Seventy per cent was not enough and while we are very grateful to the Minister for easing the level of payments up to 75% of the average of court awards, that is still not enough. Nor would 80%, as in the amendment of my noble friend Lord Browne and the noble Lord, Lord Wigley, be sufficient in my view. Ninety per cent is the very minimum with which we could be satisfied. As the Association of Personal Injury Lawyers has pointed out, the Financial Services Compensation Scheme, which provides compensation where insurers have become insolvent, pays at the 90% level.

I turn for a moment to my own Amendment 16, which would prevent what I regard as excessive demands for repayment by the DWP through its agency, the Compensation Recovery Unit. The rationale for the figure of £110,000 is that if we expect the average of payments over the next 10 years to be £87,000—it may be fractionally more, now that the Minister has moved it up to 75%—and if, as the Minister has advised us, the average recovery required from claimants will be £20,480, add those two figures and you get to £107,500. Round that up a little and you get to £110,000. That is appropriate because payments under the scheme, unamended, will be meagre. At the same time, the DWP —and no doubt the Treasury, lurking behind it— aggressively intends to reclaim 100% in recovery of benefits and lump-sum payments from people who will have received only 70% of what they might have received in court.

Moreover, the department intends no abatement in its reclaiming to take account of pain and suffering, which they would do in the case of an award by the courts. So we risk the £87,000 typical award by the scheme being reduced by around a further £20,000 as a result of the DWP's reclaims. According to the Association of Personal Injury Lawyers, the best estimate of what mesothelioma victims and their dependants will receive from the scheme will, therefore, be only 60% of what the courts might have awarded. It cannot be right that these people should receive only 60% of their legal entitlement when they have suffered a double negligence: negligence on the part of their employer and negligence on the part of their insurer.

The Minister has said that his intention, in this legislation, is to remedy a market failure. To be frank, that is a euphemism. We are talking about a gross and scandalous dereliction of their proper responsibility on the part of a number of insurers, affecting a significant number of people who should have had cover. This has been a great evil and we should make amends as fully and generously as we possibly can. Is that double negligence on the part of employers and insurers, from which they have already suffered, to be compounded by a double meanness on the part of the Government, insisting on taking 100% of 70% and taking no account of pain and suffering? The Government are being too greedy here.

**Lord Wigley:** My Lords, I shall speak primarily to the lead amendment, to which I have added my name, and return to Amendment 12, which stands in my name, at the close of my remarks.

The scheme proposed by the Bill will provide neither the full amount of compensation to which the sufferer would usually be entitled, nor full protection for those suffering from asbestos-related diseases. It is utterly unjust that those who have already suffered a wrong, due both to their injury and to the negligence of their employers in losing their insurance records, should now face losing a significant percentage of their damages.

The Government have offered the justification that mesothelioma claimants should be encouraged to seek out "all other avenues" before coming to this scheme. As I said during earlier stages of the Bill, this attitude shows a flagrant disregard for the harsh realities of this disease, not to mention the fact that the sufferers usually die very soon after diagnosis, so leaving their families with less compensation than they would otherwise have been entitled to. Of course, I welcome the move

to increase the compensation payable from 70% to 75%, and I thank the Minister for securing that improvement. However, whether the Government propose that claimants should receive 30% or 25% less than the average worth of a claim, it is essentially unfair that any reduction is happening at all. By point of comparison, the Pneumoconiosis Act 1979 was designed to award full compensation to claimants and is reviewed annually.

The difference between 100% and 70% compensation for these claims is not to be balked at. On 25 June, the noble Lord, Lord Wills, asked the Government what assessment had been made of the likely impact on the insurance industry if it was made to pay the full 100% of compensation to sufferers under the proposed scheme. In his response, the noble Lord, Lord Freud, said that over the first 10 years of the scheme, if the tariff were 100%, the amount of compensation paid would total £451 million. Under the 70% tariff originally proposed, the insurance industry was, by comparison, forecast to pay £322 million. However, the money that the insurance industry saves by getting away with 70% or 75% is a cost suffered by the victims' families.

The Minister also said that the Government,

"are getting an average of £87,000 a head to people who suffer from this terrible disease".—[*Official Report*, 25/6/13; col. 654.]

It is presumably now nearer to £94,000 at the 75% level. According to the Association of Personal Injury Lawyers, if the tariff was set at 100% and based on the figure proposed by the noble Lord, Lord Freud, the amount of compensation awarded would be around £124,000. That is a £30,000 shortfall in what the victims and their families can expect and it is a big difference. It is a difference of millions of pounds for the insurance companies but, my goodness, that £30,000 difference for the victims will be even harder to bear.

Finally, I want to share with the House two of the many comments that I have been sent by families of asbestos victims. Sandra Emery wrote:

"It took Parliament … a hundred years to ban asbestos. As a result, I have lost my mother and brother to mesothelioma. Please do not compound the error by passing such inequitable legislation".

As Kerry Jackson says:

"All victims and their families deserve 100% of what they are entitled to … this is a disease that has come through pure neglect".

I ask the Government for an undertaking that they will continue to seek other ways to increase the compensation to around 100%. I plead with them to reconsider. I will not be pressing my amendment for the 80% level, which I would have done had the Minister not come forward with an increase. However, in order to register my support for the principle, if the 100% amendment is pressed to a vote I shall support it.

*7.15 pm*

**Lord Browne of Ladyton:** My Lords, I have added my name to the amendment in the name of my noble friend Lord Wigley. When he and I put our names to the amendment, we were unaware of what the Minister would be able to achieve without the benefit that our amendment being carried by your Lordships' House might give in strengthening his negotiating hand. I have immense respect for my noble friend and his decision not to press his amendment and I will not seek to do otherwise. However, I want to add to what has already been said in relation to this group of amendments and the principle of justice.

In one of the early sentences of his introductory speech at Second Reading, the Minister enunciated a principle that, if a person is damaged by the negligent actions of another, that person should be entitled to compensation and, therefore, justice. I paraphrase him and I am sure that I do not do justice to the eloquence of his words at the time, but I remember pointing out that there was an inconsistency between that and other recent actions of his Government in relation to health and safety law.

We all agree with that principle and, with all due respect to the arguments that can be made, I suspect that the Minister does not equate the payments from the scheme with justice. He will be comfortable at the Dispatch Box and probably will, in his characteristic style, say that he is not presenting this as justice. Justice for these people would be for an employer who is insured to sue, and 100% compensation. So we are not going to do justice. I regret that we are not going to do justice to the victims of this dreadful behaviour and of the dreadful history that followed it, not necessarily on the part of employers—which went out of business for lots of reasons—but certainly on the part of the insurance industry.

However, we have a duty to strive for justice. The Minister eloquently expressed, as he has done on a number of occasions, that this is basically a negotiation. He has negotiated on behalf of the victims in a situation where hitherto they had only statutory schemes to look to, and he is to be congratulated on his achievement. I have experience of the responsibilities he holds and know just how difficult the job is. I have congratulated him on it in the past and he gets a significant amount of deserved credit in this House for what he has achieved.

He says that his ability to improve the scheme is a function of a number of practical and realistic things: what is negotiable in the circumstances of what the market will bear; and the point at which he judges, and the insurance industry tells him, that it will be compelled to transfer the marginal cost of the scheme to British industry and thus affect competitiveness. It is also a function of the fact that he is operating in a situation where he is seeking to have the scheme funded by what he calls active insurers, which are not necessarily the insurers that historically wrote the policies that carried the risk in the first place.

I accept all that. In the debate on the previous group of amendments, my noble friend Lord McKenzie made a point that prompts my own, which is different from any that have been made in the debate. We do not doubt the Minister's bona fides, but whether we are at the limit of his negotiating ability, or whether we can help him go a bit further towards the sort of figure that is more like justice, it would be helpful if we knew how many of the insurers with which he is negotiating are those that carried this risk in the first place and behaved in the way they did.

Until now, the Minister has deployed very adroitly the point about active insurers as opposed to those who carried the risk. However, he has done it in a very

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generalised way. I was not moved to interrogate him in detail until he explained, probably for the second time —I did not pay enough attention the first time—to my noble friend Lord McKenzie that when he first approached the issue, his desire was to place the burden on those insurers that underwrote the policies and risk in the first place. That implies that he must have thought that there were enough of them to carry the burden. Therefore, this cannot be an insignificant number of insurers. The inference I drew from the argument that he put forward in his contribution—which he may now regret—was that a disproportionate burden was being placed on people who were not about when the problem was being created. However, my knowledge of the Minister and of his abilities, which is growing, suggests that the opposite is the case, and that more of these insurers than we think will have to pay up.

If I had thought about this before, I might have argued for a differential levy in order to get a significantly increased amount of money, so that we could all do what we wanted to do, which was get much beyond 70%. Is the Minister in a position to help us? It may not be of any great assistance to us, although there is still Third Reading, but at some stage—I am not asking him to name and shame, although I would quite like him to—it would be interesting to know the number of insurers involved. Perhaps we could go a bit further. Could he describe the scale of this market in monetary terms, and the proportion of the market that is controlled by those companies that let this insurance market fail? We would then all have a better sense of justice and of where we should apply the burden.

I will say two more things. Unfortunately I had to leave the Grand Committee before we came to debate this issue. When I read the *Official Report*, I was extremely impressed by the amendment of my noble friend Lady Donaghy, which proposed adopting the idea of the incentive that the ABI deployed—which my noble friend Lord Howarth demolished and which the Minister has now abandoned—and reversing it to fix the compensation at 130% of the average, in order to incentivise the insurance companies to get their colleagues to find the policies, and to get the people who wrote them to carry the risk and burden. That is where the incentive should be in this situation.

I see that the noble Lord, Lord Stoneham, is in his place. I am glad that, thus far in the debate, he has not deployed the argument of delay in relation to this legislation. I do not resent—but I do not like—the idea that those of us who have been trying to improve the legislation somehow have to step back because we may delay the point at which very deserving people can get some form of payment. I do not like it for a simple reason. The Bill was introduced in your Lordships' House and went into Grand Committee. We are now on Report and this is the first and earliest point at which we can vote on anything in it. If the argument of delay in these circumstances is to have any merit, it means that we have to accept whatever is presented to us by the Government if it is broadly in a good area of public policy. If in future we ever have to face an argument for reform of the House of Lords, we had better not do that.

**Lord Wills:** My Lords, I, too, support the amendments in this group and endorse everything that my noble friend on the Front Bench said in support of them. In doing so, I express my appreciation for the achievement of the Minister in nudging the percentage up to 75%. It is a significant advance and I appreciate all the effort that must have gone into achieving it. However, I am afraid that it is still not enough.

I will say a few additional words in support of Amendment 13, to which I added my name. It sets out a mechanism to try to ensure that the Bill can be a final settlement of the issue. It does so by setting out to ensure a continuing equitable balance between the various interests at play. We have heard at all stages of the Bill that there is strong support in your Lordships' House for the percentage paid to be not less than 100% of the average damages recovered by claimants in mesothelioma cases, and for the start of the scheme to be 10 February 2010. However, at the same time, I think that your Lordships' House recognises the strenuous efforts made by the Minister to achieve a settlement with insurers that could be delivered rapidly.

With respect to my noble friend Lord Browne, the issue is not so much the processes of Parliament as how obstructive the insurers are going to be. I appreciate that there is a risk of unpicking what the Minister has achieved and encouraging insurers to dig their heels in and be obstructive. We have seen too much evidence of the obstructive approach that they adopted in the past for that not to be a risk. Nevertheless, we can improve the Bill further, and this amendment seeks to do that.

As I understand it, the basis of the settlement, which can be achieved rapidly, is that costs should not exceed 3% of the levy. That is the point at which insurers estimate that they would have to pass on costs to employers. It is the actuarial assumptions made by insurers on this basis that have reduced the figure to less than 100% for payments under the scheme, and set the start date at 25 July 2012. Those actuarial assumptions are just assumptions. They could be questioned, and, as we have already heard, the Government's assumptions are different. However, it may turn out that they are accurate. All assumptions at this stage can be only a best guess.

If it does turn out that these actuarial assumptions by the insurers have overestimated the cost of the scheme, the amendment will address that eventuality. If, over time, once the smoothing period is over, the cost of the scheme amounts to less than the 3% of the levy that insurers are currently willing to contribute, the end result will be that insurers will up paying less than they are currently prepared to pay—in effect, they will save money—while victims of mesothelioma will continue to receive less than many, and perhaps most, in your Lordships' House and outside it believe that they should receive. Such an outcome would be manifestly unjust, and would lead to considerable pressure in Parliament for new legislation to put right such injustice.

The amendment seeks to avoid that situation, and all the further delays and uncertainty for victims of this disease that would result, by ensuring that such an injustice will not occur. It places no new burdens on insurers at all; it merely seeks to ensure that, whatever the outcome of the actuarial assumptions that underpin

the current provisions of the Bill, insurers will pay what they are currently prepared to pay. It offers the victims of this dreadful disease the comfort that, if there is more money available as a result of those assumptions turning out to be inaccurate, it is those victims that will get it and not the insurers. This avoids the prospect of future wrangling and disputes, which I would have thought the insurers would certainly welcome. It would be in nobody's interest to reopen the matter in this way, and this amendment offers a continuing equitable outcome. I hope that it will find favour with the Government.

*7.30 pm*

**Lord James of Blackheath:** My Lords, before the Minister replies, I should like to return to a point that came up in Committee and to try to set the industry context in which these misunderstandings, particularly those of the noble Lord, Lord Browne, are occurring. I should declare my interests. I was an elected member of the Council of Lloyd's throughout the whole six years of its rescue; I was in the somewhat unhappy position of being chairman of its audit committee for those six years; and, finally, I was chairman of the committee that created Equitas. I have twice stood trial in America for the fraudulent signing of the audit certificate of Lloyd's, of which I was fortunately acquitted each time, as it was a 25-year mandatory sentence. I therefore have some perspective on these affairs.

The noble Lord, Lord Browne, has a fundamental misunderstanding. There is no such thing as an insurance industry in the context in which all these liabilities were first conceived. Insurance companies do not exist. They have morphed into what is now, effectively, a vast international reinsurance market, where all these liabilities have been swept up and eventually reinsured with each other until they are all divided up against the entire global insurance market., Lloyd's itself is now wholly owned by Berkshire Hathaway and the negotiations will, therefore, have to be entirely with Berkshire Hathaway and its chairman—good luck in getting charity from him.

The context, therefore, is not that there are a lot of companies waiting to have separate negotiations. You have to hold negotiations with something like Swiss Re, as it will represent the entire financial community which has come together to provide a collective bond to underwrite, first of all, Lloyd's, and then everywhere else. The negotiation is very difficult for the Minister to undertake and it is in that context that I know he will now answer us.

**Lord Freud:** My Lords, I thank noble Lords for tabling these amendments. I will start with those relating to the rate of payment and then I will turn to the amendment of the noble Lord, Lord Howarth, on the recovery of payments over £110,000. The amendments tabled by the noble Lords, Lord McKenzie and Lord Wigley, and the noble Baroness, Lady Sherlock, seek to ensure a minimum level of scheme payment at either 100% or 80% of the value of an average mesothelioma civil damages claim. I completely understand and appreciate that noble Lords would like to see payment levels that are closer to, if not equal to or above, those of average civil damages. Equally, I take from our debates that I have noble Lords' full support in wanting to guarantee that we get the maximum possible payment for people who, through no fault of their own, clearly cannot bring a case against an employer or their employer's insurers. As we have often discussed, the funds to provide these payments are to be raised through a levy imposed on the active insurance market. The amount of levy to be imposed, and consequently the amount we can pay eligible people, has been determined following considerable work and negotiation.

Perhaps I may pick up the point about incentives made by the noble Lord, Lord Howarth. We have not made that argument. To the extent that it has appeared in some of the earlier texts on this Bill, I think it reflects a shape that was somewhat different when that argument might have applied. We have not made it. It is not relevant to this particular scheme. The noble Lord, Lord Browne, made the point in reverse. I actually give the credit for the 130% to the noble Baroness, Lady Donaghy, who proposed it originally. I have taken that point in a somewhat different way. That is what has driven the discussions with the FCA and led to its much tighter determination to have an effective incentive for insurance companies to do the tracing that they should do and to ramp up the tracing effect.

We have a duty here to do our best to ensure that costs are not passed on willy-nilly to British industry and that the levy works in that way. At that time, many of the insurers were not necessarily in the business on the same scale that they are today. I know that the noble Lord, Lord Browne, has asked for a full analysis. My noble friend Lord James gave him a picture of the kind of capital pools we are talking about. That is what insurance essentially is, with companies acting as agents. It is extraordinarily hard, but there is already a big split—I do not have reliable figures: I thought I had, but they are not reliable enough to quote in public—between a large number of run-off companies that are not active anymore, many of which are in run-off, which is the polite way of saying they have given up administration, because of some of the liabilities that they took. That needs to be monitored, which is difficult to do. There is also the matter of the market share of these companies. They may have been active for 50 years, but their market share may have changed dramatically. There is also the fact that some may have kept very good records while others have not, leading to a double whammy effect. Those that have paid up, because they have really good records, are probably those from which we are trying to take more money through this levy. I do not have a market analysis of the kind that the noble Lord, Lord Browne, wants, but I am confident in saying that nobody else has either.

Let us move on to where we have got to. Thanks to the combined and consistent pressure on the insurance industry from both the Government and noble Lords, we have secured what I could call a reluctant agreement from insurers that the scheme payments will now be set at 75% of average civil compensation. I emphasise again the important role played by noble Lords in getting that outcome. I am grateful for that. I have already talked about the different assumptions of the Government and the industry regarding the volume of

[LORD FREUD]
applications. The insurers have based their calculations on their own figures, which they think will require a levy of close to 3% of their gross written premium.

This has been a tough negotiation and even those with whom the Government were negotiating have had a tough job persuading others in that industry that there is an affordable package here. We want more, but this is a significant move from the insurance industry. If we could pay people more, we would, but this is a balancing act. If we were to go up to 80% or 100%, we would be very concerned about the costs being passed straight on to British industry. Indeed, a key concern that I have had about the structure of the scheme is that that should not happen, or that the risks of it happening should be minimised, and that is what the smoothing mechanism for the first four years is about. I know that the noble Lord, Lord Browne, will not like me saying this but there could be delay and delay and a full renegotiation is quite a painful process, as I know he will understand better than virtually anyone else.

On the point about the 3% made by the noble Lord, Lord Wills, I have been fully on the record since the beginning of the afternoon about the two points relating to the CPI and, more importantly, about our intention to review the matter at the end of the smoothing period. I hope that he appreciates how far that goes towards meeting his concerns.

Your Lordships have been very generous in what they have said about this matter but I think that a real expression of gratitude here would be if the noble Lord did not call a vote on this. That is the kind of gratitude that I understand and appreciate.

Before I close, I shall turn quickly to the amendment tabled by the noble Lord, Lord Howarth, which would allow the scheme to recover a scheme payment already paid only if the amount of the payment was above £110,000. Clause 4 is intended to allow the scheme to recover any payment, or part payment, in specified circumstances. Those specified circumstances will form part of the regulations setting up the scheme and will be debated in due course. However, the intention is that a payment that has been made in error will be subject to repayment. This amendment would allow the scheme to recover a payment made in error only if that payment was above £110,000. Payments of £110,000 or less could never be recovered.

If someone receives a payment and it is subsequently established that the payment was made in error or obtained as a result of some fraud or misrepresentation—it does not happen very often but there are one or two examples—it is right that the person who received that sort of payment should be asked to repay it, regardless of the level of the payment. It would not be appropriate to allow someone to keep any payment if it had been established that they were not eligible for it. It would clearly be unfair to allow one person to keep a payment of £110,000 but to recover a payment of £110,000 and a penny paid to someone else.

It may be that the noble Lord's amendment is intended to address the recovery of social security benefits and government lump sums from scheme payments, but the amendment as drafted does not achieve that. Provision for compensation recovery is dealt with in Clause 11 and Part 1 of Schedule 1, although I acknowledge that, like one or two other bits of the Bill, they are somewhat impenetrable.

The noble Lord's intention may be to prevent the scheme administrator reducing scheme payments in order to offset the cost of repaying recoverable benefits and lump sums to the Secretary of State of £110,000 or less. Recovery of benefits legislation applies where a person makes any payment to or in respect of another person in consequence of an accident, injury or disease and specified social security benefits or lump-sum payments have been paid in respect of the same incident. This is the basic principle of not receiving money or being compensated twice—the use of the word "compensation" here is more casual than legal—and we believe that that principle should apply here.

The other effect is that a person could receive a scheme payment plus benefits and a lump sum. That would mean that some people could well end up in a more advantageous position than someone receiving the full amount of compensation directly from an employer or traced insurer, which clearly cannot be right. I appreciate the noble Lord's intention to maximise the amount that people with mesothelioma can receive but this is simply not the way to achieve that end. Therefore, I urge him not to press the amendment.

*7.45 pm*

**Lord McKenzie of Luton:** My Lords, I thank all noble Lords who have spoken in favour of Amendments 11 and 13. Perhaps I may deal briefly with the Minister's reply. We agree that we want to get the maximum possible out of this. We acknowledge the improvement in the incentive for tracing that the noble Lord announced earlier, and I think that all noble Lords accept the increase from 70% to 75% in the level of recovery. However, we always come back to analysing this from a justice point of view: what is fair to insurers and what is fair to people who have contracted diffuse mesothelioma because of employers' negligence. We cannot get away from the fact that justice for them has to be 100% of the compensation that they would otherwise receive if there were formal compensation arrangements rather than the tariff. One hundred per cent of the tariff is justice; anything less is not.

I am not sure that we heard a compelling argument as to why the 3% minimum was not appropriate, particularly if it is where insurers are at the moment, certainly over the initial period. That would seem to be an easy one for the Minister to accept. However, given the hour and given the business that we have left to do, I should like to test the opinion of the House on Amendment 11.

*7.46 pm*

*Division on Amendment 11*

*Contents 119; Not-Contents 153.*

*Amendment 11 disagreed.*

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*Amendments 12 and 13 not moved.*

*Amendment 14*

*Moved by* ***Lord Freud***

**14:** Clause 4, page 3, line 5, leave out "regulations" and insert "scheme"

*Amendment 14 agreed.*

*Consideration on Report adjourned until not before 8.45 pm.*

## Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

*Motion of Regret*

*7.58 pm*

*Moved by* ***Lord Bach***

That this House regrets that the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, laid before the House on 7 March, will result in a substantial number of vulnerable people not being eligible for legal aid because of the capital in their house. (SI 2013/480)

**Lord Bach:** My Lords, one way of cutting legal aid is to take areas of law out of scope, which is something that this Government have done with a vengeance. As this House knows very well, social welfare law has been potentially destroyed by Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. However, there is another way to do the same thing, and that is to cut the number of people who can obtain legal aid in those areas of civil law—and there are precious few of them—which are still in scope; for example, mortgage possession and eviction cases, community care cases, mental capacity cases and some domestic violence cases as well. By these regulations that we are debating tonight, which my regret Motion deals with, Her Majesty's Government have excluded many who could claim legal aid previously. Is that a fair or just thing to do, particularly at a time of hardship and austerity for so many people? That is my point.

Before 1 April, any person in receipt of means-tested welfare benefits—for example, income support or guaranteed state pension credit—would qualify for legal aid on both income and capital. They were described as being passported. A quick decision could be made, which was easy to administer for the Legal Services Commission as was, the providers of that legal advice and the clients themselves.

Now the Government have put into place radical changes. The regulations require a capital test as well as an income means test: if a person has more than £8,000 capital, they are denied legal aid. Interestingly, under welfare benefit law, that sum is £16,000 and if they have anything less than £16,000, they would still qualify. My first question to the Minister is: why the difference? The welfare benefit system also ignores the value of a person's main dwelling but in these regulations the value of their main dwelling is taken into account. Therefore, my second question is: why is it taken into account under these regulations but not under welfare benefit regulations?

Of course, there is a disregard of £100,000 for any equity and £100,000 for any mortgage. Do the Government deny that many people who own homes with mortgages and some equity will not qualify for legal aid? The state has recognised in the benefits system that these people cannot easily, or at all, access their capital because it is tied up in the property that they have. Why will that not apply in these cases too? My case is that this will affect a large number of people's access to some sort of justice. Her Majesty's Government estimate 4,000 people will be affected. The belief of many outside is that that is an unbelievably small figure and that there will be many more in practice. This is simply unfair.

There is also a need for a general discretion to disregard income and/or capital where it was or is equitable in all the circumstances. In the 2000 regulations, there was a general discretion to disregard where it was equitable in all the circumstances. There has been no evidence of abuse of those regulations in that way. Why is it not in these regulations? We all know cases, perhaps involving mental capacity or disability, where justice demands legal help by way of legal aid. But because of the inflexibility of these regulations there is, to coin a phrase, no way out. There is certainly no way out with the exceptional funding scheme, which perhaps now should be called the very rarely exceptional funding scheme because it is not relevant to cases that are still in scope. Section 10 of LASPO is there for areas of law now out of scope. I fear the fact that there is no flexibility, and that the £8,000 capital is such a ridiculously low figure, shows that the purpose of these regulations is not to advance justice but to restrict it—not to help people sort out their legal problems but to make absolutely certain that they cannot.

In 2009, when austerity had already begun, the Labour Government did not reduce eligibility for legal aid in social welfare law; they increased it by 5%. We recognised that at a time of economic difficulties, it is crucial to ensure that people get quality and inexpensive legal advice to sort out their legal problems rather than go without any access, with the consequences that everyone knows; namely, that problems multiply and magnify until often in the end the state has to pick up the pieces arising out of problems with debt, welfare benefit mistakes and loss of employment. That decision by that Government was not a soft-hearted decision: it was based on a realisation that not only is access to justice right in principle; in this instance it saves the state money. It is not rocket science; it is just something that this Government do not get.

I look forward to the contributions of other noble Lords in this debate and to the Minister's reply. I ask him on this occasion please to address the debate itself. When I was a Minister, like him, I had to undergo from time to time debates where the government policies that I was trying to defend were attacked from start to finish by practically everyone who spoke. It is not a comfortable position but I would argue that there is still a duty on Ministers to answer the debate being heard at that time. I do not think that the Minister did himself justice last Thursday in the debate that the noble Baroness, Lady Deech, began, but I know that he can. Anyone who heard him at Question Time today dealing with the noble Lord, Lord Tebbit,

and others will know that he is an experienced and skilful performer in this House. Therefore, I ask him to deal with the issues that are raised in this debate and not just read out his speech.

There are already cases of people not getting legal aid when they should. That is a consequence of so much social welfare law being taken out of scope. There are also cases of people who have legal problems in areas that are still in scope but as a result of the regulations that we are debating tonight they are not able to access justice. That is a bit of a scandal. The Government should think again about these regulations and I hope that the House will agree with me that they are, at the very least, to be regretted. I beg to move.

**Lord Pannick:** My Lords, I thank the noble Lord, Lord Bach, for moving this Motion. Over the past three years he has played an essential role in identifying with forensic skill and great eloquence the defects in the series of measures that this Government have brought forward to limit legal aid in our society. The noble Lord has repeatedly pointed out, accurately and with some degree of force, that legal aid is a vital cement in our civil society. There is no point whatever in this place conferring rights unless people have the opportunity to vindicate them. It would be a great shame if there were further reductions in the ability of persons other than the wealthy to vindicate their rights by legal process.

The essential defect in these regulations is their treatment of the capital sums owned by persons who are otherwise eligible for legal aid. I cannot understand why the regulations apply different criteria to capital from the criteria that are applicable in welfare law. Regulation 8(2) provides that any person with more than £8,000 in capital will be denied legal aid, even though welfare benefits law provides that persons qualify for means-tested benefits even though they have up to £16,000 of capital.

There is a further discrepancy in that the welfare benefits system ignores the value of a person's home. These legal aid regulations will disregard only £100,000 of equity in property, under Regulation 39; and £100,000 of any mortgage, under Regulation 37. The inevitable result is that many people who own their own homes will be excluded from legal aid, even though they cannot in practice access the capital.

All this is very unfortunate, given that the Legal Aid, Sentencing and Punishment of Offenders Act has already reduced the scope of legal aid so that it is now skeletal. I am very concerned that even within the much reduced scope of legal aid under that Act, people who have no income and who are therefore eligible for welfare benefits will be unable to obtain legal advice and assistance. As the noble Lord, Lord Bach, said, there is a vital need in the regulations for more flexibility.

The Minister will no doubt tell us, as he usually does, that funds are limited and that economies are needed, but to adopt criteria, as the regulations do, which are more onerous than the criteria applied to welfare benefits is simply irrational and fails to understand the vital function of legal aid itself as a welfare benefit for the needy in our society. My essential question for the Minister is this: why are the criteria for capital in these regulations different from, and more onerous than, the criteria for welfare benefit law?

**Baroness Deech:** My Lords, I shall speak in support of my noble friend Lord Pannick and the noble Lord, Lord Bach, who is also my friend but not technically my noble friend. I want to put the regulations in perspective and to inquire whether the Government realise the pressure that these calculations will place on other parts of our society. I will mention just two issues.

This Government and their predecessors have pushed very hard to widen house ownership in the past 20 or 30 years. It has been successful. Ownership, of modest homes, has spread to all corners of society. To include their value in the assessment of legal aid places an unfair burden on a modest number of the population who have striven to own their own home. Not only that, but having owned one's own home one now finds that it has to be sold to pay for one's care in old age. It may have to be sold to raise money if one has the misfortune to be involved in expensive litigation. Not only that but, heaven forbid, it might even come to a mansion tax. In other words, one is putting much too much pressure on that wide swathe of population that owns a home of relatively modest value. They might have bought it for a five-figure sum years ago, but they will now find their house in that more than £100,000, and then £8,000, asset rank, depriving them of legal aid. The assessment costs will bite into the limited funds that are available for legal aid, because given the way in which the legislation is drafted, assessing whether someone is eligible for legal aid will involve quite a complicated process.

*8.15 pm*

The regulations will also place pressure on the Bar, which, as I have mentioned many times in this House, I regulate but do not represent. Barristers are already doing an extraordinary amount of pro bono work—they represent people for free, which I discovered when I started regulating—but there is a limit to how much pro bono work can be expected of the Bar, especially the junior Bar, when legal aid is in effect being removed from many areas where the most altruistic of our young people and older barristers practise. There is no more good will by way of pro bono that can be drawn, or no more than there is at the moment.

We have also seen a growth in the number of litigants in person. People who are not getting legal aid are representing themselves. The calculations in these regulations will include a number of people who think that they can represent themselves, or indeed have to. This has caused, as we have already seen in judicial comments, a great deal of trouble for judges, who are trying to control what is going on in court and are finding that cases are taking longer and that there is no parity of arms between the self-representing litigant and the litigant on the other side who may be able to afford a barrister. Complaints are arising from this, because the litigants in person do not understand, and cannot be expected to understand, how procedure works and what can be expected of the judge and the barrister on the other side.

[Baroness Deech]

The knock-on effects of these regulations, which almost get rid of legal aid, will bear their own costs. I join others in urging and pleading with the Government to withdraw and redraft them.

**The Lord Bishop of Norwich:** My Lords, a key reference in this Motion of Regret is to "vulnerable people", which is why this non-lawyer dares to stand amid such legal luminaries and feels a bit vulnerable himself.

A civilised country is one where we are all free under the law and where vulnerable people are not left defenceless against unjust treatment by another person, organisation or even an agent of government. Vulnerability is relative, of course, but the calculations that inform the regulations under discussion concern people who may be a very long way, as we have heard, from financial comfort and security, and may have multiple other needs.

The level at which permitted disposable capital is set is likely to render some older people in particular less capable of securing legal aid when faced by serious problems requiring legal redress. The levels seem to be set deliberately low. An older person with a capital value in their house of, let us say, £150,000 and an income that is modest yet sufficient to take them over the limits here might have to sell up to pay for legal services in a case, for example, involving mental capacity or criminal negligence. If they do not sell, they will have no access to the law, or, as the noble Baroness, Lady Deech, has just illustrated, they would have to represent themselves.

Do we think that such a person should move away from the support structure of family and friends just when they might need them most, when suffering from an injustice, if they are to realise any capital? Perhaps I am painting too gloomy a picture, but these seem to me to be the likely consequence of the regulations. I should be grateful if the Minister would address such dilemmas and what someone in such a dilemma is expected to do.

Last week, the Justice Secretary's statement that he was ideologically opposed to legal aid for prisoners in almost all situations, however disabled or disadvantaged they were, caused comment. I know that this is not the focus of this Motion of Regret, but the use of the word "ideological" was worrying. Ideology has too often trumped humanity in the history of the 20th century. Of course, the term emerged from the French Revolution, so its pedigree is argued over.

Although I am sure the Minister will robustly defend the regulations, I hope he will recognise that if they damage access to legal representation for vulnerable people, the Government will have to change course on humanitarian grounds and not defend themselves on the basis of a flawed ideology.

**Lord Beecham:** My Lords, I congratulate my noble friend Lord Bach on raising this issue by means of the Regret Motion. To prepare for this debate, I did of course read the regulations and the Explanatory Note. It occurred to me that it would be helpful to look at the impact assessment. However, that posed a certain challenge. It took about three-quarters of an hour for the Printed Paper Office and me to track down the appropriate documentation, because the reference in the Explanatory Note is not very helpful, and apparently nobody in the Ministry of Justice was able to respond to a telephone call from the Printed Paper Office.

However, I was eventually able to access the impact assessment, which was revised on Royal Assent. It certainly makes interesting reading. It discloses that a majority of respondents to the initial consultation,

"did not support the Government's proposals for reform",

although some did. It would be interesting to know what proportion of respondents supported the proposal out of the 5,000 who responded. "Some" could mean as few as two but conceivably a few more. It would be interesting to know what the balance was.

There has been no specific consultation on these regulations. However, the impact assessment made it clear that the changes have the potential to have a disproportionate effect on women, BME citizens and those between the ages of 25 and 64. Nevertheless, it stated that the Government's conclusion was that clients should have a financial stake wherever possible. That financial stake could be as much as 30% of disposable income. Disposable income is not generously calculated. Roughly speaking, a contribution of that size would pay for an evening out for the Chancellor and whoever he chose to entertain—Lynton Crosby seems to be quite a popular accompaniment to any Minister.

There is also a serious point, which the noble Baroness, Lady Deech, referred to, about the question of the capital value of property to be taken into account. Given the current level of house prices, certainly in this part of the country, just over £100,000 of capital represents very little in the way of property. Values are substantially higher than would be reflected in other parts of the country. A pensioner on pension credit whose mortgage has been paid off and whose home is worth £110,000, who could be living in a very modest property in London to exceed that figure, will be ineligible for legal aid. A recently unemployed father on jobseeker's allowance in negative equity with a home worth £240,000 and a mortgage of £250,000—so not in possession of any equity at all—will also be disqualified from receiving legal aid. A disabled man receiving employment and support allowance with a mortgage of £150,000 on a home worth £210,000—again, in London, that will not get you very far—will also be ineligible for legal aid. There is a real question of hardship here. It is certainly undesirable that people in that position should be compelled to have, to use that rather ugly phrase, "skin in the game" to access justice.

There is a particular question on which perhaps the Minister can help me. Regulation 40 states that,

"payment made out of the social fund under the Social Security Contributions and Benefits Act",

must be disregarded. Does that apply to the Social Fund in its new incarnation, because it is of course no longer a national Social Fund; it has now been passed to local authorities? I do not necessarily ask for an answer tonight, but it is unclear to me whether that disregard will apply to payments made under the new regime.

Another issue, mediation, has been raised by the Law Society, among others, and is something that the Government are very keen to push. I have my reservations about the degree to which it will actually help to resolve cases. Nevertheless, it is available, it has been used, and the Government want to encourage it. The same eligibility criteria will apply. Have the Government taken that into consideration? There is also the issue of the cost of administration of the system. Clearly administering the new regime will involve greater costs than the previous regime.

Then there is the question of how many people will be affected. As my noble friend said, the Government's original estimate was 4,000. As he said, that is widely viewed as an underestimate. Admittedly the scheme has been going for only a few months, but have the Government made any attempt to ascertain the likely numbers, and can they project them? If they have not done that yet, will the Minister undertake to do so after, say, six months, nine months or a year, so that we can assess the impact on those affected?

It is unfortunate that we find ourselves in the position of considering significant changes to a scheme whose scope is in any case being substantially narrowed. Clearly, the likelihood of people being deterred from pursuing a remedy will be borne out in the event. It is difficult to argue with those who believe that deterring claims is part of the Government's objective, at least as much as the potential savings that will accrue, at the expense, as the right reverend Prelate pointed out, of many vulnerable people.

I entirely endorse the terms of the Motion and look forward with interest to hearing from the Minister. I join my noble friend in congratulating the Minister on the line that he took this afternoon in questions about human rights. If I may say so, he distinguished himself from some of those around and behind him this afternoon in a very effective way. A little more of that from him would win him even more plaudits around the House. I congratulate him, and I hope that in that spirit he will respond a little more constructively to my noble friend's Motion than might otherwise be the case.

*8.30 pm*

**The Minister of State, Ministry of Justice (Lord McNally):** I think there is a line in TS Eliot about, "Woe unto me when all men praise me".

This debate gives me the opportunity to clarify the position in the regulations laid before the House on 7 March concerning the issue of capital in relation to financial eligibility for civil legal aid. I will certainly respond to the debate, as I did last Thursday. In fact, I reread the debate and my reply. I think that I covered most of the points raised by the 14 lawyers and two others who contributed to that debate.

The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 set out the rules that the director must apply to determine whether an applicant's financial resources are such that the applicant is financially eligible for civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These regulations broadly replicate effects of Parts 1 and 2 of the Community Legal Service (Financial) Regulations, which were made under the Access to Justice Act 1999. Indeed, a number of the points that were raised tonight were in complaint of parts that replicated that Act.

However, as part of Government's consultation in 2010, entitled *Reform of Legal Aid in England and Wales*, the Government proposed several changes to the rules concerning financial eligibility and contributions for civil legal aid. One of these changes was the removal of capital passporting. Two others were to cap the subject matter of the dispute disregard at £100,000 for all forms of civil legal services, and to increase the levels of income based contributions to a maximum of 30% of monthly disposable income. Before the 1 April, someone receiving certain income-based benefits such as income support, could have up to £16,000 disposable capital but be automatically passported through the means test and be deemed eligible for legal aid. However, a person not receiving a passporting benefit, and who had more than £8,000 in disposable capital, would be ineligible for legal aid.

It is inequitable that applicants with similar levels of capital may or may not be eligible for legal aid depending on the source of their income. To achieve greater internal alignment and fairness to all applicants for legal aid, the Government proposed that in future, people in receipt of passporting benefits should have their capital assessed in the same way as it is assessed for others, although they would still be passported through the income side of the test.

The Government's response to that consultation in June 2011 confirmed that they would take forward the proposal, and this is reflected in these new regulations. Therefore, under the new rules, all applicants for civil legal aid are subject to the same capital eligibility test. This means that any applicant with disposable capital above £8,000 will be ineligible for civil legal aid, regardless of whether they are in receipt of benefits. If the applicant's disposable capital is more than £3,000 but does not exceed £8,000, they will be required to make a contribution from that capital towards the costs of the legally aided services.

Ensuring that the capital assets of all applicants are subject to the same eligibility test helps to focus limited public legal aid funds on the most financially vulnerable clients and means that those who can afford to pay, or can contribute towards the costs, do so. It is estimated that assessing all applicants' disposable capital will result in approximately £10 million a year of savings in steady state. This is not insignificant against a backdrop of continuing pressure on public finances, where we need to continue to bear down on the cost of legal aid to ensure we are getting the best deal for the taxpayer. Disposable capital comprises all capital assets, including equity in land and buildings, money held in a bank, investments, stocks, shares and the monetary value of valuable items. However, there are certain disregards in calculating the amount of an individual's disposable capital, including for mortgages and for equity in an individual's home.

It may be helpful if I explain what these are. If an applicant is contesting property with their partner, their share of capital is assessed individually. Any outstanding mortgage, up to the value of £100,000, is

[LORD MCNALLY]
subtracted from the value of the property. Where assets are in joint names, they will generally be treated as owned in equal shares. Thus the remaining equity is divided equally between the parties. The first £100,000 of the applicant's equity is then disregarded under the subject matter of the dispute rule. The applicant then receives a further £100,000 equity disregard if the property is their main dwelling. If the remaining equity exceeds the £8,000 capital limit, the applicant will be financially ineligible for legal aid.

In practice, this means that only those applicants who are contesting large amounts of capital, or homes registered in joint names that are valued in excess of £500,000, and where there is a mortgage of at least £100,000, are excluded on capital grounds. We do not think it unfair or unreasonable that people who are disputing substantial assets fall outside eligibility for civil legal aid.

Where a property is not the subject matter of the dispute, is in an applicant's sole name and worth more than £208,000, that applicant would not normally be eligible for legal aid. However, a further disregard of up to £100,000 would apply if the applicant was aged 60 or over and had monthly disposable income of less than £315. The financial eligibility criteria for civil legal aid are designed to focus our limited resources on those of moderate means and with moderate amounts of capital. This helps to ensure that we can continue to provide services for vulnerable persons, such as victims of domestic violence, children at risk and those with mental health problems.

For domestic violence and forced marriage cases where the applicant seeks an injunction or other order for protection from harm to the person, or seeks committal for breach of any such order, there is a power to disregard the eligibility limits. In this way, we extend eligibility to legal aid for victims of domestic violence irrespective of the value of any property that the individual may own. A contribution may be required from income or capital.

The eligibility waiver for victims of domestic violence seeking protection from harm is a significant concession. This measure improves access to legal aid for domestic violence victims by extending eligibility beyond the original limit. It means that immediate legal advice and representation is available for those who need it and who otherwise would not qualify under the normal eligibility regulations. For those applicants required to pay a contribution, as legally aided clients they will benefit from the reduced cost of representation under legal aid rates as opposed to private rates.

There is a concession for pensioners who are in receipt of an income of £315 a month or below. Disregards of between £10,000 and £100,000 can be applied to any capital assets that they hold, including both property and savings, depending on the level of their income. For example, a monthly income of £76 to £100 attracts a capital disregard of £70,000. This is in addition to the allowances that normally apply, such as the equity disregard. Pensioners who receive a passporting benefit are entitled to the maximum disregard of £100,000.

The financial eligibility criteria for civil legal aid are designed to focus our limited resources on the poorest people. Bringing the capital rules for those receiving benefit into line with the rules for those who are not will help to do that, and will improve the fairness of the system. The substantial provision for disregards that I have outlined will ensure that an appropriate degree of sensitivity to individual circumstances is maintained, in particular as regards capital in the form of equity in the home. This is a sensible and reasonable measure.

The noble Lord, Lord Bach, made a number of points about the difference in the capital tests. Legal aid is not a welfare benefit and should not necessarily be treated in exactly the same way as universal credit, which is a working-age benefit. This is reflected in the different functions of income support and legal aid. The former is intended to lift people out of poverty over the long term while not penalising people for saving, while the latter is for people required to deal with a short-term legal issue and the associated expense.

The noble Lord, Lord Pannick, said that our LASPO reforms have reduced legal aid to skeletal proportions. I remind the House that we are talking about an exercise that has brought legal aid down from £2.1 billion to £1.5 billion. Neither the noble Lord, Lord Bach, nor the noble Lord, Lord Pannick, do their case any good by pretending that a system that will still spend something like £50 million on welfare legal aid and £1.5 billion in total can be described as "skeletal". The noble Lord, Lord Bach, said how generous the Labour Government were in 2009. In 2010, we had to take some very tough decisions. Again, I question whether the noble Lord, Lord Bach, has any authority to encourage us to believe that in 2015 a Labour Government would try to restore any of these changes to legal aid.

I hear what was said by the right reverend Prelate and the noble Baroness, Lady Deech. However, they do not do the cause that they espouse—desiring to help the poorest and most vulnerable in our society—any good by arguing that these changes, which will affect people with quite substantial assets behind them, are the right priority in the circumstances in which we find ourselves. The noble Baroness, Lady Deech, mentioned litigants in person. We are monitoring the impact of litigants in person. However, as I pointed out to the noble Lord, Lord Bach, in a more recent exchange we had, LASPO has been in practice for just over 100 days. He has been forecasting perfect storms and disaster for at least a year. We are keeping a close eye on these things and will monitor these various issues. However, the constant argument of disaster does not serve anybody. The very first Statement I made from this Dispatch Box was to the effect that if a part of your spending is directed at the vulnerable and the needy and you cut it, of course you will affect the vulnerable and needy. In those circumstances we have tried to make sure that we concentrate the money we have available where it is most needed. I will have a look at the Social Fund disregard and will write to the noble Lord—unless it was in that bit of paper that was passed to me. Even if it was, I will write to him.

This has been an interesting debate. The modest changes that we have made to the financial eligibility rules for civil legal aid are consistent with the fundamental

objective of our reforms. We need to continue to think carefully about how taxpayer-funded money is spent and focus legal aid on the highest-priority cases and those most in need, while delivering the savings needed to address the national financial deficit. I hope that I have covered most of the questions raised in the debate, and I hope that the noble Lord, Lord Bach, will agree to withdraw his Motion.

**Lord Bach:** My Lords, I thank all noble Lords who have spoken in this debate, in particular the Minister for the trouble he has taken to respond to the debate. I am grateful to all noble Lords, particularly the noble Lord, Lord Pannick, for his extraordinarily flattering remarks, which were somewhat exaggerated. However, it was very good also to hear from the noble Baroness, Lady Deech, and from the right reverend Prelate the Bishop of Norwich; the Government should listen with some care to the remarks that he made. I am grateful, too, as always, to my noble friend Lord Beecham for summing up the Opposition's view so clearly and crisply.

We should remember that we are discussing areas of law where the Government decided that legal aid should continue, not those areas of law where they thought that legal aid was completely meaningless or was not legal or appropriate. These are areas where people's need for legal aid is acute: for instance, housing repossession, domestic violence or community care. With these regulations the Government have said, on the one hand, "These are the areas where legal aid is appropriate", but on the other, "Those of you who may be poor in income terms but have a small amount of capital cannot take advantage of where we are keeping legal aid in scope".

That is not a satisfactory position for the Government to take. To say that what has been taken out of legal aid—particularly out of social welfare law—is skeletal, seems to be an overstatement rather than an understatement, when we look at what is left in scope compared with what has been taken out, which includes all welfare benefit social welfare law, all employment social welfare law, the vast majority of housing social welfare law and nearly all debt social welfare law. The word "skeletal" is not wrong at all.

Legal aid is part of our welfare system and should be so. It is part of our social security system and a protection for all our citizens, or so it ought to be. That was the idea when it was first formulated—an idea that has grown up with Governments of all persuasions over the past 60 years. It is a great shame to hear the Minister say that it can be completely divorced, as it were, from the rest of the social security system. It cannot be: it remains a protection for all of us.

These regulations make the position more complicated, more costly, more unfair and more inflexible. That is not satisfactory. Of course, I am tempted—as I always am—to divide the House on the issue. Noble Lords have spoken in pretty clear terms of what is felt around the House. However, the House has probably voted quite sufficiently in the early part of this evening. We have had the debate and will be able to read it in *Hansard*. I have no doubt—I know that the Minister will look forward to this—that we will come back to these issues in due course, but probably after the summer rather than before. I beg leave to withdraw my Motion.

*Motion withdrawn.*

## Mesothelioma Bill [HL]

*Report (Continued)*

*8.47 pm*

*Amendment 15*

*Moved by* ***Lord McKenzie of Luton***

**15:** Clause 4, page 3, line 10, at end insert—

"(2A) The average damages recovered by claimants in mesothelioma cases shall be determined by reference to the gross tariff, as set out in Schedule (Tariff).

(2B) The gross tariff will be up-rated annually by the general level of prices as measured by the Consumer Price Index and reviewed at least every five years."

**Lord McKenzie of Luton:** My Lords, in moving Amendment 15 I shall speak also to Amendment 19. These address aspects of the levy. That subject was covered in large measure by the noble Lord in his introductory statement, so I hope that I can be brief. However, given that we have not yet seen a draft of the levy regulations, nor will we by the time the Bill leaves your Lordships' House, we need as much clarity as possible on what they will contain.

Amendment 15 sets out a gross tariff as a schedule to the Bill. It is based on the national institute analysis that sought to determine average civil compensation awards for mesothelioma cases based on recent experience. It is set out in yearly age bands and stretches from age 40—that is, at date of diagnosis—to age 94. The tariff is intended to be a proxy for levels of compensation that would have been awarded had individual compensation assessments been made. It is expressed in gross amounts, so if payments are made at less than 100%, the relevant percentage would apply. The tariff excludes the legal cost of reimbursement. I understand that the amounts included in that gross tariff, reflected in the proposed new schedule, are not contentious and are accepted by the Government, the ABI and the Asbestos Victims Support Group campaigners and its professional advisers. However, it would be good to have the Minister's specific confirmation of that.

The Government may resist the tariff going in a schedule to the Bill, although we would contend that that is where it belongs. An alternative approach is acceptable to us, as long as there is certainty on the gross starting tariff. The amendment also calls for the tariff to be uprated annually by reference to inflation. We have adopted the CPI measure and the Minister has already said that that is the intent. However, again, it is important to have that on the record.

The amendment further calls for the tariff to be reviewed at least every five years. Not only is this reasonable in terms of generally ensuring that the tariff is aligned with reality, but it implicitly recognises the changes that might ensue following the uprating of civil compensation claims following LASPO deliberations. It would be helpful to have confirmation from the Minister that it would be the intent to align the tariff with the outcome of any such review. I beg to move.

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** My Lords, I thank the noble Lord and the noble Baroness for their amendments. As I understand it, their purpose is to set out the exact tariff to be used by the scheme and to require that the growth tariff would be uprated annually in line with the consumer prices index. I support the intention of the amendments, although I do not think that they are necessary. I shall explain why.

I put on the record that it is our intention to uprate the scheme payments annually in line with the CPI. If we were to put that in the Bill, we would have no flexibility to uprate by any other amount in future. For instance, we have given an undertaking to review the scheme's operation and the rates of payment at the end of the smoothing period. Obviously I cannot pre-empt the findings of the future review, but were any review to show that a gap had developed between average civil damages and scheme payments, we would want to address that. If we were required by the Bill to uprate only in line with the CPI, we would be unable to do so.

Regarding the proposed tariff to be included in the Bill, I confirm that we have published an ad hoc analytical publication that sets out the same figures that are included in the table attached to the amendment. These are the figures that we will be using as a baseline when we calculate the percentage level of damages. If we included the table as a schedule, as the amendment proposes, we would need either annual primary legislation or a regulation-making power to make any change to the schedule. As I say, I am happy to go on record to say that the figures contained in the report that we have published will be used when we calculate the amounts that individuals will receive. We will publish in regulations the amounts that people will receive from the scheme.

I hope that I have covered these issues in adequate detail and have put the position on the record without the need for these amendments, which I understand were intended to tease out these issues. I hope that the noble Lord will feel able to withdraw the amendment.

**Lord McKenzie of Luton:** I thank the Minister for his reply. It dealt satisfactorily with the purpose of the amendment, which I beg leave to withdraw.

*Amendment 15 withdrawn.*

*Amendment 16 not moved.*

### *Clause 7: Scheme administration*

*Amendment 17*

*Moved by* ***Lord Howarth of Newport***

**17:** Clause 7, page 4, line 12, at end insert—

"( ) must ensure as far as possible that the scheme administrator is unbiased as between the interests of the insurance industry and the interests of applicants to the scheme,"

**Lord Howarth of Newport:** My Lords, this amendment is intended to highlight the important issue of conflict of interest, which we have not sufficiently considered so far in our proceedings. The Government are proposing that a scheme intended for the benefit of mesothelioma sufferers should be run by the same insurance industry whose negligence deprived mesothelioma victims of legal redress and which for years held out against fair and decent treatment. As envisaged by the ABI, the industry would create an incorporated body, accountable to its funders in the industry through its board.

In its briefing to us, the ABI has made mention of the possibility of competition that the Minister informed the House about earlier today. I applaud his intention to ensure that there is a competitive tender of the administration of the scheme; that is right in principle. However, it may be difficult for the noble Lord to find other tenderers that are competent to run the scheme. Let us see.

Meanwhile, the difficulty we need to keep clearly in sight is that it is in the insurers' interest to pay 75% or even less of the average civil court settlements. It is in their interest to avoid costly procedures and negotiations of the kind the court route requires of them. Indeed, it is in their interest to determine that applicants for awards from the scheme are found to be ineligible. It is in their interest, after all, to reduce the levy.

The Bill, as drafted, and the scheme, as proposed, create an administrator and a technical committee that have pretty well plenipotentiary powers to assess eligibility, the validity of documentation and the significance of evidence. Under Clause 4(3)(b), the scheme may,

"in particular, give the scheme administrator power to decide when to impose conditions or what conditions to impose".

That is a fairly blank cheque. In the scheme contents that we have been shown, which are to be brought in by regulation, the scheme administrator has powers to refuse altogether to make payment. We need to be well aware that there is a bias built into this system. It may be unavoidable but it is there.

The ABI has informed us that, of 4,051 ELTO searches in the year from May 2011 to April 2012, 2,354 were successful in tracing the documentation; it follows that 1,697 were unsuccessful. Yet the ABI is predicting that only 200 to 300 claimants will be found to be eligible each year. What is to happen to the other five-sixths of those whose documents could not be traced?

The powers of the administrator and technical committee are, as I have suggested, almost total. Admittedly, there is provision for reviews and appeals and, if this is to be a body created under legislation, there may be scope for judicial review, but that of course is not a desirable way to resolve these cases.

The insurance industry is going to be judge and jury in what is in its own interest. The case for using the insurance industry to administer the scheme is that it understands the business. However, I hope that the Minister will describe to the House how he intends to ensure fair play. The history of employer's liability insurers does not inspire confidence and it is not satisfactory to design into the scheme a blatant conflict of interest. Therefore, the question is: will the oversight committee proposed in the amendment from my noble friends on the Front Bench be sufficient to ensure fair play?

My Amendment 30 would require the Secretary of State to report on the performance of the scheme and the administrator to Parliament each year. This amendment is modelled on a provision that the Government have written into the Intellectual Property Bill. It is an admirable provision. If the Minister is willing to agree that there should be an oversight committee, should it report to the Secretary of State and the Secretary of State then report to Parliament on an annual basis? I hope that that will be the case. The matters on which we should look to the Secretary to State to report to Parliament include: the performance of the administrator; all the relevant data and statistics to enable us to know the performance of the scheme in detail; the number and variety of cases; the speed at which cases are processed; the pattern of tariff payments; the evolving relationship between payments under the scheme and awards made by the courts; and the scale and nature of compensation recovery unit recoveries from payments. We should also be told about what is happening in the field of research, which we debated at length this afternoon.

*9 pm*

The report ought also to cover those matters that are the responsibility of the Ministry of Justice in the Government's two-pronged strategy to support people with mesothelioma. We need to know, therefore, what legal costs are being incurred. We need to have reports on reviews and appeals that have taken place—and, indeed, on the issue of legal aid and the cases that may be justiciable under the ECHR and which would be eligible for legal aid. We will need to know about the progress of the conditional fee agreements, about which we are waiting to learn from the Ministry of Justice what it intends.

All in all, we need to have an understanding of the state of co-operation between the DWP and the Ministry of Justice. It does not appear, at the moment at least, that it is as good as it should be. I took the precaution of inquiring at the Library yesterday, and made a final check today, to see whether the Ministry of Justice consultation had finally come out—a consultation that has been promised so many times, and upon which our expectations have been dashed so many times. Believe it or not, unless the Minister can correct both me and the Library, it has even now, after all these postponements, still not appeared. It does not seem that the Ministry of Justice shares the sense of urgency of the Minister at the DWP.

To its credit, the DWP is anxious to make haste to get its side of the bargain on the statute book. The Ministry of Justice appears to be entirely uninterested. It is so busy demolishing the foundations of justice with its attacks on the legal aid system that it has no time to spare any consideration for mesothelioma sufferers. It is simply awful. The Minister himself has said that he envisages a five-yearly review. Perhaps every five years, the annual report will be really super.

Finally, I suggest that the report should also cover the Government's plans to establish other schemes—which is the subject of Amendment 29 in the name of my noble friends—and their thoughts about an Armed Forces scheme, which the noble Lord, Lord James of Blackheath, wants to see. I would go even further than the noble Lord. There is clearly an equal and extensive range of obligations on the Government to ensure that people who have contracted mesothelioma as a result of negligence on the part of the state or its agencies —on construction sites, shipyards and the enormous variety of industrial situations where the state itself may be the employer or has contracted to employ other employers—are no less well looked after and compensated than those who have been the victims of other employers and are unable to get redress from employer's liability insurers. The Government self-insure, and have therefore taken that responsibility upon themselves. The annual report ought to cover the range of the Government's responsibilities in this whole area.

Mesothelioma victims have few champions. They have the Asbestos Victims Support Group's forum and the Association of Personal Injury Lawyers. They have the noble Lord, Lord Freud, whom I am sure they appreciate very much, and my noble friend Lord McKenzie of Luton, as doughty champions for them. Noble Lords in this House and Members of Parliament in another place are also committed to supporting them. However, their case was ignored by policymakers for decades. Again and again, the avarice of the insurance industry outweighed the generosity of the Government in 1979 and again in 2008.

Continuing parliamentary vigilance is essential. The Minister has so far promised an annual Written Ministerial Statement. That is not enough: we need a full annual report. I beg to move.

**Lord McKenzie of Luton:** My Lords, we have Amendments 25 and 29 in this group and we support Amendments 17 and 30 in the name of my noble friend Lord Howarth, although there is some overlap between the two sets of amendments. I will be brief as I believe we are pushing at an open door from what the Minister told us earlier today. Amendment 25 calls for the establishment of an oversight committee to monitor, review and report to the Secretary of State on the overall arrangements touched on by this legislation. It would undertake this task in relation not only to the scheme and the technical committee but to the tracing office and the electronic information gateway. They fit together, and we know that the insurance industry sees them as an integrated package.

The idea of an oversight committee was originally prompted by concerns over the extent to which the insurance industry may be engaged in all of this, possibly as a scheme administrator—although we welcome the news announced earlier today about the open competition—and certainly on the technical committee, running the tracing office and devising the portal. An oversight committee properly constituted would provide a level of reassurance for those whom the scheme should benefit and would be a counterweight to the level of engagement of a powerful industry with clear financial interests in how it all works, as my noble friend Lord Howarth so powerfully demonstrated. That is why we believe that the oversight committee should include representatives of asbestos victims support groups and the trade unions which have supported them, with an independent chair. Effective oversight would, we suggest, help the hard-pressed DWP resources,

[Lord McKenzie of Luton]
and an annual report from the committee could be incorporated with an annual report to Parliament by the Minister.

In Committee and in meetings thereafter, the Minister has expressed support for an oversight committee. We heard it again today and I know that he has considered various options. While disappointed not to see a specific amendment from the Government today, we hope for an assurance that they will introduce an amendment when the Bill passes to the House of Commons. I was not quite sure that it was clear enough in the noble Lord's opening statement, so I hope he will clarify matters. It would be good if that assurance spelt out at least the bare bones of what is intended.

Amendment 29 is a return to the issue of support for sufferers of other asbestos and long-latency diseases. The payment scheme in this Bill relates to those diagnosed with diffuse mesothelioma. It therefore excludes other asbestos-related diseases such as asbestos-related lung cancer and asbestosis. It also includes other work-related, non-asbestos diseases such as pneumoconiosis. The DWP's June 2013 analysis quotes the Health and Safety Executive data on industrial diseases, which has an annual estimate of sufferers of asbestos-related diseases of some 3,500—that excludes those suffering from mesothelioma—and of non-asbestos-related industrial diseases of some 4,200. Many of these will face the same problem in identifying a negligent employer or an employer liability insurer. The DWP's June note acknowledges that many of the diseases covered do not share the same characteristics as mesothelioma, and that their severity and progression may vary, depending on the heaviness of exposure to asbestos.

It also highlights the fact that, for example, only a small proportion of asbestos-related lung cancers are compensated through government schemes, because of the range of different causes of lung cancer that mask an asbestos cause. Notwithstanding this, and perhaps somewhat strangely, in computing the effect of extending the scheme, it has been assumed in the data that the same proportion of those with diffuse mesothelioma who can access the scheme proposed by the Bill will be able to access an extended scheme, that the same level of scheme payment will be received, and that the same amount of benefit will be recovered. These are fairly broad-brush assumptions, to say the least. In resisting this amendment, the Minister will doubtless point to the costs of bringing forward an extension of the scheme. On the basis of their estimates over a 10-year period, they suggest that there will be 5,100 successful applicants for other asbestos-related diseases and 6,100 with non-asbestos work-related diseases. There will be additional levy on insurers of £478 million and £564 million respectively.

At face value, these figures are shocking. It is not so much the amounts as the suggestion that over the 10-year period some 11,200 people will miss out. By how much will depend on benefit recovery arrangements, but they could miss out to the tune of £1 billion. If the concentration were just on the other asbestos-related diseases, not expanding the scheme will deny 5,100 people, who will miss out just because an employer has gone out of business or cannot be located and a relevant insurer cannot be established.

The amendment requires the Secretary of State to bring forward proposals within a year to establish other schemes to cover these other diseases. We have been clear that we do not want the pursuit of broader coverage to hold up the scheme for diffuse mesothelioma, and there is no reason why acceptance of the amendment should cause this to happen. It is accepted that it will be difficult to graft onto the mesothelioma scheme the tariff approach, given the varying degrees of suffering that some of the other diseases entail, and that there may be convoluted issues around causation. Therefore, while continuing to acknowledge the merits of the mesothelioma scheme, we should no longer look aside from those people—many thousands on the Government's own figures—who face terrible suffering because of the negligence or breach of statutory duty of an employer. This is all the more important where access to the state lump sum and social security support is more difficult, as it is for some.

The Minister has come thus far and we have supported and congratulated him on doing so. Indeed, he has expressed sympathy for a broader scheme. Accepting the thrust of these amendments would add to that journey, which I beg him to undertake. If he cannot, he will of course be aware that the campaigns will go on.

**Lord Freud:** My Lords, it would be most convenient to deal with these amendments in their original order. If I may, I will start with the amendment moved by the noble Lord, Lord Howarth, on the scheme administrator, and then turn to the two amendments tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Sherlock, which relate to an oversight committee and future reports on further schemes. I will then turn to the amendment of the noble Lord, Lord Howarth, on annual performance.

Amendment 17 is intended to make certain that the body chosen to administer the scheme is able to operate in a wholly objective and unbiased manner. I know that there has been concern among noble Lords about the insurance industry's involvement with this scheme, especially its administration. I agree that it is paramount that the administrators of a scheme that is intended to help its applicants must be able to do so in a fair way. I am confident that the necessary safeguards are in place to ensure this without the need for an amendment on the matter.

First, I remind noble Lords of the commercial procurement strategy that I spoke about earlier. The scheme administrator will be chosen through an open procurement competition that will be launched in time to meet our aim of taking the first applications in April 2014 and making payments next July. Members of the insurance industry will be allowed to tender, as will the shadow body created by the ABI. Legal specialists may also tender. The body will be chosen through this exercise according to our commercial criteria, which include being able to administer the scheme as set out by the scheme rules.

Secondly, I refer noble Lords to the scheme rules, which set out clearly every aspect of the scheme administration and specify how the administrator may or may not act. Compliance with the scheme rules will form an integral part of scheme arrangements.

*9.15 pm*

I will pick up the point made by the noble Lord, Lord Howarth, on the power of the administrator to impose conditions when making payments. As we spent a lot of time in Committee discussing, this is designed to allow the scheme's administrator to place a payment in trust where the payment was made to a minor or to a person who lacks capacity. I am content that the selection process for our scheme administrator, in conjunction with the scheme rules, provides sufficient assurance that the scheme administrator will not be able to influence or interpret the running of the scheme. I hope that the noble Lord is reassured by this explanation, and I urge him to withdraw the amendment.

Amendment 25 proposes an oversight committee that would monitor the performance of the scheme and other related matters and report to the Secretary of State. I agree with the idea behind this amendment. The suggestion was made in Committee, and since then we have been exploring available options for some form of oversight. I spent some time looking for an existing mechanism or body already within the auspices of the DWP that I could utilise, but I have not been able to find a suitable vehicle. We are therefore continuing to explore all the options.

We face one restriction which noble Lords will appreciate more than most—on the setting up of new non-departmental public bodies—and we have to deal with that issue as we develop our options. I am working with stakeholders to identify a suitable structure that will allow for effective scrutiny of the scheme without necessarily requiring underpinning legislation.

There are several areas in this amendment that I wish to reflect on. The first is the proposed use of the oversight committee to monitor the Employers' Liability Tracing Office. ELTO is a private company funded by the insurance industry. The Association of British Insurers is currently looking to recruit representatives from stakeholder groups to sit on the board of ELTO to monitor its performance. Having stakeholder representatives on the board of ELTO will allow them to directly influence the work of ELTO, as well as ensure that it is performing to expected standards. In addition, we expect that the technical committee will sit within ELTO. If that expectation is realised, the ELTO board, which by then should include stakeholder representatives, will be able to monitor the performance of the technical committee and report on this through the annual ELTO report. It will also allow stakeholders to identify any concerns and raise them with the DWP so that remedial action can be taken as necessary.

Next, I must reflect on the proposal in the amendment to report on the proposed electronic information gateway. There may well be merits in looking at how any gateway interacts with the scheme in order to ensure that it is supporting, rather than hindering, applications. However, we cannot yet say whether or not an electronic information gateway will be introduced, so it is not possible to work out the details of how this monitoring may be carried out. I prefer a non-legislative solution to this issue that allows us to set up a proportionate and flexible oversight committee, made up from all stakeholder groups that have a stake in the operation of the scheme. It will provide valuable support to DWP officials as they monitor the scheme's performance in the years ahead. We will continue to work with stakeholders on the proposals over the recess.

I now come to the amendment that would require a report to be published giving details of government plans to establish future schemes. I understand the desire for us to commit to going further and to helping as many people as we can. We have discussed before why the particular nature of mesothelioma lends itself to a discrete scheme aimed at that disease alone, and that separate schemes would be required to provide for sufferers of other diseases. While I understand and agree with the intention to keep up this momentum and for a commitment to do further work, I am afraid that I must reject this amendment. First, the complex and varied nature of other diseases would necessitate significantly more complex schemes that could take several variables into account. They are the ones that the noble Lord, Lord McKenzie, pointed to, and include the severity of the disease and the contributory factors when calculating eligibility and payment amount. The complex nature of the necessary schemes would also necessitate high costs.

Secondly, I draw noble Lords' attention to the work of ELTO and the recent work of the FCA in conjunction with ELTO that I spoke about earlier. These two bodies have taken very positive steps towards correcting the market failure in the insurance industry. In the first year, the overall rate of successful traces increased from 46% to 71%, while the rate of successful mesothelioma traces increased from 34% to 58%. This work should not be underestimated. It may be that, in time, the work of these bodies brings further improvement until one day we get to a stage where the number of untraced records is so small that additional schemes are not needed. We need to give the measures that are in place sufficient time to show the progress that they are making.

The figures show that a much more significant improvement has been made in the overall tracing rate than in the rate of tracing mesothelioma-only cases. This shows that a scheme for mesothelioma cases is necessary, and reinforces my point that the steps we have taken already may in the fullness of time be sufficient for other diseases.

We also need to be mindful of the resource constraints within which we have to operate. The DWP will rightly focus on ensuring that the scheme operates as expected in its first years. There will undoubtedly be teething problems, as there are in any new scheme. Although we will do our utmost to minimise them, it would be naive to think that there will be none. It would therefore not be the best use of limited resources to divert them into producing a report into other schemes. As I have indicated, this would be complex to design and would be at the expense of the scheme that we have.

While I do not accept the amendment, which would commit us and future Governments to producing a formal report every year, I am alive to the need to review the situation as time goes by. Certainly, once we are able to see how much ELTO has improved things and how well the payment scheme has worked, the Government will be in a position to undertake such a review. I remind noble Lords that provision exists for

[LORD FREUD]
sufferers of other asbestos-related industrial diseases under the scheme in the 1979 Act. Therefore, I urge the noble Lord and the noble Baroness not to press their amendment.

The final amendment in this group, tabled by the noble Lord, Lord Howarth, would require the Secretary of State to report to Parliament on the performance of the scheme within six months of the end of each financial year. It is not necessary to include this provision. Scrutiny and reviews are already planned for the scheme, without the need for including details in legislation. As I said, I am happy to commit to making a statement to the House on the scheme's performance.

Other amendments deal with the issue of scrutiny via some form of oversight committee. We are still working on the details, but we expect that performance information will be made available, probably online. This may be in another format. Perhaps it will be monthly rather than annual. We are looking at the matter and will consider it alongside the oversight committee. Indeed, the oversight committee may have views on the best way to make the information available. With that, I urge the noble Lord to withdraw his amendment.

**Lord Howarth of Newport:** My Lords, I am grateful to the Minister for his full response to each amendment in this group. He tells us that sufficient safeguards are in place to ensure the objectivity and unbiased behaviour of the scheme administrator, and asks us to accept that the open procurement competition will be a contributor to guaranteeing that impartiality. However, it may be difficult for him to find anybody competent to run the scheme who is not in the industry, so the problem of conflict is likely to persist. I do not wish continuously to impugn the motives of people in the insurance industry, and would like to think that those who are appointed to work as administrators of the scheme will set out with the best of honourable intentions.

We are always being warned, however, that we should avoid situations of conflict of interest and, from time to time, people are vulnerable to the temptations that conflicts of interest present to them. There is a whole institutional temptation here because the insurance industry stands to gain significantly from cases not going to court and from cases not being handled generously by administrators, who will have such absolute powers of determination. I therefore remain concerned about this, although the Minister offered a little reassurance about Clause 4(3)(b) when he said that it was harmless. Certainly, on the face of it, the wording of it seems to give enormously large powers to the administrator, but I accept what he said about the purpose of that particular piece of drafting.

Moving on to the oversight committee, it is good that the Minister agrees that there should be such a committee; he made his points about getting stakeholders on to the board of ELTO and the technical committee being within ELTO, so that stakeholders would be in a position to keep an eye on the performance of those parts of the whole apparatus. He said, understandably enough, that he wants a non-legislative solution, but we will probably want to know a good deal more about the provision that he intends to propose before we can agree that it is right in principle that there should be a non-legislative solution. My noble friends may want to reserve the right to return to that, whether that is here or in another place.

As to the report on future schemes, the Minister again rejected the proposal from my noble friends, as he does not want to divert scarce resources—no doubt of time and energy, as well as money—to preparing that. He suggested that the complexities of the other asbestos-related conditions are such that they would not fit well into the mould of the scheme that we are legislating for in this Bill. I hope, however, that the Minister will continue to reflect on the fact that there are—as my noble friends explained compellingly, and rather movingly—large numbers of people who are suffering from these other conditions. At the moment they have all too little support; we know that there is a vast disparity between the lump sums that are paid under government schemes and the awards that the courts provide and the lesser payments that the scheme will provide. These people continue to be seriously disadvantaged and we cannot be happy with that.

I was pleased that the Minister was able to tell us that the success rate in tracing has been improving spectacularly, which suggests that it could always have happened if there had been the will on the part of the industry to do this. We must be pleased that it is now doing better but, equally, we must have means to keep the pressure up and to ensure that, in the future, there is not again any deterioration in the success rate of tracing and, above all, that elements of the industry do not resume the practice of conveniently losing or shredding documentation, which is the great scandal. They are getting off all too lightly in that regard.

On the annual report, the subject of Amendment 30, the Minister wanted us to accept that scrutiny and reviews are already planned and that we do not need to worry because everybody will keep an eye on it and Parliament does not need to be too bothered by it. I do not think that the annual Written Ministerial Statement that the noble Lord has promised is good enough for Parliament, even when combined with the online information that he said will be made available. He will have seen already the intensity of interest in your Lordships' House and he will certainly see both greater intensity of interest in the House of Commons when it comes to scrutinise this Bill and a wide and deep concern across the country. I think that it is a proper responsibility of Parliament to invigilate this process, and an annual report is a convenient and practical means for Parliament to do so. Therefore, I am disappointed that the Minister has resisted that. This is a subject that I think we will wish to return to but, in the mean time, I beg leave—

*9.30 pm*

**Lord McKenzie of Luton:** Before my noble friend withdraws the amendment, perhaps I may clarify one point with the Minister. I was slightly less reassured about the oversight committee than I expected to be, partly because it looks as though it might be a fragmented effort, given the ELTO structure. The noble Lord said that his preference was for a non-legislative solution, and we do not have a problem with that. However, will a conclusion be reached as to whether the non-legislative

solution will be found by the time the alternative of a legislative solution passes in the Commons? It would be a pity if we had not concluded on this and decided in due course that we needed a legislative solution and the Bill had completed its passage.

**Lord Freud:** My Lords, my aim is to know where we are with the structure over this Recess. I think that I owe the noble Lord a letter at the end of the Recess setting out where we have got to on that so that he will be able to talk to his colleagues in the other place. If he thinks that a gap is developing, that is a way for me to handle that uncertainty.

**Lord Howarth of Newport:** In the mean time, I beg leave to withdraw the amendment.

*Amendment 17 withdrawn.*

***Clause 9 : Unauthorised disclosure of information: penalties etc***

*Amendment 18*

*Moved by* ***Lord Freud***

**18:** Clause 9, page 6, line 3, leave out "281(5)" and insert "154(1)"

**Lord Freud:** This is a minor amendment which removes an erroneous reference to Section 281(5) of the Criminal Justice Act 2003. The appropriate transitional provision which relates to the offence in Clause 9 of this Bill is Section 154(1) of that Act.

*Amendment 18 agreed.*

*Amendment 19 not moved.*

***Clause 13 : The levy***

*Amendments 20 to 23 not moved.*

*Amendments 24 and 25 not moved.*

***Clause 15 : Technical Committee to decide certain insurance disputes***

*Amendment 26*

*Moved by* ***Lord Freud***

**26:** Clause 15, page 9, line 11, leave out "or anyone else"

**Lord Freud:** The amendments in this group concern the technical committee that will be established to make decisions regarding disputes about whether an insurer provided employer's liability insurance to a particular employer at a particular time. The amendments do two things: first, they make clearer the definition of "potential insurance claimant"—in other words, those who could be in dispute with an insurer about cover and whose disputes might come to the technical committee for a decision—and, secondly, they remove the power of the Secretary of State to expand that definition in the future.

Currently, the definition of a potential insurance claimant includes those who allege that an employer is liable for damages and an employer or anyone else who is alleged to be liable for damages. Amendment 26 removes the phrase "or anyone else". This phrase is not deemed necessary because we are not able to identify any further parties that could come to the committee, other than those already listed.

Amendment 27 removes Clause 15(10), which gives the Secretary of State powers to make regulations to amend the definition of potential insurance claimant. This could include extending the scope of the technical committee to cases concerning other diseases or bodily injury. Amendment 32 makes a consequential amendment to Clause 17 to reflect the fact that, with the removal of Clause 15(10), there will be no regulations under Clause 15.

The Delegated Powers and Regulatory Reform Committee, in its report, recommended the removal of the power to amend the definition of "potential insurance claimant" unless its purposes could be more precisely specified. Having considered the points made by the DPRRC about this power, we are persuaded that these amendments are necessary. Clause 15 as it stands potentially broadens the scope of the Bill in a way that is not consistent with the focused nature of the rest of the Bill. Furthermore, as we are not able to specify the exact circumstances in which the Secretary of State might choose to expand the classes of people about to bring disputes before the technical committee, we agree that such a broad regulation-making power is inappropriate.

I hope that noble Lords can support the wish to make the Bill as robust as possible, and support the removal of unnecessary regulation-making powers. I beg to move.

**Lord McKenzie of Luton:** My Lords, we have no difficulty in accepting these amendments. As far as Amendment 27 is concerned, we are a little unhappy to see this disappear but accept that, without broader schemes evolved and being brought forward, it does not make particular sense.

So far as Amendment 26 is concerned and the deletion of "or anyone else", can the Minister just remind us who that was intended to cover or who the drafters originally thought ought to be covered?

**Lord Freud:** My Lords, I think that is the most difficult question I have had in the past three years. I simply do not know what was in the draftsman's mind. I think it was a standard reflex to capture anything that may not have been in the list. When we had the chance to go over it in more detail, we really could not think of anything else so it became redundant. I think that is the explanation and I am deeply impressed by the question.

*Amendment 26 agreed.*

*Amendment 27*

*Moved by* ***Lord Freud***

**27:** Clause 15, page 9, line 15, leave out subsection (10)

*Amendment 27 agreed.*

*Amendment 28*

*Moved by* ***Lord James of Blackheath***

**28:** After Clause 16, insert the following new Clause—

"Establishing additional schemes

The Secretary of State shall by regulation establish another scheme in relation to long-latency asbestos-related diseases in current and retired members of the Armed Forces."

**Lord James of Blackheath:** My Lords, the sole purpose of this amendment is to make sure that we do not lose track of the very important but parallel issue of asbestosis that affects members of the fighting services. I remind noble Lords of the amendments made some six years ago by the former Government that were very much against the interests of former officers and servicemen, particularly in the Royal Navy. There was a very bad record of asbestos-related illness, particularly on ships such as HMS "Furious", HMS "Albion" and, above all, the Royal Yacht "Britannia", which was a floating death-trap.

The unfortunate consequences of the amendments made six years ago were that the amount of compensation one was entitled to was reduced very drastically; in addition, the period of claim was limited so severely that it could not possibly allow for the inevitable eventual development of the disease and the justification for a claim. Armed Forces people have been very poorly treated in this and although we are talking here of a different branch of asbestosis, I remind your Lordships that in the insurance world they would not make that distinction. Nobody ever wrote a policy for mesothelioma on its own any more than they wrote one for asbestosis without embracing the generality of it. This is an important factor that has sometimes been forgotten in this debate.

In the matter of the Armed Forces, these people have been left exposed—to a greater or lesser degree—to all the consequences we have been talking about that are associated with this disease. They are going to be somewhat perplexed when they find out that the Government have gone out of their way to pass this splendid Bill to help sufferers of a different form of asbestosis while doing nothing whatever to amend the drastic reductions made six years ago to the terms available to servicemen.

I was very grateful for a joint meeting between the Minister's department and the MoD, from which I came away with the great expectation that there would be a thorough analysis of data of the actual exposure and the number of cases concerned, and that this would open the way for some sort of parallel accommodation to be agreed. There was no question of dipping into this Bill's pot to pass money over but there was the suggestion of perhaps a separate pot being arrived at by the Ministry of Defence, which could help to close the gap between the have-nots of the Armed Forces and the haves who will benefit from this Bill.

The reason for this amendment is that, unfortunately, the MoD has not provided the expected data. I talked to the noble Lord, Lord West, about this matter earlier and he showed a keen interest. He was an officer on one of the ships that was greatly affected and had the responsibility of overseeing the engine room replenishment of one. He therefore regards himself as a prime candidate for the condition in time. We have not had those data and it looks as if it is the Navy that has been remiss; yet it is the Navy about which we are most concerned.

May I please send a message via the Minister to ask the Navy to stir its stumps a bit and do something about getting those data to us? We need them. The idea would then be to see what can be done to put together a programme that will not result in a *Daily Mail* headline such as, "Callous Government plan for the many and abandon their heroes of the seas". We do not want that, and it would be unfair anyway. We need a commitment to do something for Armed Forces people who have had a very bad deal for the past six years. We need to do something to put it right.

I have tabled this amendment in order to keep people interested in the possibility of having that debate, which we cannot do until we know the data and what can be done. I do not wish to press this amendment tonight but I certainly wish to roll it over to Third Reading, in exactly the same wording, in the hope that by then we will have a more positive approach to how we can arrive at a solution to give some parallel improvement to the terms available to former members of the fighting services. On that basis, I urge the Minister to do whatever he can to stimulate that dialogue. I would be happy to participate in any stage of it.

**Lord McKenzie of Luton:** My Lords, the noble Lord, Lord James, raised this issue with passion and commitment in Committee and, doubtless, previously. I am not sure that I understand all the detail of the proposition he is advancing and the background case but I certainly encourage him to continue with his campaign. I think that the noble Lord was seeking to advance the argument that some people are being dealt with under this Bill but that there are members of our Armed Forces who are not being dealt with on an equivalent basis. He keeps referring to asbestosis. This Bill relates to diffuse mesothelioma, which is different from asbestosis. In fact, we have just set our face against developing a scheme that has broader implications for people with asbestosis.

**Lord James of Blackheath:** I thank the noble Lord for that. I hope I made clear the distinction that I am looking at this matter from an insurance industry point of view; namely, that asbestosis covered everything and that six years ago we inadvertently disadvantaged the Armed Forces so severely that we have put them way below the benchmark that we are seeking in this Bill for sufferers of mesothelioma. A comparison is bound to be struck. Veterans' groups are bound to pick it up and there will be people who are very unhappy to see this deficiency on their part.

**Lord McKenzie of Luton:** I am grateful to the noble Lord for that clarification, and I accept the point. If he is comparing people with diffuse mesothelioma who are not being treated on an equivalent basis, it seems that there is a case. I think that I would hang on to my point that asbestosis is different and that we have not sought to address that in this Bill.

**Lord James of Blackheath:** I am talking about the sufferers and the industry.

*9.45 pm*

**Lord Freud:** My Lords, I thank my noble friend for his amendment and assure him that I am sympathetic to his desire to provide support for current and retired members of the Armed Forces. As he would expect, however, I must reject the amendment.

This Bill's remit is strictly mesothelioma, which was a point made by the noble Lord, Lord McKenzie. Nevertheless, I hope that it will continue to draw into the spotlight the issues highlighted by the amendment and that the momentum from this Bill will assist my noble friend as he continues to advocate on behalf of service personnel.

I remind my noble friend of the distinctive characteristics of mesothelioma that allow for a relatively straightforward and quick scheme to be established, such as its undeniable link to asbestos exposure, the lack of co-causality with other factors such as smoking, and the very short time between diagnosis of the symptoms and death. These unique elements of diffuse mesothelioma allow us to establish a scheme that will make payments quickly and efficiently.

It is important to note, too, that the mesothelioma payment scheme proposed in the Bill addresses a market failure related to employer's liability insurance. Armed Forces personnel are not normally covered by employer's liability insurance due to the Government self-indemnifying. It is therefore not appropriate for insurers to be required to fund payments for individuals for whom they have never received premiums. My noble friend has already indicated that he will withdraw the amendment, and I urge him to do so.

**Lord James of Blackheath:** I beg leave to withdraw the amendment.

*Amendment 28 withdrawn.*

*Amendments 29 and 30 not moved.*

***Clause 17 : Regulations under this Act***

*Amendments 31 and 32*

*Moved by* ***Lord Freud***

**31:** Clause 17, page 9, line 39, leave out "4 (amount of payment)" and insert "1 (the scheme)"

**32:** Clause 17, page 9, line 40, leave out ", 10 or 15" and insert "or 10"

*Amendments 31 and 32 agreed.*

***Clause 18 : Defined terms used in more than one section of this Act***

*Amendment 33*

*Moved by* ***Lord Freud***

**33:** Clause 18, page 11, line 1, leave out "The Secretary of State may by regulations" and insert "The scheme may"

*Amendment 33 agreed.*

# Local Audit and Accountability Bill [HL]

*Report (2nd Day)*

*Relevant documents: 3rd and 6th Reports from the Delegated Powers Committee.*

*9.46 pm*

***Clause 39 : Council tax referendums***

*Amendment 44*

*Moved by* ***Lord Tope***

**44:** Clause 39, page 26, line 25, at end insert—

"( ) This section ceases to have effect after 30 April 2016."

**Lord Tope:** My Lords, I have no wish to reopen, especially at this time of night, the debate on Clause 39 which was so rudely interrupted on Monday evening when we might well have concluded it. In moving the amendment, which is of course a sunset clause, I am following the wisdom of the current Secretary of State, who described sunset clauses as being:

"In line with best practice on public policy",

because they limit,

"changes to three years and a review of the benefits from the policy at that point".—[*Official Report*, Commons, 24/1/13; col. 17WS.]

I am sure that those of us who worked so assiduously on the Growth and Infrastructure Bill will remember those wise words from the Secretary of State, and that is the effect of this amendment.

The LGA would like to see the removal of the clause altogether because it believes that it is,

"a significant threat to both local government's financial stability and infrastructure investment".

On the other hand, the noble Lord, Lord Beecham, when he spoke earlier on Report, wanted the clause removed, or at least not implemented, because he thought that the Government had overreacted to what he described as,

"a pretty small problem in terms of the number of authorities and the cash affected".—[*Official Report*, 15/7/13; col. 607.]

Time will tell who is right, and that is the purpose of the amendment. The Government are clearly unwilling to remove the clause altogether, so if it has the unforeseen and negative consequences that some fear, it could be removed without the need for primary legislation. As the Secretary of State has said, that accords with best practice on public policy, so I am sure that the Minister will be keen to accept this amendment. I beg to move.

**Lord Beecham:** My Lords, the sun has already set; none of us wants to be here when it rises in the morning. I concur with the amendment moved by the noble Lord and I trust that the Minister will accept it.

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):** My Lords, I can be very brief. The Government cannot accept the amendment. The Government are absolutely committed to ensuring that council tax payers should have the final say on excessive increases and that the case for the inclusion of levies in the referendum

[Baroness Hanham]
legislation is compelling. The Government intend that, once made, the change to the legislation should remain on the statute book and that council tax payers should be protected from excessive increases permanently—not just for a few years. Local authorities and levying bodies would not appreciate the prospect of further change to legislation in three years' time.

It may be helpful to the noble Lord if I also mention a major practical issue raised by the amendment. In 2016, as in all years, local authorities must set their council tax by 11 March. Any authority triggering a referendum must begin preparations almost immediately, so the referendum will be scheduled for the first Thursday in May 2016. The sunset clause would take effect on 30 April 2016, right in the middle of local authorities' preparations to hold a referendum. Furthermore, if the amendment is accepted, by that time, the provision would have disappeared from the statute book and rendered regulations relating to the conduct of the referendum and its effect in direct conflict with the legislation on which they are based. That is because they would be based on the definition of the relevant basic amount of council tax, including rather than excluding levies. That would be a recipe for confusion and would not be fair on local authorities or council tax payers. So, for reasons of principle and practicality, the Government are unable to support the amendment, and I hope that the noble Lord is willing to withdraw it.

**Lord Tope:** My Lords, I am very grateful to the Minister. I confess to a little disappointment about that reply, although I wonder whether I should see some encouragement. If the only defect in the amendment is a technical one on timing, perhaps the principle could be accepted. I look forward to that being pursued in another place at another time. In the mean time, I beg leave to withdraw the amendment.

*Amendment 44 withdrawn.*

*Amendment 45 not moved.*

*Amendment 46*

*Moved by* ***Lord Tope***

**46:** After Clause 39, insert the following new Clause—

"Local authority publicity requirements

(1) Any requirement for a local authority to publish a notice in a newspaper shall cease to have effect.

(2) Instead, the local authority shall publish the notice in question in such way as the local authority thinks is likely to bring it to the attention of the greatest number of people in the area most concerned."

**Lord Tope:** My Lords, I will take a little longer on this amendment as we return to the subject of statutory notices. The amendment is simple, clear and straightforward. It would remove the requirement to publish statutory notices in local newspapers, but it would require local authorities still to publish those notices in such a way as is likely to bring them to the attention of the greatest number of people in the area most concerned.

The arguments for the amendment were well rehearsed at Second Reading and in Grand Committee. We know that the legislation dates from 40 years ago, in 1972, which was a very different world. I think that there is common agreement that the publication of a statutory notice, often in small print and in an impenetrable form, in the middle or back pages of a local paper is, arguably, the least effective means of communication. Those arguments were well rehearsed in Grand Committee and I shall not repeat them all today. What were much less well rehearsed were any arguments against the actual amendment. Instead, noble Lords made perfectly valid points with which I agreed but which had nothing to do with the purpose of the amendment. Let me begin by being clear what the amendment does not do. It does not remove or weaken in any way the requirement on local authorities to publish statutory notices. Indeed, I would argue that it strengthens that requirement, because it requires them to publish them in a way most likely to reach the greatest number of people in an area, which a statutory notice in a local newspaper certainly does not do. Nor does it make any changes to the 163 enactments, which I listed in another amendment, that require publication of a statutory notice. I happen to agree with the noble Lord, Lord Beecham, when he said that a cull of those enactments is probably overdue, but that is not part of the amendment. It can, and I hope will, happen anyway.

I agree with noble Lords who said that not everyone looks at the local authority website or even uses the web at all. The amendment deliberately does not specify how statutory publication should be done, only that it should be done in the best way. In some areas, and in some circumstances, that may well be through the local newspaper.

All speakers in Grand Committee agreed that the requirement to publish in a local newspaper came from a very different age. Communication methods have changed hugely in the intervening 40 years. So have local newspapers themselves. There are fewer of them, they are generally less well-read and, as the noble Lord, Lord Beecham, graphically illustrated in a previous debate earlier on Report, the coverage of local government by local newspapers has also changed. It is a fast-changing world, not least in the field of mass communication. It would be wrong now for government to specify how statutory notices should be published. That would be likely to be out of date even before it was enacted, let alone in 40 years' time. It would also not be in keeping with the spirit of localism. There are very different circumstances in different areas. Some are fortunate enough to have a well-read daily local newspaper; some still have widely read and paid for weekly newspapers; and some have weekly free sheets that may reach a greater proportion of the local population. But many areas now have none of those things. Not all statutory notices are appropriate to a whole council area. Publication of some can be much better targeted at the particular area to which they relate. These are all reasons why I believe that, while the statutory requirement to publish these public notices must remain, the decision on the most effective way to communicate them should be with the local authority and not enshrined in statute.

The LGA estimates that last year local authorities spent £26 million on the publication of statutory notices in local newspapers as well as a further £17 million voluntarily on general advertising. This was really the only argument put forward against the purpose of the amendment; that local newspapers are in difficulty because of the changes in communication and that therefore local authorities should continue to be required by law, not by choice, to subsidise them through the publication of statutory notices. I do not think anyone regards that as a tenable argument at any time, but it is certainly not one in the face of the severe budget pressures on all local authorities now. Many local authorities, including my own, have good and positive partnerships with the local press that are of mutual benefit and that is surely the route down which we should all be encouraged to go.

Although the Minister gave no indication of this in her reply in Grand Committee, the Government seem to be persuaded by these arguments. The *Local Government Chronicle* reported last week that the Secretary of State told Conservative councillors that he,

"pledged to let councils publish statutory notices online in the next two years".

It then reported that the DCLG issued a statement that did not confirm or deny Mr Pickles' comments. Instead it quoted the Minister, Brandon Lewis, as saying that,

"commercial newspapers should expect over time less state advertising as more information is syndicated online by local authorities for free. The flipside is the free press should not face state unfair competition from town hall newspapers and municipal propaganda dressed up as local reporting".

This Bill legislates for one side of the quid pro quo. My amendment deals with the flip-side, to use the Minister's expression. It needs to be in the Bill before it is enacted. Will the Minister tells us in her reply whether it is the Government's intention that the current requirement to publish all statutory notices in newspapers should be ended? If that is the Government's intention, what is the timescale? Is it the two years that the Secretary of State has referred to? If that is not the intention, how do they intend to give effect to Brandon Lewis's statement? Assuming that it is the Government's intention, as I hope and believe it is, will the Minister tell us how and when the Government expect to remove or at least change the current legislative requirement?

Within two years clearly means in the lifetime of this Government. Surely the Government are not intending to legislate separately for this in the last few months before a general election. While it would be wonderful if this amendment was accepted today, I expect to be neither surprised nor disappointed if it is not. I made clear in Grand Committee that what I am seeking is a clear commitment from the Government that they will use this Bill to give legislative effect to whatever change they propose to take effect within the next two years.

Given the reported comments of the Secretary of State since Grand Committee and the renewed interest in and speculation about the Government's intentions, I hope that the Minister will make the position clear beyond any doubt in her reply today. I beg to move.

*10 pm*

**Lord Shipley:** My Lords, I will add a brief comment about this, because from the perspective of the general public it is a very important issue. I understand that the Secretary of State has made a statement, published in the *Local Government Chronicle*, that a change will be effected in two years' time. However, we need to be a bit clearer about what this might mean because of the rights of people to know what statutory notices are being placed that they might be interested in.

As I understand it, newspapers can still be used, which I welcome because newspapers in many parts of the country still have a role in publishing statutory notices. However, that will become a matter for a local council to decide. Let us also note that in the second part of this amendment my noble friend Lord Tope is saying that a local authority has to use a means of publicity that will bring it to the attention of the greatest number of people in the area. I hope no local authority thinks that that means it need not advertise on local lampposts and notice boards. If you are going to get to the greatest number of people, using local lampposts is a very effective means of achieving that.

I think the Secretary of State was quoted as saying that he prefers websites to be used in future. However, I will make three proposals to the Minister that might be thought about when the time comes to issue guidance. It is very easy for information to be lost on websites. There has to be a link to statutory notices from a council's main page, and the website has to be easy to navigate to get the information off it. I also ask the Government to introduce an automatic postcode search facility so that someone who wants to inquire, as they do on a planning matter, can input a postcode, as they can in most local authorities, and get a straightforward list of current planning applications in that area. I propose that the same thing should happen for statutory notices.

Other than that, the world is changing around us. While I quite like to read statutory notices in newspapers, I understand the need to move with the times as long as the interests of the general public are protected and information is not hidden from them when lampposts, newspapers and the web could all be used in relevant ways as decided by local authorities.

**Lord Beecham:** My Lords, far be it from me to seek to mediate between the coalition parties on this matter, although of course I cannot resist the temptation to do so.

The noble Lord's proposition is in many ways sensible. Even under the present law, councils certainly have the right to advertise in ways additional to publication in newspapers if they choose. Eventually, no doubt, that will become pretty much par for the course. The Government could facilitate the process by at least reviewing now rather than at some definite point in the future the list of items that have to be publicised, because frankly it is ridiculous. Planning matters are clearly important. However, when it comes to dog control orders or their revocation, the licensing of buskers, charges for street trading licences, abandoned shopping trolleys and charges for public baths and wash-houses, one wonders whether a formal statutory notice of any kind is desired. It is certainly not required, and certainly not in paid publications.

[LORD BEECHAM]

If the Minister were to indicate that the Government will address this matter—it is not that complicated; after all, there are only eight or nine pages of these things to work through—a sensible accommodation could be achieved that still leaves a statutory requirement for publication in newspapers. That should remain as part of a new framework, given that not everyone can look at the website, and there will at least be the opportunity to read a printed version. I hope that that would alleviate some of the concerns of the Local Government Association and, indeed, of the noble Lords who have already spoken. It would not be acceptable for the Government simply to reject the Motion and do nothing about this ridiculous list of notices that have to be published in a paid-for publication at the present time. A gesture from the Government in that respect, other than the normal gesture that one tends to get metaphorically across the Dispatch Box, would be helpful.

**Baroness Hanham:** My Lords, I thank noble Lords for those rather contrary views. Only three people have spoken, and their views were all different, so that is a pretty good start and leaves me with a fine path through.

The purpose of a statutory notice, as everybody clearly knows, is to inform the public about decisions that affect their lives, their property and their amenity. That is especially the case for issues where the public have a limited period in which to respond.

The Committee was in broad agreement that notices should be easily available for local people and that they are vital for local transparency and accountability. The noble Lord has highlighted the cost of statutory notices and suggested that local newspapers are one of the least effective ways to convey information to people. We do not agree. Research by GfK for the Newspaper Society found that the reach of local newspapers was much greater than council websites: 67% of the respondents to that survey had read or looked at their local newspaper for at least a couple of minutes within the past seven days, compared with 9% who had viewed their council website. Some 34% of adults questioned had not accessed the internet at all in the last 12 months.

The most recent internet access quarterly update from the Office for National Statistics, published in May, shows that 7.1 million adults in the United Kingdom—14% of the population—have never used the internet. Two-thirds of over-75s, a third of 65 to 74 year-olds and 32% of disabled people, as defined by the Disability Discrimination Act, have never used the internet. There are quite a lot of people, therefore, who do not, would not and could not use the internet for these notices.

The GfK research for the Newspaper Society showed that local papers are spontaneously cited as the way in which most people—that is, 39%—expect to be informed about traffic changes, for example. My noble friend Lord Shipley will be interested to know that the next placed source of information is street signs, at 26%—they come immediately to notice. When prompted, 79% of all adults responding said that they expect to be made aware of traffic changes in their printed local paper, second only to street signs and ahead of any other communication channels.

Undoubtedly, the requirement to publish some notices in newspapers comes from an age when there was no access to other means of communication. Under present conditions it could perhaps be removed, but the requirement to ensure that these notices are available easily remains as valid today as it always has.

As I said in Committee, the last Administration consulted in 2009 on removing the statutory requirements to publish planning notices in newspapers and found that that was not well received, as noble Lords opposite will remember. Some 40% of respondents to that survey were against the proposals, with a further 20% giving only qualified support. I acknowledge, of course, that that was four years ago. Things have moved on a bit. However, the party opposite concluded that some members of the public and community groups relied on the statutory notices in newspapers, and was not convinced that good alternative arrangements could readily be rolled out. A recent debate in the other place on alcohol licensing notices showed the strength of cross-party feeling against repealing the requirement to publish the notices in newspapers.

In Committee, the noble Lord, Lord Beecham, said that statutory advertising should not go altogether—I think he repeated that today—and that it was more a question of which statutory notices should be reformed and which should continue to be advertised in newspapers. That can already be done, because departments can put forward particular statutory notices for consideration under the Red Tape Challenge, and that provides opportunities to review a statutory notice. The amendment gives little consideration to which statutory notices are important to local people or where there is a case for retaining publication in a newspaper, and that of course would have to be looked into.

In the internet age, it is clear that commercial newspapers should expect less state advertising over time, as my honourable friend Brandon Lewis has made clear, as more information is syndicated for free online. We accept that newspapers need to develop new business models rather than relying on revenue from statutory notices. However, the newspaper industry is very clear that competition with local authority newspapers, for example, can be damaging.

It would be unfair to remove statutory notices in the blanket way that is being proposed while independent newspapers still face unfair competition from local authority newspapers. We must stop this first before looking at other issues. We acknowledge that the DCLG Select Committee's recommendations a couple of years ago for a review of publication requirements of statutory notices cannot be ignored in the long term.

I hope that with those explanations the noble Lord will be happy to withdraw his amendment.

**Lord Tope:** Before the Minister sits down, I ask her to comment, as she seems to have forgotten to do so, on the reported comments of the Secretary of State that this requirement will be phased out within two years. He was quoted as saying this by I think three or four Conservative councillors separately, while Brandon Lewis, the Minister, has similarly indicated that the Government intend to change the statutory requirement as a quid pro quo for the legislation that we are in the process of passing. Can the Minister not end this

uncertainty now and give us some certainty on what the Government's intentions are and when they are going to be implemented?

**Baroness Eaton:** My Lords, I apologise for not being here at the beginning of the debate. An issue that concerns me about statutory notices being advertised in newspapers is that in some of our larger cities there are large communities that have no language to read a local newspaper. It can be very helpful when the council passes out information in appropriate languages, and I do not think that any of the debate we have had so far has given any indication of how this is to be communicated to very large sections of larger cities' communities.

**Baroness Hanham:** My Lords, I thank my noble friend for her intervention. It is perfectly clear that in most cities, where there are large groups of ethnic minorities, they often have their own publications, and anyway I know that most councils are happy to ensure that information is available.

With regard to the review, as I have said, we accept the Communities and Local Government Select Committee's recommendation that a review must be undertaken. I have no knowledge of the *Local Government Chronicle*'s information or where it got it from. I have pointed out that it is possible to have statutory notices considered under the Red Tape Challenge at the present time.

*10.15 pm*

**Lord Tope:** I am grateful to my noble friend Lord Shipley for supporting my amendment. I remain not entirely clear whether or not the noble Lord, Lord Beecham, was supporting it because once again he avoided the issue. He indicates that he does not support it. He called for a cull of the requirements; I said in my introduction that I have much sympathy with that, but, again, it is not the purpose or the point of this amendment.

The Minister answered—I think speaking on behalf of the Newspaper Society—in terms of more people getting their information from the news reporting in local newspapers. The issue is not about whether local newspapers report the news and provide information more adequately or more fully than council websites. It is not about local newspapers, it is about statutory notices published in them. That is very different from news stories that appear on the news pages of a local newspaper. Again, we are avoiding the issue.

I understand and accept that the Minister is not in a position tonight to make the definitive statement that I think everybody now wants. Whatever side of the argument they are on, everybody wants that definitive statement. I accept that the Minister cannot make it but the Government cannot go on simply avoiding the question. They cannot go on as they have done for several years—almost since they were elected—saying that this is under review; at some point that decision has to be made.

The *Local Government Chronicle* reported a number of Conservative councillors saying separately that the Secretary of State had said this. The DCLG in its statement neither confirmed nor denied it—most of us would accept that that is as near to a confirmation as you ever going to get. Before long, and certainly before this Bill finishes its passage through the other place, the Government are going to have to state their intention. They are going to have to give a timescale and say how and when they will legislate to amend the 1972 provision. That is clearly not going to happen tonight. I am sad and sorry about that but I have no choice but to withdraw the amendment.

*Amendment 46 withdrawn.*

*Amendment 47*

*Moved by* ***The Earl of Lytton***

**47:** After Clause 39, insert the following new Clause—

"Parish polls

(1) The Secretary of State may by order amend Schedule 12 to the Local Government Act 1972 to make revised provision for parish polls with implications for parish finance.

(2) An order under this section may make provision for—

(a) the number of persons on whose vote may give rise to a parish poll;

(b) the purposes for which a parish poll is sought;

(c) its application to smaller authorities or authorities with electorates below a threshold to be specified in the order;

(d) safeguarding an authority against frivolous or vexatious use of the right to call for a parish poll and disproportionate costs of a parish poll, including circumstances in which an authority conducting the poll may require reimbursement of the cost of a poll from a parish; and

(e) the circumstances in which a demand for a poll gives rise to a mandatory or discretionary requirement to conduct a poll including the discretion of the chairman of a meeting at which there is a demand for a parish poll."

**The Earl of Lytton:** My Lords, this amendment is a further attempt to remedy an issue concerning parish polls. I declare my interest as president of the National Association of Local Councils, which has a particular interest in this. The background to this is already recorded in the *Official Report* of 26 June. On that occasion I was very gratified to receive not only the general support of the Committee but recognition from the noble Lord, Lord Wallace of Saltaire, that there is a problem that needs addressing.

Since then, accompanied by the chief executive of NALC, I have had an extremely useful meeting with the noble Baroness, Lady Hanham, and her departmental officials, and I am extremely grateful to her for that opportunity. I was encouraged by her very positive stance on this, as well as the great care with which her officials had obviously looked into the whole matter.

To summarise, parish polls are a very important way in which matters of interest can be aired and views sought, but they are governed by some fairly archaic legislation, which is more than 40 years old and contained in Schedule 12 to the Local Government Act 1972, and they are open to abuse. The issues are fourfold. First, incredibly minimal requirements are necessary to trigger a parish poll, which I have referred to in the past. Secondly, although it has to be on a parish matter, "parish matter" as a term of art is nowhere defined. Thirdly, once triggered, the costs incurred by the principal authority in conducting the

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poll are recoverable from the parish. While these may not be great in the overall score of things, in proportionate terms for a parish budget, they are pretty significant. Fourthly, there is no obligation to act on the poll, regardless of its outcome. Indeed, a number of polls have had very poor turnouts and inconclusive or even contradictory outcomes, as was outlined in the report by Action with Communities in Rural England.

This problem can only get worse. In Grand Committee, it was made clear that the Bill might not be the place for such an amendment. I understand that and the reasons for it. Yet it does affect parish finance and has a clear bearing on the way in which a parish is held to account. Equally clearly, there is a dimension of audit, although usually long after the event, as a check that the expense has been properly incurred.

The effect of the amendment would simply be to give the Secretary of State the power to amend by order the provisions of the 1972 Act. It does not of itself change anything in the Bill. The main change in this amendment compared with the previous version is in the five words at the end of proposed new subsection (1),

"with implications for parish finance".

That was my way of trying to get round the issues to do with the scope of the Bill in terms of financial accountability and audit, which I explained in more detail in Grand Committee.

I am not hopeful that the amendment will prove acceptable. My purpose is to get on the record a firmer commitment to do something about this. The questions really are, if not here and now in the Bill, by this amendment, can something not be done at Third Reading, perhaps with—dare I say it?—a tweak to the Long Title of the Bill; I say that in the knowledge that we will shortly be dealing with a tweak to the Long Title. The best solution would be to accept something along the lines of this amendment in the context of the Bill, because it will be the quickest way of actually achieving something rather than expending powder and shot on trying to find some other parliamentary workaround to deal with what is, after all, not really the biggest of nuts to crack and which should not require a huge hammer to deal with.

Public money is at stake. If my amendment is not acceptable, and there is no tinkering with words that will make it so, perhaps the Minister could undertake to use reasonable endeavours to see if the Commons, with its wider powers over the scope of Bills, could be persuaded to do something. I believe, and have to accept, that the regulatory reform procedure is of no help here. The fall-back position, as I understand it from Grand Committee, would be for a Private Member's Bill to be brought forward in a future Session, but at the cost of a further delay. If that is the only way forward, although it seems an awfully long-winded way of achieving something that really should be fairly uncontroversial, so be it. I would be happy to offer any assistance or activity on my part that could bring that forward. Perhaps the Minister could give an indication of whether, in that fall-back event, such a single-issue Bill would, in principle, receive government support and, more crucially, time to see it through. I beg to move.

**Lord McKenzie of Luton:** My Lords, we are sympathetic to the position adopted by the noble Earl, Lord Lytton, As my noble friend Lord Beecham said in Committee, the noble Earl has explained the archaic regime that exists at the moment for parish polls, the small numbers involved in calling a poll, the fact that the poll is not binding and the financial cost being recoverable for the parish. I would have thought an effort to address that would be well worth while. Indeed, the noble Earl's amendment suggests that there should be an order-making power inserted into the Bill. Obviously, once the amendment itself has been accepted, it is presumably within the scope of the Bill; otherwise it would not be on the Marshalled List.

I do not see why it cannot be done. Maybe the wording needs to be changed. If the Government are reluctant to pick this issue up because they think that there are broader issues involved and it needs to be dealt with in some different way, perhaps we could hear that. However, if there is sympathy for the noble Earl's proposition, and we are just looking for a parliamentary process to facilitate that, why not an order-making power?

**Baroness Hanham:** My Lords, we, too, are sympathetic to this amendment, and I am grateful to the noble Earl for having brought it to the attention of the House. We all recognise that parish polls are a way for local people to achieve something they want that is relevant and appropriate to the area over which they have authority. The noble Earl made it clear in Committee that sometimes that area extends to the European Union, which seems rather beyond the competence. We accept that there are concerns about the threshold for polls being called. I am very grateful to the noble Earl for coming to spend a bit of time with us, and we have had an opportunity to talk about it.

The way in which the noble Earl has constructed this amendment just about puts it within the scope of this Bill, but it is not wide enough for all that needs to be done. We believe that the scope can be made wider in the other place. We need to look at that carefully and will come back to it. I hope very much that we will be able to say that we will take that up and see it dealt with in the other place. If we cannot, then we are in the sort of territory that the noble Earl has talked about—a Private Member's Bill or a hand-out Bill. I assure him that the Government are supportive of what he has said, and I give an undertaking to the House to take this away and look at how we can get it implemented in the best and quickest way. I hope that the noble Earl will be willing to withdraw his amendment.

**The Earl of Lytton:** My Lords, in the light of that undertaking by the noble Baroness, it would be entirely churlish of me, especially at this time of night, to seek to do anything other than to withdraw this amendment. I do so with my enormous thanks to her and her officials for the input that they have had on this. I have my fingers crossed for a later stage. In the mean time, I beg leave to withdraw this amendment.

*Amendment 47 withdrawn.*

***Schedule 12 : Related amendments***

*Amendment 48*

*Moved by* ***Lord Wallace of Saltaire***

**48:** Schedule 12, page 79, leave out lines 19 to 27 and insert—

""(1A) The Chief Inspector may do anything the Chief Inspector thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**Lord Wallace of Saltaire:** My Lords, these amendments refine the provisions in the Bill that enable existing inspectorates to co-operate with an inspector, appointed by the Secretary of State, to inspect a best-value authority under Section 10 of the Local Government Act 1999, as amended by this Bill. Clause 33 and Schedule 10 to the Bill give a similar power to the Secretary of State's existing power to ask for an inspection of a best-value authority. This is intended for use as a last resort in very serious cases, such as the ongoing intervention in Doncaster.

Paragraphs 2, 25, 36, 38, 54 and 72 of Schedule 12 amend existing legislation to enable existing inspectorates to co-operate with such a corporate governance inspection, as they sometimes do at present. The relevant bodies and inspectors are Ofsted, the Care Quality Commission, Her Majesty's Chief Inspector of Constabulary, Her Majesty's Chief Inspector of Prisons, Her Majesty's Inspector of Probation, and Her Majesty's Chief Inspector of the Crown Prosecution Service. The amendments to each of these paragraphs of Schedule 12, which take the same approach in each case, achieve this policy intention more cleanly. They remove the provision suggesting that a chief inspector may be appointed under new Section 10 as an inspector by the Secretary of State to inspect a local authority. This is because it is unlikely that it would be the chief inspector himself or herself who would undertake the inspection. Instead, it simply states that the chief inspector—or the commission, in the case of the Care Quality Commission—may do anything they think appropriate to "facilitate" such an inspection. This could include releasing staff to form part of an inspection team. All these amendments allow bodies to co-operate; they do not compel them to do so. We believe that these amendments simplify and clarify our approach without significantly affecting the impact of the Bill. I beg to move.

**Lord McKenzie of Luton:** My Lords, I am grateful to the noble Lord for that explanation. I was puzzled by what the substantive difference was between some of the clauses in the Bill and those that replaced them, but I believe the noble Lord's explanation has helped me in that regard and I am happy to support his amendments.

*Amendment 48 agreed.*

*Amendment 49*

*Moved by* ***Lord Wallace of Saltaire***

**49:** Schedule 12, page 81, line 21, at end insert—

"(1) Section 22 (other local authority capital controls in England and Wales) is amended as follows.

(2) For subsection (5) substitute—

"(5) In a case where the controlling authority of a public airport company are—

(a) a county council or county borough council in Wales, or

(b) a composite authority of which both or all the constituent councils are county councils or county borough councils in Wales,

it shall be the duty of the controlling authority to exercise their control over the public airport company so as to ensure that the company appoints as auditors of the company only persons who, in addition to meeting the requirements of Part 42 of the Companies Act 2006 (statutory auditors), are approved for appointment as such auditors by the Auditor General for Wales.

(5A) In any other case, it shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that the company appoints as auditors of the company only persons who meet the requirements of Part 42 of the Companies Act 2006 (statutory auditors)."

(3) In subsection (6), after "(5)" insert "or (as the case may be) (5A)"."

*10.30 pm*

**Lord Wallace of Saltaire:** My Lords, this is another group of government amendments. It includes Amendments 49, 50, 54 and 55, 57 to 62 and 64, which remove redundant references to the Audit Commission and make clarifications to related provisions in existing legislation.

Amendment 49 is a consequential amendment to the Airports Act 1986. Amendment 50 makes a similar amendment to the Education Reform Act 1988. Amendment 54 repeals sections of the Public Audit (Wales) Act 2004, which place duties on the Auditor-General for Wales and the Audit Commission to co-operate with each other when necessary in undertaking value-for-money studies, et cetera.

Amendment 55 amends the Public Audit (Wales) Act 2004 to remove provisions which enable a transfer scheme of property, assets and liabilities from the Audit Commission to the Auditor-General for Wales.

Amendments 57 to 61 deal with the National Health Service Act 2006. Amendments 57 and 60 are tidying-up amendments, which simply clarify how an auditor may be appointed to a clinical commissioning group and other NHS bodies under the Bill. These bodies may not always appoint their own auditors; the appointment may be made on their behalf in certain circumstances by the commissioning body or the Secretary of State.

Amendments 58 and 61 replace the references to the Audit Commission Act in Schedule 4 to the National Health Service Act 2006 with the relevant provisions from this Bill which relate to reports and other information in respect of NHS trusts in England. Amendment 59 amends paragraph 23 of Schedule 7 to the National Health Service Act 2006 so that an NHS foundation trust can appoint an auditor who is eligible under this Bill, thus replacing the reference to the Audit Commission Act 1998.

Amendment 62 inserts an amendment to the National Health Service (Wales) Act 2006 to remove the reference to the Audit Commission Act 1998. The audit of Welsh health service bodies is now within the remit of the Auditor-General for Wales. Amendment 64 removes provisions in the Public Audit (Wales) Act 2004 which

[Lord Wallace of Saltaire]
amend other legislation but which are now superfluous, given other amendments to those Acts made by this Bill. I beg to move.

*Amendment 49 agreed.*

*Amendments 50 to 64*

*Moved by* ***Lord Wallace of Saltaire***

**50:** Schedule 12, page 81, line 33, at end insert—

*"Education Reform Act 1988 (c. 40)*

The Education Reform Act 1988 is amended as follows.

In section 124B, omit subsection (5) (duty of certain higher education corporations to consult Audit Commission before appointing auditor in respect of first financial year).

In paragraph 18 of Schedule 7 (higher education corporations)—

(a) omit sub-paragraph (4) (duty of certain higher education corporations to consult Audit Commission before appointing auditor in respect of first financial year),

(b) in sub-paragraph (5) for "that sub-paragraph" substitute "sub-paragraph (3) above", and

(c) in sub-paragraph (6) omit the definition of "the first financial year" and the "and" which follows it."

**51:** Schedule 12, page 83, leave out lines 5 to 13 and insert—

""(1A) The chief inspector of constabulary may do anything the chief inspector thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**52:** Schedule 12, page 84, line 42, leave out from beginning to end of line 6 on page 85 and insert—

"" (1A) The Chief Inspector may do anything the Chief Inspector thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**53:** Schedule 12, page 85, leave out lines 28 to 36 and insert—

""(1A) The chief inspector may do anything the chief inspector thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**54:** Schedule 12, page 88, line 11, at end insert—

"Omit section 43 (co-operation with Audit Commission).

Omit section 57 (provision of information to Audit Commission).

In section 62, omit paragraph (b) (co-operation with Audit Commission)."

**55:** Schedule 12, page 88, line 15, at end insert—

"52A (1) Schedule 3 (transfer schemes) is amended as follows.

(2) In paragraph 1(1), omit paragraph (b) and the "and" preceding it.

(3) In paragraph 2—

(a) in paragraph (a) after "Wales," insert "and", and

(b) omit paragraph (c) and the "and" preceding it.

52B (1) The amendments of Schedule 3 to the Public Audit (Wales) Act 2004 by paragraph 52A do not affect—

(a) the transfers of property, rights and liabilities of the Audit Commission to the Auditor General for Wales by a scheme under that Schedule, or

(b) the operation of that Schedule or of such a scheme in relation to those transfers."

(2) In this paragraph "the Audit Commission" means the Audit Commission for Local Authorities and the National Health Service in England."

**56:** Schedule 12, page 89, leave out lines 5 to 13 and insert—

""(1A) The Chief Inspector may do anything the Chief Inspector thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**57:** Schedule 12, page 89, line 23, leave out from "2013" to end of line 24

**58:** Schedule 12, page 89, line 25, leave out paragraph 58

**59:** Schedule 12, page 89, line 41, at end insert ", and

(c) in paragraph (c) for "any other" substitute "a"."

**60:** Schedule 12, page 90, line 28, leave out from "2013" to "and" in line 29

**61:** Schedule 12, page 90, line 30, at end insert—

"(1) Until the repeal of Chapter 3 of Part 2 of the National Health Service Act 2006 by section 179 of the Health and Social Care Act 2012 is fully in force, Schedule 4 to the National Health Service Act 2006 (NHS trusts) has effect with the following modifications.

(2) In paragraph 12 (reports and other information)—

(a) in sub-paragraph (2)(b) for "section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32)" substitute "paragraph 1 of Schedule 7 to the Local Audit and Accountability Act 2013", and

(b) in sub-paragraph (2A) for "section 8 of the Audit Commission Act 1998" substitute "paragraph 1 of Schedule 7 to the Local Audit and Accountability Act 2013"."

**62:** Schedule 12, page 90, line 30, at end insert—

*"National Health Service (Wales) Act 2006 (c. 42)*

In paragraph 12(2)(b) of Schedule 3 to the National Health Service (Wales) Act 2006 (NHS trusts established under section 18 of that Act: reports and other information) omit "section 8 of the Audit Commission Act 1998 (c. 18) or"."

**63:** Schedule 12, page 92, leave out lines 27 to 35 and insert—

""(1A) The Commission may do anything it thinks appropriate to facilitate the carrying out of an inspection under section 10 of the Local Government Act 1999 (inspection of best value authorities).", and"

**64:** Schedule 12, page 98, line 24, at end insert—

"( ) paragraphs 9(2) and 20(b) of Schedule 2 to the Public Audit (Wales) Act 2004;"

*Amendments 50 to 64 agreed.*

***Schedule 13 : NHS trusts and trustees for NHS trusts: transitory and saving provision***

*Amendment 65*

*Moved by* ***Lord Wallace of Saltaire***

**65:** Schedule 13, page 101, line 26, leave out paragraph 10 and insert—

"Section 20(2A) (general duties of auditors of accounts of health service bodies) is to be read as if—

(a) for "accounts of special trustees for a hospital" there were substituted "accounts of a health service body other than a clinical commissioning group", and

(b) in paragraph (c)—

(i) for "the special trustees have" there were substituted "the body has", and

(ii) for "their" there were substituted "its"."

*Amendment 65 agreed.*

*Amendment 66*

*Moved by* ***Lord Wallace of Saltaire***

**66:** In the Title, line 9, leave out "for directions to comply" and insert "about compliance"

**Lord Wallace of Saltaire:** My Lords, in response to the Delegated Powers and Regulatory Reform Committee report on the Bill, we have amended Clause 38. Provisions for compliance with the code now include the power for the Secretary of State to make a direction requiring individual authorities to comply with some or all of the code, and that the exercise of the power to ensure compliance with the publicity code in relation to classes of, or to all, local authorities should be made by an affirmative statutory instrument. As a consequence of this, we are required to amend the Long Title of the Bill to accurately reflect that a requirement to comply may not be the result solely of a direction. Our amendment makes this clear in the Long Title of the Bill. I beg to move.

**Lord Beecham:** My Lords, we have spent some time debating the requirements on local authorities to comply with the code of practice. I suppose this is our last opportunity to comment before Third Reading and the eventual passage of the Bill to the House of Commons. It is an opportunity to reiterate the problems that many of us envisage in the Government's approach.

I suppose we ought to be grateful to the Government for clarifying the Title of the Bill, but the Title is almost irrelevant to the substance with which councils will have to contend. The further accretion to the Secretary of State of powers to direct individual councils is not a concession from the original proposition that a direction can be given to all councils. In replying to this short debate, will the Minister indicate exactly how the Secretary of State intends to go about giving his directions, whether to individual local authorities or to categories of local authorities? Would he envisage doing so after consultation and, if so, with whom: individual authorities or the Local Government Association?

Who else might the Secretary of State involve in the consultation process? For example, before making any direction, would he consult the local print media, which he purports to be most concerned about? How would he do that, particularly if he is issuing a general direction? Has the Secretary of State consulted at all, with anybody, about this proposal, thus far? It would be interesting to know whether he has had meetings with, for example, the Newspaper Society, if that is the correct name of the outfit in question, assuming that it has time to indulge in such consultations while the Leveson report remains undetermined.

There is a fundamental problem with the Government's approach, which largely depends on what I have described —accurately, I think—as an obsession of the Secretary of State and has very little to do with the reality on the ground. I had the opportunity today of a brief conversation with representatives of the National Union of Journalists who were ensconced in Portcullis House. I do not know whether any other Members of your Lordships' House were invited to meet them, but they stressed again their opposition, as members of a union that represents journalists both in local government and in the print media—

**Lord McKenzie of Luton:** I wonder whether my noble friend can help me before he leaves this subject. I refer to the change in the Title of the Bill, for the reasons that were outlined. By tweaking the Title further, as we have just discussed, might there be a way of facilitating the desire of the noble Earl, Lord Lytton, in respect of parish polls? Does my noble friend think that that could that be accommodated by changing the Title of the Bill?

**Lord Beecham:** I certainly do, but it would be more relevant to know whether the Minister will accept that point. In a moment or two, I shall give him the opportunity to make his position clear.

As I said, the National Union of Journalists, representing journalists across the piece, feels very strongly that the Government's stance on this is entirely unjustified. Having said that, it would be remiss of me not to point out to the noble Lord, Lord Tope, that the NUJ has great reservations about the amendment that he moved. However, I will be interested to hear what the Minister says in reply before the debate ends.

**Lord Wallace of Saltaire:** My Lords, I thank the noble Lord for those points. Many of them deserve further conversation in the Corridors and elsewhere. The Bill is part of a long process by which we hope to devolve more power to the cities and local authorities of England—an objective that I know the noble Lord shares. There are many difficulties in doing so, particularly during a recession when there are insufficient funds to do everything that one would like to. However, that is the objective, which I hope is shared across the House, and which I hope we will have the opportunity to explore further in future debates.

*Amendment 66 agreed.*

*House adjourned at 10.41 pm.*

# Grand Committee

*Wednesday, 17 July 2013.*

*3.45 pm*

**The Deputy Chairman of Committees (Viscount Ullswater):** My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

## Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013

*Motion to Approve*

*3.45 pm*

*Moved by* ***Lord Taylor of Holbeach***

That the Grand Committee do report to the House that it has considered the Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013.

*Relevant documents: 4th Report from the Joint Committee on Statutory Instruments, 6th Report from the Secondary Legislation Scrutiny Committee.*

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** My Lords, the Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013 and the Protection of Freedoms Act 2012 (Guidance on the Making or Renewing of National Security Determinations) Order 2013, along with copies of the attendant Surveillance Camera Code of Practice, which I will refer to as the code, and the Guidance on the Making or Renewing of National Security Determinations, which I will refer to as the guidance, were laid before Parliament on 4 June and 24 June respectively. Both orders are made under the Protection of Freedoms Act 2012. This Act delivers important changes to the law, ensuring that we strike the right balance between respecting the rights of individuals and protecting the public, which reflects a key commitment of this Government. I will explain each order in turn.

The first order, on the Surveillance Camera Code of Practice, follows on from Section 30 of the 2012 Act and reflects a coalition agreement commitment to the further regulation of CCTV. The Government support the use of CCTV, automatic number plate recognition—ANPR—systems and other surveillance camera systems to cut crime and protect the public. In general terms, the public support their use. However, that support is conditional on these cameras being used proportionately to meet a legitimate aim and being used effectively in meeting their intended purpose. For too long we have seen the use of CCTV and the advance of technology develop without a proper regulatory framework, with ever greater potential for surveillance and ever greater potential to interfere with citizens' rights and freedoms.

This code seeks to reassure the public about the use of surveillance camera systems and applies to England and Wales. Section 34 requires the appointment of a Surveillance Camera Commissioner, whose role is to encourage compliance with the code, review its operation and provide advice about it. Noble Lords may be aware that the Secondary Legislation Scrutiny Committee has considered this draft order, and the draft code, and has drawn the special attention of the House to these documents on the basis that they may imperfectly achieve policy objectives. My belief is that bringing the code into force will be a critical step in our incremental and measured approach to regulation.

We have worked closely with our partners including the police, local authorities, the Information Commissioner, the Chief Surveillance Commissioner and the Surveillance Camera Commissioner in developing this code. The code is based on 12 guiding principles which are applicable to any overt operation of CCTV in public places. Those who work to these guiding principles will be better placed to reassure the public about their intentions and to share images and information of evidential value with the police and the criminal justice system to help investigate crime and bring criminals to justice. The commissioner will provide additional information which complements the guiding principles and helps system operators turn them into reality.

We have always been clear that our approach to further regulation in this area is to be incremental and measured, starting with state surveillance and getting the basics right, then taking further steps as necessary, informed by advice from the Surveillance Camera Commissioner. This order also exercises powers under Section 33(5)(k) and seeks to add the three non-territorial police forces—the British Transport Police, the Civil Nuclear Constabulary and the Ministry of Defence Police—and the Serious Organised Crime Agency to the list of relevant authorities which will be placed under a duty to have regard to the code from the outset. Each has been consulted over the proposal and each has consented to it. Our intention in expanding the list to additional forces is to provide further assurance to the public that overt surveillance by the state is being effectively and transparently regulated.

I turn to the second order before the Committee today, which brings into force the guidance on the making or renewing of national security determinations as provided for by the Protection of Freedoms Act 2012. This order implements an important element of the Government's commitment, set out in the coalition's programme for government, to restore balance between the protection of individuals' rights and protecting the public in respect of police retention of DNA and fingerprints.

We propose to commence the substantive powers in the 2012 Act from October this year. This will mark an important change. From this point, with the exception of convicted individuals, DNA and fingerprint material will not be held indefinitely. This guidance deals with a limited exception whereby it may be necessary to extend retention for the purposes of national security. We want to ensure that, in exercising their powers to extend retention by the making of a national security

[LORD TAYLOR OF HOLBEACH]
determination, chief officers and chief constables are doing so in an open, transparent and consistent way. This guidance seeks to achieve that. The guidance is introduced pursuant to Section 22 of the 2012 Act and is applicable throughout the United Kingdom. It sets out the basic principles underpinning the new powers, specific requirements governing consideration of necessity and proportionality and clear processes for making or renewing a national security determination, including appropriate direction as to the responsibilities of chief officers or chief constables.

The Act establishes for the first time a comprehensive regime for the retention, destruction and use of biometric material held for national security purposes. This regime is to be independently overseen by the new commissioner for the retention and use of biometric material—the Biometrics Commissioner, Mr Alastair MacGregor QC. The retention of biometric data by the state is a justifiable interference with the right under Article 8 of the European Convention on Human Rights where it is necessary and proportionate to do so and where it is in accordance with clearly defined law. The Act's provisions, coupled with the guidance and the robust independent oversight we rightly and confidently expect from the Biometrics Commissioner, in my view achieves this objective.

We consulted extensively over the preparation of the code and the guidance which are before your Lordships for consideration today. The code and the guidance were published in draft form on 7 February and 26 March respectively for public consultation. There was broad support for these changes. A summary of the consultation responses and resultant changes made for each have been published on the Home Office's website.

These orders are intended to build and maintain public confidence in both overt surveillance camera activity in public places and in the retention, destruction and use of DNA and fingerprint material held for national security purposes now and in the future. I commend them to the Grand Committee.

**The Earl of Erroll:** My Lords, I will say a few words because this is an area in which I take an interest. In principle, I have no trouble with using surveillance cameras around the place to find out what happened after an event and, in some cases, to anticipate what might happen. The only thing that has ever worried me is when things are linked together to try to surveil and track a population around. From that point of view, ANPR cameras could be used for purposes other than traffic management and could start to be used for tracking people. A lot of that stuff involves data protection, so all this looks fairly innocuous.

The main thing that I am worried about is whether it really does anything. At the end of it all, these are all good words. Are we just adding more cost and stuff than can be more effectively used elsewhere? It looks like we have just invented a couple of extra posts, which will be very nice for someone; it will do a bit more box-ticking so everyone will think that it has all been covered. However, if it starts being really effective, it will interrupt other people's jobs where they do need cameras, and make them more difficult.

So I am giving a few words of caution: let us not waste public money on something that is merely a cosmetic exercise. At the same time, many of the issues that do matter in this are covered by the Data Protection Act, for instance accurate databases and things like that. So they are already covered elsewhere. Will having an extra commissioner really make a difference? It is obvious that I am sceptical about it. It does not really address the big problem about the surveillance state and things like that, but we do not have that yet, thank goodness.

**Baroness Smith of Basildon:** My Lords, I first thank the noble Lord, Lord Taylor, for his helpful explanations and information. Just prior to the Committee, I indicated to the Minister that we are considering praying against these instruments. I apologise if he was not told beforehand, although the Whips' Office knows. In future I would talk to them directly. These are important issues.

I want to offer the Minister the opportunity to answer my questions first, because that might alleviate some of my concerns. His answers will be very important in that regard. The noble Earl, Lord Erroll, hit the nail on the head with some of the concerns that I want to raise as well. The Minister referred to our own Secondary Legislation Scrutiny Committee, which was quite damning about this order's ability to achieve the objectives that the Government set out. It stated:

"While the principles themselves are commonsense, some of the explanation is vague, with frequently used terms such as 'proportionate' or 'appropriate' left undefined in the context".

Those are wise words. I would impress on the Minister the committee's final comment, which stated:

"The House may therefore wish to question the Minister about the Government's plans for the wider application of the code and to invite the Minister to clarify how its benefits will offset the costs of the additional bureaucracy involved".

This SI increases costs and bureaucracy to local authorities and the police of installing CCTV. The Explanatory Notes claim that this is a policy decision motivated by a desire to halt,

"the extent to which private lives are exposed to ever greater scrutiny by other individuals, organisations or the State, leading in some instances to a potential exposure to criminality, or more generally, to an erosion of personal privacy".

That is the point that the noble Earl, Lord Erroll, made. Can the Minister say where in this order is anything that restricts the use of CCTV by individuals or private companies and makes any difference to the potential exposure of criminality that the Government have identified? I am not sure what that means in the context of this order. It may be a government objective, but it is nowhere in this order that I can find, because only public bodies—mainly the police and local authorities—are bound by the order before us today. The consultation and the order will not prohibit the installation of CCTV. What it will do is increase the paperwork and bureaucracy, making it considerably more expensive.

The Government have made a commitment to lean government, and I do not think that it was just a reference to Eric Pickles's diet when the Chancellor said it. The impact assessment states that this extra flood of bureaucracy is not subject to the Government's

principles of "one in, two out", in terms of regulation. Why is that? What is the point of having such a policy if the Government can then simply exempt a regulation from it? That makes a complete nonsense of the policy. The Home Secretary said:

> "After years of bureaucratic control from Whitehall … this government trusts you to fight crime",

but apparently not where CCTV is concerned. Here, the Home Office is creating 25 pages of statutory guidance for local authorities to go through—25 pages of hoops for the police to jump through before they can install CCTV.

*4 pm*

However, it is not just the document; to compound the issue, the Home Secretary has also created a new bureaucracy in the form of a Surveillance Camera Commissioner at an annual cost of £250,000 a year. When I first read that, I thought that I had slipped back into an episode of "Yes Minister", with Jim Hacker speaking. You could almost write the script about a Surveillance Camera Commissioner. What is not clear from the order is how the commissioner will ensure adherence to the code. Will the commissioner have any statutory powers to do so? How will the commissioner investigate? Will there be any legal power to surrender CCTV recordings? Will there be any sanctions if people do not comply with the guidance, as outlined in the order? I cannot see any sanctions in it. The code therefore becomes nonsense if there are no powers or sanctions. What is the purpose of the code?

The scrutiny committee asked what the code added to existing powers. That issue has to be addressed, particularly when taking into account the additional cost of about £1.6 million. This is significant. The police budget has been cut by a massive 20% and we are losing 15,000 police officers, the vast majority of whom will be taken from the front line—those on the beat and involved in community safety work. We could end up with the nonsense that in order to use CCTV, police forces have to employ staff to do back-office work to comply with all the bureaucracy while police officers are being lost from the front line. I am convinced that that is not what the Minister wants.

I should make it clear that we are not against oversight. There is a common-sense element in the code of conduct but, as the noble Earl, Lord Erroll, also said, these tasks are already being undertaken. I have no doubt that room can be found for improvement but it seems that this common-sense approach will be replaced by a monstrous paper trail that will include reviews, consultations and technical assessments. From the impact assessment, the cost of all this will be something like £14.1 million a year. The impact assessment also states that that is a best guess. The government readily accept that the cost could be as high as £29 million.

When one considers how onerous the requirements of the code of practice are, £14.1 million might be a conservative estimate. There need to be annual reviews of every CCTV camera and the possible effects on privacy. How will that be done? If guidance is being issued there will be obligations as to how that can be carried out. It would be helpful if the Minister could shed any light on that. All the cameras that we are talking about are those in public places, so there presumably needs to be an assessment of who goes to those public spaces in order to be able to ascertain the effects on their privacy. I cannot see any other way in which that task could be undertaken. Even if the Minister can reassure me that it does not mean that, there needs to be guidance as to exactly what is meant, and the guidance is not clear. Local authorities will produce their own ways of interpreting the guidance and say, "That is what we have to do, so we will not have a CCTV camera".

Police forces and local authorities have to create teams to provide information about CCTV, at an expected cost of up to £114,000 for each team. There has to be an assessment of all the information being stored, and a lot of it is stored because the police may want the information at a later date if there is any criminal prosecution.

Finally, consideration has to be given to any "operation, technical and competency standards", with a general principle that all the technology should comply. I am not clear what that means, but perhaps the Minister can help me. Is it intended that through the regulations the local authority or police, at a potentially huge cost, may have to replace equipment not because a force does not think it is working or because a replacement would be cost effective but because the equipment does not match the technical standards created by the Surveillance Camera Commissioner—although we are not yet clear as to what that role is? The commissioner could set standards with which every force must comply and they could then have to change their equipment.

There are good reasons to think that the costs may be even higher than the Government estimate. There are 11 "guiding principles" in the code of conduct, seven of which involve no monetary cost, yet each places bureaucratic obligations on the police. That will be expensive. The impact assessment claims that the cost of complying with the scheme will be found from existing budgets. If the Minister can tell me how, that would be extremely helpful. Were local government and the police specifically consulted on the costs; did they agree that they could meet them from existing budgets; and were they aware of the huge costs involved?

The Minister mentioned SOCA but not the National Crime Agency. My understanding is that SOCA has now been absorbed into the National Crime Agency, and I wonder why SOCA is mentioned but not the NCA. Can the Minister help with that point?

The Government often say that something is cost neutral. That means that it is cost neutral to the Government; the costs are passed further down the line to other organisations, because somebody has to pay for bureaucracy. Is the Minister able to explain where within the existing budgets that money can be found? Whenever I have asked questions in your Lordships' House about budgets or service cuts for police and local authorities, Ministers say that it is a matter for local government or the police, not for them, and that it is a local decision. Ministers create the conditions that lead to cuts, because Ministers set the budget. If the Government are saying that extra expenditure has to come out of the existing budget, there is an indirect relationship. Although the local

[Baroness Smith of Basildon]
police or council may decide what cuts have to be made as a result, the decision has been imposed by government or Ministers. That is not localism, it is evading responsibility. If this order is passed, police and local councils will have no choice but to comply with the additional bureaucracy, and I do not know how they will pay for it.

We are already seeing huge cuts in CCTV. We have seen thousands of street lights being switched off across the country, including in my county, because local authorities cannot afford the increased electricity bills. What use will CCTV be at night if there are no lights on the streets? I shall not go into detail, but Gloria De Piero MP has used freedom of information requests to get some idea of how CCTV has been affected by local authority budget changes and budget cuts. The figures we have relate to public-facing CCTV cameras, not to private property cameras. Craven District Council in North Yorkshire has cut all its CCTV cameras since 2010; in Trafford there has been a 53% cut; in Blackpool it is nearly 50%; and in Bolsover it is 44%. Across the country we are seeing the number of CCTV cameras operated by local authorities being cut, and I cannot see the order before us today making things any easier for local authorities. The huge bureaucracy and paperwork will make things more difficult for local authorities.

The real question is: what is the policy intention behind this? I have read the stated intention, and like the Secondary Legislation Scrutiny Committee I cannot see that what is in the order complies with that policy intention. If it is really to achieve better oversight of CCTV, which we would not necessarily oppose, there is very little in this new regime to deliver that, but is the effect not more likely to be to reduce the number of CCTV cameras across the country? If that is the case, the level of bureaucracy and the cost to local authorities and the police will make it a pretty well designed instrument, because that seems to be the result. I do not think that that is what the public want.

At the beginning of my comments I repeated the question asked by the Secondary Legislation Scrutiny Committee about how the additional benefits will offset the costs. I have treated a number of questions, but that is the key question to the Minister. I listened very carefully to what he said, and he said that this is incremental, measured and proportionate, but I do not think that that is enough of an answer to address the comments made by that committee. If the Minister has more information, I would appreciate hearing it from him today.

The second order refers to biometric information, which is a hugely important issue. The Minister will recall our original concerns about the changes that the Government are introducing in relation to holding DNA evidence. There was a long debate in your Lordships' House, and I do not intend to repeat those debates today. The Protection of Freedoms Bill was introduced into Parliament in February 2011; it got Royal Assent on 1 May 2012, yet over a year later the Government are only now taking legal steps to provide the guidance needed on holding biometric materials such as DNA evidence and fingerprints, allowing for an extension if it is in the interests of national security. I do not understand why that has taken so long, given the implications for national security. There is nothing more important for any Government than to secure the safety and security of their citizens. Why has it taken so long, and what are the implications of that delay?

The current position is that biometric evidence, however vital it may be in fighting crime and protecting security, must be destroyed after it has been held for three years, if the person is not convicted or charged with an offence. Yet it is possible to keep it for longer if the law enforcement agencies are of the view that it is in the interests of national security to do so. The guidance to give effect to that is before us today and has taken some time to reach us. I fully understand and accept the point that such technical and important guidance must be fit for purpose. However, the Government have known about the need for such provision since February 2011, so it is hardly a surprise that we would have to have such guidance.

I have three key questions other than the one that I have just asked. What system has been in place until now for applying for an extension to hold biometric data for longer? The Minister will know from previous debates on the Bill addressed in the Intelligence and Security Committee that national security relies on bringing evidence together from various different sources, places and times—so it is a bit of a jigsaw that has to be put together. Since this provision came in, there must have been cases in which data held may have been older than three years, so what process has been used? Have there been any applications to extend beyond the three years? I am told that there have not been any, but I find that quite startling, and if the Minister could confirm that or give me further information it would be really helpful. That has huge implications for public safety since Royal Assent on 1 May last year. If there were any applications, how many were successful—or how many records have been destroyed since 1 May 2012 because this guidance was not in place? There are serious implications to those questions, and I will probably get standard number-crunching answers from the Minister, but it would be very helpful in understanding the implications of the impact of this order.

**Lord Taylor of Holbeach:** My Lords, I am very grateful to the noble Earl, Lord Erroll, for his contribution and for that of the noble Baroness, Lady Smith. It is the first time that we have had the chance to debate these issues, and some of the questions that she asks me arise because we have not had a chance to discuss these matters before. I am pleased to be able to seek to answer her uncertainty about these measures.

I have to say to the noble Earl that this is not a cosmetic measure; it is not designed as a patch, to cover something up. The recent report of the British Security Industry Association made it clear that there are a very large number of cameras in this country, and these measures will apply to just 2% of the cameras in place, because the vast majority are in commercial premises or private situations.

One feature of the current surveillance apparatus that we have in this country, which is extensive, is the relatively random way in which it has developed and

the lack of quality assurance that exists within it. The whole focus of this code—and Andrew Rennison and I had a meeting today about his work in overseeing it—is going to be on improving the effectiveness of surveillance. An awful lot of cameras can take an image which is then of little or no evidential value because the camera systems have been installed to improve public confidence but do not necessarily provide images which can be used in the fight against crime. This is one of the purposes of the code of practice and the appointment of the Surveillance Camera Commissioner.

*4.15 pm*

I have to say that, untypically, the noble Baroness exercised a degree of hyperbole on this issue. That is rather out of character as I usually agree with her view on issues and think that she sees them clearly. However, in this case she appears to have become confused about the cost and efficiency of the measure and its objectives, which are, after all, to protect the privacy and rights of our citizens in a public place where surveillance cameras operate. I think it is reasonable that public authorities utilising cameras in public places are placed under an obligation to ensure that those cameras are used properly, that the images are used for the purposes for which they were designed and not used improperly, and that there is a responsibility to ensure that these things are effective. If the noble Baroness wonders why this does not apply to the conventional "one in, two out" regulatory reforms, it is because this concerns not business but state institutions—local authorities and the police—and they are not included in this policy area.

The noble Baroness asked about the cost of the commissioner. The figure of £250,000 is the cost that the previous Administration identified for an interim CCTV regulator. The commissioner will encourage, advise and enable systems operators to use CCTV more effectively and proportionately to protect the public. Those words have meaning. I do not believe that "proportionately" does not have a meaning; it clearly does. The Home Office will take an early and visible lead—

**Baroness Smith of Basildon:** I am sorry to interrupt the noble Lord and am grateful to him for giving way. However, he said that I asked about the cost of the commissioner. I did not do so as I referred to that matter in my comments. What I was asking about were the powers of the commissioner and how they could be enforced, not the cost.

**Lord Taylor of Holbeach:** The powers are clearly laid out in the instrument which places those bodies identified under a statutory obligation to comply with the code. That is what the statutory instrument is about. Those are the powers of the commissioner and his power is, of course, to see that the code is enforced by those public authorities so affected.

As I say, the Home Office will take an early and visible lead in the voluntary adoption of the code and, along with the Surveillance Camera Commissioner, will show how working with the 12 guiding principles can help build and maintain public confidence. Along with the Surveillance Camera Commissioner, we will be raising awareness of the code and its guiding principles. There will be practical advice on how to apply those principles so that where CCTV is needed it is effective in meeting its purpose. Maintaining public confidence is in itself an incentive for voluntary adoption. Not to adopt the code will be to risk reputational damage by appearing to be unwilling to engage with the public or to follow good practice.

The number of cameras is not really the issue. The BSIA's recent report was clear that the issue is whether the cameras have the ability to meet their purpose and adhere to legal requirements.

The additional costs—the noble Baroness may care to take notice of this—incurred by a local authority are estimated to be on average £2,000 a year, and on average £23,000 for a police force. These are modest costs and are expected to bring the benefits of better quality images, help in investigating crime and bringing criminals to justice and greater public confidence. Placing a monetary value on these benefits cannot be done easily, as I think that the noble Baroness accepted, and yet they are important.

The Surveillance Camera Commissioner plans to generate a self-assessment test, which will be a speedy and efficient mechanism for an organisation—or a business in the case of voluntary adoption of the code—to assess whether it is complying with the code. This will be faster than digesting the code in its entirety and will help to demystify the principles in the code and any technical terminology used. There is no mandatory requirement to replace an existing system but organisations will be encouraged to work to approved operational and occupational standards. This can be done by better use of the existing resources. So I have focused once again on the effectiveness of the systems in delivering what is needed.

CCTV and ANPR are used in a variety of settings for a variety of purposes. Therefore, if some of the definitions are vague and general rather than specific, that is because the code does not contain a detailed, prescriptive and one-size-fits-all guidance which defines every circumstance. Some may regard it as vague but it is a matter for operators to assess necessity and proportionality when using CCTV and ANPR, and to then test their judgment with the public and their partners. This code and the Surveillance Camera Commissioner will provide a framework within which they can exercise their discretion to do so.

The commissioner will provide advice on approved operational, technical and competency standards. He is already meeting with relevant certified accreditation bodies to explore a formal certification scheme for CCTV. In addition, he is developing a self-assessment template, as I have said, to help system operators to assess compliance and to follow the code.

The noble Baroness asked about SOCA. Currently, of course, when Ministers say SOCA they mean the National Crime Agency, which will be its successor. I can demonstrate to her how public authorities have viewed the establishment of the CCTV and surveillance commissioner and his role by the response of authorities such as SOCA and, for that matter, the non-territorial police forces which have been pleased to sign up to this code. They can see the huge advantages of being part

[Lord Taylor of Holbeach]
of a group of law enforcement agencies that receive the support and technical assistance of the commissioner and the reassurance that the commissioner's appointment offers.

The noble Baroness also asked about the mechanism for enforcing compliance with the code. Perhaps I may explain. Local authorities and the police will be under a duty to have regard to the code when exercising their functions. The SI will place a statutory duty on them. When a local authority or police force fails to do so, it will be vulnerable to judicial review for a breach of that statutory duty. The possibility of being subject to such a legal challenge will incentivise local authorities and the police to adhere to that statutory duty.

Before I go on, I shall talk about DNA and the noble Baroness's comments in that area. This is complex legislation, as she will appreciate, and considerable work has been carried out to date to prepare the relevant systems and to consult law enforcement authorities. Having made the policy decision, we undertook a full public consultation and carefully considered the responses before we brought this guidance forward. I am satisfied that it is in time and is specifically designed to address the concerns that the noble Baroness raised.

The noble Baroness particularly asked about the current legislative framework against which decisions have been made. The current legislative regime whereby material is held by the police and other law enforcement authorities is still in effect. There have been no applications to extend the retention period on national security grounds and no material has been destroyed as a result of not extending the time period on those grounds. There have been no applications, but the framework has not ceased to exist.

I am sure that the noble Earl, Lord Erroll, will be pleased to hear that under guiding principles one and two we are clear that the use of CCTV or ANPR must be in pursuit of a legitimate aim and meet a pressing need and must take account of privacy, which, as I have tried to emphasise, is the countervailing balance that this code is designed to reconcile. These first principles establish the need for surveillance and reassure the public that it is necessary.

The Government's intention is to give communities confidence that camera systems are used to meet a legitimate aim, that they are necessary and proportionate —words which noble Lords will fully understand—and that they are used effectively to meet a stated purpose. The vast majority of systems are operated privately. However, local authorities and the police are key organisations in ensuring the safety and security of our public places—which is where the code is initially focused—and therefore have a significant interest in the use of CCTV. That is why the starting point of our journey of incremental and measured regulation is to place them under a duty to have regard to the code. CCTV is used in a wide variety of settings for a wide variety of purposes. Therefore, the code does not contain detailed, prescriptive, one-size-fits-all guidance which attempts to define every circumstance. Some may regard this as vague, but it is for operators to assess necessity and proportionality when using CCTV and then to test their judgment with the public and partners. This code will help them do so.

In this complex and challenging arena we have always been clear that our approach to regulation will be incremental and measured. Andrew Rennison characterised this as taking small but practical steps, and I am sure that that is a strategy that the noble Baroness will endorse. We are taking action to reassure the public and as a driver of public standards. We in government remain committed to ensuring that, where the powers which these orders seek are granted, they are necessary, proportionate and transparent and, crucially, that their use goes hand in hand with respect for our long-held individual rights and freedoms. Both the orders before the Committee today go to the very heart of that matter, and I commend them to the Committee.

**Baroness Smith of Basildon:** My Lords, I am grateful to the Minister, who has sought to address the points that I have made. However, I am not convinced that he has addressed them all. I am still unclear on the point, which he did not answer, on the enforcement or monitoring powers of the Surveillance Camera Commissioner. He said that it was a statutory duty on local authorities or the police, so the fear of judicial review would ensure that they carry this out. My experience of local authorities is that the fears of the cost of judicial review often lead them not to take an action that they would otherwise take. My fear would be that the costs of a judicial review—and there are 12 principles under which they could be judicially reviewed—could lead a number of local authorities to say that they will just not bother with this because it is too much effort.

I am disappointed that the Minister described what I think are genuine concerns as hyperbole. The place to question such issues is your Lordships' House; that is our role, as well as scrutiny. I am sorry that the Minister was unhappy with that position.

On the final order, the Minister said that there have been no applications to destroy biometric information, and none had been destroyed. Can I take it that that means that there have been none over three years old? Those are a couple of points that were not raised. I shall take this back and read the *Hansard* to see from what has been said whether my points have been addressed.

*Motion agreed.*

## Protection of Freedoms Act 2012 (Guidance on the Making or Renewing of National Security Determinations) Order 2013

*Motion to Approve*

*4.31 pm*

*Moved by* ***Lord Newby***

That the Grand Committee do report to the House that it has considered the Protection of Freedoms Act 2012 (Guidance on the Making or Renewing of National Security Determinations) Order 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments.*

*Motion agreed.*

# Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013

*Motion to Approve*

*4.32 pm*

*Moved by* ***Lord Newby***

That the Grand Committee do report to the House that it has considered the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments.*

**Lord Newby:** My Lords, I am pleased to introduce the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and the Financial Services Act 2012 (Consumer Credit) Order 2013. I will refer to the former as the RAO order and the latter as the consumer credit order.

I am sure that we can all agree that a well functioning consumer credit market is vital to the functioning of a healthy economy. However, the market is not functioning as it should, and consumers are not being properly protected. The current licensing regime, run by the Office of Fair Trading and established under the Consumer Credit Act 1974, lacks the capacity and powers to comprehensively tackle consumer detriment in a fast-innovating market. The National Audit Office estimated that there was £450 million of unremedied consumer detriment in this market last year. This Government are determined to ensure that the market functions well for consumers, firms and the economy. That is why we are moving the regulation of consumer credit to the Financial Conduct Authority next April. Consumers will be far better protected; the FCA will require higher standards of firms and will have more robust enforcement powers. However, we will also make sure that the regime is proportionate and supports a sustainable and competitive credit market.

There is widespread support for the transfer to the FCA, and agreement that we have got the balance about right. We first consulted at the end of 2010 on broad policy options. Then, following extensive work on regime design with firms and consumer groups, the Government published detailed proposals on 6 March this year.

The statutory instruments that I am introducing today take into account the feedback that we received from a wide range of stakeholders during the consultation period. These instruments effect the transfer of consumer credit regulation to the FCA under powers taken in the Financial Services Act 2012. The RAO order amends the Financial Services and Markets Act 2000, or FSMA, and associated secondary legislation, to bring consumer credit into the scope of FCA regulation and to apply the FSMA regulatory regime to consumer credit. The order also makes extensive amendments to the Consumer Credit Act 1974—or CCA—in relation to the functions of the OFT. The consumer credit order ensures that retained provisions of the CCA continue to apply appropriately and can be effectively enforced.

Before turning to the specifics of the new regulatory regime for consumer credit, I draw attention to the scope of regulated activity in this market. The Government's policy is to carry forward the current scope of consumer credit regulation. We are, however, making a few key changes that were well supported by respondents to the consultation. The most significant of these relates to a new growth sector in the market, peer-to-peer lending.

The RAO order creates a new, bespoke regulated activity that brings together what peer-to-peer platforms do when they arrange credit agreements between lenders and borrowers. It ensures that the consumers who borrow and those who lend via the platform are both protected. Secondly we are aligning the definitions of credit broking and credit intermediation, and narrowing the definition of credit reference agencies to capture only those who provide credit references as a primary activity. Thirdly, we are removing third party tracing agents from the scope of regulation, as they do not carry on a financial activity. Fourthly, we are clarifying that not-for-profit debt advice is carried out by way of business and is therefore a regulated activity. This was called for by not-for-profit debt advice providers themselves, and will ensure consumer protection is consistent. Finally, in view of responses to the consultation, we are extending the current exemption for insolvency practitioners to include advice that they may reasonably provide in their professional capacity in anticipation of a formal appointment.

I now turn to the three main components of the new FSMA regime for consumer credit. The first one is authorisation. Unless they are exempt, all firms will need to be authorised by the FCA in order to carry on consumer credit business. They will have to meet a much higher bar than under the current licensing regime. The RAO order revokes the OFT licensing regime to allow for the move to authorisation under FSMA, but the Government recognise that a one-size-fits-all approach will not deliver its vision for a competitive and sustainable credit market.

The RAO order therefore provides for what is known as the "limited permission regime". To be eligible for this regime, firms must only conduct certain specified lower-risk credit activity. The quid pro quo is that those firms will face lower costs and fewer regulatory burdens. The RAO order defines the activities which are eligible for the limited permission regime. They include: credit brokerage, where firms do this as a secondary activity to their main business, such as car dealers; and sellers of goods and services who provide credit without interest or charges, for example a gym or golf club.

The FCA must assess firms against prescribed threshold conditions. Limited permission firms will have to meet a smaller, modified set of threshold conditions which have been designed to suit the lower-risk nature of their business. For example, a simpler solvency test will apply. One of the advantages of the FCA regime is that it can make rules to tackle actual or potential detriment in the market much more quickly than the Government could legislate. Its rules are also binding on firms, while the OFT's guidance is not.

[Lord Newby]

The RAO order repeals certain provisions of the CCA and related secondary legislation to allow the FCA to make rules in these areas. It revokes advertising requirements so that the FCA can make rules under its financial promotions regime instead and it revokes "form and content" requirements in the CCA so that the FCA can cover these requirements in its rules.

Finally on enforcement, the FCA has a more flexible and robust enforcement toolkit than the OFT, and will have greater resources to take action on breaches of its rules. The RAO order therefore provides that certain requirements in the CCA that are currently subject to criminal penalties should instead be punishable by the FCA's regulatory powers. Some criminal offences in the CCA will remain in force under the FCA regime, where there is greatest risk of consumer detriment.

In addition, the consumer credit order applies the FCA enforcement toolkit to provisions of the CCA which will still apply under the new regime. It also ensures that there is no double jeopardy—a person may not be convicted of an offence under the CCA where the FCA has already used its enforcement powers in relation to the same breach. The consumer credit order provides for the continued role of local authority trading standards, and the Department of Enterprise, Trade and Investment in Northern Ireland, in investigating and prosecuting offences under the CCA. Trading standards will play an important new role in supporting the FCA to police the regulatory boundary and to take action against illegal loan sharks.

Consumer credit firms should not see this transfer as wiping the slate clean. The RAO order gives the FCA the power to take enforcement action against any breach of the CCA prior to the transfer, but it will not be able to apply its rules or sanctions retrospectively, as this would be unfair to firms. Unlike the OFT, the FCA also has the power to require redress to be paid to consumers. In addition, customers of consumer credit firms will still have recourse to the Financial Ombudsman Service.

The timetable for the transfer to the FCA is driven by the demise of the OFT on 31 March. We recognise that this is a challenging timetable for firms, which is why the Government have introduced provisions to help smooth the transition. We recognise that firms will need to prepare for FCA authorisation, so the RAO order allows the FCA to grant interim permissions based on firms' existing OFT licences. Interim permissions will allow firms to continue to trade from 1 April, but all firms will still need to apply for full authorisation by April 2016.

This approach will mean business as usual for firms but allows the FCA to deploy its full enforcement powers to protect consumers during this period. The RAO order includes transitional provisions, so that firms who have already applied to the OFT for a licence do not have to reapply from scratch for FCA authorisation and live enforcement action will be seamlessly picked up by the new regulator.

The Government are committed to promoting continuity in the conduct requirements that firms need to abide by to ensure that the compliance burden is manageable. The RAO order allows the FCA to designate, as rules, secondary legislation made under Part 2 of the CCA. The new regulator is also incentivised to replicate CCA requirements in its rules. Where rules are the same, or substantially the same, as CCA provisions, the requirement to conduct a cost-benefit analysis is waived and the FCA's competition duty does not apply.

I hope that I have been able to explain the purpose and the benefits of these orders and I commend them to the Committee.

**Lord Kirkwood of Kirkhope:** My Lords, I will make a brief intervention in the Grand Committee's proceedings. These are extensive and important orders. I confess that I defer to the knowledge that other noble Lords have on consumer credit, but I would like to tax my noble friend with a request for assurances about payday loans and unsecured household credit. There have been some big changes in that field and I want to detain the Committee for a moment on that issue.

However, before I do that—and my noble friend will understand why I have been put up to this in a moment—I want to raise an issue about Article 9 of the consumer credit order, which includes provisions for local weights and measures authorities to institute proceedings in England and Wales, and in Northern Ireland. Given my accent, he will not be surprised to know that I would like an assurance that this does not mean that weights and measures enforcement cannot take place in Scotland. I am sure that he will tell me that it is a Section 30 order or some such thing but I will be able to go home more safely at the weekend if I can say that I asked the question.

I come at these orders from the niche direction of the whole question about unsecured short-term household lending. Other people have been doing a lot of work on this but the matter has been drawn to my attention simply because of the massive increase that we have started to see in the amounts of money rolled over and borrowed under the existing payday loan provisions.

*4.45 pm*

The Office of Fair Trading has been doing its best but is struggling to regulate this area and to get a handle on what has been going on. I remind noble Lords that the OFT's most recent report on payday loans estimated that between £2 billion and £2.2 billion was borrowed in paydays loans in 2011-12, up from £900 million in 2008-09; so a very big and fast increase has taken place in a very short space of time. I am not asking for payday loans to be closed down or for anything like that because the industry that provides them is responding to a real and urgent need and, in the context of the period of austerity that we are going through, that need must be recognised, but I am saying that they need to be regulated better. Clients who seek payday lenders' services need better protection.

I understand that these orders cannot suddenly magic the OFT into the FCA. That would be unrealistic, but if we cannot do something until the Financial Conduct Authority is established, can the Minister assure the Grand Committee that the time between now and April will be used to make sure that all the powers, toolkits and the rest of it that we hear so much

about will be put in place so that when we get to April 2014 he and the ministerial team will be confident that the FCA is on top of an increasing problem of lack of regulation?

The orders refer to proper and proportionate—I make no complaint about it—regulation for micro-businesses. Micro-businesses deserve exemption from some of the heavy-duty regulation but some payday organisations that provide unsecured short-term household lending are small businesses, and some of the bigger risks come from smaller businesses. Some of the bigger companies are a bit better organised and are better able to be observed and controlled. Can I have an assurance that the exemptions for micro-businesses are not going to let slip through some providers of these services who may be as big a part of the problem, although on a smaller scale, as some of their more professional, larger scale colleagues in the industry?

Can we get the Financial Conduct Authority to address what the OFT put its finger on as the problem in this market? The market is failing because the way it works is that lenders have to grab and get an established connection with a borrower. Speed is of the essence. The advertising is now so slick and makes it all seem so easy. Speed comes before proper assessments of the creditworthiness of the families and households applying for these loans. The OFT is right in putting its finger on that as the key issue. If the Financial Conduct Authority is not alive to that, it may not be able to do the job that I hope it will do.

Continuous payment authorities, aggressive debt collection and the proportion of payday loans that are rolled over are serious problems. I hope my noble friend will take all these things back to the department and that he is able to give the Grand Committee an assurance this afternoon that, come April next year, we will be confident we can deal with them. I am concerned not just about the effect on low-income households but the increase in fraud. Professional fraudsters are stealing people's identities and using payday lenders to defraud people's bank accounts. That is an increasing problem that we need powers to deal with.

Do the Government have any plans between now and April to talk to responsible organisations such as the Consumer Finance Association, which has a code of practice, although it is not strong enough? I would like there to be a statutory code of practice and the association wants to resist it. Do the Government have any plans to use the time between now and April to stiffen the resolve of the trade association in this area and put things on a more professional and better footing?

My final question is about credit unions, which I think are included in these orders. I should be grateful if my noble friend could confirm that. My concern is that people are starting to think that credit unions are similar to providers of unsecured, short-term household lending, and they are not the same. Credit unions have an important role but they do not give out money to people who have trouble in repaying debts, because that would destroy the credibility of credit unions. I am getting serious representations from people in the credit union sector who say that they are being confused and conflated with those short-term lenders in a way that is not constructive.

These orders are the right thing to do. I am sure that the Government have carried out the consultation properly and the orders are a real and urgent upgrade on the 1974 consumer credit rules. I am in favour of all that. However, perhaps my noble friend can reassure me on some of these issues. I am sorry to detain the Committee on a relatively small matter but these could become big issues. It is therefore right for the Grand Committee to spend some time considering them.

**Baroness Kramer:** My Lords, I shall comment on three aspects of these orders, of which I am very supportive. First, I welcome the elements of the order that create a regulated environment for peer-to-peer lending platforms. While most industries have spent their energies saying, "Remove red tape", this industry has been coming to the Government and the regulator saying, "Please can we have proper regulation", because it knows that without proper regulation, rogue players can come in from the outside, undermine the credibility of the industry and probably provoke a regulator to come in with inappropriately heavy regulation as a consequence.

Can the Minister reassure me that the industry has been involved in negotiating and structuring these regulations? It looks to me as though they meet the test, but can he assure me that they reflect the kind of safeguards that that industry has already outlined in its code of conduct, established under its trade association? I think that that code was to be the basis of most of the discussions. It is a real way forward because, as we know, the banks have been very challenged over providing the credit we need in our economy, and peer-to-peer lending is increasingly coming in to fill that gap to provide both competition and additional resource, which is useful and positive.

Secondly, I pick up my noble friend's comments on payday lenders. I share many of his concerns about this industry. Indeed, the whole House did so, as the Minister will remember, during the passage of Financial Services Bill in 2012, when an amendment that we colloquially called the Sassoon-Mitchell amendment put very effective powers into the hands of the FCA. When it takes over supervision of this industry in April 2014, the FCA will have powers to regulate, manage and supervise it.

The powers were written with an eye to some of the regulation that has been put in place in Florida—I believe 13 states use this kind of regulation—which includes the ability to limit the amount of borrowing to $500 outstanding at any one time, to limit the number of outstanding loans, to cap interest rates and fees and to provide for a grace repayment period. It also has various other characteristics. I would like assurance that the order does not compromise the wide range of powers sought by the House in the legislation and in the amendment.

Like my noble friend, I am concerned with the impression the industry is giving of marketing energetically and raising its interest rates above and beyond what

[Baroness Kramer]
most of us already regard as high levels. I hope the FCA will be able to hit the ground running. That means going through the consultation process and deciding how it will manage that regulation.

It is also a systems issue. As the Minister knows, the various US states that have regulation have systems that allow them to see on a real-time basis what applications are taking place, what the amount is, what the interest rate is, unauthorised roll-overs and so on, and they are able to manage the process. This not only allows the regulator to look at the data and intervene in retrospect, but enables it to set up systems so that if the rules are contravened an automatic decline shows up and an offending loan cannot be made. While it needs time to put such a system into place, I wonder how likely it is that the FCA will be in a position to deliver it as early as April and, if not, what the thinking is around it.

I am afraid my next question comes from my lack of understanding and my difficulty in reading my way through orders. It concerns social impact investment, the financial promotions order and its relationship to the FCA. The Minister will know that if, for example, a social enterprise attempts to create a new community hall, it can turn to members of the local community and ask them to donate. However, it cannot ask them to invest without offending Finprom unless it has become a qualified investment, which is financially impossible for any kind of small project.

We raised this issue during the passage of the Financial Services Bill and the Government expressed their desire to deal with this problem and enable a project to turn to individuals with small amounts of money and allow them to invest. Will the FCA have the necessary power to make those changes under Finprom without having to come back for new primary legislation? I assume that, in the end, we will see a kind of materiality clause that will state that if you want to make an investment of less than £500, or whatever, you will not have to go through all that incredible palaver and you will be able to do so. Will these orders affect that, or will it fall outside their scope?

**Baroness Hayter of Kentish Town:** My Lords, I thank the Minister for his clarity in introducing these orders. Very often we are not wholly behind what the Government are doing but, on this one, we are. We welcome the move to the FCA and these SIs. I have supported the policy behind them for a long time, but I do not know for how long my party has done so. We particularly welcome the powers they give to the FCA. As the Minister implied, they will be its enforcement tool kit for consumer credit and will strengthen its powers to punish misconduct. We also welcome the Government's decision not to exempt small businesses, as that might have weakened, rather than strengthened, consumer protection.

*5 pm*

I have two concerns, and a very small one which I hope to raise. I know that the first will be familiar to the Minister. It is the concern raised by R3 Group about insolvency practitioners who are already regulated, albeit by a plethora of recognised professional bodies. R3 pointed out that the exemption for insolvency practitioners—which both it and we welcome—might not work quite as intended if it covers only any pre-appointment advice which is reasonably likely to lead to an appointment. R3 is worried that IPs, having given advice and heard more, may consider that formal insolvency is not the right way forward. R3's question is whether the earlier advice that it gives requires it to be FCA authorised. It has a slight worry that if it did, it might find itself recommending insolvency in order to avoid double regulation, which would clearly not be to anyone's advantage. It might have to do that to avoid double regulation or bite the bullet and be regulated. However, that would probably be too expensive, particularly for smaller IPs. Is the Minister sure that the term "acting with reasonable contemplation of appointment as an insolvency practitioner" will not force IPs into launching a formal insolvency, rather than giving general debt advice, in order to avoid such double regulation? I hope that the Minister will give some comfort on that today. If not, perhaps he will talk further to R3 about it.

The second issue is payday loans, and I make no apology for returning to it. This has already been raised by the noble Lord, Lord Kirkwood of Kirkhope, and the noble Baroness, Lady Kramer. We and the charity StepChange are concerned that the staged transition to FCA regulation may allow payday loan companies to continue to run on a business model based on multiple rollovers of debt, with predictable and rather serious consequences for the borrower.

We very much welcome the FCA's power to consider business models, especially given what we know about this industry. The OFT found that half the revenue of these firms comes from loans that are rolled over at least once and one-fifth of payday loan companies' revenue comes from customers who are forced to roll over a loan four or more times. Their very business models are based on people getting into debt trouble. That is why the scrutiny of business models is so much needed, but—to echo other noble Lords—it is needed now, not in three years' time.

Will the Minister confirm that the interim permissions regime, which allows for staged transition to FCA regulation, will not be used by payday loan companies to delay that scrutiny of their business models by the FCA? The Minister knows better than us, because it is in the impact assessment, the figures from StepChange, which suggest that unaffordable, unsuitable credit is a key contributor to its clients' debt problems. Furthermore, many of the worst examples of poor conduct seen by that charity include firms that operate very much at the margins, lending to lower income and vulnerable consumers. We do not want to wait until 2016 for the FCA to cast its—hopefully—extremely beady eye over these firms' business models. We therefore look forward to quick and effective implementation of the FCA credit regime.

Lastly—and this is a very small issue—the FLA has raised with us its anxiety that the new rule book is not yet available in draft, and it wants the Government and the FCA to ensure that arrangements for the new regime coming into operation in April will be promulgated

in good time. That does not seem too much to ask; we simply seek some reassurance on progress on that matter.

We welcome and support these SIs and hope that the Minister will be able to give us those small bits of reassurance.

**Lord Newby:** My Lords, I am grateful to all noble Lords who have spoken in this debate and for their broad welcome for the provisions that we are introducing.

The noble Lord, Lord Kirkwood, asked about Scottish weights and measures. He will have read Paragraph 9, which says:

"Local weights and measures authorities may institute proceedings in England and Wales".

As he will know, it would be completely improper in Scotland for anybody but the Lord Advocate to initiate prosecutions. I have no doubt that he will wish to talk to his noble and learned friend Lord Wallace of Tankerness, as I am sure that he is doing his job properly.

The noble Lord, Lord Kirkwood, concentrated, as other noble Lords did to a certain extent, on payday loans and what is happening about them. The FCA has a formal responsibility for managing payday loans from next April, but it is not waiting until next April to start to think about the issue. Indeed, it is going to set out draft rules in September for a consultation. I am sure that many people will want to get involved in that consultation. That gives a certain amount of time to get rules in place by the time when it takes over the formal responsibility. The FCA has also reminded the banks of their obligations when cancelling continuous payments authorities, which is obviously an issue for payday lending consumers.

The noble Lord said that he hopes that micro-businesses will not be exempt from this provision because they are very important even if they are not very big. The micro-business exemption does not apply in this area; that would obviously compromise consumer protection because there are a lot of small businesses. Although we tend to be familiar with a number of brand names, very often the worst offenders—literally—are small, local operations.

BIS has launched a review on voluntary payday codes that will survey lenders and consumers and provide a sense of progress. The codes were implemented by lenders last November, and we expect BIS to publish findings in the autumn. We hope that will put pressure on the trade association to raise its game ahead of April.

The noble Lord made the point that credit unions are not a perfect substitution for payday lenders, and I completely agree. The extent to which the two seem to be equated with the good and bad ends of short-term lending has rather surprised me. Credit unions are really vehicles for people who take a longer-term view of a loan. If you are signed up to a credit union and have established a history of savings, it can help if you get into difficulties and can act in the same way as a payday lender would, but they are very different. The other problem is that, in many areas, there is no credit union of any significance or it is quite difficult to find out about it. Having said that, the Government support credit unions, and we are doing a number of things to make them more attractive, such as increasing the maximum rate of interest that they can charge from 2% to 3%, but as the noble Lord said, they are a partial solution to the problem.

The noble Baroness, Lady Kramer, began by discussing peer-to-peer lending. I congratulate her on the extent to which she has been able to raise peer-to-peer lending as an issue in this House and more broadly and has encouraged the Government to come forward with these regulations. We are in discussions with the industry. We were actively engaged with it before we produced these regulations and it has been very keen to be regulated because it, in a sense, gives a stamp of authority to the whole sector which, for a new sector, is very welcome.

On payday lenders, the noble Baroness asked whether the order in any way compromises the FCA's ability to undertake a number of things, including a capping power. It does not. That was one of the issues that it will consider as it thinks about its rule-making power. She described the conditions in Florida which have enabled very effective regulation of payday loans while enabling the payday loans sector to carry on in operation. Like her, I have been extremely impressed by the extent to which Florida has managed to go a long way to solving the issue that we are grappling with, which is how to ensure that poorer people can get access to money when they need it but do not get fleeced. We hope that there are some lessons that we can take from Florida, not least on a real-time payday database, which the FCA is very interested in. If we decide to go for it, it will take a bit of time to put in place, and it would be expecting a bit too much to think that we could do that by next April.

The noble Baroness asked about social investor exemption from the financial promotions regime. These regulations do not affect the rules in that respect. We are actively looking at how we can resolve the problem she explained. The challenge is, as ever, to make sure that we are able to put in place a regime that not only allows the kind of lending she is talking about but safeguards consumers. That is the balance we are still grappling with.

The noble Baroness, Lady Hayter, asked about R3 and its concern that in extending the exemption for insolvency practitioners, in part in response to its concern, we might not have got it quite right. We are pretty confident that the extended exemption that is designed to give comfort to insolvency practitioners when giving advice will do that without running the risk that she talked about. Officials have been and will remain in discussions with them to make sure that their fears are put to rest. We do not believe that they need to be worried.

The noble Baroness raised multiple rollovers of debt and hoped that we will not delay work in this area. The FCA is very much on to this. There is no delay. The business models of payday loan companies is one of the things it will look at.

Finally, the noble Baroness asked when the rule book will be available in draft. It will be available in draft early in the autumn, and we hope that the FLA and others who have a direct interest in it will, as they

[Lord Newby]
have until now, play a major part in scrutinising it and giving us their views. I hope we will be able to come up with something that they will find easy to live with.

I hope that I have answered the questions that have been raised, and I commend the order to the Committee.

*Motion agreed.*

## Financial Services Act 2012 (Consumer Credit) Order 2013

*Considered in Grand Committee*

*5.16 pm*

*Moved by* ***Lord Newby***

That the Grand Committee do report to the House that it has considered the Financial Services Act 2012 (Consumer Credit) Order 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments*

*Motion agreed.*

*5.17 pm*

*Sitting suspended.*

*5.21 pm*

## Companies and Partnerships (Accounts and Audit) Regulations 2013

*Motion to Approve*

*Moved by* ***Viscount Younger of Leckie***

That the Grand Committee do report to the House that it has considered the Companies and Partnerships (Accounts and Audit) Regulations 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments.*

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** My Lords, I beg to move that this Committee considers the following three statutory instruments, which I will speak to in turn: first, the Companies and Partnerships (Accounts and Audit) Regulations 2013; secondly, the Companies Act 2006 (Strategic Reports and Directors' Report) Regulations 2013; and, thirdly, the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013.

With my apologies to noble Lords for beginning this debate with a technical and specialised subject, I will introduce the Companies and Partnerships (Accounts and Audit) Regulations 2013. These regulations close a loophole in the implementation of the EU Fourth Company Law (Accounting) Directive. They do this by amending the Companies Act 2006 and the Partnerships (Accounts) Regulations 2008.

The businesses most affected by these amendments are limited partnership investment funds in the private equity, venture capital and real estate sectors. These specialised businesses have been aware of the planned changes as far back as 2010, when BIS consulted on closing the relevant loophole. The loophole allows certain limited partnerships to avoid preparing accounts and reports where these are required by EU law. Accounts such as those for limited liability companies are required where the partnerships in question are structured to have limited liability.

Work on these regulations started as soon as this problem was identified. Following the 2010 consultation, we have continued to work with stakeholders who responded. Certain other unlimited companies and general partnerships are also affected, but we believe there are few, if any, of these in existence. The amendments in the regulations close the theoretical loophole that is available here also.

By way of background, these loopholes originated in the 1993 regulations that first implemented the relevant provisions of the EU fourth directive, after they had been inserted into that directive, in 1990. The defective drafting that caused the loophole was then carried over from the 1993 regulations into the Companies Act 2006 and the Partnerships (Accounts) Regulations 2008, so these regulations insert a new systematic definition of a "qualifying partnership" into the Partnerships (Accounts) Regulations 2008. This replaces the previous definition, which contained a technical drafting error. The regulations also insert a systematic definition of what is meant by the "members" of a qualifying partnership. This addresses similar technical drafting errors and removes some previous unnecessary gold-plating.

The regulations also correct the implementation of requirements relating to the publication of a qualifying partnership's accounts. Where a qualifying partnership has no UK limited company members or EU equivalents, the regulations ensure that accounts are made available for inspection in the UK. Where the qualifying partnership has no principal place of business in the UK, it will now have to publish the accounts at a nominated UK address. This ensures that the directive requirements are met and are enforceable under UK law.

These regulations also address a separate and unrelated issue in order to complete the implementation of the 2009 EU electronic money directive. They ensure that all forms of e-money issuers are covered by the full audit and accounting requirements of the Companies Act. These amendments were missed when the EU electronic money directive was implemented in 2011 and have been developed in consultation with the Financial Conduct Authority and HM Treasury.

The impact assessment published with these regulations estimates that between 5,000 and 8,000 limited partnership investment funds are affected. The costs are likely to be between £8,000 and £30,000 per fund per year in accounting and audit. These costs would be likely to double in the first year, as the relevant partnerships and their auditors will have to prepare and audit full accounts for the first time. The costs will also be higher for around 10% of limited partnerships, which will have to prepare consolidated accounts. The remaining 90% will be able to take advantage of recent changes introduced to UK accounting standards, which allow them not to produce consolidated accounts.

The revised regulations have the following important effects. First, they increase the transparency of accounting and reporting by the partnerships affected and, secondly, they address outstanding issues with the implementation

of two EU directives. The changes take effect for accounting years beginning on or after 1 October. The limited partnerships affected will have at least the whole accounting year to prepare.

I now turn to the second statutory instrument under consideration, the Companies Act 2006 (Strategic Reports and Directors' Report) Regulations 2013, which covers narrative reporting. The Government cannot overemphasise the importance of clear concise narrative reporting by companies. The annual report is a key tool for shareholders to understand how their company operates, to hold it to account and to promote informed discussion at the company's annual general meeting.

Over the years, the average length of annual reports has risen to more than 100 pages, with the longest being more than 500. This makes key information difficult to find and makes it hard for shareholders to gain an immediate understanding of how their company operates. To quote Sir Winston Churchill:

"The length of this document defends it well against the risk of its being read".

That is why we propose a simplified framework to help companies focus on the key messages that they want to communicate to their shareholders.

Specifically, the Government will require the creation of a new section of the annual report—the strategic report—in which we expect companies to discuss their strategy, their business model and their principal business risks. The current structure is unhelpful to shareholders as this information is not in a prominent place and can be hard to find. We will also ask quoted companies to disclose other information necessary to understand their business, including about their impact on the environment, social and community matters, their employees, and human rights issues that the company needs to address.

For example, the tragedy in Bangladesh brings into sharp focus the need for companies to produce high-quality reporting on their social, environmental and human rights issues. Although there is no specific requirement for companies to report on their supply chains, the requirement in these regulations to report on human rights will provide a proportionate regulatory response. However, we recognise that business and government can do more, and the Government intend to publish the UK action plan on business and human rights later this year.

Businesses should be aware of the compelling case for respecting human rights in their activities, as it reduces operational risk, promotes prosperity and helps to establish a stable and sustainable market. The requirement to report on human rights will focus the corporate mind on these obligations and provide evidence for shareholders to hold their company to account.

*5.30 pm*

The UK faces unprecedented challenges in the current financial climate, with businesses operating in one of the toughest economic situations we have ever seen. It has never been more important to capitalise fully on the skills and talents of all people, regardless of their gender. This is about improving the performance and productivity of companies. More diverse boards with a plurality of views and experience will be in a better position to compete in the global marketplace. The noble Lord, Lord Davies of Abersoch, made recommendations in his review, *Women on Boards*, published in 2011. The gender disclosure requirement in the narrative reporting regulations supports this work. These regulations will require companies to disclose the number of employees of each gender on their board, in senior management positions and in the company as a whole. This will help investors to identify those companies that are most effective at developing their staff.

We are also asking companies to disclose their greenhouse gas emissions. The Climate Change Act 2008 required government to look at company reporting of emissions. This is something that we have consulted extensively on and I know is widely supported by companies, investors and civil society organisations. While we encourage companies to go beyond mere compliance, these regulations set out minimum requirements for companies to report their emissions in a transparent way with least burden to the business. Specifically, we propose that companies disclose their annual greenhouse gas emissions for activities for which they are responsible. This will provide the key data that investors and others have said they need to see.

The Government have consulted on the reporting regulations several times. During these consultations we asked respondents to suggest disclosure requirements that have become outdated or that provide no meaningful disclosure. For example, we are removing the obligation to report on essential contractual arrangements. Should the company have specific concerns, it should highlight these to the shareholders as part of its risk disclosure. The Government will also no longer require companies to disclose their charitable donations. While we encourage companies to engage in philanthropy, we have no evidence that this disclosure affects charitable giving while the disclosure itself has become burdensome to business.

We are also removing the requirement for reporting on policy and payment of creditors. This disclosure provides little information to the shareholder as to how their company pays its creditors. However, we do take this issue seriously. In November, my honourable friend in the other place, the Minister for State for BIS, Michael Fallon, wrote to companies to encourage them to become signatories to the prompt payment code.

*5.32 pm*

*Sitting suspended for a Division in the House.*

*5.44 pm*

**Viscount Younger of Leckie:** My Lords, as I was saying, in removing the requirement for reporting on policy and payment of creditors, we are taking this issue seriously. In November, my honourable friend in the other place, the Minister of State at BIS, Michael Fallon, wrote to companies to encourage them to become signatories to the prompt payment code. By 1 April 2013, more than 1,371 organisations had signed up to the prompt payment code. These regulations are not intended to stand alone and will be supported by

[Viscount Younger of Leckie]
guidance from the Financial Reporting Council. This guidance will be published for consultation in the coming weeks and will provide help for those companies whose thinking on their reporting is still in development.

I turn now to the third statutory instrument on today's agenda, the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013, covering reporting of directors' pay. It is worth taking a few moments to elaborate on the reasons why it is important to make company reporting on directors' remuneration more transparent. As the Committee will know, the Government's comprehensive reforms to executive pay addressed concerns that the link between directors' pay and performance has grown weak. This is damaging for the long-term interests of business and it is right that the Government are acting to address this failure.

These draft regulations are the final part of those reforms. Changes to primary legislation contained in the Enterprise and Regulatory Reform Act have given shareholders new voting powers to hold companies to account. These regulations give detailed effect to those changes for shareholders by setting out the information that quoted companies must include in a directors' remuneration report. As a package, these reforms contribute to the Government's wider aim of establishing a corporate governance system that supports long-term, sustainable growth. The regulations focus on the content of the company's report on directors' pay. They cover both the required disclosure of pay policy and the improved transparency of reporting on pay and I shall deal with those in turn.

First, on the remuneration policy, the Enterprise and Regulatory Reform Act amended the Companies Act 2006 to give shareholders new voting powers to hold quoted companies to account on directors' pay. Quoted companies must put their remuneration policy to shareholders at a minimum interval of every three years. These regulations give effect to those changes by setting out the details of the information that quoted companies must give to shareholders in their directors' remuneration policy. The policy must include: first, a description of the elements that make up each director's remuneration package, such as salary, pensions and bonus; secondly, the maximum that may be paid for each of those elements; thirdly, an explanation of how payments are linked to different levels of performance and how that performance is measured; and, finally, the company's policy on recruitment and exit payments.

In addition to the directors' remuneration policy, companies will be required, as they are now, to produce an annual remuneration report setting out what directors have been paid in the past financial year. Remuneration reports can currently be long and opaquely written, which is why we are proposing significant changes to those reports to make it much clearer to investors how much directors have been paid and how this links to performance. In the new annual remuneration report, companies will have to: first, report the amounts paid to each director in terms of their salary, pension, benefits, annual bonus and long-term incentive plans, and provide a single figure for total pay; secondly, explain clearly how the payments relate to performance by giving details of actual performance against the targets set and how that relates to the amount received; and, thirdly, provide contextual information, including details of the fees paid to remuneration consultants for advice to the company relating to directors' pay, and a comparison of the change in pay for the chief executive and the wider company workforce.

Under the changes to the primary legislation, shareholders will continue to have an annual advisory vote on a remuneration report. However, where a company's shareholders reject the annual remuneration report, the company will be required to resubmit its pay policy to a binding vote at the AGM the following year.

I would make it clear that these reports are not intended to be long legalistic documents but to provide clear and meaningful information to company shareholders which allow them to hold the company to account. These regulations replace the current 2008 regulations on reporting and will apply to the same group of companies as at present—in other words, the approximately 900 quoted companies registered in the UK whose shares are listed on the main market.

These regulations have been developed in close consultation with a wide range of interested parties, including companies, investors and unions, to ensure the reforms achieve the policy intentions in a workable and lasting manner. This has been a challenging task and we are satisfied that we have successfully found the right balance. Indeed, several major companies have already started to adopt some of the new disclosures in this year's annual reports.

I recognise that these are big changes, but we expect these regulations to be accompanied by industry-led guidance to aid companies and investors in their implementation of the regulations. We welcome this guidance, which is being developed by companies and investors together and is scheduled to be available in September. The guidance will be of real benefit in ensuring that companies provide a meaningful level of detail to their shareholders. However, and arguably more importantly, it also demonstrates the impact of improved engagement between companies and investors, engagement which we are starting to see and which will be the final part of making sure that these reforms lead to real and lasting change. I commend these orders to the Committee.

**Lord Hodgson of Astley Abbotts:** My Lords, I am grateful to my noble friend for his clear explanation of the three instruments. I want to focus my remarks on the last two—the strategic report regulation and the one that is concerned with directors' remuneration. Before I go any further, I need to declare an interest, which is on the register. I am the senior independent director, or SID, or a FTSE 250 company, and the chairman of its remuneration committee. So these orders are far from being of academic interest to me. On Friday, the day after tomorrow, I will meet our remuneration consultants in Wolverhampton to discuss the implications of the instruments that we are talking about this afternoon. It is important that we should move sometimes from the rarefied atmosphere of this Committee Room and see what the things we discuss are going to mean on the ground and their real

implications for British industry. With great respect to my noble friend and his officials, sometimes the reality of what is being proposed is some way distant from the undoubted good intentions with which the regulations are drafted. If this makes me sound a bit parochial, I am afraid that I am not going to apologise for that, because what we are considering and will no doubt pass today is going to affect 900 of Britain's largest companies. I am concerned with the practical implications.

The business of which I am director is not a complex one. We brew beer in five breweries up and down the country and run just over 2,000 pubs across England, Wales and Scotland. We have no overseas operations and a pretty simple business model. I say that to my noble friend so that we can set in context the remarks that I am going to make about these two sets of regulations.

The Committee should be aware that, in 1995, our annual report was 25 pages long; by 2000, it was 41 pages long; and by 2005, it was 76 pages long. In spite of the observations in the Deloitte study included in the documents that have been circulated, which suggests that the size of annual reports is sloping off—I have yet to see a company whose annual report is shortening—last year it had gone up by a further 20 to 96 pages. So in 15 years, we have gone from 25 to 96 pages. I have to say that I do not think that that has helped the shareholders.

I looked through the objectives in the Explanatory Memorandum for the strategic report regulations, which says at paragraph 7.5:

> "The suggested restructure and simplification of the reports aims at giving all stakeholders … the information they need in a clear and effective way so they can be active stewards of the companies they own".

I thought, "Amen to that! Terrific!". When my noble friend says, in his clear explanation, that we are going to simplify the framework, I say amen again. However, he went on to say that there is going to be a new section of the annual report. That does not sound like simplifying, it sounds like extending. It may have a simplified bit in it, but it does not sound to me as though we are going to shorten it, because he then went on to say that we are going to require the disclosure of other information.

I am particularly concerned about the growth in the annual report and, as I will explain as we go along, the effect that the growth in the size of annual reports has on individual shareholders. The fact is, as the Explanatory Memorandum makes clear, institutional shareholders are fine. They will turn up at our door, knock and say that they want to know about this, that or the other, and we will say, "God bless you guv'nor" and tell them. I am much more concerned about the average small shareholder.

We have a big shareholders' list, probably not unconnected with the fact that we offer free pints of beer to every shareholder who comes to our annual general meeting. For small shareholders, less can often be more: something shorter and better focused can be attractive and advantageous. We are talking about a strategic report, concerned with the essence of what drives a company, but when I look at new Section 414C that is to be added to the Companies Act 2006, headed "Contents of strategic report", I see that it has 14 subsections and begin to think, "Hello, what is going on here?".

New Section 414C(7)(b) states that a quoted company's strategic report must include information about,

> "environmental matters … the company's employees, and … social, community and human rights issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies".

We have 2,000 pubs and five breweries. What are we going to write? It will be either a telephone book or the most anodyne and superficial stuff, because you cannot move between the two easily. What will happen is that the consultants will come along and say, "These are the words you need to use in your annual report. They will meet the requirements of the strategic report which we will approve this afternoon".

New Section 414C(2)(b) says that the strategic report must contain,

> "a description of the principal risks and uncertainties facing the company".

That makes no distinction between risks that we can control and those we cannot. The major risk that we face is what happens to the UK economy. If it goes badly wrong, people do not go to the pub, they do not eat at the pub and they buy their beer more cheaply at the supermarket. However, saying that would give such a broad statement that it will be of little value to the company or the shareholders. Surely it would be much better if the regulations placed more emphasis on describing the key risks that were within the company's control, rather than such broad generic statements, as I am sure we will get to.

At the other end of the spectrum, at the micro level, when we get to new Section 414C(8)(c)—and remember that we are discussing a strategic report—it states that it must include,

> "a breakdown showing at the end of the financial year … the number of persons of each sex who were directors of the company … the number of persons of each sex who were senior managers of the company … and … the number of persons of each sex who were employees of the company".

The employment of women is critical. Believe me, when my noble friend goes to the pub on the way home tonight he will find that a lot of the bar staff, the people who work there and a lot of the managers are women. However, do we have to have this in a strategic report? Is this going to add to the sum of human knowledge and put a shareholder in a better position to make a proper assessment of the company's position going forward? Less is more.

My concern about these regulations, worthy though their purpose is, is that they do not provide enough specific focus for an individual company. We are going to get a series of bland statements. We are going to have a meat cleaver rather than a surgeon's knife. The regulations continue to put far too great an emphasis on reporting the past, judge the ship by the shape of the wake and do not provide directors with sufficient safe-harbour provisions in respect of forward-looking statements. For noble Lords who are not familiar with the term "safe harbour", it describes a means whereby you can say something about the future without being

[Lord Hodgson of Astley Abbotts]
sued for doing so, provided that you do not say something that is utterly reckless.

We want directors to be encouraged to make more forward-looking statements, because that is what it all about. To do that, they need proper safe-harbour provisions built into these regulations. I do not see them there and I hope that my noble friend can say something about this when he winds up. To be really helpful to shareholders, actual and potential company reports need to look forward and peer into the fog of the future, but directors will be reluctant to do so unless they have adequate protection.

*6 pm*

After that tirade about the utility of the strategic report, I turn to the directors' remuneration regulations. I understand the Government's position given the public anger and concern about what are seen as unreasonable rates of pay and rewards for failure. I certainly support the idea of a binding vote for shareholders, but company remuneration reports need to take place against an informed background.

These regulations require very complex executive remuneration figures to be reduced to a single number. I understand the attractions of simplicity but, for example, let us take the "Single Total Figure Table" set out under Regulation 5(1). I invite my noble friend to consider column "e". The problem is that we are required to have a single figure to deal with all pension-related benefits. Pension valuation is an arcane, obscure and difficult subject and has been known to make strong men weep. A tiny change in the gilt rate, which forms the basis for discounted future liabilities, has a dramatic effect on future values. Last year, the remuneration report that I signed off for my company showed that the transfer value of one executive's pension had increased by £542,000 from £2.8 million to £3.3 million. Had we paid him more? No. Had we paid him less? No. We paid him what we had always paid him. Yet, because of the way that gilt rates and valuations work, there are these huge swings. He had no control over that and we had no control over that, which leads to obscurity, misinformation and shareholders not getting accurate and proper information. I am not sure how, with those sorts of disclosures, we are going to avoid perverse conclusions being drawn. We have on our board two executive directors. Every year, we are now going to have three shareholder votes to deal with their pay. I do not mind having three votes and I do not suppose that the shareholders do either, but it is a sledgehammer to crack a nut.

My noble friend mentioned that many remuneration reports were long and opaque. He said that the purpose was not to have long legalistic documents. The remuneration report that I signed off for last year's chairman of the remuneration committee was eight pages long. We have received the first draft from our remuneration consultants on what will happen when we pass these regulations into law, because we are discussing the matter on Friday. Surprise, surprise—it is 21 pages long. So it is not going to be a shorter document. It may perhaps be less opaque—I do not think it is—but it will be nearly three times as long. I am not against transparency or disclosure, but I want the Government and the Committee to realise the practical implications of what we are passing today. What we are trying to do is worthy, but the results are not as we hoped.

In relation to these regulations, will my noble friend give an undertaking that we will look at them in three years to see whether they have had the effects that we want them to have? I went out a few minutes ago because my phone rang, and it was our remuneration consultant because I had rung her to say, "We're discussing this in a few minutes. What do you think about it?". I wanted to get her views. She said, "I think they're a complete waste of time. I don't think they'll achieve anything the Government seek to achieve at all". So I think we need to look again at this and I hope my noble friend can agree to do that.

Each time we look at these regulations, we need to think carefully about what we can remove. I know my noble friend gave some examples. He talked about removing the disclosure of charitable donations. That is one line. It is, "The company gave no charitable or political donations". I am delighted to have that out, but we have to do some serious restructuring of the way we handle and publicise company accounts.

Who are the winners and losers of these regulations? The first and biggest winners are the accountants. No wonder the Financial Reporting Council is saying that it wants to show how to do it better. More stuff will need verifying, more people will need to go in to check and more people will need to prepare the reports, which will be huge. Remuneration consultants will be winners because they will have an opportunity to sell their wares. Lawyers and actuaries are coming along behind because they, too, will be asked to verify and ensure that we are complying with this increasing raft of regulations. The losers will be the companies, which will undoubtedly have to add to their non-productive resources to collect all this information and put it together in a comprehensible form. Will these regulations benefit shareholders? The jury is out. Possibly they will, but I think it is all going to be lost in the wash.

At some point, the Government—the department—are going to have to look at the balance between process and judgment. These regulations extend process. We will tick the boxes and do it all, we will make sure that we disclose whatever, but I confidently predict that when our annual report is published in November it will not be 97 pages; it will be between 110 and 120 pages. They will add between a quarter and a third to it.

I have one final point. UK plc needs first-class men and women to act as executive and non-executive directors of our public companies. They are the backbone of our economy. We need to strike a balance and find an appropriate level of transparency and disclosure while avoiding a situation where the personal financial rewards that quite rightly follow commercial success lead to finger pointing and the politics of envy. It is in all our interests to ensure that this balance is properly struck, but I am not sure that we have achieved it this afternoon.

**Lord Young of Norwood Green:** My Lords, I do not profess to be very expert in this area, but I declare an interest as vice chair of the Ethical Trading Initiative

and somewhere in the comprehensive report from the noble Viscount there was a reference to environmental, social and human rights issues and supply chains.

I do not have a lot to say on the first set of regulations, which seem to be about tidying up and closing a loophole, although the question of whether there would be any tax consequences as a result of the changes occurred to me. I thought the point about narrative reporting was interesting and I could not help reflecting on the experience of the noble Lord, Lord Hodgson, and the range of his comments. I suppose there is one side of me that inclines to what he says—that less is probably more. He is probably right. As a small shareholder myself in a number of companies, how many times do I bother to wade through the annual report? It is not very often, unless I am really desperate in my reading material. However, I think that the companies that we are talking about have a duty to report comprehensively and responsibly. We do not want any more of it than is necessary but we cannot honestly say that everything is right these days and that we are in a climate where nothing bad happens or where companies' behaviour is always perfect. The Minister conveyed a lot of interesting information to us about narrative reporting.

Overall, I welcome the new strategic report section and the way that it will deal with environmental, social and human rights issues. The Minister mentioned Bangladesh, which is just one example of how this can impact on companies. What I did not hear in all his comments was any mention of ethics, which are important to the way that companies behave. If this points them in that direction, that is a good thing. Company policy on ethical behaviour is becoming more and more important. We see large companies behaving very irresponsibly and unethically, and then being required to make enormous payouts. The recent example of payment protection policies is one of a number of such cases. These regulations would certainly not do those companies any harm.

The Minister then talked about the action plan on business and human rights, and the requirement to report. I think I am right in recalling that the Foreign and Commonwealth Office are supposed to be publishing a document soon on the UN Ruggie principles. Will this legislation encompass those principles?

I welcome the section on gender reporting, especially on board members, although not on that alone. It is important that we see how much progress has or has not been made. In the current climate, if we are serious about controlling greenhouse gas emissions, that is perfectly reasonable as well. An area that interests me, which I would not mind seeing in an annual report, is—

**Lord Hodgson of Astley Abbotts:** The noble Lord talked about gender reporting on boards. I understand that and am in favour of it. However, he has only to look at the list of the directors at the front of the annual report to see who are men and who are women and to draw his own conclusion. We do not have to have a section on gender reporting. The information is all there and people can gather it together.

**Lord Young of Norwood Green:** I am sure it will be there, but the report does not actually say what the company's policy is on gender balance on its board. That is of interest to stakeholders and investors. I agree with the noble Lord that there is a balance to be struck but I am with the Government on this one.

As I was saying, one area that interests me and which I would not mind seeing in annual reports—it might be there already, buried away—is the amount of training that companies provide and the number of apprenticeships that they take on. That is another interesting signal of their attitudes towards their workforce and this is an area to which this Government, after all, say they are absolutely committed. We know we need a more skilled work force and more apprenticeships, so a requirement in relation to those areas in the regulations would not go amiss.

*6.15 pm*

I was interested in the two areas that are being dropped. I do not understand why charitable arrangements are burdensome. I would welcome an explanation of why they are seen as such. I would not have thought they merited a huge amount of effort.

The other point on which I ask the Government to think again is the policy and payment of creditors. The Minister referred to the companies which have signed up to a prompt payment code, which is good, but there is, again, an ethical sense to this. We know how many SMEs live and die by the prompt payment policies of companies and I find it puzzling that that should be dropped.

The question of directors' pay has, quite rightly, become the focus of a great deal of attention. Why? It is because we have seen many companies—I do not mean the noble Lord's company; in fact, I am thinking of investing in it, if only to benefit from the offer of the beer—which have rewarded not only failure but failure and unethical activities as well. This is an important area and, by and large, I welcome the regulations. If the policy included the issue of workers' representation on the remuneration committee, that might inject some reality; and, given the Hutton report on the ratio between the average workers' pay and directors' pay, a comment on that issue would not go amiss either. Some of those ratios over the past 10 or 15 years have grown enormously, unjustifiably so in many cases. Some of the examples of reductions in directors' and chief executives' pay are interesting. People are beginning to realise that their pay has grown unreasonably, usually on the basis that if we did not reward them we could not possibly find anyone else to do the jobs. I have always doubted that.

On the pay and the pension bonus, I take the point that the noble Lord, Lord Hodgson, made. However, that situation should be explained. I accept that there will be a variation depending on market performance but I cannot see any reason why that should not be explained. The total remuneration package that has been described includes pay, pension, bonus, performance and exit payments. We have recently seen some unbelievable examples of exit payments in the BBC, where people have walked into another job immediately and still received an additional year's salary. We need

[Lord Young of Norwood Green]
to know the justification for that. As to the annual remuneration report and the amounts paid to each director, and pay and performance fees paid to remuneration consultants, again, if investors want to see the full picture, that is the kind of information that they require.

As to the passionate plea from the noble Lord, Lord Hodgson, of course no one wants these reports to be any longer than they need to be. I am sure that the Churchillian quote was apt and that the length of the report is inversely proportional to the amount of readership it encourages. However, I would have thought that there were ways of giving small investors a key point summary and directions to the full body of the report if they want more information. Again, this area is ripe for development.

The noble Lord, Lord Hodgson, made an interesting point about principal risks and uncertainties. It is difficult but, again, necessary, given that some companies have made some unbelievable investments that have brought them to ruin. Making sure that they are assessing risks as best they can, given that there is a general risk about the growth of the economy, is right. I was not quite sure that I fully understood the concept of the safe harbour provisions, but no doubt the Minister will be able to explain it.

The noble Lord, Lord Hodgson, made a valid point on a three-year review process. We do not want these reports to be any longer than they need to be. I am sure that over a period we will see what the Government would see as best practice and encouragement to develop it. With those thoughts, I look forward to the Minister's response.

**Viscount Younger of Leckie:** My Lords, I thank my noble friend Lord Hodgson and the noble Lord, Lord Young, for their contributions to this rather short, succinct debate. I am very sorry to hear that my noble friend Lord Hodgson is so pessimistic about these proposals to make improvements to reporting. He made one or two good points, and I will pick them up, but he will not be surprised to hear that I do not agree with all the points he made.

My noble friend made a good point about the size of the report. The noble Lord, Lord Young, mentioned concern about extending the report to include a strategic report given the history of reports and my noble friend Lord Hodgson's example of a report that was 15 pages a few years ago and is now 70 pages. It will be up to companies to decide how long their reports will be and, no doubt, they will want to make them as succinct and readable as possible to include the extra requirements. I hope that will include cutting down on other areas so that the reports will be more readable.

My noble friend Lord Hodgson was concerned about the disclosure of risk. He raised an important point. The guidance on the strategic side of the report will provide guidance for businesses on deciding their key risks. He made the important point that it is quite challenging for a company to decide what risks are under its control and what risks are not, such as the economy. The guidance is designed to help with that approach but it will be up to the company to decide what it puts into its report on an annual basis. This guidance will be published for consultation and I encourage my noble friend to respond when it comes out.

My noble friend Lord Hodgson and the noble Lord, Lord Young, raised the safe harbour provision. The answer to the question, "Is there a safe harbour provision for directors?" is yes. The detail is in paragraph 17 of the schedule. It extends the safe harbour provision in Section 463 to the strategic report. The Companies Act permits directors a defence that they were not reckless, and we have made a consequential change to the law to extend this safe harbour defence to the preparation of the strategic report. I hope that that gives some comfort to my noble friend Lord Hodgson.

My noble friend Lord Hodgson raised the issue of the numbers of women being included in the report. It is fair to say that he was somewhat exercised by this. However, I hope I can reassure him, and answer a question about this matter from the noble Lord, Lord Young, by saying that this is about ensuring that businesses are managing their boards better to understand their customers, investors and staff. Evidence suggests that diverse boards are better boards and help employees who may hope to move up into management. The whole objective is to be transparent and to provide full and purposeful figures and to allow stakeholders to look at the reports. The measure is designed to be helpful to them as opposed to simply not including them.

My noble friend Lord Hodgson did not agree that the single figure disclosure would provide accurate and useful information for shareholders. I think that he was referring to the new figures that will be required. He gave the example of a director's pension. I totally understand his point about pensions being pretty complex and that to reduce them to a single figure is challenging. As regards the example that he gave, it would be fair to say that, just as in company reports and auditing reports, you would have a codicil saying, "This figure is particularly high because of a particular aspect", which would make the issue clear. Perhaps my noble friend was making the broader point that if you put in single figures the whole time you may obscure the bigger picture. I hope I can reassure my noble friend that companies will have guidance on this and will have to make simplicity a byword when reporting these figures. The regulations will prescribe the minimum requirements but there is nothing to stop companies providing any other material that would help shareholders better understand the information or put it into context, which is the nub of the matter. My noble friend asked whether the Government would undertake to review the regulations and their effects. The noble Lord, Lord Young, also asked about reviewing. The Government have committed to review the regulations in 2017, which is not too far off, so I hope that gives some comfort.

The noble Lord, Lord Young, asked whether the strategic report would include a company's ethics policy, which is an interesting point. The annual report will promote discussion at the annual general meeting on the ethics of the company's business practice, so I hope that reassures the noble Lord. He also raised an

interesting point about charitable donations and asked why we were planning to cut the figures relating to those donations. The format of the charitable donations disclosure required companies to disclose the name of the recipient, the amount and the true purpose. For those companies which make a lot of donations this was becoming a burdensome requirement. The total figure is still included in the accounts but the objective of this move is to leave out figures that are becoming somewhat meaningless and rather burdensome.

The noble Lord asked whether these measures had any tax consequences. There are no direct consequences and the tax transparent status of partnerships is unaffected. The changes that we are proposing do not amend the tax law. The noble Lord also asked about pay ratios and, specifically, why we did not require companies to report on the pay ratio between directors and the average worker, which is a fair point. Companies will have to say more about how the remuneration committee has taken into account employee pay and publish the percentage increase in the pay of the chief executive and that of the workforce. However, disclosure of pay ratios has its limitations and could provide misleading information. For example, a company with a large number of low-paid employees would have a big ratio but a company that had outsourced such employees, which might be less socially responsible, will none the less have a better ratio for entirely artificial reasons.

The noble Lord, Lord Young, asked whether apprenticeships could be covered in the report. Indeed, the company can include in it additional useful material. Where a company has several apprentices, we hope that it will inform shareholders of that and shout it from the rafters.

**Lord Young of Norwood Green:** I refer not only to apprenticeships but to training, given the importance of reskilling.

**Viscount Younger of Leckie:** Training, I would argue, comes under human resources policy. Again, it would be up to companies to decide whether they want to include specific training aspects. There is no obligation to do so, but they are wise to do so if it is going to materially benefit shareholders.

The noble Lord, Lord Young, asked why payment to creditors was omitted. The disclosure required companies to make a statement as to how they paid their creditors. Most companies, even rogue traders, stated that they paid their creditors on time. So we feel that the work on the prompt payment code, to which I alluded in my speech, will provide a better response.

The noble Lord also asked why there was a request to state the principal risk, which was a point that I made earlier in response to a question from my noble friend Lord Hodgson. It implements the terms of the EU accounting directive. That was a separate and extra point that I wanted to make.

I hope that I have answered all questions raised. If not, I shall be more than happy to write to noble Lords.

**Lord Young of Norwood Green:** I asked about the effect of the action plan and the requirement to report on business and human rights, and whether it had embraced or taken into account the UN Ruggie principles.

**Viscount Younger of Leckie:** Indeed, the noble Lord did ask that question. The human rights reporting requirement is broadly worded deliberately. However, it was inspired by the words of Professor Ruggie, which may be of some comfort to him. The FRC will provide guidance on how this may work.

*Motion agreed.*

## Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013

*Motion to Approve*

*6.31 pm*

*Moved by* ***Viscount Younger of Leckie***

That the Grand Committee do report to the House that it has considered the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.

*Relevant document: 4th Report from the Joint Committee on Statutory Instruments.*

*Motion agreed.*

## Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013

*Motion to Approve*

*6.31 pm*

*Moved by* ***Viscount Younger of Leckie***

That the Grand Committee do report to the House that it has considered the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments.*

*Motion agreed.*

## Regulatory Enforcement and Sanctions Act 2008 (Amendment of Schedule 3) Order 2013

*Motion to Approve*

*6.33 pm*

*Moved by* ***Viscount Younger of Leckie***

That the Grand Committee do report to the House that it has considered the Regulatory Enforcement and Sanctions Act 2008 (Amendment of Schedule 3) Order 2013.

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments*

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** I beg to move that the order be considered by the Committee. Primary authority is a statutory scheme, which was launched in 2009. Under the scheme, businesses can form a partnership with a single local authority, the primary authority. This gives the business a single point of contact to help it to comply with regulation. There are currently 785 businesses and 104 local authorities in partnerships covering more than 64,000 premises. They provide support on complying with many regulations, including regulations on health and safety, age-restricted sales and trading standards. The purpose of the order is to extend the primary authority scheme to cover additional regulations not currently within it. It will enable businesses to benefit from primary authority in relation to three additional regulations: first, Part 1 of the Housing Act 2004; secondly, the Sunbeds (Regulation) Act 2010; and, thirdly, the Single Use Carrier Bags Charge (Wales) Regulations 2010.

Reducing regulatory burdens on business is important for growth. It is essential that businesses are able to comply with regulations efficiently. In their responses to the consultation on these proposals, businesses told us that they need reliable advice and confidence that their approach to compliance will be treated consistently. We know that businesses value primary authority. Not only have they told us so in consultation but recent evaluation showed that more than 90% of business respondents would recommend primary authority to others. That is why the Government are committed to ensuring that as many businesses as possible can share in the benefits of it and that the scheme covers a wide range of regulation.

The savings are not for business alone. By reducing duplication in the enforcement of these regulations, primary authority saves time for local authorities, too. It allows them to use their time better to target rogue traders and help businesses to deal with the most severe risks. Moreover, local authorities that choose to become primary authorities can recover the costs from the business.

Lastly, but very importantly, primary authority increases protection for consumers. The majority of UK businesses want to protect their customers and follow the law, but they need advice that they can rely on and need to know that the law will be applied consistently. This enables them to invest in compliance—for example, by putting policies in place or by training staff.

We have opened up eligibility for primary authority to many more businesses through the Enterprise and Regulatory Reform Act 2013. From October, this will enable businesses that share a "common approach to compliance", such as trade associations and franchises, to enter primary authority partnerships. This order strengthens primary authority further. It will allow businesses to access primary authority for additional areas of regulation. I shall now discuss these extensions in more detail.

First, Part 1 of the Housing Act 2004 is a crucially important piece of regulation for improving the standards of the private rental sector in this country. Let me provide an example of the benefits that primary authority can bring to this area. A landlord may have received conflicting advice from two local authorities on how best to fireproof his properties. By obtaining appropriate advice from a primary authority, he will have the confidence to spend money on installing new fire doors, knowing that they are suitable. The Government have considered the detailed consultation responses on the inclusion of Part 1 of the Housing Act. Lettings businesses and some local authorities were in favour of the extension but many local authorities had reservations. We have worked closely with housing authorities to ensure that there will be no unintended consequences. We are confident that the intention of the legislation to provide risk-based protections will be supported by primary authority but we will continue to monitor its application. The Government believe that the benefits of the primary authority scheme should be extended to the private rental sector. Primary authority will provide an avenue for advice that gives certainty to landlords, thereby giving them the confidence to invest in properties. As one local authority commented, the extension,

"would give better consistency and help with raising standards amongst private landlords".

I turn to the second extension, which is to include the Sunbeds (Regulation) Act 2010. Bringing this law within the scope of primary authority will mean that if a leisure company wants to offer sunbeds for use, it can receive advice about how best to ensure that these are not used by children. Moreover, a business unsure about the additional legislation in Wales, made under this Act, can gain assured advice about the health information that it needs to display. As a local authority in Wales commented:

"This would benefit businesses by fostering a consistent approach to the understanding of the proper implementation of the Act and Regulations".

Thirdly, the final extension to primary authority which we are discussing today concerns adding Welsh regulations on single-use carrier bag charging to the scheme. This existing regulation requires businesses to charge customers in Wales for certain carrier bags. Primary authority will ensure that businesses, whether based in Wales or not, can access robust and reliable advice on complying with this Welsh legislation. For example, many businesses deliver products to customers in Wales from England. They will be able to gain advice on the requirements to keep records of the charges made to customers.

This extension is welcomed by national businesses such as Asda, which has stated that it wants,

"a common approach to such a straightforward issue that affects our sites across a number of local authorities".

Its benefits will also be felt by smaller retailers. The Association of Convenience Stores has said:

"The ability to obtain assured advice in relation to the Welsh carrier bag levy would be beneficial for retailers and help to ensure a consistent approach to enforcement across Welsh local authorities".

We have listened to businesses. They have told us that primary authority is valuable to them because it delivers consistency and reliable advice. They have told us that they would recommend primary authority to other businesses and that they would like these

areas of legislation included within the primary authority. This order will extend the scope of primary authority, enabling businesses to access its benefits for these additional areas of legislation. It will give businesses a further tool to reduce the burden of complying with these regulations, allowing them to concentrate on growing their business. I commend this order to the Committee.

**Lord Young of Norwood Green:** My Lords, we welcome this approach. If, as the Minister said, it reduces duplication and gives more consistency, what is not to like? I listened carefully as he went through the various areas where it would extend the application of a primary authority and I have a couple of questions. Is there any impact at all on local employment partnerships? While I welcome the fact that landlords will not get conflicting advice, I could not help thinking about the tenants. What impact will the measure have on them in terms of being assured that there will be consistent advice?

As regards bringing sunbeds into the scope of primary authority, not only children but adults often overindulge in that area. However if there is consistency, again that seems a good thing. Similarly, as regards carrier bags, anything that reduces their population—I am constantly picking them up as I walk my dog—is welcome. However, the impact will be felt mainly in Wales. The question is: when will we have this sensible legislation extended to England?

*6.42 pm*

*Sitting suspended for a Division in the House.*

*6.52 pm*

**Lord Young of Norwood Green:** I think that I had almost reached a conclusion. I think the Minister mentioned something about monitoring, and I was going to ask whether there was a fixed review period in relation to that.

**Viscount Younger of Leckie:** My Lords, first, I thank the noble Lord, Lord Young of Norwood Green, for his collegiate approach and for his general welcome for this statutory instrument. He raised a couple of questions. The first was whether LEPs would be impacted. I can confirm that there is no direct impact on LEPs as they operate independently from local authorities and the primary authority scheme. However, if a LEP decides that it wishes to address the issue of the burden of compliance within its area, it is free to encourage the uptake of the primary authority scheme among businesses.

The second question related to the effect on tenants of the changes that we are making to primary authority and to the landlord housing scheme. The Government believe that it is important that tenants are protected and that landlords in the private rented sector provide safe and healthy housing. Primary authority is consistent with this. By giving businesses certainty about their obligations, primary authority makes it simpler for lettings businesses to comply with any regulation. When businesses understand what is expected of them and know that it will be applied consistently, they are more likely to invest in compliance, which leads to raised protection for tenants. The noble Lord, Lord Young, asked about the fixed review period, and I can confirm that there will be a review after three years.

Finally, just before we broke to vote, the noble Lord asked whether this will protect adults as well as children using sunbeds. Primary authority advice will be available to cover the full range of protections under the Act, which creates a duty on businesses in England and Wales to ensure that no person under 18 uses or is offered the use of a sunbed on their premises. The Act also gives powers to the Secretary of State and Welsh Ministers to enact further secondary legislation in England and Wales. In 2011, Welsh Ministers introduced measures in Wales under this Act that further regulate the sale and hire of sunbeds and require the provision and display of health information and the provision of protective eyewear. This will protect both children and adults. The inclusion of the Sunbeds (Regulation) Act 2010 within the scope of primary authority will therefore cover the enforcement of these areas. I hope that that answers all the questions raised by the noble Lord, Lord Young.

**Lord Young of Norwood Green:** There was one other thing. I was interested in carrier bag usage in Wales. Have the Government given any consideration to extending charges for carrier bag usage to England?

**Viscount Younger of Leckie:** That is a fair question. We are not able to comment on it at present, so I will take note of the question. The UK Government have not yet reached a decision on mandatory charging for carrier bags in England. We are first monitoring the results in Wales and Northern Ireland and the outcome of the Scottish consultation on such a charge. We need clear, robust data before making any decisions. That way, we will be aware of any unintended consequences of the actions.

As the noble Lord will be aware, extending primary authority to Welsh regulations on single-use carrier bag charging affects only Wales. Therefore government policy regarding England is at present unaffected.

*Motion agreed.*

*Committee adjourned at 6.56 pm.*

# Written Statements

*Wednesday 17 July 2013*

*The following six Written Ministerial Statements were laid in the House of Commons yesterday.*

## Afghanistan

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague) has made the following Written Ministerial Statement.

I wish to inform the House that the Foreign and Commonwealth Office, together with the Ministry of Defence and the Department for International Development, is today publishing the twenty ninth progress report on developments in Afghanistan since November 2010.

The Prime Minister visited Afghanistan on 29 June accompanied by Senior Minister of State for Foreign Affairs, Baroness Warsi. In Helmand, they celebrated Armed Forces' Day with troops, witnessing the progress and changing role of British Forces as they move from a combat role to one based primarily on training, advising and assisting the Afghan National Security Forces (ANSF). In Kabul the Prime Minister and Baroness Warsi met President Karzai. The Prime Minister and President Karzai agreed on the importance of credible Presidential and Provincial elections, and the peaceful transfer of power to President Karzai's successor, for the future stability of Afghanistan. They also discussed the peace process and Afghanistan's relations with Pakistan.

On 18 June, the Qatari Government announced that the Taliban would open a political office in Doha for the purpose of talks with the US and Afghans.

On 14 June, President Karzai appointed a new Afghan Independent Human Rights Commission. Following the appointments, the Chair of the Commission expressed her concern that some of the new appointees might not have the necessary expertise. The UN High Commissioner for Human Rights, Navi Pillay, expressed similar concerns, urging the Afghan Government to reconsider the recent appointments and re-open the selection process.

The UK has agreed a new programme in Afghanistan to strengthen Afghan women's political participation, as candidates and as voters, in the upcoming elections. DFID has committed £4.5 million for the programme from June 2013 to December 2015.

On 18 June, President Karzai announced that the last of the 91 Afghan Districts, covering 11 Provinces and the remaining 13 per cent of the Afghan population, will enter security transition. This fifth and final tranche of security transition means that the ANSF will assume lead security responsibility throughout the country, for all of Afghanistan's 27 million citizens.

On 4 June, a Written Ministerial Statement was laid in the House of Commons outlining the UK redundancy policy for Locally Employed Staff in Afghanistan. This confirmed a package of training and financial support for our locally employed staff in Afghanistan, in recognition that as our presence in Afghanistan reduces our requirement for the support of local staff is also reducing.

I am placing the report in the Library of the House. It will also be published on the gov.uk website (www.gov.uk/government/publications/afghanistan-progress-reports).

## British Council: Annual Report and Accounts

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Minister of State for Foreign and Commonwealth Affairs (Hugo Swire) has made the following Written Ministerial Statement.

Copies of the British Council's Annual Report and Accounts for the 2012-2013 financial year have been placed in the libraries of the House. It can also be found at the British Council's website www.britishcouncil.org

During the period the British Council received £171,500,000 Grant-in-Aid from the Foreign & Commonwealth Office.

## British Council: Triennial Review

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Minister of State for Foreign and Commonwealth Affairs (Hugo Swire) has made the following Written Ministerial Statement.

The Foreign and Commonwealth Office will shortly commence a Triennial Review of the British Council. It is government policy that all Government Departments are required to review all their Non-Departmental Public Bodies (NDPBs) at least every three years. The review will be conducted in two stages. The first stage will examine the key functions of the British Council. If the outcome of this stage is that the functions performed by the British Council are still required and that it should be retained an a NDPB, the second stage of the project will ensure that the British Council is operating in line with the recognised principles of good corporate governance. Copies of the review will be placed in the Libraries of both Houses.

## Great Britain China Centre

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

The Triennial Review of the Great Britain China Centre (GBCC) has now been completed. This review concluded that the GBCC has specific and valuable

China expertise which benefits Government. The status of the GBCC as a non-governmental body is crucial to its effectiveness. The GBCC also leverages significant corporate and programme funding and the review concluded that the GBCC offers excellent value for money and should continue to exist in its current form. A full copy of the review will be placed in the libraries of both Houses.

## Marshall Aid Commemoration Commission

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

The Foreign and Commonwealth Office will today publish the report of the Triennial Review of the Marshall Aid Commemoration Commission (MACC), which I launched in March this year. The review concluded that the Marshall Scholarships make an important contribution to HMG's foreign policy priorities through maintaining and strengthening the United Kingdom's bilateral relationship with the United States. The review also concluded that the MACC should be retained as a non-departmental public body and that the Marshall Scholarship process was well managed, had mechanisms in place to ensure sufficient accountability to the Foreign and Commonwealth Office, including on the handling of its finances, and benefitted substantially from the pro bono input of the MACC Commissioners.

Copies of the report of the Review, and of the MACC Management Statement and Financial Memorandum, will be published online and placed today in the Libraries of both Houses.

## Syria: Chemical Weapons

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

As I told the House on 10th July, we are faced with a growing and protracted crisis in Syria. We have to be prepared to do more to save lives. There is evidence of attacks using chemical weapons in Syria - including sarin. We believe that the use of chemical weapons is sanctioned and ordered by the Assad regime.

I explained on 10th July that we are exploring the possibility of supplying the Syrian Opposition protective equipment against chemical and biological weapons use and yesterday I laid a Minute before Parliament providing more detail on these plans. We plan to equip the moderate armed opposition with 5000 escape hoods, nerve-agent pre-treatment tablets (NAPs) and chemical weapons detector paper.

Escape hoods protect against sarin gas for approximately 20 minutes, allowing a person to move away from an affected area but not enabling them to continue to fight. They do not require fitting or extensive training to be effective. Pre-treatment with NAPs gives a person who is exposed to a nerve agent (including sarin) a greater chance of reaching a place where atropine can be administered under medical supervision. Chemical weapons detector paper enables the basic detection of chemical weapons agents. The capability to detect quickly whether chemical weapons agents are present will inform decisions on whether or not to remain in an area and so potentially save lives.

The gift will be offered to the Supreme Military Council of the Syrian National Coalition, which the UK recognises as the sole legitimate representatives of the Syrian people. The approximate total cost of the equipment in the proposed gift is £656,800 which will be met by the Government's Conflict Pool Fund.

It is normal practice when a government department proposes to make a gift of a value exceeding £250,000, for the department concerned to present to the House of Commons a Minute giving the particulars of the gift and explaining the circumstances; and to refrain from making the gift until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

In this case, making the gift is a matter of special urgency. The rapidly deteriorating situation in Syria and the urgent need to support the Syrian opposition means that the Government needs to act as soon as possible. We put great value on the scrutiny provided by parliament, but summer recess means that it is unfortunately not possible to allow 14 sitting days for the House to consider the gifting minute. In this case, we will not proceed with plans to make the gift until a period of 14 working days after the minute has been laid has expired. If there are no objections, we will proceed with plans to make the gift on or after 3rd August 2013.

The use of Conflict Pool funds to cover the costs of this gift has been approved by the Foreign Secretary, the Secretary of State for Defence and the Secretary of State for International Development. FCO and MOD officials have also assessed the gift against the Consolidated Criteria and the gift does not cross the risk thresholds in the consolidated criteria provided adequate measures are put in place to mitigate the risk of diversion. In assessing the risks of providing these materials, the FCO's Counter Terrorism Department and the Office for Security and Counter Terrorism (OSCT) have been consulted and agree the recommendation to provide the gift. This gift is also consistent with HMG's agreed policy on Syria.

This gift has undergone intense scrutiny to ensure that we are providing the best possible support to the Syrian Opposition and that we meet all our national and international obligations.

## Advisory Council on National Records and Archives

*Statement*

**The Minister of State, Ministry of Justice (Lord McNally):** My honourable friend the Parliamentary Under-Secretary of State for Justice (Helen Grant) has made the following Written Ministerial Statement.

"I am today announcing the triennial review of the Advisory Council on National Records and Archives. Triennial reviews of non-departmental public bodies (NDPBs) are part of the Government's commitment to ensuring that NDPBs continue to have regular independent challenge on their remit and governance arrangements. The review will challenge the continuing need for the function of the Council and its form. In conducting the review, officials will be engaging with a broad range of stakeholders and users. The review will be aligned with guidance published by the Cabinet Office. If it is agreed that it should remain as an NDPB, the review will consider its control and governance arrangements to ensure that it is operating in line with the recognised principles of good corporate governance. I intend to announce the findings of the review early next year, and will place a copy of the report in the House library."

## Alcohol: Fraud

*Statement*

**The Commercial Secretary to the Treasury (Lord Deighton):** My honourable friend the Economic Secretary to the Treasury has today made the following written ministerial statement.

I can inform the House that the Government is today publishing the response to the 2012 consultation on legislative measures to tackle alcohol fraud.

Alcohol fraud is a serious problem which HMRC estimates leads to revenue losses of approximately £1.2 billion a year. It also has a detrimental impact on the legitimate businesses attempting to compete in this sector. This is why the Government consulted last year on potential measures to deal with this problem. Measures covered by the consultation included beer fiscal marks, supply chain legislation and a registration scheme for alcohol wholesalers. The consultation also explored alternatives to these options that could assist HMRC's enforcement strategy.

The responses to the consultation highlighted the potential anti-fraud benefits but also some considerable impacts the proposed measures might have on legitimate alcohol supply chains. After fully examining the case for and against the proposed measures, the Government has decided not to proceed with beer fiscal marks or supply-chain legislation at this time.

Compelling evidence was provided on beer fiscal marks to show that, although it could be a useful tool to counter trade in illicit products, the costs of affixing stamps to goods could be significant for the UK brewing industry and particularly for legitimate importers and exporters. Therefore, the Government will not be proceeding with the introduction of beer fiscal marks at this time to allow exploration of other, less burdensome options to address alcohol fraud.

Regarding supply-chain legislation, the consultation highlighted issues regarding the practicality and cost of introducing new 'track and trace' systems across the brewing industry, as well as concerns regarding the likely effectiveness of the measure. The Government does not therefore intend to legislate for this measure at this time, but wishes to continue to explore available and emerging technologies that could help to secure alcohol supply chains. The Government will also consult shortly on new proposals to strengthen due diligence obligations of excise businesses throughout the supply-chain.

The Government notes the positive response across all sectors towards the option to register alcohol wholesalers and can also see that there could be benefits in authorising this part of the supply chain, which is frequently the point at which illicit products are distributed. The Government wishes to consult further with relevant sectors informally over the summer of 2013 to refine the design of a registration scheme, and fully understand the costs, benefits and implications if it were introduced. This will also include seeking views on the specific powers and sanctions that would be essential if the scheme is to be effective. The outcome of this further work will inform the Government's future decision on whether to proceed with wholesaler registration.

The consultation also considered a large number of alternative measures, including many proposed by industry. The Government intends to progress a wider programme of change to policy and enforcement to strengthen the current 'Tackling Alcohol Fraud' strategy. Full details of that programme, will be published shortly but will include steps to increase collaboration with industry and between enforcement agencies; measures aimed at tightening controls in the existing excise regulatory system; dealing more robustly with those found holding or moving illicit goods, and increasing co-operation with other EU Member States.

A copy of the full response to the consultation will be available online on the GOV.UK site at https://www.gov.uk/government/publications?publication_filter_option=consultations.

## Autism

*Statement*

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** My hon Friend the Minister of State, Department of Health (Norman Lamb) has made the following written ministerial statement.

In line with duties under the Autism Act 2009, the Department of Health is currently leading a review of progress in relation to the 2010 Adult Autism Strategy for England *Fulfilling and rewarding lives* and its related statutory guidance.

The adult autism strategy is an essential step towards realising the Government's long term vision for transforming the lives of and outcomes for adults with autism. The Department of Health is the lead policy department for implementation of the strategy but with delivery shared across a range of government

departments and agencies, and local health and social service providers, who have the freedom and responsibility to decide how best to design and deliver services for their local populations.

The autism strategy has five areas for action aimed at improving the lives of adults with autism :

(i) increasing awareness and understanding of autism;

(ii) developing clear, consistent pathways for the diagnosis of autism;

(iii) improving access for adults with autism to services and support;

(iv) helping adults with autism into work; and

(v) enabling local partners to develop relevant services.

The strategy is not just about putting in place statutory autism services but about enabling equal access for people with autism to support and opportunities through reasonable adjustments to everyday services, training and awareness raising.

The review is an opportunity for us across Government to assess whether the objectives of the strategy remain fundamentally the right ones, to take an honest look at what progress is being achieved by Local Authorities and the NHS, and consider what should happen to continue to make progress. We will issue a report after the investigative stage of the review which will last until the end of October, on revising the strategy as necessary by March 2014.

The National Autistic Society's (NAS) *Push for Action* campaign coincides with the review and has a central thrust on local implementation. We are working with NAS and other key partners to ensure that the voices of people with autism and their families and carers are heard during the review and there will be a range of opportunities for people to feed in. I would welcome views and input from hon Members and their constituents during these processes.

## Burma

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My Right Honourable Friend, the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement:

From 14-16 July Burma's President Thein Sein visited the United Kingdom for discussions with the Prime Minister, the Defence Secretary, the Secretary of State for International Development, Lord Green and me.

This was the first official visit of a Burmese President to the UK. It was an opportunity to discuss with President Thein Sein the significant political reforms his government has achieved over the last two years, including releases of political prisoners, ceasefire agreements with ten out of eleven ethnic armed groups, and steps to increase freedom of expression. It was also an opportunity to urge further progress in areas where additional reforms are needed.

The Prime Minister and I also raised our concerns about a wide range of human rights and ethnic issues, including the continuing plight of the Rohingya community in Rakhine State. I welcomed the President's announcement of the abolition of the Nasaka security forces in Rakhine State. The President committed himself during his visit to releasing all political prisoners by the end of 2013, and said that he hoped over the coming weeks to achieve a nationwide ceasefire with the ethnic armed groups. The President also welcomed our initiative on preventing sexual violence in conflict. He acknowledged the need to reform the constitution ahead of the 2015 elections.

The Secretary of State for International Development emphasised the need for the President's leadership on ethnic reconciliation, peace-building and inclusive growth, and confirmed our continued commitment to supporting Burma, notably helping foster private investment, jobs and better livelihoods, advance healthcare and schooling, bolster peace-building, and provide humanitarian aid to people hurt by conflict and ethnic violence. She also announced £10m for the 2014 Census, £5.65 million to support Burma's economic development and £13.5m for a humanitarian programme in Kachin delivering food, shelter, water and adequate sanitation.

We emphasised the importance of reforming the Burmese military and of pursuing a sustainable ethnic peace process. The focus of our future defence engagement in Burma will be on adherence to the core principles of democratic accountability and human rights. The Defence Secretary offered to support the participation of around 30 Burmese officers in the British military's flagship 'Managing Defence in the Wider Security Context' course in January 2014. We sought assurances from the President that any links to the DPRK, contrary to UN Security Council Resolutions, have ended.

The President met a range of British businesses at events hosted by the UK ASEAN Business Council, and discussed the importance of transparency, building a stable regulatory framework and harnessing private investment for the good of the people. We will offer our support to develop Burma's financial services sector; Lord Green launched the Financial Services Task Force, which will support the development of financial services in Burma to help facilitate economic growth.

The British Government will continue to work with the Burmese government and build constructive ties to secure long term democratic development and reform, while making clear, both directly and through the UN, our human rights concerns, especially in the areas affected by ethnic conflict.

## Devolution: Wales

*Statement*

**The Commercial Secretary to the Treasury (Lord Deighton):** My Rt. Hon Friend the Chief Secretary to the Treasury has today issued the following Written Ministerial Statement.

The first report of the Commission on Devolution in Wales made 33 recommendations to increase the financial accountability of the National Assembly for Wales and the Welsh Government.

After careful consideration of the Commission's recommendations, the Government recognises that the Assembly's financial accountability and autonomy would be enhanced if it was funded through a combination of block grant and self-financing.

However, the Government wishes to consult with business on the potential impacts of devolving Stamp Duty Land Tax (SDLT) to the Assembly in advance of making a full response to the Commission's first report.

The Commission's first report included the recommendation that SDLT 'should be devolved to the Welsh Government with Welsh Ministers given control over all aspects of the tax in Wales'.

Further to the Commission's analysis underpinning their report and the Government's subsequent assessment of their recommendation, the Government would like to seek further views, especially from business, on devolving SDLT. In particular, the aim would be to understand the potential impacts on the construction industry and housing market given the populous border between Wales and England.

Based on the outcome of this short and targeted consultation, the Government will make its response to the Commission's recommendations. The Government will also set out how this can help, including through looking at the Welsh Government having early access to borrowing, to support a funding solution for the M4 improvement scheme in south Wales.

## Disclosure and Barring Service: Annual Report and Accounts

*Statement*

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** My hon Friend the Minister of State for Crime Prevention (Jeremy Browne) has today made the following Written Ministerial Statement:

The 2012-13 Annual Report and Accounts for the Disclosure and Barring Service for the 4-month period from 1 December 2012 to 31 March 2013 is being laid before the House today and published on www.gov.uk. Copies are available in the Vote Office.

## Education: Primary School Assessments

*Statement*

**The Parliamentary Under-Secretary of State for Schools (Lord Nash):** My Rt hon. Friend the Minister of State for Schools (David Laws MP) made the following announcement:

"Launch of consultation on primary assessment and accountability.

I am pleased to announce today the launch of our consultation on primary assessment and accountability.

We believe it is crucial that as many children as possible should leave primary school having reached a level that leaves them ready to progress and achieve their full potential at secondary school. Our reforms to the national curriculum, statutory assessment and school accountability for primary schools are designed to ensure that pupils are well prepared for the next stage of their education and that schools do not allow pupils to fall behind.

We want to see a step change in attainment at the end of primary school. In the past, the achievement bar was set too low and too few pupils cleared this bar. Our ambition is that all pupils, excepting some of those with particular learning needs, should be secondary ready at age 11 – that means using a higher measure of what success looks like. We are already raising the threshold for the percentage of pupils to be ready for secondary school to 65%. But we know that schools and teachers have already raised their game way beyond this. For that reason, we will expect a very high proportion of pupils – 85% – to reach the new, higher secondary readiness threshold for a school to be above the bar. Since we know that both children and schools can achieve this, it is right that we set this as a minimum standard.

Our new national curriculum is designed to give schools genuine opportunities to take ownership of the curriculum. The new programmes of study, published on 8 July, set out what pupils should be taught by the end of primary education. Teachers will be able to develop a school curriculum that delivers the core content in a way that is challenging and relevant for their pupils.

Statutory assessment in core subjects at the end of key stages is designed primarily to enable robust external accountability. We will continue to prescribe statutory assessment arrangements in English, mathematics and science. National curriculum tests in English and mathematics will continue, and will show whether pupils have met a demanding secondary readiness standard, which will remain the same from year to year. We propose to report pupils' test results as a scaled score, such as those used in international surveys, to make sure that test outcomes are comparable over time. We will report each pupil's ranking in the national cohort by decile to show their performance relative to their peers nationally.

It is vital that we set high aspirations for all schools and pupils. Our new targets will prepare children for success. At the moment, pupils are being asked to reach a bar that too often sets them up to fail. So that all children – whatever their circumstances - can arrive in secondary school ready to succeed, we are giving significantly more money to primary school pupils eligible for the pupil premium. This will support this step-change in ambition

We introduced the pupil premium in 2011 to help schools close the attainment gap for disadvantaged pupils. In 2014-15, total funding through the pupil premium will increase by an extra £625m to a total of £2.5bn. We will use the extra funding to increase the level of the pupil premium for primary schools to £1,300 per pupil compared with £900 in the current year. This 44% rise in the pupil premium is the largest cash rise so far. This should enable more targeted interventions to support disadvantaged pupils to be "secondary ready" and achieve our ambitious expectations for what pupils should know and be able to do by the end of primary education. We believe in early intervention because the greater the numbers of disadvantaged

pupils that leave primary school with basic literacy and numeracy, the greater their chances of achieving good GCSEs.

We also want to treat schools fairly by acknowledging the performance of schools whose pupils achieve well despite a low starting-point. We will therefore look at how we can introduce a reliable, robust measure of progress that we can take into consideration when holding schools to account. A school that does not achieve the attainment threshold will not be judged to be below the floor standard if its pupils are making good progress. The progress measure will also help identify coasting schools, whose pupils do not achieve their full potential. Ofsted will focus its inspections more closely on schools below and just above floor standards, and inspect schools with good performance on these measures less frequently.

We will continue to report on the progress pupils make during primary education. In order to measure pupils' progress, we need to measure how each pupil's end of key stage 2 test results compare with the results of pupils with similar prior attainment. Currently the baseline against which we measure progress is at the end of key stage 1. We could continue to keep the baseline at this stage. Alternatively, we could introduce a similar teacher-led baseline check early in Reception, which would help teachers understand the stage the child has reached and allow the crucial progress made in Reception, Year 1 and Year 2 to be reflected in the accountability system. Our consultation seeks views on which is the best option

Finally, we recognise that teachers are professionals, and we want to give schools more freedom over the way they measure assessment. We have already announced that we will remove the current system of national curriculum levels and level descriptions, which imposes a single system for ongoing assessment and prescribes the detailed sequence for what pupils should be taught. This will leave schools free to decide how to track pupils' progress. Ofsted will expect to see evidence of pupils' progress, but inspections will be informed by the pupil tracking data which schools choose to keep.

The results of national curriculum tests, along with summative teacher assessment, will continue to be published. These provide important information for parents, governors, Ofsted, the wider public, and the secondary school where the pupil will continue their education. The department will continue to use floor standards to identify schools which are under-performing.

I will place a copy of the consultation on primary assessment and accountability in the House libraries."

## Elections: Recall of Members

*Statement*

**Lord Wallace of Saltaire:** My Honourable friend the Minister for Political and Constitutional Reform (Chloe Smith) has made the following Written Ministerial Statement:

The Coalition programme for Government included a clear commitment to establish a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and 10% of his or her constituents have signed a petition calling for a by-election.

We set out our proposals and draft legislation in a White Paper which has been scrutinised by the Political and Constitutional Reform Committee and we have today issued our full response to their report.

In our response, we have reiterated our intention to proceed with the introduction of a recall mechanism and to legislate as soon as Parliamentary time allows.

We believe this recall mechanism will go some way to restoring trust and accountability to the political process. It will provide an important tool for the House to add to its own suite of disciplinary measures and will give a reassurance to constituents who should not have to rely on their MP choosing to stand down following the committal of a serious wrongdoing.

The recall mechanism we are proposing will have two triggers. Firstly, where a member receives a custodial sentence of 12 months or less, a recall petition will be automatically opened in that member's constituency (under the Representation of the People Act 1981, where a member receives a custodial sentence of more than 12 months, they are automatically disqualified from membership of the House). If 10% of constituents sign the petition, the MP's seat will be vacated and a by-election called. The former MP may stand as a candidate.

Secondly a recall petition will be opened where the House of Commons resolves that one of its members should face recall. This will ensure that a member could also face recall where they have committed serious wrongdoing which did not result in a custodial sentence, for example, a serious breach of the House of Commons Code of Conduct. This will be a new disciplinary power for the House to help ensure that it is able to deal with disciplinary issues effectively. Constituents would again then have the opportunity to decide if a by-election should be held.

We welcome the Committee's thorough consideration of the proposals and have accepted many of their recommendations, particularly on the conduct of the recall petition. The process of pre-legislative scrutiny has been valuable and will result in an improved bill being presented to Parliament in due course.

## Embryology

*Statement*

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** My hon Friend the Parliamentary Under-Secretary of State, Department of Health (Anna Soubry) has made the following written ministerial statement.

The Department of Health is today publishing *Government response to the independent report of the review of the Human Fertilisation and Embryology Authority and the Human Tissue Authority by Justin McCracken*.

On 25 January 2013 I announced to the House that, following a consultation carried out in 2012 on proposals to transfer functions from the Human Fertilisation

and Embryology Authority (HFEA) and the Human Tissue Authority (HTA), I had commissioned an independent review of both bodies which would also give serious consideration to their merger. This review was conducted by Justin McCracken, the then Chief Executive of the Health Protection Agency, between January and April 2013 following which he reported to me and the Minister for the Cabinet Office.

We have now considered Mr McCracken's report in detail and have taken careful note of his conclusion that the current arrangements deliver generally effective regulation and achieve high levels of public and professional confidence. We have also closely examined his finding that there is little overlap in the activities of the two bodies and his conclusion that greater efficiency is to be gained from reducing the burden of regulation than from structural reform. The review recognises that there is scope for improvement in the ways the bodies operate, and that efficiencies can be achieved by way of a review of human tissue legislation. There are 18 recommendations in total to help achieve a reduction in the burden of regulation. Most of the recommendations are aimed at the HFEA and HTA and we will work with them to ensure they are implemented.

The report recommends that the Government reviews human tissue legislation. We recognise the importance of that and understand that there will be particular sensitivities around such an undertaking but believe that the evidence presented in the McCracken report is persuasive. We are committed to safeguarding the principles of the Human Tissue Act (and the requirements of EU legislation) but believe that after nearly a decade in force, a review of this legislation is timely. We aim to produce a consultation document in this financial year.

The Department, therefore, accepts Mr McCracken's recommendations in total, and will work closely with the HFEA and HTA as they implement those recommendations for them.

In conclusion, we believe that implementation will bring about increased efficiency and effectiveness of the regulators whilst maintaining public and professional confidence in these sensitive and complex areas.

A copy of the *Government response to the report of the independent review of the Human Fertilisation and Embryology Authority and the Human Tissue Authority by Justin McCracken* along with a copy of the independent report of the *Review of the Human Fertilisation & Embryology Authority and the Human Tissue Authority* have been placed in the Library. Copies are available to hon Members from the Vote Office and to noble Lords from the Printed Paper Office.

## Energy: Nuclear Power Stations

*Statement*

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** My right honourable friend the Minister of State For Energy Michael Fallon (MP) has made the following Written Ministerial Statement.

The Department of Energy and Climate change is today announcing a package of benefits for the communities that host any new nuclear power stations.

The new nuclear programme will substantially contribute to the Government's growth strategy; creating significant numbers of jobs around the UK, bringing investment in the UK's nuclear and wider construction supply chains, and encouraging growth for local businesses in the surrounding communities.

The community benefit package recognises the role of communities that are being asked to host such large infrastructure projects that will contribute significantly to national energy generation and growth, and the reduction of the UK's carbon emissions.

The total package will be proportionate to the amount of energy the power station generates, up to a value of £1000/MW per annum for up to forty years. In the case of Hinkley, this could amount to approximately £128m. The package will be delivered in two distinct phases.

In the first phase, authorities will benefit from the business rates retention arrangements which were introduced by the Government in April this year. They will keep a share of the business rates paid in their area, and also keep a share of any increase in business rates (subject to payment of any levy that might be due). Authorities hosting new nuclear power stations will therefore benefit significantly from the increase in revenues that will arise from the development of those facilities. They will get the reward from these increased revenues for up to ten years.

The second phase is intended to deliver the remainder of the package over the period 2030 – 2060 which will be an annual payment of equivalent amounts, funded by DECC. These funds are specifically intended to benefit the local communities who are hosting new nuclear power stations and the Government fully expects that the Local Authorities will involve their communities in developing their spending plans, with Government also providing assistance and support in its development. Given the amount of time before this phase of funding will be issued and recognising the differences between communities, DECC will extensively discuss the implementation of this funding with each local area to determine how the needs of the community may best be served.

Business rates are a devolved matter and business rates retention does not apply in Wales. As a result, DECC will work with the Welsh Government to provide a community benefits package equivalent to that delivered in England for the communities surrounding Wylfa power station.

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

*Statement*

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** My honourable friend the Minister for Employment (Mark Hoban) has made the following Written Ministerial Statement.

The Informal Employment, Social Policy, Health and Consumer Affairs Council met on 11-12 July in Vilnius. I represented the United Kingdom.

On the first day, there were three simultaneous workshops covering: Efficiency and Effectiveness of the Social Investments; Implementation of the European Alliance for Apprenticeships; and Wage Setting Mechanisms and Economic Growth. The UK attended the first workshop on Social Investments and stated that effective spending was about how money was spent rather than the amount and that Member States can benefit hugely from sharing experiences. The UK urged caution about using relative poverty to measure the situation and referred to the consultation the Government is running to look at alternative measures of poverty. The UK found the Commission's multidimensional model and focus on the root causes of poverty helpful.

On the second day, the discussion focused on the Social Dimension of the Economic and Monetary Union (EMU). Setting out its vision for a Social Dimension of the EMU, the Commission outlined its proposals for action under the three pillars: better monitoring of social policies, better coordination of social policies, and better involvement of social partners. The United Kingdom highlighted that spill-over was not so relevant to Member States outside of the Eurozone. The UK stressed the importance of respecting subsidiarity and proportionality, and that primary competence in this area lay with Member States and the Commission.

## EU: Foreign Affairs Council

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My Honourable Friend the Minister of State for Europe (David Lidington) has made the following Written Ministerial Statement: My Right Honourable Friend the Secretary of State for Foreign and Commonwealth Affairs will attend the Foreign Affairs Council (FAC) on 22 July in Brussels. The FAC will be chaired by the High Representative of the European Union for Foreign Affairs and Security Policy, Baroness Ashton of Upholland.

*Introduction - Water Security*

Baroness Ashton will update the FAC on the EU's work on water security in her introductory remarks. We do not expect a discussion. Conclusions that acknowledge the importance of water security and endorse the EU Water Diplomacy Strategy Paper are under negotiation.

*Introduction - Western Balkans*

Baroness Ashton will then briefly outline progress on the Serbia/Kosovo Dialogue. The UK remains a strong supporter of the EU-facilitated Dialogue. It is important that the momentum for normalising relations between Kosovo and Serbia is maintained. We expect Conclusions on Bosnia and Herzegovina (BiH) that focus on support for the EU Special Representative and for early resolution of the Sejdic-Finci constitutional issue that is preventing BiH's Stabilisation and Association Agreement from coming into force. These Conclusions should mirror the strong messages Commissioner Füle and Baroness Ashton have been passing to BiH's leaders this month.

*Human Rights*

Ministers will discuss the EU's external human rights policy, one year on from the adoption of the EU Strategic Framework and Action Plan on Human Rights and Democracy, and the appointment of Mr Stavros Lambrinidis as EU Special Representative for Human Rights. We expect Conclusions to be adopted that reaffirm the Council's determination to promote and protect human rights and democracy around the world.

*Southern Neighbourhood*

On Syria, we expect Baroness Ashton to update Ministers on progress made in preparing for the Geneva II talks. This will be an oral presentation. The UK will continue to encourage increased humanitarian assistance from EU Member States and institutions; to ensure the EU continues to focus on a political solution to the Syria crisis; and to encourage the EU to engage in concrete planning for a post-Assad transition in Syria.

Following the intervention by the armed forces in Egypt, Ministers will discuss the situation in Egypt and consider the EU's response. The UK remains committed to supporting Egypt in its transition to democracy. We will press for Conclusions which make clear that the Egyptian authorities should make good their promises for a swift return to democratic processes; that political leaders and journalists who have been detained are charged with recognised crimes or released; and that a free media is guaranteed.

*Africa*

Ministers will discuss a number of issues under the Africa item on the agenda, such as the great Lakes Region, Somalia, Sudan and South Sudan, and Mali.

On the Great Lakes Region, Ministers will discuss what an EU strategy in support of the Peace, Security and Co-operation Framework for the Great Lakes Region should contain. We expect to agree Conclusions that focus EU efforts on such work.

Ministers will discuss Somalia, looking ahead to the EU-Somalia Conference in Brussels on 16 September, and will agree Conclusions that take stock of recent progress and agree priority issues for the coming months. We expect the Conference to focus on bringing together Somali and international partners to agree a New Deal Compact; securing the required financing to implement the Government's priorities; and providing a platform for the Federal Government of Somalia to set out a clear political vision and process for building an appropriate federal system. The UK will push for ambitious Conclusions that set out the EU's long-term commitment to providing support and assistance to Somalia.

Ministers will also discuss the current setback in implementation of oil and security agreements between Sudan and South Sudan, as well as the conflicts in the Sudanese states of Southern Kordofan, Blue Nile and Darfur and the South Sudanese state of Jonglei. The discussion will be an opportunity to agree priorities for EU activity in the coming months. Ministers are expected to agree Conclusions.

On Mali, Conclusions are being prepared that will record the latest developments in the run-up to presidential elections which begin on 28 July, and will take note of an EEAS Options Paper on possible Civilian CSDP activity in Mali in the future. We are urging further discussions with both the UN and the Malians in order to identify clearly how the EU might add value. We expect any discussion at the FAC to focus on these issues.

*Eastern Partnership*

Baroness Ashton will brief Ministers on her and Commissioner Füle's recent visits to Moldova, Armenia and Georgia. Ministers will then discuss the proposed outcomes for November's Eastern Partnership Summit in Vilnius, ahead of a Ministerial meeting of the Eastern Partnership that will take place after the FAC. The Ministerial meeting will focus on progress made over the last year and expectations for the Summit. The UK supports the efforts of eastern partners in seeking a closer relationship with the EU through Association Agreements and Deep and Comprehensive Free Trade Areas on the basis of continued and irreversible political and economic reform.

*Middle East Peace Process*

The FAC will revert to the Middle East Peace Process as agreed at the June FAC. Ministers will take stock of recent developments, including ongoing US efforts, led by Secretary of State Kerry, to make progress toward the resumption of direct and substantial negotiations and further consider how the EU can support these efforts.

*Lebanon*

The evidence that Hizballah's Military Wing is a terrorist organisation and that they have engaged in terrorism on EU soil is compelling. That is why we believe that their formal listing by the EU as a terrorist organisation is fully justified. We are working closely with EU partners on this issue and want to reach a robust, collective EU position.

## Freedom of Information Act

*Statement*

**The Minister of State, Ministry of Justice (Lord McNally):** The Government will today issue, under section 45 of the Freedom of Information Act (FOIA), a new Code of Practice in relation to the release and reuse of datasets under FOIA. It supplements but does not replace the existing Code of Practice issued under section 45 for public authorities on the discharge of their current obligations under Part 1 of FOIA.

This new Code of Practice will provide guidance for public authorities on best practice to follow in discharging their new responsibilities in relation to datasets provided for by section 102 of the Protection of Freedoms Act 2012. Section 102, which is not yet in force, amends section 11 (means by which communication to be made) and section 19 (publication schemes) of FOIA and inserts new sections 11A and 11B. Once commenced, these changes, which form an important part of our transparency agenda, will mean that where a person requests information under FOIA that is or forms part of a dataset, and expresses a preference to receive it in electronic form, the public authority must (if FOIA requires the dataset to be released) provide the dataset in an electronic form which allows its re-use. The result will be that the public authority must, first, provide the dataset in a re-usable format, where reasonably practicable; and, secondly, grant a licence (in accordance with one of the specified licences referred to in this Code) under which its datasets may be re-used.

In particular, this Code of Practice provides further guidance on key definitions and the circumstances where it will be reasonably practicable for public authorities to provide datasets in a reusable format; the disclosure of datasets; their re-use, including licensing and charging arrangements; the circumstances where it may be appropriate to publish updated versions of datasets on an ongoing basis; and the provision of advice and assistance to applicants in relation to these provisions.

The Code of Practice will take effect when section 102 of the Protection of Freedoms Act 2012 is commenced on 1 September. To coincide with commencement, Regulations authorising the charging of fees for re-use of datasets will be made and laid before Parliament under section 11B of FOIA. These will also come into force on 1 September.

In line with my responsibilities under section 45 of FOIA, I will arrange for a copy of the Code of Practice to be laid before each House of Parliament.

## International Criminal Court

*Statement*

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My Right Honourable Friend, the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement: Today is World Day of International Criminal Justice. I take this opportunity to reiterate the Government's strong support to global efforts to tackle impunity and bring those responsible for the most serious crimes of international concern to justice. As part of this work I am pleased to announce that we have today launched a new strategy to support the work of the International Criminal Court (ICC).

We will work to ensure that the ICC retains its independence, delivers justice, increases its membership, builds more support for its decisions from States and from the United Nations Security Council, gains wider regional support and completes its work more efficiently.

We will help build a stronger, universal ICC, complementary to domestic jurisdictions, by being a strong advocate for the ICC in our diplomatic relations and encouraging States not party to the Rome Statute of the ICC to consider becoming a State party, or supporting its work. We will address the issues of non cooperation by working on this through our network of embassies in those States where it is a problem and by ensuring that we follow our own guidelines on essential contact. We will use our voice in the UN Security Council to promote the ICC where it has a role. And we will promote the role of international justice in UK policy.

It is our clear hope that through universality of the Rome Statute and the development of domestic jurisdictions the ICC's role will eventually become increasingly limited. Until then we will continue to support the ICC as it plays a vital role achieving justice for the victims of the worst international crimes.

I have placed a copy of the strategy in the libraries of both Houses. It is also available on www.gov.uk/government/organisations/foreign-commonwealth-office

## North Liverpool Community Justice Centre

*Statement*

**The Minister of State, Ministry of Justice (Lord McNally):** My honourable friend the Parliamentary Under-Secretary of State for Justice (Helen Grant) has made the following Written Ministerial Statement.

"I am today launching a consultation on the closure of North Liverpool Community Justice Centre. It is proposed that the work of the Centre, and the principles of its problem solving approach, moves to Sefton Magistrates' Court less than two miles away.

North Liverpool Community Justice Centre has operated from its Boundary Street site, a former primary school, since September 2005. However, the local workload has fallen to the extent that the Centre is now underutilised. In the light of current and future financial constraints it is increasingly difficult to justify the ongoing operation of the Boundary Street site.

In this case, and on any future, local consultations on court and tribunal closures, I believe that a consultation period of six weeks is sufficient to canvass the views of interested parties rather than a 12 week national consultation exercise. I am committed to ensuring that we continue to provide court and tribunal users with effective access to justice while seeking ways to do so at a lower cost and alongside our efforts to improve the efficiency of the justice system as a whole.

The consultation document is published on the Ministry of Justice website at www.justice.gov.uk."

## Northern Ireland: Security

*Statement*

**The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson):** My Rt Hon Friend the Secretary of State for Northern Ireland (Theresa Villiers) has made the following Ministerial Statement:

Following the decision by the UK and Irish Governments to wind-up the Independent Monitoring Commission in 2011, my predecessor made a commitment to provide bi-annual updates to the House on the security situation in Northern Ireland. This is my second such statement as Secretary of State for Northern Ireland.

*Overall threat in Northern Ireland*

This statement comes after a very successful G8 summit in Northern Ireland that passed without significant incident. This is an achievement of which we should all be proud. Nevertheless we remain vigilant in the face of the continuing threat from terrorism in Northern Ireland.

We are currently in the height of the parading season in Northern Ireland. Unfortunately, rioting has once again broken out in connection with Twelfth of July parades. As well as causing damage and injury directly, such disorder also potentially provides opportunities for terrorist attacks on police, as illustrated by the pipe bomb thrown at the police on Monday from Brompton Park in Ardoyne.

Since my last statement to Parliament in February 2013, the threat level in Northern Ireland has remained at 'SEVERE'. This means that an attack remains highly likely.

There were 24 national security attacks during 2012, compared with 26 attacks in 2011. So far this year there have been ten national security attacks. Some of these involve the use of relatively simple and basic pipe-bomb devices, but these can be lethal. There have also been a number of more sophisticated attacks, including two failed attempts to use mortars against PSNI stations. Many more attacks were prevented and disrupted through the excellent work of the PSNI and their security partners. I would like to congratulate and thank the PSNI and the Security Service for their highly effective work in countering the threat from terrorism.

Police officers, soldiers and prison officers continue to be the primary target of the terrorist groups. This was illustrated by an attempt last week to lure police officers to a house in Alliance Avenue in North Belfast where two pipe bombs had been primed to go off to kill anyone who opened the front door. A similar attempted attack took place in May when two PSNI officers were shot at when responding to a reported burglary in West Belfast near Twinbrook and a pipe bomb was thrown at them. Were it not for effective deployment of the training all PSNI officers receive on dealing with this kind of "come on" attack, these incidents could well have had fatal consequences.

Another device near the M5 at Newtownabbey could have fatally injured the three police officers who attended the incident.

There was a serious risk with all of these attacks that people in the local community could have been injured or killed, as well as police officers.

One of the most significant incidents of the past 6 months was an attempted mortar attack on a Londonderry PSNI station in March. It was aimed at murdering police officers but such devices are highly dangerous and inaccurate. This attack could have caused mass casualties amongst anyone who happened to be in the vicinity if it had been successfully fired. This provided further evidence that so-called dissident republican groups have no regard to the people living in the areas which they target. It was only through the highly effective work of the PSNI that this attack was disrupted as it was underway.

The Police Service of Northern Ireland and the Security Service, along with An Garda Síochána, continue to demonstrate a robust commitment to bringing to justice those who carry out such attacks.

Northern Ireland has already witnessed a historic year with the G8 summit in Fermanagh and the accompanying visit by the President of the United States to Belfast. The successful delivery of these events would not have been possible without the cooperation of the PSNI, Security Service, An Garda Síochána and police forces from across the UK who came to Northern Ireland to provide mutual aid support. Despite recent public order problems, this year contains further opportunities to present a positive image to the world, with events associated with the Derry-Londonderry City of Culture and World Police and Fire Games.

Those who dedicate themselves to making Northern Ireland a safer place will continue to work together to ensure that these events pass off successfully and without incident.

*Activity of republican paramilitary groups*

The so-called "new IRA" continues to contribute significantly to the threat in Northern Ireland. They have conducted one national security attack – the brutal murder of prison officer David Black in November last year.

That they have only conducted one attack is at least in part down to the achievements of the security forces. As mentioned earlier, in March of this year PSNI successfully intercepted a mortar in Londonderry moments before it was deployed. In April, a young member of this grouping was caught in possession of five handguns and in June the PSNI recovered a quantity of high explosive. These disruptions serve to prevent specific attacks while also demonstrating to potential terrorists across Northern Ireland the reach of the security services.

The efforts of the PSNI has been ably supported by An Garda Síochána. In March, An Garda Síochána arrested five persons following the shooting dead of Peter Butterly in a car park near Drogheda, Co. Louth. Three of the men were subsequently charged with membership of an unlawful organisation, namely the IRA. In the same month, eight men were arrested in connection with terrorist activities and have also been charged with membership of an unlawful organisation. In recent weeks, An Garda Síochána recovered their biggest ever find of dissident arms and explosives including approximately 15kg of Semtex. This is a significant find which has undoubtedly saved lives.

Despite these successes for the security forces, this grouping continues to try to develop its capability. Its lethal intent and disregard for the wishes and safety of the wider community means that it remains a high priority for the PSNI and their security partners.

Óglaigh na hÉireann (ONH) has been very active over this period and has demonstrated increased lethal intent, including IED, shooting and pipe bomb attacks on PSNI officers in the Belfast area. In March the group was responsible for a failed mortar attack against New Barnsley PSNI station in north Belfast, as well as a large vehicle borne IED which was abandoned in County Fermanagh. Fortunately the group has had only limited success; if the devices been deployed and functioned as intended, they would almost certainly have resulted in injuries or fatalities.

Continuity IRA (CIRA) has splintered into several competing factions. These groups continue to be dangerous. Over the last six months they have been responsible for a shooting attack against PSNI officers in Craigavon as well as multiple hoax devices. These hoaxes are extremely disruptive to the community with families evacuated from their homes and suffering from a range of disturbances on an all-too-regular basis.

Groups involved in these terrorist attacks continue to engage in a range of criminal activity including fuel laundering, smuggling, drug dealing, robbery and extortion.

*Threat to GB from Northern Ireland related Terrorism*

The threat level in Great Britain remains at 'moderate', which means an attack is possible but not likely. We recognise, however, that dissident republican terrorists continue in their aspiration to conduct an attack in GB. All threat levels are, of course, kept under constant review.

*Activity of loyalist paramilitary groups*

As noted in my last statement on the security situation in Northern Ireland, the UDA and UVF leadership remain committed to their ceasefires, although individuals associated with these groups continue to be engaged in criminal activity.

*Paramilitary style shootings and assaults*

Throughout this period, paramilitary style attacks continued with involvement by both republican and loyalist groups. These attacks, which include beatings, shootings and even murder, continue to cause significant and irreparable harm to families on both sides of the community.

*Co-operation*

The Government continues to offer its full support to the PSNI to ensure that they have the capability they need to tackle the threat. The Government recently confirmed that the PSNI will receive an additional £31million funding in 2015-16 to tackle the threat faced from terrorism in Northern Ireland. That funding package extends the £199.5m of support provided to the PSNI by this Government in 2011. The ongoing provision of £31 million in security funding for the PSNI is part of the Government's continuing strategy to maintain pressure on the terrorists to make Northern Ireland a safer place for everyone.

Co-operation across government and agencies has been strengthened by the working arrangements around the G8 summit, including even stronger links with Irish counterparts. I hope that these new relationships can provide a sound basis on which to further enhance our work on tackling the threat faced in Northern Ireland. Cross-border cooperation with An Garda Síochána remains strong and they continue to work with PSNI to ensure that those who exploit the border for criminality and terrorism are bought to justice. I would like to take this opportunity to pay tribute to the role of An Garda Síochána in ensuring a successful, safe and secure G8 summit. I keep in very close contact with the Northern Ireland Justice Minster, David Ford, and the Irish Minister for Justice and Equality, Alan Shatter TD.

*Conclusion*

There have been some striking successes for Northern Ireland this year, not least of which is the G8. The Government is committed to building on that success. However, the significant public disorder that has occurred on and around 12th July provides an illustration of some of the continuing policing and security challenges in Northern Ireland.

We remain fully committed to tackling the threat from terrorism and keeping the people of Northern Ireland safe and secure.

## Office for Budget Responsibility: Fiscal Sustainability

*Statement*

**The Commercial Secretary to the Treasury (Lord Deighton):** My Rt. Hon Friend the Chief Secretary to the Treasury has today made the following Written Ministerial Statement:

Today the independent Office for Budget Responsibility (OBR) published its third fiscal sustainability report (FSR). This document meets their requirement to prepare an analysis of the sustainability of the public finances each financial year, and provides an important insight into the state of the public finances taking into account the significant impact of demographic change. The report was laid before Parliament earlier today and copies are available in the Vote Office and Printed Paper Office.

The OBR FSR projections show that public sector net debt is expected to fall to a trough of 66% of GDP in the early 2030s, before rising to reach 99% of GDP in 2062-63 in the absence of further policy change. The FSR shows that, without additional policy change, an ageing population is projected to increase age-related spending by 4.4% of GDP between 2017-18 and 2062-63, as health, social care and pension expenditure become an ever larger proportion of total public spending and the economy.

The FSR also examines the long-term sustainability of government revenues. As in previous years, the OBR project that oil and gas revenues will decline markedly over the coming decades. Updated projections show revenues declining from 0.4% of GDP this year to 0.03% of GDP in 2040-41, with total revenues over the projection period revised down by £11bn. The OBR consider the impact of alternative scenarios for oil and gas prices and for production and conclude that revenues will fall below 0.1% of GDP in the coming decades, even in these more optimistic scenarios.

The Government is committed both to strengthening our fiscal position now and making it sustainable for the long term. The OBR analysis makes it clear that the Government's medium-term consolidation plan is essential to restoring long-term sustainability of the public finances. A deterioration in the primary balance in 2017-18 worth 1% of GDP could increase projected public sector net debt in 2062-63 to around 150% of GDP. The OBR discusses the impact of changes to policy on their long-term projections. They show that excluding policy changes announced since the 2012 FSR, public sector net debt would have been projected to be around 50% of GDP higher by 2062-63. They identify the additional spending reductions announced for 2017-18 as one of the key factors in containing the growth of spending over the long-term, demonstrating the importance of the Government's programme of fiscal consolidation for the long-term health of the public finances.

The FSR presents long term projections of state pension expenditure including the Government's new single tier state pension. The single-tier reforms will restructure current expenditure on the State Pension into a simple flat-rate amount, to provide clarity and confidence to better support saving for retirement. This reform will cost no more than the current system.

The single tier reforms will complement the bold measures already taken by this Government to improve the sustainability of UK pension systems. Bringing forward the increase in the State Pension age to 66 to 2020 is expected to deliver savings of around £30bn while bringing forward the increase to 67 to 2028 is expected to deliver savings of around £70bn. Further, the Government has set out its plans to consider future changes to the State Pension age in a more regular and structured manner, ensuring that the State Pension age keeps pace with changing demographics and putting State Pension expenditure on a more sustainable footing.

Together, single tier and State Pension age reform will provide individuals with greater certainty about their retirement income and ensure a more sustainable system which represents a fair outcome across generations. This provides a solid foundation upon which individuals can plan for their retirement.

Reform of the State Pension comes alongside the Government's reforms to Public Service Pensions. The Government has set out a package of reforms to rebalance taxpayer and member contributions in the short term, and to ensure that costs are sustainable and fair in the long term. The new scheme designs, rebalancing of contributions between members and the taxpayer, and switch to uprating by the Consumer Price Index (CPI) are forecast to save £430 billion over the next 50 years.

The OBR's report also focuses on the pressures of an ageing population on social care spending, and the projections reflect for the first time the impact of the historic reforms to social care funding announced earlier this year. The Government will introduce a cap on lifetime care costs, greater means-tested support for residential care and deferred payments, so that nobody faces unlimited care costs, more people get support with their residential care costs sooner, and nobody is forced to sell their home in their lifetime to pay for residential care. The Government is also taking action to deliver better, more efficient care. For example, the Spending Round set out radical plans to create a £3.8 billion pooled budget shared across health and care, to deliver more integrated services, which we expect to manage down pressures across both services.

## Pensions
*Statement*

**Lord Wallace of Saltaire:** My Right Honourable friend the Minister for the Cabinet Office (The Rt Hon Francis Maude) has made the following Written Ministerial Statement:

The Public Service Pensions Act 2013 abolished separate pension arrangements for future holders of the Great Offices of State. Future holders of the Great Offices of State will instead accrue pension in the Ministerial pension scheme.

Amendments to allow future holders of the Great Offices of State to participate in the Ministerial pension scheme are therefore required.

These amendments will:

• Allow future Lord Chancellors, Prime Ministers and Commons Speakers to remain members of the Ministerial pension scheme on appointment.

• Allow the current Lord Chancellor to rejoin the Ministerial pension scheme for future appointments

The changes do not affect the current Prime Minister and Speaker.

The amendments do not make any provision in relation to an accrued right which puts (or might put) a person in a worse position than the person would have been in apart from the provision.

The details of the new scheme will be laid in the House today, along with a copy of the response to the consultation from the Chairman of the Parliamentary Contributory Pension Fund Trustees.

## Probation Trusts
*Statement*

**The Minister of State, Ministry of Justice (Lord McNally):** My honourable friend the Parliamentary Under-Secretary of State for Justice (Jeremy Wright) has made the following Written Ministerial Statement.

"On 27 March 2012, in his written statement announcing the launch of consultations on community sentences and probation reform, my Right Hon friend the then Secretary of State for Justice explained that the consultation exercise and subsequent Government response would form the basis of stage one of the Triennial Review of Probation Trusts. That is, it would identify and examine the key functions of these Non-Departmental Public Bodies, look at how they contribute to the work of Government, and consider whether they were still needed.

Triennial Reviews are a central part of the sponsorship and governance relationship between a Department and their NDPBs. All NDPBs are subject to Triennial Review, and the Probation Trusts formed part of the wider programme of such reviews for the Ministry of Justice.

On 9 May this year, following a further public consultation, my right hon friend the Justice Secretary announced the publication of *Transforming Rehabilitation: A Strategy for Reform*. This set out the Government's plans for transforming the rehabilitation of offenders by opening up rehabilitation services to a more diverse range of providers, drawing from the best of the voluntary, community and private sectors, equipped with the flexibility and incentives to reduce re-offending, extending statutory support to some 50,000 offenders who receive prison sentences of under 12 months and putting in place a nationwide "through the prison gate" resettlement service.

As an integral part of developing the Strategy, we looked in detail at the full range of Probation Trust functions and at how we could organise the public sector probation service in the most efficient manner to discharge its new responsibilities. This is in line with the requirement of a Triennial Review to look at the function and form of a NDPB and to consider the best delivery model, options for which would include moving delivery from an arms length body to an in-house provision. On that basis, we will create a new National Probation Service, working to protect the public and building upon the expertise and professionalism already in place.

The design of our delivery model is based on our goals of harnessing the expertise of a more diverse market of providers to reduce reoffending, making use of new payment incentives and protecting the public from the most serious offenders through a strong public sector which is organised in the more efficient way for the delivery of its new functions. By sharing back-office functions within the public sector we can release efficiency savings to invest in rehabilitation, and by MoJ through NOMS managing the new public sector probation service directly, we can ensure that contract managers can effectively oversee the work of both the public sector probation service and competed providers, and how they interact. In considering the most appropriate delivery model, the consultation and strategy have addressed the central questions asked by stage one of a Triennial Review.

In line with the Cabinet Office central guidance on Triennial Reviews, where a review recommends that an NDPB no longer continue in its current form, there is no need to proceed to stage two of the review. This statement, therefore, marks the formal closure of the Triennial Review. In line with Cabinet Office guidance, my right honourable friend, the Minister for the Cabinet Office, has signed off the outcome of the triennial review."

## Prosecutions: Concurrent Jurisdiction
*Statement*

**The Advocate-General for Scotland (Lord Wallace of Tankerness):** My Rt. Hon Friend the Attorney General has made the following written ministerial statement:

The Attorney General (Dominic Grieve): The Director of Public Prosecutions (DPP) has today published the final guidelines to prosecutors on decision making in certain cases involving concurrent jurisdiction. The guidelines, which take immediate effect, follow a recommendation in the Report of the Review of the UK's Extradition Arrangements by the Rt Hon Sir Scott Baker that there should be more transparency about the principles that are applied by prosecutors in

this jurisdiction when determining whether criminal proceedings should be brought here or in another jurisdiction.

The guidelines were issued on an interim basis and were the subject of a consultation exercise that ended on 31st January 2013. The interim guidelines were reviewed in light of the comments received and to ensure that they were consistent with the forum bar legislation that was approved by Parliament earlier this year. The guidelines provide guidance for prosecutors in cases where criminal investigations have been commenced in more than one jurisdiction and involve suspected criminal conduct that crosses international boundaries. The CPS recognises that decisions made in accordance with these guidelines will form the basis of consideration for the courts when applying the forum bar.

The Director of the Serious Fraud Office has indicated that his prosecutors will also consider themselves bound by this guidance.

Copies of the guidelines will be placed in the Libraries of both Houses.

## Railways: High Speed 2

*Statement*

**Earl Attlee:** My Right Honourable friend the Secretary of State for Transport (Patrick McLoughlin) has made the following Ministerial Statement.

Today I am beginning a period of public consultation on the proposed route for Phase Two. This is the route the new high speed line will take from the West Midlands to Manchester and Leeds, with connections to the West and East Coast Main Lines to serve the rest of the North of England and Scotland.

HS2 will be a vital part of our infrastructure. This new high speed line will open up opportunities for this country that we have not seen in generations. Its scope to transform this country is enormous.

The delivery of a state-of-the-art, safe, reliable high speed network will not only better serve our great cities but will return Britain to the forefront of engineering and construction. We must seize the chance to deliver it. We can generate jobs, support regeneration and growth in cites and unite regions. This will enable them to better compete with the capital, building a stronger Britain

Phase Two will turn HS2 into a truly national asset that we can be proud of. It is vital that we get it right. We need the views of the people who will be affected by the HS2 line or who stand to benefit from it, including representatives of cities and businesses to ensure that the high speed lines from the West Midlands to Manchester, Leeds and beyond are the very best that they can be.

This is an opportunity to strive for the very best in every aspect – to boost our regions, to embrace new and sustainable technology and to ensure the very best passenger experience. The views we get during this consultation will play an important part in informing my decision on a final route, station and depot options by the end of 2014.

The Phase Two consultation will run for six months and will be accompanied by a series of public information events from mid-October 2013 to early January 2014 where people will be able to review local information and speak directly with HS2 Ltd staff about the proposals.

Although HS2 will benefit the whole country, the Government understands the impact and anxiety that these proposals have on property owners affected by the route. That is why I am today launching an Exceptional Hardship Scheme (EHS) to assist property owners during the early stages of Phase Two's development. The scheme is designed to assist owner-occupiers of residential, agricultural, and small business property before the route itself is firmed up.

It is a temporary scheme to help people whose properties are affected by the plans for the line, and are experiencing (or are at risk of experiencing) exceptional hardship because they can not sell them. Successful applicants will have their properties purchased at 100% of their un-blighted open market value. That is, the value of the property were there no proposals for Phase Two of HS2.

It is not the only opportunity for compensation. As plans for the Phase Two line are firmed up, we will consider options for further long-term discretionary compensation. We will shortly launch a fresh consultation on such options for Phase One. All this is in addition to statutory compensation measures.

I am determined to find the solutions that benefit the greatest number of people, best support our cities and have the least impact on our environment. Our consultations with the public are a vital part of achieving these goals – we want people to join the debate on Phase Two of HS2 – and help us to shape a network we can all be proud of.

Copies of the consultation document, *High Speed Rail: Investing in Britain's Future Consultation on the route from the West Midlands to Manchester, Leeds and beyond*; *HS2 Phase Two Exceptional Hardship Scheme Decision Document*, and other supporting documents will be placed in the libraries of the House.

## Terrorism Act 2000 and Part 1 of the Terrorism Act 2006: Annual Report

*Statement*

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** My right hon Friend the Home Secretary (Theresa May) has today made the following Written Ministerial Statement:

Mr David Anderson QC has completed his third annual report as the statutory Independent Reviewer of Terrorism Legislation, on the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 in 2012. This report will be laid before the House today and copies will be available in the Vote Office.

I am grateful to David Anderson for his thorough report and will, following consultation with other relevant departments and agencies, publish the Government's response as a Command Paper in due course. At that time the response will also be made available in the Vote Office.

## Traineeships
*Statement*

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** My Hon friend the Minister for Skills (Joint with Department for Education) (Matthew Hancock) is today making the following statement;

As part of plans to reform the education and skills systems we need better support for young people aged 16 to 24 who are focused on securing an apprenticeship or sustainable job.

Traineeships for 16 to 19 year olds were announced in May 2013 and I made a Written Ministerial Statement at that time. We published a Framework for Delivery for 16-19 traineeships and indicated that the programme would be extended up to age 24 in due course.

Today I am publishing an updated framework for delivery for traineeships, following the announcement in the recent spending review that traineeships will become available to young people up to age 24. Traineeships will address the needs of young people and employers directly, providing an important link between school or college and apprenticeships or sustainable work. This is a key part of my drive to ensure greater rigour and responsiveness in Further Education, placing the employer and their needs at the heart of delivery.

Government funding for the programme will begin for 16 to 24 year olds from August this year. Traineeships will be designed to help young people develop both skills and work experience and have flexibility around this core to respond to individuals' needs.

Copies of the document we are publishing today will be placed in the libraries of the House.

## Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill
*Statement*

**Lord Wallace of Saltaire:** My Honourable friend the Minister for Political and Constitutional Reform (Chloe Smith) has made the following Written Ministerial Statement:

Today the Government is introducing the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill to the House of Commons, with Explanatory Notes and Impact Assessments.

This is the first Government to proactively publish meetings that Ministers and Permanent Secretaries have with external organisations. The Bill will extend this transparency to give the public more confidence in the way third parties interact with the political system, ensuring that these activities are accountable and properly regulated. These parties play an important role in the political process, helping to inform policy making and ensuring views are heard by those in Government.

This Bill will ensure that we know who lobbyists lobby for; how much money is spent on third party political campaigning; and to make sure Trade Unions know who their members are.

Part 1 of the Bill introduces a statutory register of lobbyists which will address the problem that it is not always clear whose interests are being represented by consultant lobbyists. It will enhance transparency by requiring consultant lobbyists to disclose details about their clients on a publicly available register and will complement the existing government transparency regime whereby government ministers and senior officials proactively disclose information about who they meet.

The Government will today respond to the Political and Constitutional Reform Committee's report Introducing a Statutory Register of Lobbyists. We are grateful to the Committee for its detailed consideration and scrutiny of the Government's initial proposals for a register.

Part 2 of the Bill sets out new rules on third parties campaigning in elections, ensuring that spending by third parties is controlled and fully transparent. In particular, it will expand the scope of controlled campaign expenditure. It will also reduce national spending limits for third parties, ensure that, above a certain limit, political parties explicitly authorise third party spending which supports that political party, and introduce geographical limits on the amount that third parties can spend in individual constituencies.

Part 3 of the Bill will give assurance of Trade Unions' compliance with the existing obligation to maintain the register of members by requiring Trade Unions to produce an annual membership audit certificate. It also gives the Certification Officer new powers in relation to investigation and enforcement.

A copy of the Bill and Explanatory Notes can be found on the website:

http://services.parliament.uk/bills/

# Written Answers

*Wednesday 17 July 2013*

## Agriculture: Genetic Modification

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government what advice on genetic modification, and from whom, the Secretary of State for the Environment, Food and Rural Affairs (1) sought, and (2) was given, prior to making his statements on the BBC Radio 4 Today programme and his speech at Rothamsted Research on 20 June. [HL1330]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** The Secretary of State's recent statements and speech were based on a general understanding of a broad and varied range of available evidence on genetically modified (GM) crops, as well as some examples of specific impacts. Ministers receive scientific advice on the safety of proposed GM crops from the independent Advisory Committee on Releases to the Environment, and the European Food Safety Authority also provides independent advice on GM products being assessed for possible EU approval.

## Agriculture: Genetically Modified Crops

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government what is their assessment of reports of moderate to severe allergic reactions of agricultural workers when exposed only to Bacillus thuringiensis (Bt) cotton in Impact of Bt Cotton on Farmers' Health (in Barwani and Dhar District of Madhya Pradesh) by Ashish Gupta et al. [HL1460]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** The Government believes that the findings reported in 2006 by Ashish Gupta et al should be treated with some caution. The report is based on interviews with a small number of farm workers and does not support a reliable conclusion that the symptoms described were due to exposure to Bt cotton. This is in a context where Bt cotton has been grown by millions of farmers around the world, including seven million in India alone, and we are not aware of any substantiated evidence of a problem with allergic reactions. A number of studies have indicated that the cultivation of Bt cotton has had a positive effect on the health of farm workers, because it has meant fewer incidents of accidental pesticide poisoning.

## Banking: Remittance Transfers

*Question*

*Asked by* ***Baroness King of Bow***

To ask Her Majesty's Government what representations they have received following the decision of Barclays Bank to close the accounts of Dahabshiil Transfer Services Ltd and companies involved in the secure transfer of remittances from the United Kingdom to family members in developing countries; and what action they are taking in response. [HL1375]

**The Commercial Secretary to the Treasury (Lord Deighton):** Following the decision by a number of banks, both nationally and internationally to withdraw banking services from many of the smaller firms in the money service business sector, including the most recent decision by Barclays, ministers and officials have received a number of representations from affected Money Service Businesses and other interested parties.

The Government is committed to supporting a healthy and legitimate remittance sector, and to ensuring that UK citizens are able to continue to remit funds safely to family abroad. As such, work has been underway for some time on addressing and reducing risk in this area but we recognise that there is more to do.

We do not know yet what the impact of market restructuring in this sector will be. The Government is committed to doing everything it can to minimise any negative impact on individuals and businesses in the UK and on developing countries that rely on remittances from abroad.

The Government will assess the impact of market restructuring on developing countries and working with private sector and aid partners to mitigate negative repercussions. We commit to working with all the relevant authorities to look urgently at concerns expressed by several of the UK's leading high street banks around the structural features of the sector and the money laundering and terrorist financing risks this poses to the UK and the global financial system.

## Burma

*Question*

*Asked by* ***Baroness Nye***

To ask Her Majesty's Government whether the British Ambassador to Burma has raised issues concerning the recruitment of underage soldiers with representatives of the government of Burma and its military; and if so, how many times this issue has been raised, and what has been the response of the government of Burma to those concerns. [HL1385]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** Our Ambassador has not raised the issue of child soldiers specifically with the Burmese government or military; however, he frequently

raises the wide range of human rights issues, including that of forced labour, with senior members of the Burmese government.

I refer the noble lady to my previous answers of 15 July on Burma, Official report, Columns *WA78-79*.

## Children: Sexually Explicit Material

*Question*

*Asked by* ***Baroness Uddin***

To ask Her Majesty's Government what is being done to ensure that their work on children's safety on the internet is being relayed to all parents including those who may not be computer literate or have access to a computer. [HL1543]

**The Parliamentary Under-Secretary of State for Schools (Lord Nash):** The Government believes that law enforcement organisations, internet industries and charities are best placed to advise parents and children how to stay safe online. That is why the Government is working through the UK Council for Child Internet Safety (UKCCIS) which brings together government, internet industries, children and parenting charities and experts to help parents keep their children safe online. Many UKCCIS members such as Vodafone, BT and Microsoft are working with specialists to ensure a wide range of parents, including those that are less technically knowledgeable, can access help and guidance. Projects include BT professionals offering parents sessions on internet safety in schools and Microsoft sponsoring an outreach programme to encourage parents to talk to their children about internet safety. Through UKCCIS, the biggest internet service providers have committed to launch a multi-million awareness campaign aimed at parents in the New Year.

## Conflict, Stability and Security Fund

*Questions*

*Asked by* ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government which activities will be covered under the Conflict, Stability and Security Fund; at what interval those activities will be reported to Parliament; and how the breakdown in spending will be reported to Parliament.[HL1443]

To ask Her Majesty's Government how the Conflict, Stability and Security Fund will support the Building Stability Overseas Strategy. [HL1444]

To ask Her Majesty's Government how the Conflict, Stability and Security Fund will contribute to upstream conflict prevention. [HL1445]

**Baroness Northover:** The Conflict, Stability and Security Fund (CSSF) will become operational in Financial Year 2015-16 with a budget of £1billion. The National Security Council will govern the CSSF, bringing a more strategic cross-Government approach to resource allocation to help prevent conflict and tackle the risks to UK interests that arise from instability overseas. It will bring together existing conflict resources (the Conflict Pool and the Peacekeeping Budget) with additional resources from across Government.

The CSSF will build on the success of the Conflict Pool, a key resource for delivering the Building Stability Overseas Strategy, by bringing together defence, diplomatic, development, security and intelligence capabilities.

Details of agreed resource allocations and spending priorities will be notified to Parliament. The Cabinet Office is leading a cross-Government project to ensure the new fund and supporting structures implement the National Security Council's priorities.

## Courts: Rolls Building

*Question*

*Asked by* ***Lord Thomas of Gresford***

To ask Her Majesty's Government what assessment they have made of the facilities in the new Rolls Building of the High Court of Justice for (1) fire safety, (2) sanitation, (3) air conditioning, and (4) court facilities and services. [HL1079]

**The Minister of State, Ministry of Justice (Lord McNally):** The Rolls Building is a world leading venue for dispute resolution, and has state of the art facilities. The Ministry of Justice is determined the building will be maintained to the highest standards, and has, to this end, raised a number of minor issues with the landlord in accordance with the terms of the lease and work is planned to resolve these issues shortly.

Regular user meeting and court user surveys are undertaken in the Rolls Building. The building, its facilities and the administration are regular agenda items to ensure that the building continues to operate efficiently.

## Education: GCSEs

*Question*

*Asked by* ***Baroness Sharp of Guildford***

To ask Her Majesty's Government, for each year since 2003, (1) how many, and (2) what proportion of, 16 year-olds did not achieve an A* to C grade at GCSE in English and mathematics; and what proportion of those went on to enrol at a further education college. [HL1359]

**The Parliamentary Under-Secretary of State for Schools (Lord Nash):** The table below provides estimates of the number and proportion of 16 year olds not achieving an A* to C grade at GCSE in English and mathematics since 2002/2003.

| *Year* | *Number* | *Proportion* |
|---|---|---|
| 2002/03 | 343,000 | 59.7% |
| 2003/04 | 348,000 | 58.7% |
| 2004/05 | 332,000 | 56.7% |
| 2005/06 | 329,000 | 55.1% |
| 2006/07 | 323,000 | 53.5% |
| 2007/08 | 309,000 | 51.5% |

| Year | Number | Proportion |
|---|---|---|
| 2008/09 | 285,000 | 49.1% |
| 2009/10 | 266,000 | 45.3% |
| 2010/11 | 244,000 | 42.4% |

The proportion of these enrolling at a further education college for the following academic year is shown in the table below.

| Year | Further education college | School 6th form | 6th form college | Other institution or training | Total |
|---|---|---|---|---|---|
| 2002/03 | 36.1% | 16.5% | 5.7% | 19.1% | 77.5% |
| 2003/04 | 37.5% | 16.3% | 5.7% | 18.7% | 78.1% |
| 2004/05 | 39.2% | 16.2% | 5.7% | 17.8% | 78.9% |
| 2005/06 | 41.8% | 17.2% | 5.4% | 16.9% | 81.3% |
| 2006/07 | 43.6% | 17.6% | 5.3% | 17.6% | 84.1% |
| 2007/08 | 47.3% | 18.4% | 5.5% | 15.8% | 87.0% |
| 2008/09 | 50.0% | 19.9% | 5.9% | 15.6% | 91.4% |
| 2009/10 | 51.2% | 18.5% | 5.4% | 15.5% | 90.7% |
| 2010/11 | 52.2% | 17.6% | 5.3% | 15.9% | 91.0% |

The figures relate to young people who were in the state sector in year 11 (15 at the start of the academic year, 31st August).

## Education: Missing Children

*Question*

*Asked by* ***Baroness Whitaker***

To ask Her Majesty's Government whether the revised statutory guidance concerning children missing from education has been published. [HL1501]

**The Parliamentary Under-Secretary of State for Schools (Lord Nash):** The Government plans to publish the final statutory guidance on children missing from education in the autumn.

## Employed and Self-employed Workers

*Questions*

*Asked by* ***Lord Marlesford***

To ask Her Majesty's Government how many people in the United Kingdom are (1) employed, and (2) self-employed. [HL1590]

To ask Her Majesty's Government how many people in the United Kingdom (1) over 65, (2) over 70, (3) over 75, and (4) over 80, are (a) employed, and (b) self-employed. [HL1591]

**Lord Wallace of Saltaire:** The information requested falls within the responsibility of the UK Statistics Authority. I have asked the Authority to reply.

*Letter from Glen Watson, Director General for ONS, to Lord Marlesford, dated July 2012.*

As Director General for the Office for National Statistics, I have been asked to reply to your Parliamentary Questions asking i) how many people in the United Kingdom are (1) employed. and (2) self-employed HL1590 and ii) how many people in the United Kingdom (1) over 65, (2) over 70, (3) over 75, and (4) over 80, are (a) employed. and (b) self-employed. HL1591

The table attached shows Labour Force Survey (LFS) estimates for the period January to March 2013. The estimates for the total number of people employed and self-employed are published in the monthly Labour Market Statistical Bulletin and are provided both on a seasonally adjusted and non-seasonally adjusted basis. The age group breakdowns are only available on a non-seasonally adjusted basis

Estimates of people aged 80 and over are not available. however due to being of insufficient quality as a result of the small sample size.

As with any sample survey. estimates from the LFS are subject to a margin of uncertainty. Indications of the quality of the estimates provided are given in the table.

*Thousands, not seasonally adjusted (unless stated)*

| | Total in employment[1] | Employee | Self-employed |
|---|---|---|---|
| All aged 65 and over | 985* | 596** | 352** |
| All aged 70 and over | 307** | 147*** | 138*** |
| All aged 75 and over | 96*** | -**** | 56*** |
| All aged 80 and over | -**** | -**** | -**** |
| Total (all aged 16 and over) | 29,600* | 25,177* | 4,166* |
| Total (all aged 16 and over) (seasonally adjusted) | 29,708* | 25,280* | 4,176* |

Source: Labour Force Survey (LFS)

Estimates by age are not mutually exclusive

- Estimates are considered too unreliable for practical purposes

[1] Includes, in addition to employees & self-employed, unpaid family workers & those on government supported training & employment programmes who are under 65.

Guide to Quality:

The Coefficient of Variation (CV) indicates the quality of an estimate, the smaller the CV value the higher the quality. The true value is likely to lie within +/- twice the CV - for example, for an estimate of 200 with a CV of 5% we would expect the population total to be within the range 180-220.

| KEY | Coefficient of Variation (CV) (%) | Statistical Robustness |
|---|---|---|
| * | 0 ≤ CV < 5 | Estimates are considered precise. |
| ** | 5 = CV < 10 | Estimates are considered reasonably precise. |
| *** | 10 ≤ CV < 20 | Estimates are considered acceptable. |

| KEY | Coefficient of Variation (CV) (%) | Statistical Robustness |
|---|---|---|
| **** | CV ≥ 20 | Estimates are considered too unreliable for practical purposes |

## Employment: Youth Employment

*Question*

*Asked by* ***Lord Roberts of Llandudno***

To ask Her Majesty's Government, further to the Written Answer by Lord Freud on 1 July (*WA 185*), why the Minister for Employment did not raise United Kingdom efforts to tackle youth employment under the Youth Employment Initiative at (1) the ministerial meeting on youth unemployment in Madrid on 19 June, or (2) the European Employment and Social Policy Council meeting in Luxembourg on 20 June. [HL1410]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** Both the ministerial meetings on Youth Unemployment in Madrid, and the European Employment and Social Council in Luxembourg discussed youth unemployment and actions the EU and its Member States could take to address it. The Minister for Employment drew attention to the actions we have been taking, highlighting policies including the Youth Contract and Work Programme.

At the time of the meetings the Local Enterprise Partnerships and the Scottish Government had not yet finalised their approach to implementing the Youth Employment Initiative (YEI). As these are the responsible bodies, no information was available on the implementation on the YEI to share with EU colleagues.

## Energy: Electricity and Gas

*Question*

*Asked by* ***Lord Donoughue***

To ask Her Majesty's Government what is their estimate of the total cost by 2030 of the investments required to achieve their full plan for power and gas generation, including all renewables, connection, transmission, distribution, storage, systems and meters. [HL1485]

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** The 2011 EMR White Paper calculated that up to £110 billion of investment in electricity generation and transmission was likely to be required by 2020 (75 billion could be needed in new electricity generation capacity, and Ofgem's 'Project Discovery' estimated that around an additional £35 billion of investment is needed for electricity transmission and distribution). These figures are in the process of being updated. Investment needs beyond this period are subject to a number of uncertainties and only therefore near term investment needs to 2020 are reported.

## Energy: Fracking

*Question*

*Asked by* ***Lord Greaves***

To ask Her Majesty's Government, in the light of their proposal for local communities where fracking takes place to receive £100,000 per well and 1 per cent of the overall revenues, at what stage the payment per well will be made; how the overall revenues will be assessed, at what intervals, and when those payments will be made; how the nature and extent of local communities will be defined; which bodies will be responsible for making the payments; which local persons or bodies will receive and control the payments; and for what purposes the money may be used. [HL1434]

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** The industry has recently published its Community Charter, setting out how it will engage with communities that host shale development, and also proposing to provide communities with £100,000 per well-site at exploration stage, and 1% of any revenues made at production stage.

The Government welcomes this offer from industry, which represents a good deal for communities at this stage in the development of the UK shale industry. We are also pleased that industry has pledged to keep this offer under review, and to consult with communities about it from time to time in the light of operating experience.

The UK Onshore Operators Group plan to publish further details of how the Charter will operate in practice in the Autumn, and they will be engaging with communities and stakeholders as they develop these proposals further.

## Energy: Smart Meters

*Question*

*Asked by* ***Lord Harrison***

To ask Her Majesty's Government what assessment they have made of the recommendations made by the Electrical Safety Council's industry summit white paper in respect of the smart meter roll out. [HL1278]

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** The Government has been working with the Electricity Safety Council (ESC) as part of our commitment to raising awareness of electrical safety issues via the smart meter implementation programme. DECC has also established a stakeholder working group including energy suppliers and network operators which considers operational issues, including safety matters. This group has considered many of the issues raised in ESC's recent paper and a number of improvements are planned, or have already been implemented by industry. For those issues that fall outside of the scope of the smart

meter implementation programme, DECC will facilitate discussion with industry and Ofgem to ensure that the issues are understood and seek assurance that those parties who are responsible for resolving them have appropriate plans in place.

## Energy: UK Coal

*Question*

*Asked by* ***Lord Laird***

To ask Her Majesty's Government whether they have any liability in respect of employees and pensioners of UK Coal who previously served in the nationalised coal industry; what UK Coal paid annually to the Pension Protection Fund (PPF); whether PPF's latest accounts show a surplus, and, if so, how much; whether there are plans to increase the levy to meet new liabilities; and how PPF intends to operate any coal mines that come with UK Coal's pension scheme. [HL1377]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** When the British Coal Corporation was privatised in 1994 its two large occupational pension schemes were closed to further contributions and, since that time, Her Majesty's Government has provided them with solvency guarantees which safeguard the accrued rights of members up to the point of privatisation.

Corporation employees who transferred to private sector employers including, what is now, UK Coal were given the right to join newly established "industry-wide" pension schemes. These schemes stand alone and Government has never had a direct locus in their respect.

The levy paid by an individual scheme for the Pension Protection Fund (PPF) is a matter between that scheme and the PPF. The scheme receives a levy invoice each year. As this information is confidential, it would not be appropriate for me to disclose it. However, the noble Lord may wish to contact the pension scheme directly.

The PPF's annual report and accounts for 2011/12 show the Fund had total assets of £17,271 million and total liabilities of £16,206 million, providing a reserve of £1,065 million. This figure should be seen in the context of the PPF's objective to be financially self-sufficient by 2030 and the more challenging environment for pension schemes as a whole.

The pension protection levy estimate for 2013/14 is £630 million. The Board of the PPF will be consulting on the levy for 2014/15 in the autumn.

UK Coal is being restructured and the relevant sections of the industry wide pension schemes are expected to enter the PPF. The PPF will not have any controlling equity in the new company that replaces UK Coal. Instead, the PPF's interest in the new company will consist of a series of debt instruments. The PPF will not be involved in the day-to-day running of the company.

## EU: Olive Oil

*Question*

*Asked by* ***Lord Pearson of Rannoch***

To ask Her Majesty's Government how United Kingdom representatives voted in the European Union Commission and COREPER on the Commission's proposal to ban the selling of olive oil in restaurants except in sealed non-refillable containers. [HL1519]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** During negotiations on an amendment to EU marketing standards for olive oil (Commission Regulation no. 29/2012) the Government consistently opposed a new EU requirement for bottles containing olive oil in the catering sector to be non-refillable and non-resealable from 1 January 2014. However, this only formed one element of the proposals which also included improved labelling provisions for consumers and the UK, therefore, abstained in the final vote. Given the support for the proposal from olive oil producing Member States, a vote against the proposal would have had no impact on the outcome.

Subsequent to the vote, common sense prevailed; the EU Agriculture Commissioner announced on 23 May that the proposal would be withdrawn and that he would consult further on the issue before deciding next steps. We await the outcome of those consultations.

## Finance: Credit Cards

*Question*

*Asked by* ***Lord Laird***

To ask Her Majesty's Government what is the present status and purpose of the Office of Fair Trading investigation into the charges for transactions made using MasterCard and Visa credit cards; when that investigation began; what are the permissible interest rates those companies can charge; and whether they intend to encourage new entrants to the credit card market. [HL1350]

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** The Office of Fair Trading (OFT) has an ongoing investigation, under the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the European Union, into the interchange fee arrangements for UK domestic point-of-sale transactions made using MasterCard/Maestro and Visa consumer payment cards. These are charges paid by the retailer's bank to the bank that issued the payment card. The investigations were opened in May 2004 (Visa) and December 2005 (MasterCard).

The OFT's investigations concern domestic (UK) interchange fee arrangements. Separately, the European Commission has investigated cross-border interchange fees.

The UK Government (with the OFT as lead department) has intervened in support of the European Commission before the Court of Justice of the European Union in the appeal proceedings brought by MasterCard

against the 2007 decision of the European Commission regarding MasterCard's, including Maestro's, intra-European cross-border interchange fee arrangements. On 24 May 2012, the General Court dismissed MasterCard's appeal. MasterCard's further appeal to the Court of Justice was heard on 4 July 2013. The OFT intends to consider whether to issue Statements of Objections in respect of its own investigations following the conclusion of these proceedings.

The interest rates charged to consumers by credit card issuers are not the focus of these investigations. The OFT does not set permissible interest rates payable to credit card issues.

The OFT does not have a remit to encourage new entrants to any particular market. However, it seeks to tackle barriers to entry and anti-competitive behaviour where there is evidence of a problem. In addition to the current investigation, the OFT has conducted reviews of the barriers to entry in retail banking and of payment systems, details of which can he found on its website.

## Financial Ombudsman Service

*Question*

*Asked by* ***Lord Martin of Springburn***

To ask Her Majesty's Government, further to the Written Answer by Lord Deighton on 4 July (*WA 242*), when the Financial Ombudsman's Service will reply to Lord Martin of Springburn; and who will reply. [HL1495]

**The Commercial Secretary to the Treasury (Lord Deighton):** The Noble Lord was sent a reply by the Chief Ombudsman Natalie Ceeney on 12 July.

## G8

*Question*

*Asked by* ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government what plans they have to ensure that the agreement reached at the G8 summit on tax is made mandatory. [HL1380]

**The Commercial Secretary to the Treasury (Lord Deighton):** The purpose of the G8 summit was to achieve the agreement of political leaders on a number of global policy issues. Adherence to these policies is not mandatory and countries can decide whether or not to adopt these policies.

The G8 summit declaration made clear that tax authorities should automatically share information in order to fight tax evasion and we are working closely with our international partners to secure a new global standard in the automatic exchange of tax information.

The G8 leaders provided political support for the ongoing work by the OECD and G20 on Base Erosion and Profit Shifting (BEPS). The OECD will be presenting their action plan for tackling these issues to the G20 later this month. The action plan will identify actions needed to address BEPS along with deadlines for implementation and resources and methodology for the work.

The G8 also commissioned the OECD to develop a standardised template for multinational companies to report, to tax authorities, where they make their profits and pay taxes around the world.

## Government Departments: Ministerial Meetings

*Question*

*Asked by* ***Baroness Smith of Basildon***

To ask Her Majesty's Government when Ministers last met representatives of the Civil Nuclear Police Federation; and when they next intend to do so. [HL1493]

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** The last occasion when Ministers from the Department of Energy and Climate Change met representatives of the Civil Nuclear Police Federation was on 18th July 2012. There are presently no further meetings scheduled.

## Health: Research

*Questions*

*Asked by* ***Lord Crisp***

To ask Her Majesty's Government how many health research projects based in primary care settings, submitted both by practices and by university departments, have been funded by the National Institute for Health Research. [HL1406]

To ask Her Majesty's Government what proportion of applications to the National Institute for Health Research for the funding of health research based in primary care settings, submitted both by practices and by university departments, are successful. [HL1407]

To ask Her Majesty's Government what proportion of applications to the National Institute for Health Research for the funding of health research based in secondary and tertiary care settings, submitted both by hospitals and by university departments, are successful. [HL1408]

To ask Her Majesty's Government whether the National Institute for Health Research prioritises funding for research applications submitted by university departments over those submitted by primary care practices. [HL1409]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The Department's National Institute for Health Research (NIHR) does not hold this information in the form requested, and it could be provided only at disproportionate cost.

All NIHR research programmes assess applications against the same criteria irrespective of the care setting. Success depends on the importance of the topic to patients and the National Health Service, value for money and scientific quality.

Project proposals are typically submitted by a multi-disciplinary—and often multi-professional—team of researchers working in both NHS organisations and universities. Many projects encompass interventions and follow-up within a mix of settings that can include primary, secondary and tertiary care, general and specialist clinics, community settings and other controlled environments such as care homes and prisons.

The NIHR issued a call for research to evaluate health care interventions or services delivered in primary care settings in February 2013. This call is a key component of the NIHR response to recognition of the need for further research-based evidence related to the provision of primary care services in the NHS.

## House of Lords: Legislation

*Question*

*Asked by* ***Lord Avebury***

To ask Her Majesty's Government on what occasions Ministers have sponsored legislation to which they have indicated they were personally opposed since May 2010. [HL1555]

**Lord Wallace of Saltaire:** Her Majesty's Government is bound by the principles of collective responsibility. This is set out in the Ministerial Code and requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached.

## Immigration: Children

*Question*

*Asked by* ***Baroness Doocey***

To ask Her Majesty's Government how many non-British children were intercepted at Greater London and south-east ports of entry in (1) 2012, (2) 2011, (3) 2010, and (4) 2009. [HL1050]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** In each of the fours years 2009 to 2012, the number of children intercepted and consequently detained at Greater London and the South East ports was as follows:

| | *Year* | | | |
|---|---|---|---|---|
| | *2009* | *2010* | *2011* | *2012* |
| Number of children detained | 1,985 | 1,839 | 1,538 | 1,386 |

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

We have taken Greater London and South-East regional ports to mean the following ports: Gatwick, Heathrow, Stansted, Luton, London City, Southend and St Pancras International.

## Mobile Phones: SIM Cards

*Question*

*Asked by* ***Viscount Waverley***

To ask Her Majesty's Government, further to the Written Answer by Lord West of Spithead on 16 July 2007 (*WA 4*), whether, as part of their plans for tackling organised crime, they will consider compulsory checks for proof of identity to be produced when individuals apply for a pay-as-you-go mobile telephone SIM card. [HL1504]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** We have no plans to introduce compulsory identity checks for the public when purchasing pay-as-you-go mobile telephone SIM cards.

## Overseas Aid

*Questions*

*Asked by* ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government whether they have plans to allocate more United Kingdom development assistance in the form of loans. [HL1382]

**Baroness Northover:** As the nature of development changes, DFID continues to assess new and existing instruments.

*Asked by* ***Lord Hylton***

To ask Her Majesty's Government what assessment they have made of the work carried out by UNICEF and other multilateral agencies and non-governmental organisations in relation to children in detention in the developing world; and whether they have any plans to increase the role of the Department for International Development in that area. [HL1510]

**Baroness Northover:** In 2009, UNICEF estimated that more than one million children worldwide were deprived of their liberty by law enforcement officials (UNICEF, Progress for children, 2009). DFID supports several agencies which work to protect the rights of children in developing countries including those in detention, including UNICEF and the United Nations Office of the High Commissioner for Human Rights (OHCHR). While we do not evaluate the performance in this particular area of work of the multilateral organisations to which we provide funding, we do carry out a detailed assessment of their overall effectiveness through the Multilateral Aid Review (MAR) process. Based on the MAR, we seek to ensure that maximum impact is achieved with the funding we provide. DFID works closely with the multilateral agencies to ensure that they take action on identified weaknesses and continue to deliver value for money across programmes.

DFID also works with a number of non-governmental organisations primarily concerned with protecting children, for example Save the Children and War Child. Through War Child, we are helping children in

detention centres in Afghanistan through improving the justice system as well as the conditions in the centres. Children are also being assisted to re-connect with their families and local communities when they leave the centres.

DFID does not currently have specific plans to increase its role in the area of children in detention in developing countries.

*Asked by* ***Lord Hylton***

To ask Her Majesty's Government, in the light of the number of Palestinian refugees living in camps for long periods, what representations they have made with the United Nations Relief and Works Agency about securing additional funds for the higher and further education of school leavers amongst that population. [HL1572]

**Baroness Northover:** The United Nations Relief and Works Agency (UNRWA) provide a range of services, including vocational training and tertiary education, for Palestine refugees in UNRWA camps. The majority of the UK's support to UNRWA is channelled through its General Fund, which pays for many of UNRWA's essential services for refugees. The UK's contribution to UNRWA's General Fund will provide, among other things, primary education for over 36,000 refugees a year up to 2015.

We do not currently plan to raise the specific issue of securing additional funds for the higher and further education of school leavers amongst that population. We regularly work with UNRWA and other donors and partners to explore how to best reduce poverty and improve opportunities for Palestine refugees, as well as to improve the Agency's financial position.

## Philippines

*Question*

*Asked by* ***Lord Hylton***

To ask Her Majesty's Government whether they will raise with the government of the Philippines the impact of organised crime on the sexual exploitation of the children in that country. [HL1480]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** Criminal activity with regard to child exploitation in the Philippines tends to be localised and fragmented rather than organised through major crime syndicates. Our Embassy in Manila works very closely with the Philippines government and Philippines law enforcement agencies to help tackle and prevent child exploitation.

The UK's Child Exploitation and Online Protection Centre (CEOP), working with our Embassy in Manila, has delivered regular training courses in the Philippines and in the ASEAN region to share our expertise in identifying and preventing child sexual abuse, Senior Philippines government officials and politicians have attended these events. This training has included specialist courses for law enforcement officers and training to help teachers identify the early signs of child abuse so that immediate action can be taken to remove victims from abusive relationships. Further funding has recently been approved to allow CEOP to deliver additional training later this year, including on the prevention of cyber abuse.

## Police: Civil Nuclear Police Federation

*Question*

*Asked by* ***Baroness Smith of Basildon***

To ask Her Majesty's Government how many Civil Nuclear Constabulary Police officers are currently on gardening leave on full pay (1) as a direct result of the cessation of policing at Capenhurst, Springfields and Chapelcross, and (2) for other reasons.[HL1494]

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** Following the cessation of Civil Nuclear Constabulary presence at the Capenhurst and Springfields sites, 17 non-Authorised Firearms Officers (non-AFOs) are currently on gardening leave on full pay, in line with their contractual notice periods, awaiting the conclusion of the Civil Nuclear Police Authority's consultation with the affected officers. There are no other CNC officers on gardening leave for other reasons. Formal consultation on redundancy for a further 7 non-AFOs at the Chapelcross site will commence ahead of the cessation of CNC protection later this month.

## Police: Women Recruits

*Questions*

*Asked by* ***Baroness Uddin***

To ask Her Majesty's Government what steps if any are being considered to increase the number of police women recruits from minority communities. [HL1540]

To ask Her Majesty's Government what progress has been made to increase the number of police women from Muslim communities. [HL1541]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** Police forces that reflect the communities they serve are crucial to cutting crime in a modern diverse society. While the police workforce is more representative in terms of gender and ethnicity than it has ever been, there is still much more to be done, and under-representation of Black and Minority Ethnic women officers is a particular challenge that needs to be addressed.

Police forces themselves must take active steps on these issues, in discussion with their Police and Crime Commissioners and their local communities, and with the support of the College of Policing. The Government is working with forces and the College to ensure that the positive action provisions of the Equality Act 2010 are used effectively to improve recruitment from under-represented groups in the police workforce.

## Sudan

*Questions*

*Asked by* ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the answer by Lord Wallace of Saltaire on 9 July, what assessment they have made of the new Amnesty International satellite imagery and eyewitness testimonies relating to the Sudanese military's activities against the Nuba people in South Kordofan and Blue Nile. [HL1488]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** We are very concerned over recent reports from Southern Kordofan and Blue Nile, including Amnesty International's June 2013 report, which detail the upsurge in conflict in recent months. We have made it clear to the Government in Sudan, and the Sudanese People's Liberation Movement-North (SPLM-N), that the conflict is having an unacceptable impact on civilians who need to be protected.

*Asked by* ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the answer by Lord Wallace of Saltaire on 9 July, when the situation in South Kordofan and Blue Nile was last raised in the United Nations Security Council. [HL1489]

**Baroness Warsi:** The United Nations Security Council discuss Sudan and South Sudan on a fortnightly basis. The situation in Southern Kordofan and Blue Nile was raised in the most recent consultations on II July 2013. In addition to this, the Noble Lady, the right hon the Baroness Amos, UN Under-Secretary-General for Humanitarian Affairs, covered the humanitarian Situation in those areas in her briefing to the Council on 20 June.

*Asked by* ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the answer by Lord Wallace of Saltaire on 9 July, whether they support the extension of the current arms embargo on Darfur to cover the whole of Sudan. [HL1490]

**Baroness Warsi:** The UK fully supports the EU arms embargo which covers the whole of Sudan. We would consider any proposal to extend the current UN arms embargo on Darfur.

*Asked by* ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the answer by Lord Wallace of Saltaire on 9 July, whether they are collecting first-hand witness accounts to establish the truth about the alleged genocide and crimes against humanity in South Kordofan and Blue Nile; and, if not, why not. [HL1491]

**Baroness Warsi:** The Secretary of State for Foreign and Commonwealth Affairs, my right hon. Friend the Member for Richmond (Yorks) (Mr Hague). made it clear that at the start of the conflict that the situation in Southern Kordofan and Blue Nile deserves a Full and credible independent investigation. We continue to believe that is the right course to take when circumstances and access allow it.

## Waste Management: Toxic Chemicals

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the design of statutory risk assessment procedures in both the United Kingdom and the European Union in detecting chronic sub-clinical effects such as endocrine disruption caused by low-level exposure to toxic chemicals. [HL1329]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** The human health risk assessments performed for chemicals in the UK and European Union are in line with internationally accepted procedures; for example, those described by the World Health Organisation. For substances such as pesticides, extensive animal study data sets are required, including chronic/carcinogenicity and reproduction studies. A full range of end points is routinely examined, including sub-clinical effects. Acceptable exposure for humans is determined by dividing by a factor of 100 (or more), a dose that produces no effect in the most sensitive animal study. Due to the large number of general chemicals addressed by the Registration, Evaluation, Authorisation & restriction of Chemicals (REACH) Regulation (EC No. 1907/2006), a tiered testing approach is undertaken. More extensive data are required for those substances produced or imported in the greatest amounts.

Recent publications in the scientific, peer reviewed literature indicate that this approach is as applicable to endocrine disrupting chemicals (EDs) as it is to other classes of chemicals. This is supported by the recent Opinion of the Scientific Committee of the European Food Safety Authority (*EFSA Journal 2013;11(3):3132*), which stated that '*EDs can therefore be treated like most other substances of concern for human health and the environment*'. The studies that are required to be undertaken for regulatory purposes are expected to identify any compounds that act on endocrine sensitive tissues or hormonally controlled physiological processes. Any such effects are considered as part of the overall risk assessment.

## Young People: Drugs

*Question*

*Asked by* ***Baroness Uddin***

To ask Her Majesty's Government what programmes or initiatives are in place to tackle the numbers of juveniles who are engaged in the selling of drugs in the east London area. [HL1539]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** The Government has devolved responsibility for the commissioning of

crime prevention and community safety programmes to locally elected Police and Crime Commissioners (PCCs) and to the Mayor's Office for Policing and Crime (MOPAC) in London. It is therefore for PCCs to decide whether young people's involvement in crime such as drug dealing is a priority for their local area.

The Government provides a number of different funding streams, such as the Community Safety Fund, which PCCs may use to deliver prevention and diversionary activities aimed at young people engaged in or at risk of becoming involved in gangs and youth violence, which is often connected to drug dealing.

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