Vol. 716
No. 26

Friday
15 January 2010

PARLIAMENTARY DEBATES
(HANSARD)

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House of Lords

Friday, 15 January 2010.

10 am

Prayers—read by the Lord Bishop of Chichester.

Building Regulations (Amendment) Bill [HL]

Second Reading

10.05 am

Moved By ***Lord Harrison***

That the Bill be read a second time.

Lord Harrison: My Lords, under its unassuming title, I have the honour to present this Bill to your Lordships today. The Bill's ambition is to save the lives of those who otherwise, for the want of parliamentary action, needlessly die or are maimed or injured in fires, principally through burns or smoke inhalation. This simple Bill will save lives, as well as property, save millions of pounds of public money and significantly improve our environment. By this sensible Bill, we have a chance today to make a real difference to people's lives. I hope that we can.

Our modest proposal is to extend the Government's existing building regulations, whereby sprinklers must be fitted in new residential blocks more than 30 metres in height, to new residential blocks under 30 metres in height. If passed, the Bill would ensure that they, too, are fitted with sprinklers or other fire suppression systems to approved document B standard. New schools, residential care homes and large single-storey retail buildings under 30 metres will also be protected by sprinklers, which can throw a valuable lifeline to the elderly, the infirm, the schoolchild as well as the shopper unfamiliar with the shop fire exits.

Last year, 347 of our fellow citizens missed out on those vital few minutes which would have provided the time to run for cover. A death in the family from fire is incalculable in terms of human misery. Nevertheless, the ODPM has suggested that each fatality from fire can cost the economy a staggering £1.4 million. The total cost to our economy was calculated in 2004 at £7 billion. Of that, £2.5 billion is identifiable as damage to property, the loss of viable businesses and the disruption to the nation's workforce.

In passing, it should be noted that people increasingly work from home. This, in turn, increases their fire risk and cost to the economy. In layman's terms, this wasted £2.5 billion lost to needless fires would have bought 80 new secondary schools or provided 5,000 hospital beds. This cost is in addition to the fire service's preventive work and its familiar task of putting out fires and cleaning up the consequent damage. These days, our intrepid firefighters in the modern fire and rescue service have to marry old-fashioned bravery with a new skill set as teachers, public speakers and proselytisers for best fire prevention practice.

I should add that sprinklers help to save the environment, not only by reducing the 2 million tonnes of carbon dioxide spilt into the atmosphere as a result of putting out unbidden fires, but by eliminating wastefully expended energy as a consequence of having to rebuild or repair burnt buildings. Sprinklers can also conserve 96 per cent of the 5.6 billion litres of water used annually in the United Kingdom to fight large fires.

The main groups of people who suffer disproportionately from fire incidents are: students; other 16 to 24 year-olds; the disabled; female single parents; other single, middle-aged people, a number of whom drink and smoke at home, thereby heightening their vulnerability; and the most significant group of all, the elderly, with the over-65s being very vulnerable and the over-80s in the greatest peril of all.

Last year, deaths in domestic fires rose 5 per cent from 331 to 347, whereas deaths in other buildings fell by almost half. This strongly suggests that fire safety in domestic buildings has not advanced as speedily as had once been hoped. Moreover, the nation's changing and aging demographic requires homes to be more resistant and sustainable. Further, we must recognise, and I believe that the Government do recognise, that current procedures for evacuation in a fire are antiquated, especially now that more people live longer into old age with a commensurate and increasing lack of mobility. Less mobile people often retreat into a single room to live, which leaves them more vulnerable to dying in fires in the so-called room of origin. These deaths are on the increase and are a worrying development. In these circumstances, smoke alarms are a help, but sprinklers are better. They give a breathing space for the less mobile to make a timely exit.

Moreover, sprinklers can extinguish fires by themselves, which is a real plus in saving lives and property. Sprinklers were introduced some 150 years ago, principally to save property. Nowadays, we recognise their pivotal role in saving lives. Where sprinklers have been installed, fire deaths have almost been eliminated, injuries have been reduced by 80 per cent, firefighter safety has been significantly improved and property damage has been reduced by an astounding 80 per cent. These findings are echoed by a 2007 study conducted by the US National Fire Protection Association. Interestingly, it found that where sprinklers are fitted, nine out of 10 fires are confined to the room of origin compared with six out of 10 fires where no sprinklers are fitted. This is important. Given that most people who die in fires succumb in five minutes, the operation of the sprinkler in the first three minutes is crucial. This is especially true given that the average call-out time of even our best fire and rescue services is some 10 minutes. Interestingly, in the UK, we have not, as yet, had multiple fire deaths in buildings with working sprinkler systems. Moreover, given the paramount danger from smoke inhalation, sprinklers beneficially wash the larger particles of smoke and so reduce the toxicity and density of acrid smoke, thereby saving lives.

Sprinklers work, and we have the evidence from countries in the vanguard of sensible change. In Vancouver, the first mandatory sprinkler by-law was introduced in 1973. In those days, fire deaths were

[Lord Harrison]
7 per cent per 100,000; by the 1990s, the death rate was sharply down to 0.6 per cent. In Scottsdale, Arizona, the sprinkler law was brought in in 1985. Losses attributable to fire were reduced by 90 per cent, which compared favourably to fire losses in unsprinklered buildings, many of which are residential. Nearer to home, in Studley Green in Wiltshire, a 1999 £10 million redevelopment of a housing estate included sprinkler protection in some 200 homes. Subsequently, two fire incidents have occurred. In one, two lives were probably saved by the sprinklers; in the other, considerable property damage was averted. On the Studley Green estate, nine out of 10 householders declared that they liked having sprinklers; three out of four worried less about a fire in their daily round; and only one in five residents worried about the sprinklers going off accidentally.

Perhaps I should say a word about the 400 million sprinklers fitted each year worldwide, especially as some people think they are problematic. They are normally activated when the temperature in the room where the fire is burning reaches the preset temperature of the sprinkler head. That is normally 68 degrees centigrade, which is a very high threshold. They are activated as individual heat sensors. The water is released only in the room where a fire is detected. These facts explain why the chance of a sprinkler malfunction is remote; it is computed as one chance in 16 million operations. Like other technologies, sprinkler technology advances in leaps and bounds and other advances in technology help. For instance, the use of PVC pipes in new build overcomes the problems associated with leaks from traditional pipes.

Some in the water industry are worried that the traditional lowering of water pressure at night might cause more leaks, but the installation is of new mains in new buildings. This allays the water industry's groundless fear. I believe this is particularly true of Dwr Cymru, the Welsh water authority. It has been reconciled, having been antagonistic. It is also useful to note that where sprinklers operate, firefighters use less water from their appliances. This has the environmental effect of not contaminating our nation's watercourses with dirty water, as happens with traditional methods of extinguishing fires. The main cost of sprinklers is the capital cost of installation, which is 1 to 2 per cent of the total capital cost of construction. Annual maintenance costs are small, up to £150 a year.

The 2005 BRE report on the effectiveness of sprinklers in residential premises was commissioned by the ODPM. It found sprinklers to be most effective in residential care homes and tall blocks of flats. It generally supported the use of sprinklers. However, caution should be exercised about the report's conclusions. The Fire Sprinkler Association and the British Automatic Fire Sprinkler Association challenge some of its contents and findings, including the doubtful cost-benefit analysis. The 1984 Ruegg and Fuller data are precipitate, and so unreliable, given that the legislation was introduced only in 1981. The 2002 Rohr report is also faulty. It mistakenly suggests that fire deaths have occurred in the United States of America in sprinkler-protected buildings. That is simply wrong; they have not. In addition, the BRE report has entirely ignored all the data available from Arizona and Canada, to which I have already alluded. It is simply not good enough to rely on solely UK-based data. I hope my noble friend will look to Wiltshire and Wales for more up-to-date local data, and worldwide for a more comprehensive view. I am sure he has been informed of the legislation similar to today's Bill that is now successfully passing through the Welsh Assembly.

Today's Bill is simple and effective. Almost at the stroke of a pen, the building regulations applicable to sprinklers fitted in new buildings over 30 metres high can now operate for residential buildings of less than 30 metres. There are people alive today who will live out the full term of their lives and not perish in an avoidable fire to the great sorrow of their family and friends and the wider community. I hope that this legislative stroke of the pen is enacted, even in the dying embers of the successful mandate of this Government, who are soon to arise phoenix-like from the ashes in the spring of this year.

10.19 am

Lord Brookman: My Lords, I declare an interest as an officer of the All-Party Group on Fire Safety and Rescue.

My noble friend's Bill is, to state the obvious, not lengthy or complicated, but, from my perspective and that of many others in this House and in organisations such as the British Automatic Fire Sprinkler Association, the European Fire Sprinkler Network, the National Fire Sprinkler Network, key insurance companies and the general public, it is very important and, if passed, will be a significant milestone in fire safety legislation.

My noble friend is to be complimented, for the second day on the trot; he has had a busy week. The Bill is very well constructed and equally well researched, and his introduction of it spoke volumes for the case to amend the Buildings Regulations 2000 to require the installation of an automatic fire suppression system in new residential premises in England and Wales.

The Government are receptive to the views of the organisations that I mentioned. Indeed, as my noble friend has said, there have been some important developments in England and Wales. New residential properties that are above the height mentioned by my noble friend must have sprinklers, as must large warehouses. Further new guidance on fire safety in residential care homes, including the use of sprinklers, has also been introduced, so progress has been and continues to be made. All this points in the right direction, so my noble friend's Bill is worthy of adoption and implementation.

I have one concern. The view has been expressed to me on more than occasion that sprinklers do not save lives, they save buildings. That is refuted by experts in the field, and I am pleased that that is the case. I therefore hope that once again there will be a generally positive response from the Government to this worthwhile Bill.

As the Association of British Insurers says in its recent brochure, *Tackling Fire: A Call for Action*, working with the Government and other stakeholders is vital to making progress, and the Bill is part of that process.

10.22 am

Lord Whitty: My Lords, I too support the Bill, and I congratulate my noble friend Lord Harrison on bringing it forward and on his expedition of all the points. As my noble friend Lord Brookman has just said, it has the support not only of the industry but of fire brigades, fire authorities, the insurance industry and many property owners. It is, however, primarily about saving lives, and it behoves all of us to see what a relatively simple change in the legislation and regulations can achieve in saving lives. If we ensure that an automatic fire suppression system is a standard fitting for all new low-rise residential buildings, we will be able to save many, many lives.

The Bill envisages an automatic system that will involve no human intervention and is designed primarily to protect lives rather than property and to deal with fire. Apart from arguments about cost, doubts have been cast on the effectiveness of this, but very clear international studies, particularly from the USA and Canada, have been drawn to my attention. These show that when fire occurs, there are major reductions not only in deaths and injuries, which is the central purpose, but in the range of fire spread and resulting fire damage, in the resulting water damage, and indeed in the amount of water that is used, as my noble friend Lord Harrison has already said. Fitting automatic and effective sprinklers in residential premises is pretty much a no-brainer. Retrofitting the sprinklers would be much more expensive and much more difficult to justify, but the Bill does not deal with that; it deals with all new residential buildings and conversions to residential use.

Those who are most at risk in situations of fire are the elderly, the infirm, the disabled, and possibly those who drink too much. In other words, all of us could be affected, including probably a fair cross-section of the population as a whole. Fitting such a system could be a life saver for any one of us, so I congratulate my noble friend on introducing this Bill and the organisations that have supported it, and I hope that the Government and this House will be prepared to take it forward.

10.25 am

Lord Hoyle: My Lords, I am speaking a little earlier in this debate than I expected. I, too, give big thanks to my good friend the noble Lord, Lord Harrison. It is wonderful that we have this opportunity to debate the Bill today. Externally, we are considering health and safety in the light of what has been happening this winter and the injuries that have occurred. Here today, we are considering what happens in buildings. It is very important to say that, because we have a tendency to forget it. Deaths and injuries in buildings do not occur in the same numbers as they do in emergencies throughout the world, but they occur all the time and we should certainly look at anything that we can do to save lives.

No one would dispute that fitting sprinklers in all new builds would be effective. We could incorporate that. As has been said, we are looking at a number of people who are vulnerable in this respect. As my noble friend Lord Whitty said, they are not just in this House. Middle-aged people, usually between 40 and 59, who smoke and drink at home are also vulnerable. The elderly—I will come back to them in a moment—are particularly vulnerable, as are people with disabilities, as they are less likely to be able to get out in time. We must bear in mind that young people, including students, also come into this category. We are looking at a wide spread of the population.

Another thing that will be even more of a concern in the future is that we are, unfortunately, becoming an elderly society. More and more of us, as we see in this House, are living for longer. On the other hand, fewer people will go into homes. Many of them will stay in their own homes. They are vulnerable, and this measure will be of great assistance to such people.

A lot has been said about the cost of fire. As my noble friend Lord Harrison said, the costs are staggering: £7.3 billion. The cost of each fire is almost £25,000, of which the economic cost of deaths is £14,600 and the cost of property damage is £7,300. That is a huge cost to our society. My good friend the Minister always tries to be helpful, and I am pleased that he is replying to the debate. He may well dwell on the report which my noble friend Lord Harrison mentioned again. When the proposal was looked at, the Government did not really think that it was cost-effective. As my noble friend has said, there are defects in that report. One of the two studies looked at was dated 1984, but sprinklers were only authorised in 1981, so that could not have been an in-depth study. The second study was done after 2000; as do most studies, it looked at what occurred in this country, rather than, as my noble friend Lord Harrison, said, taking a worldwide view. Why not look at what has happened in Vancouver, where deaths have dropped to almost nil, or Arizona, where a similar story is told? That would make a huge difference.

The BRE report, which looked at this country, concluded that there could be about a 70 per cent reduction in deaths, which is quite large, a 30 per cent reduction in injuries and a 50 per cent reduction in property damage. However, if we look at what has happened in practical terms in Arizona and Vancouver, we will find a different story. There has been a 100 per cent reduction in the number of deaths: there are no deaths. There has been an 85 per cent reduction in injuries, which is quite different to our 30 per cent. In addition, there is a 90 per cent reduction in property damage. I hope that my noble friend will be able to reply to that, because those figures may be quite different to those which he may have for presenting to the House. I hope that he will take some advice on that.

I do not think that anyone could argue about the merits of the Bill. They could argue about the cost. The cost of fitting sprinklers would be between 1 per cent and 2 per cent in new-build properties. Maintenance could cost between £85 and £150 per year. But if they were fitted on all new-build houses, we should be able to bring down those costs substantially. It is worth having another look at this. As my noble friend has said, there is no reason why this small Bill could not go through both Houses and be incorporated into law. Furthermore, lives could be saved. I hope that we will get a positive response when my noble friend replies.

10.32 am

Baroness Hamwee: My Lords, from these Benches, we congratulate the noble Lord, Lord Harrison, on introducing this Bill. We, too, look for a positive response from the Government. He used the term "breathing space". I do not know whether he realised how apt that phrase was, but, given the loss of life from smoke inhalation, it is a particularly appropriate term. I have been briefed by the London Fire and Emergency Planning Authority as well as by the Staffordshire fire and rescue service, and I am grateful to both.

LFEPA makes the point, as have other noble Lords, about the importance of providing for vulnerable people. I know that LFEPA has—I am sure that other authorities have as well but I do not know them in the same way—a record of investigating proportionate risks and of assisting groups who are at most risk. It says that the impact of fire is grossly disproportionate, with 30 per cent of fire victims having limited mobility. I do not propose to pursue the categories of infirm, elderly and inebriated as applying to "us", as mentioned by the noble Lord, Lord Whitty. As we know, the average age of this House is rather high and, as the noble Lord, Lord Hoyle, has said, the category of people who are most at risk is single middle-aged people between 40 and 59 who drink and smoke at home.

I am told that 99 per cent of fires in buildings fully protected by sprinklers are controlled and that the safety of firefighters tackling fires is improved because sprinklers reduce the risk of flashover and backdraft. However, we still have the tragedy of firefighters, as well as people in buildings, dying in fires. I am interested, too, in the small amount of water that has to be used, which seems to highlight the efficiency of sprinkler systems. We are told that they can be very sensitive. Often in a room with two sprinkler heads, only one may operate if that is all that is needed. I am sure that those who have concerns about sprinklers will welcome the advance of technology. My experience of sprinklers being activated in a public building was that the water came down through about three floors, which was not very comfortable but much better than the building going up in smoke.

I contacted the British Property Federation. I accept that this Bill is about saving lives, but it seemed useful to get some comments from the property world. The London authority told me that installing sprinklers is now about 1 per cent of the total build cost, which may be reduced with new building methods. Cost is of concern to the property industry. The BPF says that given the state of the housing market it is concerned about this. I do not know whether the noble Lord has any comments to make on that. It also says that its other major concern would be tenanted properties. Putting it carefully, the BPF says:

> "Not all tenants are angels and you can imagine the damage and disruption that would be caused in a property by tenants fooling around and setting off the sprinkler system".

Its comment that,

> "in an era of better and less regulation this is not practical",

deserves to be put on the record. To my mind, the balance is entirely in favour of the Bill, but I felt that these comments should be included in the debate. We support the noble Lord.

10.38 am

Earl Cathcart: My Lords, I should declare that I am involved in the property and insurance markets. I, too, thank and congratulate the noble Lord, Lord Harrison, on introducing this Bill. His objective is to reduce death and injury from fires in new-build housing in England and I can assure him that we certainly welcome such a goal. As the noble Lord, Lord Harrison, has already said, regulations already ensure that new residential blocks more than 30 metres high must be fitted with sprinklers. New schools, residential care homes and new large single story retail buildings will all be similarly protected under changes to the building regulations.

The Bill would extend the use of sprinklers to new residential and substantially renovated homes. We on these Benches are certainly receptive to new and innovative ways of increasing fire safety. The noble Lord, Lord Harrison, has put his arguments convincingly. However, if the Minister is minded to support this Bill, I would like to play devil's advocate and ask him whether he has considered the following points. As we have heard, the installation of sprinklers in all new homes would incur an immediate capital cost, which may have unintended effects on the housing industry, especially in the current market. There will also be ongoing costs to maintain these systems.

The estimated cost of installing a low-cost sprinkler system in a new home is around £500. Would this fall on the developer or, more probably, be passed on to the initial purchaser of the property? I hope to hear from the Minister about how the water supply can affect the operation of sprinkler systems. Automatic sprinkler systems may have their water supplied independently of domestic or industrial supplies and need not be metered, dependent on the provision of adequate safeguards against fraud. Has the noble Lord thought about how this fraud could be monitored, and with whom the responsibility for such enforcement would lie?

In 2007, a Communities and Local Government report stated that the minimum service supply pressures that water authorities must achieve are well below those required by residential sprinkler systems. This problem would need to be addressed or we could end up with sprinklers that cannot do the job properly. To determine whether the required water pressure and the flow continue to be available, regular maintenance is needed to ensure that performance tests are carried out, at an estimated cost of £75 to £100 a year. Does the Minister feel that all the households affected can afford that? In addition, a recent report by the Fire Protection Association states:

> "Any future deficiency of the automatic fire sprinkler system due to changes in the water supply characteristics shall be the responsibility of the property owner to remedy at their own expense".

So that is yet another significant extra charge for the householder somewhere down the line. One might expect there to be an offset of these costs

through lower insurance premiums. Will the Government discuss this possibility with the Association of British Insurers?

I understand that most sprinkler systems are wet pipe systems, meaning the piping is always filled with water. As the recent spate of cold weather should remind us, those pipes can freeze and burst. Who would be responsible for ensuring that home owners are informed about methods to keep sprinkler systems from freezing? Indeed, what might those methods be, and at what cost? Would there need to be a duty imposed upon the home owner to make immediate repairs in the event of damage, at a cost? Would there be a responsibility on home owners to have these systems inspected prior to the reselling of the dwelling, and who would be expected to cover the costs, the vendor or the purchaser? Does the Minister have any information on what effect that might have on the housing market, which already has to contend with the cost of HIPs, EPCs, stamp duty and the rest associated with house sales?

As the noble Lord, Lord Harrison, pointed out, the changes he proposes to the building regulations will only affect new buildings and major refurbishments, but will not have an impact on the existing building stock. Given that 85 per cent of existing homes will still be in use in 2050, does the Minister agree that it may be worth holding off on the proposals in this Bill until the economy is more stable and fire suppression systems are sufficiently advanced as to warrant their installation en masse? Does he further agree that the Government ought to consult with the construction industry, the insurance industry and representatives of the fire service to consider what can be done to better understand the fire performance of modern methods of construction building types and how to reduce the risks associated with them? Here I am talking about open plan layouts and construction materials.

The proposals in this Bill certainly merit consideration, and as I have made clear, the Conservative Party is certainly open to innovative suggestions to improve fire safety. However, I have raised a number of questions about the cost, implementation and maintenance requirements of installing sprinkler systems in individual homes. I had not intended to dampen the general enthusiasm for this Bill and I am sure that my queries are not insurmountable. I look forward to the Minister's response.

10.45 am

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, I congratulate my noble friend Lord Harrison on securing this Private Member's Bill. Fire safety is a most important subject, one in which he has previously taken a considerable personal interest, and I thank all noble Lords who have contributed to the debate. A number of noble Lords, including my noble friends Lord Whitty and Lord Brookman, and the noble Baroness, Lady Hamwee, have stated explicitly that this Bill is about saving lives. Moreover, as my noble friend Lord Whitty identified, it proposes to proceed via the route of the building regulations, so it is not about retrofitting existing properties.

In England, we have a strong record in fire prevention, a record of which I think we can be proud, but not complacent. The latest fire statistics show improvement, with fire deaths in the home in England at their lowest since 1980, and the long-term trend is downwards. In 1997, 362 people perished in domestic house fires in England compared with the figure of 217 fire deaths in the home in 2008. But let me be clear: one death is one too many.

Since 1997, our key strategy to drive down preventable fire deaths has been through proactive community fire safety activities, a discipline that involves efforts to reduce the incidence of fire through education, information and publicity. Indeed, few people may realise the impact which fire has on our society. Although people are very frightened of having a fire and its potential consequences, they do not believe that it will happen to them. But the impact of fires on families and households is often greater than many crimes. It can wipe out entire families in one go, kill all the children, or have a lifelong impact with terrible injuries on those who may survive. Even if casualties do not arise, the impact of needing to be rehoused and losing all possessions, photographs, memories and treasured items can be very profound.

Most fires in the home are preventable. Community fire safety is therefore about providing basic fire safety information to householders to help them alter their behaviour and to think more about fire safety as an important issue that could affect them and their families. In particular, it is about reminding people of the importance of having working smoke alarms installed in their homes and testing them regularly, the safe disposal of smoking products, and about taking extra care when cooking with fat, using grill pans and so on.

The installation of properly maintained smoke alarms in every household has been the centrepiece of our efforts to reduce fire deaths in the home as they provide the vital early warning of fire and help people to escape. Through the Fire Kills campaign, the Government have conducted high-profile national television campaigns promoting smoke alarms and maintenance messages which have proved very successful. Ownership of smoke alarms in England now stands at 85 per cent of households and we are seeking to raise that further, as evidence suggests that those without alarms are often in the groups that are most at risk from fire.

The 85 per cent smoke alarm ownership figure is a real achievement. I am delighted to say that during the period 2004-08, the Government invested £25 million in grants to fire and rescue authorities, to whom I pay great tribute, to enable them to purchase smoke alarms for installation in domestic dwellings. This pump-priming funding stream has provided authorities with the resources to carry out home fire risk checks to target the most vulnerable people in society such as the elderly, mobility impaired and single parents. Our latest figures show that around 2 million home fire risk checks have been carried out in England, with more than 2.4 million smoke alarms being installed. This type of fire prevention work should now be mainstream for fire and rescue authorities. Since 2008-09, funding is now available through the revenue support grant that these authorities receive directly from central government.

[Lord McKenzie of Luton]

The increase in the ownership of smoke alarms as a result of these campaigns and other actions is a success story. In 1987, only 9 per cent of dwellings were fitted with smoke alarms, but as I have said, by 2007, this had risen to 85 per cent. Indeed, in the social rented sector, the English house condition survey suggested that in 2007 more than 88 per cent of homes had smoke alarms, with nearly 40 per cent of them being hard-wired, mains-powered alarms. I am confident that these figures will be even higher as we reach the end of 2009 and move into the current year.

Sadly, a percentage of households remain resistant to our messages and, in the first instance, each of us must take responsibility for safety in our own households. Of course there is a place for regulation where it is appropriate and justified to help make people safer from fire, particularly where they are vulnerable or where the risk of fire is outside their control. Duties are imposed on landlords through the licensing measures for houses in multiple occupation and under the Housing, Health and Safety Rating System, and the requirements of the Regulatory Reform (Fire Safety) Order impose duties on people responsible for commercial premises and for the communal parts of blocks of flats.

Through the building regulations, we also have a powerful tool at our disposal to design out the life safety risk of fire in newly-built or altered buildings. Part B of the regulations and its supporting Approved Document have extensive provisions for the means of escape, means of warning, means of restricting fire spread and access for the Fire and Rescue Service. The provision since 1992 for all new-build dwellings to have hard-wired, interconnected smoke alarms, along with our on-going campaigns promoting their use, has contributed to that success.

The Government are aware of the calls that this Bill exemplifies for the building regulations to be amended further to require sprinklers in new dwellings and other types of new buildings. We recognise that sprinklers have an important role to play and there are already provisions in place for their use. Our view is that sprinkler provision should form part of a package of measures. However, some stakeholders have persistently argued for more regulation to require sprinklers in new build. I have already mentioned Part B of the building regulations. Requirement B3 of the regulations, which deals with internal fire spread within a building, already sets out that, subject to the size and intended use of the building, suitable fire suppression systems, such as sprinklers, and sub-division by fire resisting construction should be provided.

My department issues guidance in the form of Approved Document B, which sets out what is considered to be a reasonable provision to satisfy the requirements of Part B. This guidance is developed using the best available evidence and expert advice and with the assistance of the Building Regulations Advisory Committee. Any new measure we introduce through the building regulations—the noble Earl, Lord Cathcart, touched on this issue—must be proportionate, evidence-based and justified in terms of the lives they save and the injuries they prevent. Before any new measure is introduced, the Government's policies on better regulation require the department to carry out an impact assessment. This involves estimating the potential costs and benefits of introducing the measures to ensure that those measures that are introduced are demonstrably proportionate to the problem they seek to address. This impact assessment, along with the draft Approved Document and supporting research findings, are then published and are subject to a public consultation exercise.

My department has recently undertaken a review of Part B and its Approved Document and the subsequent revisions resulting from that review took effect on 6 April 2007. As one might imagine, the review looked at the potential of extending the existing provisions for fire suppression to residential premises. This review drew on an extensive four-year research project looking at the issue of residential and domestic sprinklers from both an effectiveness and cost-benefit perspective. The conclusions are clear: sprinklers are an effective measure but it would not be cost-effective to impose their installation on all new residential buildings. However, there was a case for higher risk buildings.

A number of noble Lords mentioned the research which led to the current guidance on residential properties. It was an extensive four-year project and the methodology used in the cost-benefit analysis was developed in consultation across the industry group, including the Fire and Rescue Service and the sprinkler industry. A similar cost-benefit exercise carried out in the US by the National Institute of Science and Technology reached a similar conclusion.

The revised Approved Document B (Fire Safety) therefore included a provision for sprinklers to be installed in tall blocks of flats over 30 metres in height—a matter to which my noble friend Lord Harrison referred—and included their use as an option in residential care homes. This option offers an alternative to an otherwise more onerous set of standards for care homes introduced at the same time. This is one of a range of measures which can be varied where sprinkler systems are installed. The benefits that such installations can offer are explained in the Approved Document and the guidance can be structured such that those benefits are realised in reduced construction costs.

The process to review the buildings regulations was overseen and supported by both the main Building Regulations Advisory Committee and its Fire Safety Working Group, which comprise key stakeholders, such as the Business and Community Safety Forum, the Fire Brigades Union and the Chief Fire Officers Association. As set out in our implementation plan for the future of building control, my department currently has no plans to review the fire safety elements of the building regulations again until 2013. In the mean time, we continue to consider and develop the evidence base in preparation for that review.

I am sure that some might consider that this is a rather long timescale, but these are not simple matters. The standards of fire protection in modern buildings are very high and the casualty figures are, thankfully, low. We cannot justify imposing further burdens on industry—a point pressed by the noble Earl—without targeting them at where they can be most effective. That said, and as part of our collective desire to see buildings which are even more sustainable, we are exploring the impact of fire and fire protection

on the environment. The changes made to the Building Act 1984 by the Sustainable and Secure Buildings Act 2004 extends the scope of building regulations to include requirements made for sustainability purposes. My department commissioned a scoping study to consider this issue and the available evidence and to identify a way forward. The report from this project is due to be published shortly and will help to inform this important debate.

While we do not consider there is a case for more regulation now, we are looking at what we might do to encourage or facilitate the greater use and installation of sprinklers through non-regulatory routes. We have therefore commissioned three research projects to help facilitate this process. These relate to low-cost sprinklers, the cost-benefits of sprinklers in areas of new homes and the cost-effectiveness of sprinklers in high-risk buildings.

On the low-cost sprinkler project, a major barrier to the wider use of sprinklers in the domestic market has been that they are expensive. My department has therefore undertaken research into the potential for lower cost domestic sprinkler systems. As a result of this research, and in collaboration with the Fire Protection Association, we have developed a design guide for such systems. Initial findings suggest that a lower cost system can be put into a new-build house and work effectively given adequate means of water pressure. A number of noble Lords have raised the issue of water usage. However, the water industry raised concerns about the design guide as it did not comply with the Water Supply (Water Fittings) Regulations 1999. However, we have worked with the water industry to resolve these issues and, I am pleased to say, we now have a system which complies with the water regulations. We are currently trialling the compliant lower-cost system in four fire and rescue authority areas—Lancashire, Kent, Suffolk and Northumberland. The pilots are designed to test cost assumptions and to iron out any technical issues during installation.

We also recognise that the Government's commitment to build new homes in areas such as the Thames Gateway presents challenges to the Fire and Rescue Service. As I have already explained, the Government do not legislate or regulate for the provision of sprinklers in domestic properties. Long-term research has demonstrated that the costs and benefits of doing so do not stack up; the costs are so high that it cannot be justified for life safety. However, we consider it worth revisiting the installation of sprinklers as an active protection measure where large numbers of houses are being built at one time. The CLG has therefore commissioned consultants to look at the costs and benefits of potential options to address the fire and community safety needs of areas of new build housing. As part of this we will revisit the work of the BRE, to which noble Lords have referred.

There is no suggestion that by carrying out this work the Government would regulate for the installation of sprinklers in domestic properties; rather, they are looking for approaches that are persuasive enough for planning communities at the local level to consider the value added by non-statutory fire safety protection measures such as sprinklers. This work is nearing completion and we shall share the outcomes of the research with fire stakeholders at an event on 19 January.

The third research project that my department has commissioned is looking at the cost-effectiveness of sprinklers in high-risk buildings. As part of this study, we wish to gain an understanding of the perceptions of building owners and occupiers as well as of designers involved in a building's construction or refurbishment. The key outcome of this work will be the development of a tool that building owners or responsible persons can use to establish the fire risk for their building, and what measures they can take to protect their building, their residents and their employees. The work should be complete by summer 2010.

The Government have done much to exploit the benefits of sprinklers in reducing fire deaths and injuries. We are continuing to explore opportunities to encourage, where appropriate and justified, the greater use and installation of sprinklers through non-regulatory routes. As I have said, the Government take fire safety issues very seriously indeed. We are implementing a significant programme of work to drive down further fire deaths and injuries.

To recap, I say that our fire safety strategies are succeeding. The latest fire statistics are improving; fire deaths in the home in England are at their lowest since the 1980s. The long-term trend is down. However, as I have said, one death is one too many, so we should never be complacent.

Some international comparisons and issues were raised. Within the past couple of years, the Governments of the United States of America, Japan, Belarus and South Korea have been knocking on our door to learn about our work and successes. However, we cannot and will not be complacent. Government and fire and rescue service personnel have shown tremendous commitment to the fire safety agenda. Our challenge is to maintain the momentum. There is clearly a place for regulation. We have and will use it, but only where it is shown to be reasonable and proportionate to do so. I think my noble friend will understand from that our reservations about the precise focus of his Bill, but I believe that we have common cause in what we are seeking to achieve.

11.02 am

Lord Harrison: My Lords, I thank all noble Lords who have contributed to this debate, which has been sprinkled throughout with sense and sensibility and good humour. I thank all colleagues on the government Benches for adding to and adumbrating the speech that I had the privilege to make. I thank the noble Baroness, Lady Hamwee, for her contribution concerning the London fire services. I assure the noble Earl, Lord Cathcart, that I did not take it as a dampener on proceedings that he should put the proper questions. I sensed a sprinkling of scepticism from my noble friend on the Front Bench, but I was encouraged by all the research that he has asked to be looked into and developed over the coming years. I hope that he will check the BRE report again, as he said that he would, just to get assurance.

Bill read a second time and committed to a Committee of the Whole House.

Powers of Entry etc. Bill [HL]

Second Reading

11.04 am

Moved By ***Lord Selsdon***

That the Bill be read a second time.

Lord Selsdon: My Lords, I am in a difficult position because I spent a large part of my life in the construction industry and fire protection and I wonder whether I should not perhaps have spoken on the Bill of the noble Lord, Lord Harrison, because I shall be a little repetitive. The difficulty that I face is that my family spent a large part of their life in public service; I have never been in public service, only in private service, which is perhaps why we have to have a Private Member's Bill when the public sector has failed.

There is a bit of history here. The wonderful thing about your Lordships' House is that many people will not have heard what I said before—some, such as the noble Lord, Lord Campbell-Savours, will have—and I may therefore be repetitive. I have embarked on 35-year journey. My family has a motto: *Deus providebit*—God will provide, although he has sometimes not been terribly helpful on political issues; but we also had a saying that there were only three things that you could do. First, you could advise people, in which case you joined the professions, although I have to say that the professions today spend more time trying to stop people doing things than protecting them. Secondly, you could take the credit for them that did it, in which case you became a politician, but politicians have become more and more impossible. The third option was, if you were a man, you did it yourself, which is what I have tried to do today and in the years past.

It stems back to when I was an employee of the Midland Bank and we were concerned about the privacy of our clients. People were going into houses, seizing documents and copying things. What were the rights and what was the law? The banking rules were clear: you had to respect and know your client, and you had a duty a care towards them. We employed only 33,000 people in those days, which was the same, I think, as the British Navy, but we were concerned. Since I happened to be a Lord—the only one in the whole bank, I think—they turned to me and said, "You should do something about this politically". Of course, I could not, but we sat down and worked out what the problem was. Effectively, it was that there were numerous powers of entry which nobody knew about. We therefore sat down to prepare a list. We then thought that the best thing to do, because Ministers did not like to respond to private sector things, was to talk to the House of Commons.

Over a period of many months in 1975 and 1976, Questions were tabled in the House of Commons to ask the Government what their powers of entry were. Nobody seemed to know. The most helpful Minister, as the noble Baroness, Lady Hamwee, may well have expected, was Dame Shirley Williams, who then left the Labour Party and joined the Social Democratic Party. However, there were no answers, so we went on asking questions. When I came here, I went to see the Chief Whip and asked, "What do I do?". He said, "My dear chap, you ask a question". So I asked a question and got what was not deemed to be a satisfactory answer.

Over a long, long period of time, I asked more and more questions. What were the powers of entry? One of my more recent questions was to ask the noble Lord, Lord West, what powers of entry Ministers have. The answer was that Ministers do not have powers of entry. As I got used to it, I would write the answer that I expected government to give and then asked them other questions.

I consulted again on what I should do. The powers that be said, "Send them a Bill". I thought that I was to ask the Government for money. I had not fully understood that a Bill can have a great advantage, because it is an instrument that is printed and you can debate and discuss it. I therefore introduced a Bill in 2006. I just introduced it; I did not do any more. I then introduced a Bill in 2007, which went through the House. Then everybody said, "Well, in order to get it any further, you must get someone in the House of Commons to take it up".

Powers of entry are to me a public and a government issue and not necessarily a private issue, but they affect private individuals. I therefore introduced another Bill in 2008 which was exactly the same as that of 2007. All that the Bills have done is to say that you should not allow an official of government or of any body to enter somebody's property and seize or search without permission or without a court order. The difficulty was that nobody knew how many permissions or powers of entry there were. We went on asking questions and could not get the answer, and then finally I was introduced to Professor Richard Stone, who wrote the authoritative book on this. When I asked questions to Ministers who were helpful, I told them that they could get the answer from the Library from Richard Stone's book, and some did. But the answers were totally unacceptable, because the problem was that the Government did not know what their powers of entry were. In the schedule to the Bill we have put in 200 or 300, but nobody could determine it and there was not a single ministry or department that knew its powers. Worse than that, the private sector—the householder or homeowner—had no idea either.

So here you have a situation in one of the best democracies in the world, where the ministries of government, officials and others, have no idea what their powers are and how they should implement them. As a result, on one side you have legislation that gives powers to the state, but the state does not know what those powers are; on the other hand, you have the private individual, with his home and household, who has no idea what the powers are. Also, he has no idea who is who. As industries have been privatised, for example, so the gasman is now employed by a private sector company and many organisations have been merged and become more and more complex. With every new piece of legislation, there tends to be another power of entry, and as we move into the electronic age, the householder or private individual feels more and more insecure. He fears the knock on the door. Before, he—or she—knew that it would be

the milkman. You knew the postman's knock. You went to the door because you wanted the milk, or the bread, or your letters; now there is a certain fear that the letters or documents that come in may bring bad news, ask you to do something or frighten you, or that it may be another bill. So the householder's home may be his castle, but he has no idea who comes in and fails to identify themselves. I am not saying that there is much fraud, but it would be helpful if all those who had powers of entry adopted a code of conduct, which simply means that they should identify who they are, say why they are there and in a friendly manner proceed to things without knocking the door down. But doors have been beaten down, and your Lordships will have seen it in the press again and again.

When I introduced the last Bill, I went to see the noble Lord, Lord West, who was very helpful but did not really want to do anything—or his further authorities did not want to do anything. So we thought that we should quietly let No. 10 know that there was a Bill. A few days later, on 25 October, the Prime Minister got up and made a "liberty" speech, as it was called, about the freedom of the individual and the need to deal with these powers of entry. That started the movement. The noble Lord, Lord West, said that we ought to meet, because I had tabled my Bill as an amendment to a regulatory reform Bill—at the end, just to make life difficult. I was advised that this might hold other things up. So the whole Bill became an amendment to another Bill, but I agreed to withdraw it, if we consulted.

Being a Scot, I always like Scottish names. My family name is Thomson, without the "p". I was then introduced to Mr Brown, who is without an "e" and is therefore Scottish. Everyone needs a Mr Brown; Queen Victoria had a very helpful Mr Brown. I found that after a discussion with Mr Brown and his colleagues—and I cannot identify in which department that was—we had a surprising community of interests. We then set up together a public sector Bill team, as we called it, with Liberty, the Centre for Policy Studies and Mr Brown and his team and bothered and set out with Richard Stone to work out the pieces of legislation and regulations that gave powers, and to whom. I asked a few more questions and, naturally, the official Civil Service did not want to be bothered with too many questions. However, quietly, over the summer period, in quite a remarkable way, Mr Brown and his team produced a schedule which is terrifying but extraordinarily impressive. I cannot display big documents in your Lordships' House, as it is against the rules, although I could have held up a single piece of paper. But here we have identified 700 or 800 Acts of Parliament and secondary legislation, to a total of somewhere around 1,200 powers of entry, which no one else knows about and no government department knows about.

So what do we do? My hope is that this Bill now moves to Committee and that at that stage we can amend the schedule of Acts in it, because it is wrong—it will always be wrong from time to time. To go with that, we have the code of conduct. One situation that has been made is that there should be a code of practice for all Bills in future. But the difficulty lies in communicating this to the general public. Logically, it would be done by a website or by email, but most people do not know how to do that; householders cannot find the information and get frightened by it. So we need something simpler. I thought that we should co-operate from this House—and I believe that any legislation that affects the freedom or rights of the individual should if possible start in this House in the first place and then go to the Commons, rather than the other way round. That would be one of my objectives. We got in touch with local government authorities, because every power of entry will be exercised at a property in a local authority area, and local authorities do not know their own powers of entry. So we will see whether in the course of next week we can set up some form of website, linked to the Home Office website, which will start to promote and encourage an understanding of what these powers of entry are. There are many fun ones, which people have forgotten about, and there will be many more to come. A terrifying thought is that new legislation is coming in. I was just handed a Bill about hatching of eggs. The powers of entry in that Act are four or five pages long.

Somehow, we need to simplify everything—and it is a simple matter. All powers of entry should be registered and understood, and anyone who exercises them should enter only at a certain time of day and not at weekends and not in the middle of the night, and should not knock the door down, should be courteous and friendly and have a sign that says who he is—and in big letters, because some people will not have their glasses on when they go to the front door and will be frightened about who they are letting in.

My proposal is to take these issues further—and I hope that we will be able to debate this here today. I would be grateful for your Lordships' help, because at a local level this becomes particularly important and within regions there are many differences. But I have one question for the Minister. Under the dangerous Weeds Act, is cannabis, the weed of wisdom, classed as a dangerous weed? There are other pieces of legislation that you can go through—but I have said enough. I hope that your Lordships will understand that I am trying to seek good will and encourage the Government, so that when we introduce a new Bill at the end of this Session or the beginning of the next, it will work. The plan is that this Bill will go to Committee and we will put some amendments in; it will then go to Report and pass just a week before the election. Then we will introduce a new Bill, one hopes with government support—or the Government will permit a new Bill, or set up some form of pre-legislative scrutiny committee in the House to get all these things under way. I beg to move.

11.18 am

Lord Scott of Foscote: My Lords, I support the noble Lord on this Bill. He is to be applauded for drawing attention to the huge proliferation of these powers, insidiously to some extent, because these extensions of powers of officialdom to enter private premises are not widely known and are very difficult to find if one wants to identify the particular power being exercised. The vice of these powers is not only that they are difficult to find and identify but that far

[Lord Scott of Foscote]
too many are exercisable, not only without the consent of the occupier or owner of the premises in question, but also without the authority of a warrant. We are all familiar with warrants for the police and others to enter and search premises, look at documents and remove objects and so forth when necessary for their function, be that the prevention of crime or some regulatory function, but the notion that these powers can be exercised without consent and without a warrant—without, therefore, any judicial control—needs special and careful justification.

I think it would be accepted that, in circumstances of imminent danger to life or property, there must always be rights for appropriate people, be they the police, the fire services or whoever, to enter the premises and deal with the immediate situation. Subject to that, though, there ought to be acceptance of a general overarching principle that the right of the Executive, of persons appointed by the Executive, of persons appointed by some quango or of an individual exercising some statutory authority to enter premises, to search the premises, to remove documents and do all the other various things that I have referred to should not be tolerated unless done either with the consent of the owner or occupier or under the authority of an order of the court—a warrant.

There are many primary Acts that provide, in entirely unexceptionable terms, for powers of entry of the sort that are acceptable. A recent example—indeed, it is not yet an Act—is the Cluster Munitions (Prohibition) Bill, which was before this House recently. On Wednesday 6 January, just over a week ago, the House approved the enforcement provisions contained in that Bill. Those provisions provide powers of entry into the premises of arms dealers and munitions manufacturers for the purpose of enforcing the ban against the manufacturer of, or dealer in, cluster bombs. The provisions make it clear that the powers of entry are not exercisable except with the consent of the owner or occupier of the premises—the arms dealer or munitions manufacturer, as the case may be—or under the authority of a warrant granted by a court. The circumstances in which the warrant can be granted are spelt out. The case has to be made for the need to enter and search. That, in my respectful opinion, is as it should be.

It would be tedious to research the whole area of primary legislation that gives similar powers in entirely unexceptionable terms, but there are Acts and innumerable statutory instruments on the statute book that grant powers of entry, search and so forth, some of which grant those powers without requiring any consent or the production of any warrant from a court. The Medicines Act 1968 is an example that I happened to look at in connection with a statutory instrument that I shall mention in a moment and which came in front of the Merits Committee, to which I had the privilege of being appointed in November. I am told that there is also a veterinary Act that has similar provisions. The Medicines Act provides a power to inspectors—to regulators—to enter any premises, including domestic premises, without consent or a warrant, but then goes on to provide for circumstances in which a warrant can be applied for. This is a formula—repeated, I think, in the statutory instrument on eggs that the noble Lord, Lord Selsdon, referred to, and in four or five statutory instruments that have come before the Select Committee in the short time that I have been a member of it—that provides for a warrant to be applied for in circumstances that are comprehensive of any need to enter. These include cases where there has been refusal or there is likely to be refusal by the owner to permit the entry, cases where there is some great urgency that does not permit the risk of a refusal to be taken and cases in which the premises are unoccupied. Four situations were set out; there is one other that slips my memory for the moment. The circumstances are as comprehensive as one could expect. Why, therefore, given the comprehensive spread of the ability of the authorised person to go to the court and get a warrant, which can be done very quickly, is it necessary also to give a power to enter without consent and without a warrant?

Moreover, it is a feature of the Acts and statutory instruments that contain provisions of this sort that a refusal to allow entry is a criminal offence. One could potentially have a situation in which the official knocks on the door and says, "I have a right to enter and search your premises"—let us suppose it is a dwelling house—and the homeowner, surprised, says, "Well, may I see your warrant?". The official says, "I haven't got a warrant and I don't need one", so the homeowner says, "That's not good enough", and slams the door. That is a criminal offence. The authorised person can go off to obtain a warrant, come back and go in by force if necessary, but why should it be a criminal offence for a homeowner to refuse entry to someone who does not have court authorisation to enter? No doubt in the vast majority of cases, when regulators get in touch with the owner or occupier of the premises that they desire to enter, the owner will say, "Fine, come and look", but that would be a case of consent—an acceptable condition for entry, I would suppose.

The vice that needs to be addressed, and which the noble Lord's Bill seeks to address, is the proliferation of powers of entry that require neither consent nor a warrant. The noble Lord referred to the trite saying that a man's home is his castle. The proliferation of these powers offends that principle. There may be private premises where these powers of entry without consent or warrant do not matter so much. I suppose that open land, agricultural land, moorland and woodland would fall into that category. It might be arguable that it would not matter so much if there were a right to enter commercial buildings without consent. I would not accept that argument, but it might be an argument that could be put. But to allow this power to insist on entry to domestic dwellings without consent and without a warrant under the threat of criminality if there is a refusal is something else again. This must be addressed, and the noble Lord's Bill would address it.

For those reasons, I strongly support the intentions behind the Bill. I have read it carefully. There are a number of drafting difficulties about it at present, but they can be addressed later. The Bill deserves a Second Reading.

11.28 am

Lord Marlesford: My Lords, the whole nation owes a great debt of gratitude to my noble friend Lord Selsdon for introducing this important Bill. He is to be congratulated on all the hard work that he has done with the help of Home Office officials in preparing the Bill and, for the first time, revealing to the nation the gigantic number of powers of entry contained in some 1,200 statutes, comprising both primary and secondary legislation.

I have, in the past, been a severe critic of the Home Office for its constipated and unwelcoming approach to new ideas from outside its own magic circle, so it gives me particular pleasure on this occasion to be able to offer it a bouquet on its positive approach to this vital constitutional subject. Indeed, if it continues in this vein it may indicate a major cultural revolution, which should be welcomed by both libertarians and by those for whom efficient but limited government is a priority. I aspire to be a member of both of those groups.

A preliminary list is in the schedule but, in addition to mere lists of the primary and secondary legislation containing the powers, my noble friend has shown me the very detailed description of the exact powers and conditions in each of the statutes. The purpose of the Bill goes to the heart of our parliamentary democracy and, indeed, echoes the evolution of the struggle for the protection of rights of citizens, which goes right back to 1215. Magna Carta itself has the following provision:

> "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land".

Parliament has let down the spirit of Magna Carta in allowing the law of the land to become, in far too many cases, oppressive and disproportionate in its execution.

The Bill also echoes the development of habeas corpus, which goes back to the 17th century, although cases involving habeas corpus are known in English law back to 1214. Perhaps I might mention the amicus curiae brief that the noble and learned Lord, Lord Goldsmith, along with 252 members—I am one of those amici—of both Houses of the United Kingdom Parliament, together with the Scottish Parliament, the European Parliament and the Welsh Assembly, submitted this month to the Supreme Court of the United States in the matter of certain Uighur detainees in Guantanamo. I strongly recommend that those who are interested in the evolution of our ancient freedoms should read the brilliantly written and detailed descriptions by the noble and learned Lord, Lord Goldsmith, of the struggles against both monarchs and over-mighty Executives to retain habeas corpus.

My noble friend's Bill seeks to regulate the use of powers of entry to make them less overbearing, disproportionate and intrusive than they have become. No one denies that, in a well-regulated and democratic society, the servants of the state need many powers to oversee, administer and enforce the laws of the land. Unfortunately, as life grows evermore complicated, more and more legislation is churned out by the Executive. Much of it is ill-considered and ill-drafted and it has, in recent years, relied almost entirely—given the deplorable routine use of the guillotine in another place—on your Lordships' House for scrutiny and improvement. What I find wholly unacceptable is the way in which powers of entry can all too often be administered without the authority of a magistrate. The noble and learned Lord, Lord Scott, who has just spoken, made that point extremely clear. Those powers are thus fodder for every officious official who likes to display his supremacy. This applies in particular to local government and, of course, to the multitude of regulating quangos.

What an irony it is that the police generally require a warrant to enter private premises, yet in the mass of the statutes listed in this Bill the use of a warrant is not generally required. Of course, we recognise that there are many important occasions— some of them dramatic, such as the prevention of terrorism or serious organised crime, and some routine, such as the inspection of premises under standards rules—where unannounced entry is necessary. For those purposes a warrant may or may not be required as well. What a paradox it is, however, that in recent years the most careful arrangements have been made to lay down detailed rules for the supervision of the interception of communications, yet Parliament has legislated in a myriad of ways to allow entry to premises without the slightest attempt to ensure that the powers are appropriately and proportionately used. It is clear that in the great majority of cases all the information required can be obtained by co-operation and consent but where compulsory entry is needed, it should—with the exceptions that I have already mentioned—be subject to the warrant of a magistrate.

Your Lordships might remember that on 15 June last year this House took a small but, I believe, important step in reversing the previous trend. At the Report stage of the Political Parties and Elections Bill, we inserted an amendment with support from all sides of the House, by a vote of 152 to 105, to require that the untrammelled powers of entry which had been put into the Bill should be subject to a magistrate's warrant. The Government subsequently accepted that amendment and I am grateful to the noble Lord, Lord Bach, for doing so; it is now in the Act. I am intending to table an amendment in Committee on this Bill to require that all future legislation, primary or secondary, which includes powers of entry should have the use of such powers spelt out along the lines of this Bill, particularly to ensure that, with clearly defined exceptions, the exercise of all such powers for entry without consent would require a magistrate's warrant.

I hope that the Government will accept this Bill and build upon it, so that all future legislation with powers of entry would be much more tightly drawn. I should like to see a publicity campaign to encourage members of the public who feel that they have been subjected to disproportionate or abusive powers of entry to report it, perhaps through the Parliamentary Ombudsman, so that Parliament can take necessary steps to control the Executive. That, after all, is one of our fundamental mandates on behalf of the people.

[LORD MARLESFORD]

I am very sorry that the noble Lord, Lord West, is not able to be here to respond on behalf of the Government, because I am aware that he has done much to encourage and assist my noble friend in preparing the Bill. The noble Lord, Lord West, is one of the few successful GOATs who have joined the Government Front Bench and I would be happy to see him remain there when there is a change of government. I believe that, however little it is initially noticed in the wide world, we will today be taking an important step to reinforce the rights of our citizens for which our forefathers fought so hard.

11.38 am

Lord Moynihan: My Lords, I support the Bill and congratulate my noble friend on introducing his measure. This subject is particularly important in the context of the forthcoming Olympic Games to be held in London in 2012, and in that context I declare my interests as chairman of the British Olympic Association, as a director of the London organising committee—the body established by the Mayor and the BOA to oversee the delivery of the Games—and as a member of the Olympic board which has oversight of the Olympic project.

The relevance of this Bill to the Games was made clear by the president of the International Olympic Committee, Jacques Rogge, when he stated on 29 October last year:

> "Our view is very simple: athletes competing in the UK must submit to UK law. There is a rule that guarantees the rights of citizens and residents and that will rule the issue of searching rooms",

at the Olympic Games in London. I wish that were the case. What concerns President Rogge is the greatest challenge to competitive sport; the intent of a few—a very few—athletes, coaches and suppliers of banned drugs and performance-enhancing substances to give a competitive advantage through cheating and deception. I intend today to use the example of doping in sport, and the importance of the provision of legal powers to search premises with a warrant, as a case in point to underline the importance of the Bill.

President Jacques Rogge, a medical practitioner himself, has made tackling drug abuse in sport a priority for the International Olympic Committee. His laudable commitment, supported by Professor Arne Ljungqvist, has been supported by the World Anti-Doping Agency, which, under the current direction of its president, John Fahey, has sought to become a friend of sport in seeking to establish a global programme of measures to tackle cheating through the use of performance-enhancing drugs.

In this country, I have sought for many years to persuade the Government to establish an independent anti-doping agency and I have spoken to that effect in your Lordships' House on many occasions. I congratulate Ministers, particularly those in the Home Office, who have worked to put in place the independent anti-doping agency, UKAD, members of which are now working to ensure that it is supported in its work with the relevant powers of entry, authority, co-operation with law enforcement agencies and financial support to tackle the supply chain and the importation of banned substances under the WADA Code. If successful, we can, through proactive work, ensure that the United Kingdom never becomes a home for a BALCO, the genesis of Operation Puerto or a ready base for those who seek to make a living through the promulgation and use of banned performance-enhancing substances in sport.

In this context, I congratulate Andy Parkinson, the chief executive, on his leadership and direction of UKAD. No such agency can succeed without the chief executive earning the respect of his colleagues and peer group. He has achieved that already. With people of this quality in charge, there is real hope for those who seek a proportionate yet effective programme of action against doping in sport. Without such action, we will have competition between chemists' laboratories, not between top-level athletes. That would endanger the health of young athletes and wreck the principles on which fair competition in sport is built.

Since I introduced the first inquiry as Minister for Sport back in September 1987, which produced a report entitled *The Misuse of Drugs in Sport*, I have held the belief that we need primary legislation to address a number of areas in this field. In recent months, I have been working on a draft Private Member's Bill to introduce the legislation required to enact relevant measures, which will cover tackling the supply chain, sharing information and—directly relevant to this Bill—establishing the legal framework for entering premises with a search warrant to support the work of the IOC, WADA and UKAD. Today's Bill may be the vehicle to address the key issue raised by the president of the International Olympic Committee. Following close consideration of the debate today, and subject to the timing of the Bill in Committee, it may be possible—I hope that it will—through amendment to provide the legal framework for the relevant agencies to gain entry with a search warrant into premises during the London Olympic Games in 2012 and to provide the legal framework necessary to take action against those who are in breach of the WADA Code.

When this subject was first raised, the public debate went to the heart of the Bill. On the one hand, it remains my firm view that any powers to enter premises for the purpose I am outlining must be with a search warrant and that, in turn, the police must have sufficient cause to believe that an incident has been committed which is sufficiently persuasive for a magistrate or a court to provide such a search warrant. On the other hand, there are those who seek legal powers to allow the police to undertake random checks without a warrant, a subject recently aired by the British Athletes Commission. For the avoidance of doubt, random checks for this purpose would be wholly unacceptable to me, as I am sure they would be to the movers of this Bill, who emphasise the importance of obtaining search warrants and the pursuance of the due process of law.

However, I regret to inform the House that, at present, there are no powers available to the police which would allow them—either during, before or after the Olympic Games in London, 2012—to search premises for evidence that, say, the banned practice of "blood doping" in sport was taking place; thus my call for primary legislation in this area.

Much work is being done by the CPS, the British Olympic Association, LOCOG and government officials on this subject. I commend their commitment and detailed review of these issues. Our consideration of this subject in Parliament should seek to continue to work in parallel with the cross-government working group and with the results of full engagement with the law enforcement agencies. We need to see where the gaps are. We need to consider how to tackle breaches of the WADA Code. We need to act against blood doping and the increasing prevalence of gene doping. We need to avoid legislation being rushed through Parliament as a result of a doping scandal in sport.

London 2012 is the driver. We need to ensure that we do not give the police draconian powers, but seek the level of scrutiny, process and checks and balances required before searching premises with a warrant. We have the opportunity to give the Olympic world considered legislation that embraces best practice worldwide in order to tackle the challenges faced by the growing sophistication of those engaged in doping in sport.

To provide the House with one key example, I will focus on where there is evidence of blood doping, or where it is alleged, and, in so doing, seek to reflect some of the invaluable work under way by members of the cross-government working group, which I have mentioned. Blood doping is topical. It is a matter of concern both to the IOC and, in particular, to winter sports. It was a major issue in the Turin Winter Olympic Games four years ago and is high on the agenda for the Vancouver Winter Olympic Games which begin next month.

There are those who believe the Fraud Act 2006 is the best way of tackling the practice of blood doping in sport. I have serious reservations about that proposition. Any case referred to the CPS by the police for consideration of the question of prosecution must be reviewed in line with the test set out in the code for Crown prosecutors. This test has two stages. First, the CPS must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. This means that a jury or a bench of magistrates or a judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged charge. If the case does not pass the first stage—the evidential stage based on the strength of the evidence—it must not go ahead, no matter how important or serious it may be.

The advice offered to me is that an athlete found in possession of blood and/or blood doping paraphernalia could potentially be guilty of an offence of possession of an article for use in the course of, or in connection with, fraud, contrary to Section 6 of the Fraud Act 2006. An athlete who injects himself with blood prior to an event could be guilty of an offence of attempted fraud contrary to Section 1 of the Criminal Attempts Act 1981. An athlete who injects himself with blood prior to an event in which he then competes could be guilty of an offence or fraud by false representation, contrary to Section 2 of the Fraud Act 2006.

However, as lawyers would rightly point out to me, the Fraud Act 2006 was not envisaged to cover cheating in sporting competitions. As one legal adviser put it,

"there is a sense we would be shoehorning the offence into situations for which it was never intended".

The courts would be resistant to such an approach and I am certain that supporters of this Bill would share that view as a matter of principle—particularly since the current Government's view, which I share, is that criminalising athletes for doping is a disproportionate response to a sporting problem. However, I do believe in criminalising the supply chain.

Moreover, it would be questionable whether the police would be able to obtain a search warrant from a JP. The general rule that underpins the Bill is that a justice of the peace, under Section 8 of the Police and Criminal Evidence Act, has power to issue a warrant authorising a constable to enter and search premises where he is satisfied that there are reasonable grounds for believing that an indictable offence has been committed and there is material on the premises which is likely to be of substantial value to the investigation of the offence. Although fraud is an indictable offence, experts are of the view that the offence probably only takes place when the athlete competes in the event, so no offence will have been committed at the time when the premises are searched. That advice goes further when considering the Human Tissue Act 2004 and the Human Tissue (Quality and Safety for Human Application) Regulations 2007, which apply to blood and "blood components" and are thus unlikely to apply in the context of the Olympic Games.

I contend that, on this evidence, there is no likelihood under the current law that an enforcement officer would obtain a search warrant to enter Olympic premises in 2012. In other words, English law as it stands, and as applied to the Olympic Games in London, does not offer a solution which would allow anti-doping authorities to obtain a warrant to enter and search a room in the Olympic village where a breach of the WADA code is reasonably suspected; or, just as important, if not more so, premises nearby or elsewhere in England where it is suspected that blood doping activity is taking place.

In my opinion, a search warrant should be issued by the police only for the purpose of investigating a suspected criminal offence for which the CPS would have to be willing to prosecute, and not for the purpose of investigating a breach of sports rules which govern athletes. Being able to obtain a warrant to enter and search the relevant premises is the only way successfully to detect and investigate a potential doping violation and prevent the cheats from reaching the starting line. Today, no law exists in the country to provide confidence that any such warrant would be issued. Without such a law, there is the possibility of using Olympic entry forms to obtain the consent of athletes. However, there are many in your Lordships' House who would have reservations that, without a legal basis, any such request could well fall foul of the potential obligations of the European Convention on Human Rights, and in particular Article 8—the right to respect for a person's private and family life, his home and his correspondence.

In conclusion, the position is clear: the timing of implementing the PACE powers is far too long to address the problems both of blood doping and other contraventions of the WADA Code, at and before the

[Lord Moynihan]
London Games. There are many anti-doping offences in sport which are not indictable under the Misuse of Drugs Act and the Medicines Act. No possibility exists to use warrants to search relevant premises in that context—in particular, premises under the control of a third party. This leads me to a clear recommendation to the Government. It is time to legislate and to bring forward primary legislation to ensure that we lead the world in anti-doping in sport and provide the legislative framework to meet the IOC president's request that search powers, in line with the Bill, are available in the fight against doping and on the statute book in time for London 2012.

As a supporter of the Bill, I will now seek advice from experts in your Lordships' House as to whether it can be amended to cover the objectives I have set out today. I very much hope so.

11.51 am

Lord Campbell-Savours: My Lords, I want only briefly to intervene, because it would be wrong if someone from the Labour Benches were not to rise to indicate that many of us support the principles enshrined in this legislation. I personally congratulate the noble Lord, Lord Selsdon, on a remarkable campaign. I have been in this institution in one House or the other for nearly 30 years, and rarely have I seen a Member of either House go so diligently about seeking to acquire all the information necessary to secure a substantial piece of legislation. It is substantial—if local authorities, which the noble Lord is calling upon to act with him and others to ensure that the public know what their rights are, were to respond in the way that he suggests, that would have a major effect on the rights of citizens. I hope that they use the local authorities and that those authorities respond in the way that he suggests.

The noble Lord has kept me and others informed throughout his campaign. What I found in the schedule was astonishing. I do not know if everyone here or students outside, who obviously are not here to see what happens in the Chamber, have read it. They should consider the list of Acts which have within them the powers that are the subject of this Bill. It is a long list. The scale of the powers available to the authorities and the amount of pieces of legislation must have come to a surprise to many Members of both Houses.

I congratulate the noble Lord. This proposed legislation is consolidating in the sense that it sets out all the legislative areas. I hope that the Bill goes into Committee and that, ultimately, a Government are prepared to give the Bill the time necessary for its safe passage through both Houses.

11.54 am

Baroness Hamwee: My Lords, I congratulate the noble Lord, Lord Selsdon, on his tenacity in pursuing this issue. As in previous Bills, he used the term "tenacity" when referring to the sponsor of the Bill that was debated immediately before his. However, that term applies to him today. From these Benches, I very much support the premise—no pun is intended—on which this Bill is based, for the reasons explained by the noble and learned Lord, which I shall not repeat at length.

The balance of powers of the state against those of the individual—perhaps, in this context, one should call the individual the citizen—needs care. The increase in the powers of the Executive, from a neutral position, against those of the citizen needs justification in every case. What we are talking about is, indeed, an invasion of privacy—one which is less publicised than personal invasions of privacy which we debate in the context of DNA, ID cards and so on. Nevertheless, this is extremely important.

I, too, was surprised at the length of the schedule, but I wondered whether it was up to date. My impression, over the term of the current Government, is that there have been far more introductions of the sorts of powers which we all find offensive than appear in this schedule. Rather like the noble Lord, Lord Campbell-Savours, I wondered whether this was a subject on which one should encourage PhD or MA work to bring this all together and to check it out.

I am sorry to insert a note, not of discord, but of caution. This issue requires a more complex, detailed, and perhaps more subtle approach than is in the Bill. Consideration would have to be Act by Act and statutory instrument by statutory instrument, starting from the same basic point that a power needs to be justified—looking at the particular requirements in each case and, indeed, whether the power is required at all. One would hope that one might, through such an exercise, get rid of many of these powers, and certainly co-ordinate and standardise them.

Perhaps the noble Lord in his reply can tell me how much consultation there has been with each of the agencies whose powers are in contention in the Bill. I remember, during consideration of legislation a few years ago, that we listened to a lot of self-justification by some of the agencies. I was not always persuaded by it, but there has to be that sort of exercise.

Like the noble and learned Lord, I feel that there are a number of drafting points, most of which could be considered at a later stage. I shall mention just two. The first is how one defines "danger" as set out in this context. The "Limitations on powers of entry" would allow for entry,

"necessary to avert danger to life or property".

That could cover a huge spectrum of danger, including the amount of possible damage, as well as a time spectrum—immediate or long-term danger—and the degree of danger. Are we talking about an emergency, for instance? That may be what is implicit.

My second and more important point at this stage in the Bill's proceedings is that in Clause 5(2) each requirement in each paragraph must be met. It cannot be the case that there would have to be both a warrant and the agreement of,

"the person having control of the premises".

That is obviously inconsistent. If there is agreement, there would be no need for a warrant. Again, perhaps the noble Lord can confirm either that I have misread the drafting or that this is something he can take up.

As I said, I do not want my caution to reduce the concern that I expressed on behalf of these Benches about the excessive powers of the Executive, which have grown in such an extraordinary way, as illustrated by the schedule to the Bill, whether or not it is complete. The noble Lord has demonstrated his tenaciousness. I suspect that the Bill is not destined for a long life in this Parliament but the subject certainly needs very careful attention.

Noon

Lord Skelmersdale: My Lords, this has been a very interesting debate, kicked off by the long-running attack of my noble friend Lord Selsdon. Listening to his opening speech, I recalled the final lines of a Noel Coward song:

"say 'thank God', we've got no cause to complain, Alice is at it again!".

Clearly, when I say that, I mean it in no disparaging way. He is absolutely right in pursuing a matter which concerns every man, woman and child in this country, as my noble friend Lord Marlesford almost said. Powers of entry have become so widespread and so draconian over this Government's time in office that there has arisen a considerable amount of unease, to put it mildly, both in and outside Parliament. The noble Baroness, Lady Hamwee, remarked on that.

This unease was reflected in the debate on a Motion tabled by my noble friend Lord Onslow, which called on the Government to withdraw a statutory instrument laid under the Proceeds of Crime Act. Although that order was for a specific purpose—namely, the expansion of powers of entry to personnel of organisations who had not had them previously—it is germane on a more general point. The Merits of Statutory Instruments Committee produced a report on this instrument. I am not sure whether the noble and learned Lord, Lord Scott, was able to sign up to it or whether he was a member of the committee at that time. He shakes his head, so he was not; none the less, from his speech today, I am sure that he would have done.

An enormous number of public sector organisations now have employees who are accorded such powers. One of my regrets about the Bill is that these organisations are not listed in a schedule, to go with the long list of legislative authority which the current schedule comprises. The Bill would, I believe, have much more force and resonate more with the public if it contained that as well. None the less, like the noble Lord, Lord Campbell-Savours, I congratulate my noble friend on his diligence: it must have taken hours and hours of work. I know from bitter experience how difficult it is for anyone but a Minister to get such matters right, so I ask the Minister whether the schedule is complete or whether my noble friend has missed one or two Acts or statutory instruments.

To pick a couple of the powers at random, the Regulation of Investigatory Powers Act has been used in some very odd ways—Bournemouth and Poole Council harassing a mother for trying to send her child to a popular school in her catchment area, or Croydon Council trying to catch a person pruning a tree in the borough. The Terrorism Act was used to arrest a tourist photographing St Paul's Cathedral. These examples show the disproportionate way in which legislation can be, and sometimes is, used.

I make these points to put the Bill into context because it is not, regretfully, about why these intrusive powers are used but how. Clause 5 makes it clear that a person authorised by any Act or statutory instrument in the schedule should not exercise power off his own bat but only after application to a judge or magistrate, in the same way as applies to a search warrant. The only exception to this is when there is a danger to life or property. Examples might be when there is, or is likely to be, a gas explosion or perhaps when the sound of shooting is heard inside a house. Either of these scenarios might occur at any time of the day or night, so I find it somewhat curious that Clause 6 is so definitive regarding the timing; unless the court order says something different. To go back to my example of an imminent gas explosion, by the time the authorised person has succeeded in finding a magistrate on a Sunday or in the middle of the night, it might very well be too late. I should be grateful therefore if, when he comes to wind up, my noble friend would explain his thinking behind Clause 6.

However, these are quibbles which can easily be explored in Committee. What cannot be dealt with then are the astonishing number of organisations that have powers of entry. My noble friend Lord Selsdon reminded us that, shortly after inheriting his position, the Prime Minister was concerned enough to institute a review into the need for additional protections and rights for the citizen. The key objectives of that review were, first, to produce a comprehensive list of powers of entry, inspection, search and seizure to provide clarity for the police and investigating agencies and, more importantly, for the public. So, although this Bill is not the complete answer, the Government are "on side" so far as concerns the reasons behind it.

I further understand that this review was attached to a review of the Police and Criminal Evidence Act and that it was included in a consultation paper. I am sure that the Minister will be able to tell us more about that. Given the Prime Minister's obvious desire for something to be done, I find it quite amazing that the review seems to have dropped into a black hole. It was due to have completed its final stage of consultation in the spring of last year. That is around nine months ago. By then, the intention, so the noble Lord, Lord West, told the House, was that proposals would be produced around powers of entry, especially for non-police agencies. I note the word "especially". So what has happened? As I said, I hope and expect that the Minister will tell us.

There is now a certain urgency about this. As we all know, under the Terrorism Act, officers can stop and search anyone in a designated area without having to show reasonable suspicion for doing so. This is covered in Section 44 of the Act. I accept that it is not an exact parallel but it is analogous to the thorny subject of powers of entry. I had the news on Wednesday that the European Court of Human Rights said in a judgment that that legislation breached the right of privacy in a case involving two Britons who were subject to such a stop-and-search procedure outside an arms fare in 2003. Looking into the future to 2013 or 2014, could that not easily happen during the Olympic Games—an interest dear to the heart of my noble friend Lord

[LORD SKELMERSDALE]
Moynihan, whose speech I hope the Minister will take very seriously? Going back to the human rights breach, needless to say, the Home Office is to appeal.

The whole purport of my noble friend's Bill is that "we can't go on like this", and I commend him for bringing it forward yet again.

12.08 pm

Lord Brett: My Lords, I join others in congratulating the noble Lord, Lord Selsdon, on his commitment and persistence in this important area. The noble Baroness used the word "tenacity"; I say "persistence". Both are meant to be complimentary to the sterling efforts that the noble Lord has made on this issue. I appreciate that he has taken the time and effort to discuss his proposals with the Home Office. He used the term "community of interests". I think that we have a community of interests, which is why we shared with him how we consider we will meet our common objective of increasing public awareness—giving people the knowledge that they have the right to have—and raising public accountability.

As has been said, surprise has been expressed in many quarters that we have so many—more than 1,200—rights of entry. However, as noble Lords are aware, each individual power of entry is subject to parliamentary scrutiny. Any proposed new power of entry contained in a Bill or draft statutory instrument must complete the relevant parliamentary process. The noble and learned Lord, Lord Scott, referred to the cluster munitions legislation and the Medicines Act and said that citizens may be accosted and surprised when someone knocks on their door and demands entry when they do not know who the person is and when he has no warrant.

We believe that the present position should remain and that each power of entry—here I agree with the noble Baroness, Lady Hamwee—should be seen in the context of the offence or regulatory breach that it is intended to deal with. Adopting a uniform approach across all agencies would impact on their operational effectiveness and may prevent or reduce achieving the intended aim of the power. Setting down the operational processes in a single statute or laying out a common set of safeguards and protections would mean an inflexible approach. That does not make for good legislation because it would not recognise the wide range of offences or breaches that require a power of entry to ensure effective enforcement of the law.

There are problems and difficulties that need to be addressed and the community of interest is how we are seeking to do that. We are proposing that when any new or amending powers of entry are put before Parliament, the sponsoring department must comply with a code of practice that sets out consideration of what I believe meet many of the points raised. First, there is the justification for the powers, proportionality and impact of their use—a point made by the noble Baroness, Lady Hamwee. Secondly, there are the rights and safeguards of the owner or occupier of premises, which was referred to by the noble and learned Lord, Lord Scott. Thirdly, there is consideration of the alternatives of using entry powers, which was implicit in many of the contributions. The noble Lord, Lord Skelmersdale, made the valid point that it was not necessarily the powers of entry but how those powers are implemented by the persons authorised so to do. Fourthly, there are the important issues of guidance, training and the competency of those to whom powers would be granted. That is the best way of tackling the misuse of powers of entry. Fifthly, there is the issue of grievance, which was raised by the noble Lord, Lord Skelmersdale, when people think that they have been mistreated. Whether it is a question of rudeness, lack of information or people overstepping the mark, the answer is to have a complaints procedure. Sixthly, there are the reporting and scrutiny mechanisms of the powers, and seventhly, communications and public access to the data.

Those seven conditions in the code of practice would require that the information is submitted in template format to Parliament when draft legislation is put before it. The template would be published alongside the Bill or draft statutory instrument. The code of practice would also require draft guidance—a draft copy of the notice of powers and rights and details of training requirements to be published at the same time.

We would maintain the central record of entry powers that is currently on the Home Office website. Any new or repealed powers would be added to or deleted from that list. We will shortly be launching a public consultation on how to raise awareness of existing powers and how the public can access their rights and what their expectations should be.

Parliament has long recognised the need for powers of entry. The volume of legislation granting such powers illustrates the importance attached to ensuring that laws made by Parliament can be enforced effectively and appropriately. But we need to ensure that part of that effectiveness includes powers that meet operational enforcement requirements and which provide for adequate levels of accountability. We believe that our proposed approach will achieve these important aims. We very much welcome the input of the noble Lord, Lord Selsdon, and others, in the proposed consultation process. Our objective is to have the code of practice template and new communications processes in place by the end of this summer.

I turn now to some of the points that were made and on which I wish to provide information. The noble and learned, Lord Scott, raised the question of the need for warrants. One reason why we think that the Bill's approach might not be the best way forward is that the determination of the need for a warrant is dependent on the reason why entry is required. In a powerful speech that went way beyond my knowledge of medicine and sports law, the noble Lord, Lord Moynihan, made a contribution that I am advised by the noble Lord, Lord Skelmersdale, I should take seriously. I shall, and I will look at it in some detail. As the noble Lord outlined, the trafficking and supply of doping substances are covered by the Misuse of Drugs Act, and that is not a criminal offence at the moment. The introduction of the police into a matter of sporting rules rather than the being breached is difficult. The noble Lord referred to the new anti-doping body,

UKAD, and we shall look at the information sharing arrangements between law enforcement and UKAD before running headlong into any criminalisation. The noble Lord's contribution deserves a rather better response than that, so I shall look at it carefully in *Hansard* and let him have a more considered response.

The noble Baroness, Lady Hamwee, asked about consultation with other agencies. We are consulting all agencies because existing powers will have to be scrutinised as well as those that are being introduced as legislation comes before your Lordships' House. Departments will be asked to set out a timeline when they can provide the information on powers, rights, guidance, training, reporting and scrutiny, which are the questions being asked of all bodies. That scrutiny will then be publicly available through their website. It will be an opportunity for them to review whether they need to have powers of entry, or whether the powers that they already have need to be reduced or changed. That will give us an opportunity to move forward in the spirit of the noble Lord's proposed legislation.

There was a question on whether the schedule was up to date, so I can give noble Lords some statistics. At present, there are 1,208 powers contained in 295 statutes and 286 statutory instruments. To date, there are 1,230 powers contained in 311 statutes and 297 statutory instruments. Since 1997 Parliament has passed 79 Acts and 220 statutory instruments contain references to powers of entry. It is a rather longer process than just the period since this Government came to office. To suggest, as the noble Lord, Lord Skelmersdale, did, that this has been an issue of great significance in the past 12 years perhaps undermines the fact that it has gone on from 1983 onwards when the Mitchell review first identified it. I hope that in setting out the Government's position I have given heart to all those who are concerned about this issue.

Lord Campbell-Savours: Have my noble friend's officials in the department considered the views of the noble Lord, Lord Selsdon, on the role of local authorities in dealing with these matters?

Lord Brett: The noble Lord, Lord Selsdon, made laudatory remarks about the co-operation of Home Office officials on this. That will continue as the consultation continues. While not giving a definitive answer to my noble friend, I think that we are travelling in the same direction and, I hope, at the same pace.

Lord Skelmersdale: I was not saying that previous Governments were not to blame in having inserted various powers of entry into various Acts of Parliament. I was suggesting that the situation has become more serious in the past 12 years and that these powers of entry have come thicker and faster.

Lord Brett: I have given the statistics and people can make their own judgment. The more important issue is to look at how often some of these powers are used. Powers on the statute book are often not used and although there seems to be a plethora how often they have been used and their purposes are rather more relevant. The consultation that we are having with agencies and departments will help to reveal that and guide us into taking matters forward.

12.19 pm

Lord Selsdon: My Lords, I am extremely grateful to your Lordships for having given the Bill such a good reception.

My father spent his life motor-racing and died at a young age. He always said, "You must never run out of petrol and you mustn't ever get stuck in the mud or snow". So in view of the comments of the noble Baroness, Lady Hamwee, I thought I might take another five and a half hours of your Lordships' time. She asked whether there has been consultation. The work of the Home Office and other ministries has been pretty good. I would not normally, but I propose just to read the headings. Under each of the columns of the investigation which has already taken place before we have a wider consultation—and with me it is only a 35-year consultation period—the document states: "Statute, Purpose, Purpose of entry"; next, "Warrant: yes or no?"; next, "Category of person who many enter: PC or official, and level of authority"; "Other person permitted to enter"; "Threshold: To enter without warrant or make application for warrant"; "Type of premises"—and there are four different types of premises; "Times for entry: Any time", and other various times as well; "Other conditions", with a range of other conditions; "Notification to occupier required: Before entry, On entry, On leaving or None?"; "Other powers—e.g. Question persons present, examine records etc"; "Specific offence: to obstruct entry". That is just to start, and this document weighs quite a lot.

I would like to complain about the historic meanness of Her Majesty's Government. I was offered three copies of this great document—this magnum opus. I was then told that unfortunately, because it is in colour, I would have to pay 20p for each sheet other than the original copy. But never mind, it is on the website. The consultation period should be ongoing, but the most important thing now is to inform, and to inform ministries and the officials within those ministries what their powers are, because many of them do not know; and then, in the consultative period, to inform every local authority and every body—every quango, ango and NDPB which is involved—that there is a consultative period and that one should ask for it.

I go back to the noble Lord, Lord Puttnam. He had a great influence on me when, one day, he had his idea of promoting this House—because I had been told that you had to do everything through the House of Commons—and then we had the idea of Project Outreach. So I wondered whether we were allowed to communicate with people without going through the House of Commons. Previously I was told that if anyone wrote to you, you should pass it to the relevant Member in the House of Commons—because we did not have any writing paper and we had quill pens and ink, and it is impossible to get any ink in your Lordships' House now. So I thought that we should start our own consultative process from the House of Lords, which I shall be doing myself under Project Outreach with some bogus name; in fact I think I shall call myself the Undertaker. We will have a website and communicate with all people. I thought it would be reasonable that we should offer and declare that hereinafter in your Lordships' House we will offer to represent—as we are

[LORD SELSDON]
non-elected, with certain exceptions such as some of my colleagues and myself; the election process may be slightly doubtful but we have a certain legitimate claim—all elected people in the United Kingdom: Members of the House of Commons, local authority members and councillors, parish councillors and others. That is a total of 109,360 persons or personages.

So the consultation period will be as wide as possible and we will have a website—and also we should enjoy it. We want to make sure that the person has quiet enjoyment of his dwelling place, which I believe is one of the legal terms, and remove the fear and let it be known that everyone is on top of this.

Finally, I should just like to advise your Lordships that it is very important to have a starting handle. If you do get stuck in mud or snow you should always have a starting handle. The reverse gear in a car is the slowest gear. So you take the plugs out of your car, you put in the starting handle and you turn it in reverse gear, and you will get yourself out of any snow or any other mess. But on this particular project I do not have a reverse gear, so we will go on going forward.

Bill read a second time and committed to a Committee of the Whole House.

Consumer Emissions (Climate Change) Bill [HL]

Second Reading

12.25 pm

Moved By ***Lord Teverson***

That the Bill be read a second time.

Lord Teverson: My Lords, the issue of carbon emissions has been a big topic of discussion both globally and within the House over the past few weeks and months as part of the whole debate on global warming and what the UK and Europe's contribution should be to solving the problem. In 2008 this House discussed and Parliament passed the Climate Change Act, on which the Government had all-party support. The Government were very proud of their leadership in making carbon targets and budgets legally accountable and this has indeed been seen internationally as an important bit of legislation. As we would expect, it has also very much concentrated on the carbon emissions created by the production reflected in the UK's gross domestic product. That is very much in line with the Kyoto process and the definition provided under the Rio agreement and Kyoto protocol. That definition excluded aviation and shipping—we will leave that aside for the moment—but included the carbon emissions produced by an economy as part of producing goods, services and various production processes.

So if electricity generation creates carbon emissions, those emissions will be counted, and other areas will be treated in a similar fashion. However, what is not often realised is that that is only one way of looking at carbon emissions within an economy. It is not necessarily the best way but it is an important way. However, there are other methods, one of which is what this Bill intends to introduce, relating to emissions caused by the consumption within an economy. Many would think that in terms of environmental responsibility, that is a much superior indication to production. I shall not go into the argument at great length about which is best; I am simply saying that we should also include consumption within our measurements and give it similar weighting in government action and targets.

What are carbon consumption emissions? Very simply, they are a national economy's emissions as traditionally measured. However, we then remove the emissions connected to our exported goods and services while including the emissions caused by our imports of consumer and industrial goods and services used within the UK economy. That is the difference. One of the main reasons why I am bringing the Bill forward is that not only is that an equally important way of looking at the issue; there is a significant difference between the two. I shall come on to that later.

Specifically, within the context of the Climate Change Act, the Bill gives equal weight to carbon consumption emissions and to production emissions. So in terms of responsibilities of government, one is now repeated for the other, particularly as regards setting targets and budgets, consultation and reporting back to Parliament.

This is a very simple, short Bill and one that I hope the Government will see as being an important move forward in this area. I stress that the Bill does not cover individual carbon consumption. There is no move towards personal carbon budgets, which is a whole different area that has been discussed in this House on a number of occasions. Neither does the Bill replace the traditional Kyoto-based ways of measuring carbon footprint that we have in the Climate Change Act. Why is this area important? The Government undertook research through Defra that looked at this whole area, and a report was produced in 2008. It has also been looked at by a number of international climate economists. Dieter Helm of Oxford University is an authority in this area. Both reports are highly persuasive. The Defra report considered the position in the United Kingdom in 2004 and came to the conclusion—I was surprised by the accuracy with which the figures can be worked out by academics—that the consumption emissions of the United Kingdom economy were some 37 per cent higher than our production emissions. Professor Dieter Helm, looking at the figures for 2003, and taking the trend from the 1990 baseline which is used in the Kyoto Protocol, saw that although United Kingdom production emissions decreased over that period by some 15 per cent in excess of our 12.5 per cent Kyoto target, as regards the consumption level, they have actually gone up by 19 to 20 per cent, and no doubt by even more.

That means that by just looking at our carbon footprint in the traditional way, we are highly underestimating what we as an economy and as a society are contributing towards global carbon pollution. The carbon consumption measures start to look at and account for areas such as offshoring. Why is there a big difference between trends of carbon consumption and carbon production? It is because British industry

is more and more service led and we offshore a lot of our dirty industry. Our imports increasingly come from developing countries, particularly China and India. Imports from China have a particularly high carbon content. Although we may pat ourselves on the back, as we often do, and certainly the Government do, in terms of our national performance, in reality we are living in a completely different manner in terms of the way that the planet can cope with our consumption in the United Kingdom. Neither of the various ways of looking at Britain's contribution to the fight against global warming is perfect. However, it is absolutely clear that we need to look at both and not just one. This Bill is about giving equality to both those measures. That is particularly important because I believe that this way of looking at carbon footprint will become more important internationally. Certainly, its profile has been raised considerably. I should like to see Britain lead in this area, as it has led in its climate change legislation, and this is one of the ways that we can do it.

I should be particularly interested to hear the Minister give us the Government's opinion on the divergence between the two figures and the two trends and to hear whether they will refer these matters to be considered in greater detail by their own Climate Change Committee. I should also be interested to hear their views on how they see the future of such indicators within the international context. I am glad to say that when the Defra report was published in 2008, the Environment Secretary Hilary Benn then said that,

"as we move to a low carbon economy, we must help businesses and individuals to understand and reduce the environmental impacts of the products and services they produce, sell or consume, wherever in the world they are made".

That is an endorsement of this way of thinking and this move in terms of how we look at these issues, which I very much welcome.

Last month the Copenhagen accord was reached following the Cop 15 conference, which took place in Copenhagen and which we debated at great length yesterday. One of the areas of hope that came out of the lack of agreement or the light agreement that was reached at the conference, which we hope will be corrected in Mexico City at the end of this year, is that it gives an opportunity for new ways of looking at these issues, perhaps more equitable ones, particularly as between the developing and the developed world. I should like the United Kingdom be in the lead in looking at carbon consumption emissions as an important indicator in this area. I beg to move.

12.36 pm

Lord Puttnam: My Lords, I support the Bill, and most particularly the direction that it takes. It is not a step change but it is an important incremental development on the existing measure that this House put through a little over a year ago. I happen to believe that if we are to meet our eventual 2050 targets, we will have to embrace the concept of personal carbon budgets or personal carbon credits. Although I am not sure that I will live to see them, I have no doubt whatever that this House will pass a Bill at some point to make that a fact of all our lives.

We had an excellent debate yesterday on Copenhagen. I think what the outcome at Copenhagen tells us is that a comparative failure at international level puts a lot more pressure on both the local and the individual commitment to carbon reduction. It also puts more pressure on the quality, transparency and accuracy of reporting. The noble Lord, Lord Teverson, has just referred to that. When you alter the criteria for success in a situation like this, you can change the outcome quite radically, and often for the better. Let me offer an example of this, which may sound a little odd although I do not think that it really is. The Olympic medal table will be much discussed in 2012. The present use of gold, silver and bronze as the sole criterion of national success is very manipulable. Noble Lords will remember that there was quite a hoo-hah between ourselves and the Australians over who came fourth in Beijing. The dispute is very simple in its origin: if you apply five points to a gold, three to a silver and one to a bronze, you get a different result than if you apply three, two and one. That is not a good place to be for the Olympics and it certainly would not be a good place for the collection of information on carbon savings. I have recommended the following to the IOC. It should look more closely at the personal best achieved by each competitor at the Olympic Games. In the end, what counts for an athlete is their personal best. You cannot ask for more from an athlete on the day than that they deliver a personal best. If you make an accounting of the personal bests, you might get a very different competitive table. You might well find that Costa Rica is the most successful country, or Honduras or Saudi Arabia. You would get a very different table. That would establish which nation was making the most progress in the field of athletics and it would be a very important and interesting indicator. That is why I think this Bill offers a direction in which we begin to unwind and look at things in a more radical, in one sense, but also more sensible way.

I wish to offer two examples of what is happening that illustrate why the direction the Bill takes is important. One is from schools and one from communities. Ofsted produced a report in May 2008, from which I shall cite just two lines. It states,

"most of the schools visited had limited knowledge of sustainability and work in this area tended to be uncoordinated, often confined to special events rather than being an integral part of the curriculum".

Two years after the report was published, we find that secondary school teachers know nothing of the Sustainable Schools and the Eight Doorways agenda. Surely we need a form of reporting that makes it impossible for a school not to be able to announce—and, indeed, celebrate—its carbon savings. We do not have that at present.

Another example lies within communities. I touched on this briefly in yesterday's debate, but it is worth saying a little more. On Wednesday this week, the residents of the small Hebridean island of Eigg won part of a £1 million green energy price after building their own renewable electricity grid and slashing their carbon emissions by a third in a year. An article in the *Guardian* goes on to explain exactly what they were dealing with several years ago and how they succeeded in tackling that crisis. Another small community energy and transport project in the Brecon Beacons cut CO_2

[LORD PUTTNAM]
emissions in 155 homes and four community buildings by 20 per cent in a year, while an energy efficiency project run by volunteers in Shropshire cut CO_2 outputs from 460 homes by 10 per cent. These schemes may be tiny, but they are tiny triumphs. Unless, as quickly as possible, we find our way to a measurement system that celebrates and allows individual communities and individuals effectively to compete to see who can do the best in this extraordinarily vexed and difficult area, we will not make the savings or the progress that we need and deserve.

The Bill introduced by the noble Lord, Lord Teverson, makes two things possible. It makes the figures for emissions reduction more honest, thus helping to frustrate the disinformation campaign of the climate denial industry. It also creates a far greater sense of connectivity for communities and individuals in assessing their success and failure in meeting tangible and verifiable reductions. For those reasons and others, I commend the intentions of the Bill.

12.42 pm

Lord Redesdale: My Lords, I, too, welcome the Bill put forward by my noble friend. Obviously, and unfortunately, given the parliamentary timetable, it probably will not go forward to the statute book, but it is a welcome addition to the ongoing debate that the 2008 Act did not finish— I would say that it was the beginning of the beginning.

There is an interesting point of debate in the Bill, because from talking to a large number of people involved in this area, I know that there is an enormous amount of difference of opinion as to how, what and from where you should measure. The Carbon Trust deals with "whole of life". Other people think that the "polluter pays" principle should be that you measure only the carbon that you actually use. That is a real problem. It stems from the fact that when we talk about the fact that we live in a carbon economy, we make a fundamental assumption that we are talking about cost. Of course, cost and carbon are two completely separate things.

We have a trading scheme that is based on cost, but in a carbon economy, all we are saying is that for any action within the carbon economy, a certain amount of CO_2 is released into the atmosphere. That is the basis of the Bill. If we take, say, the cost of T-shirts in a supermarket in this country, it can be very low indeed. However, if you take into account the carbon costs of their being made inefficiently in a foreign country and transported half way around the world, the real cost of the cheaper T-shirts might be far higher than the cost indication.

We will have to move forward on measuring carbon. We cannot do it on a cost basis; we will have to come up with a baseline that works out how much carbon is associated with every product that we buy. That is an important issue, and one that I have been banging on about for several years.

I have a scheme, which I hope to bring to fruition, based on carbon units, which means that services and products would have a carbon label that would indicate how much carbon went into that product. Firms could easily use that system, because all that they would be doing would be measuring the amount of carbon dioxide that they are responsible for and adding it to whoever provided the good to them. That would get around some of the problems of carbon value from overseas. If a good was produced in China, in exactly the same way as the international labour laws work, you would track back and ask the producing company to give you a carbon value for that product before you bought it. It would be an interesting system, because it would indicate to companies that they would have to buy not just on cost but on carbon value, because there would be a risk to their product having a very high carbon value.

A classic example of that is cement. Cement can have dramatically different carbon values. A lot of people say that one way that we could measure carbon is by a traffic light system, as we do for food. However, in the same way that the traffic light system for fat does not work for cheese because, unfortunately, cheese is coagulated fat, so it will always be red, it does not matter what type of cheese you use, so cement has a very high carbon value, so it would always be red. However, the difference in the carbon content between two brands of cement can be enormous. That is important, especially if you are using a large amount of cement in the construction of a building. That would deal with one of the real issues that we are trying to address in all our discussions: a change of behaviour.

The Bill has set the target of 60 per cent but then—the noble Lord, Lord Puttnam, must be given credit for this, because he gave away the mechanism in the 2008 Act—the climate change committee set the target at 80 per cent. We will never meet that 80 per cent target until people start to realise that that is 80 per cent of the carbon that they as individuals, not just we as a country, use. That is a real problem. We cannot do that until we can start to understand how much carbon is associated with all the products and services that we use. Until we have a way to deal with that, it is very difficult for individuals to work out the amount of carbon that they are using.

A classic case in point is going through the exercise of carbon footprinting. It is very difficult to take a carbon footprint accurately because there are so many unknowns. That is true even for food, on which I did quite a lot of work. You have to try to work out the carbon value of all the inputs, such as fertiliser. Until last year, there was no company that would give you an accurate reading for the amount of carbon involved in fertiliser, and fertiliser accounts for, we think, 15 per cent of the carbon involved in agriculture. Even if you do a carbon footprint, it is based on assumptions. I believe it will be possible, quite soon, to introduce systems throughout the economy in which companies are asked to produce carbon figures and, when they sell a product or service, to give the carbon value for the next person to add, exactly like VAT, until it goes to the consumer. That will allow anyone making a purchasing agreement to work out the carbon value of the product or service they are buying. It will create a massive change in behaviour.

This Bill is useful because it highlights one of the areas about which we have no knowledge. My problem, which the Government will also face, is that we do not,

as yet, have the evidence base to achieve some of the reductions we are trying to undertake. Until we put that in place, many of the assumptions that we are making could be wildly inaccurate.

12.49 pm

Earl Cathcart: My Lords, I congratulate the noble Lord, Lord Teverson, on introducing this Bill and thank him for explaining it. In this parliamentary Session, we are having a flurry of Bills and debates around targets in all sorts of areas and this Bill simply adds to them. While we on these Benches fully agree that reducing carbon emissions is a critical element of meeting our 2050 target, we do not agree that drawing this Government's focus any further away from the policies that will make that possible is helpful.

The UK has signed up to many targets around climate change, most of which this Labour Government have singularly failed to meet. It is clear that yet another target will not lead to the step change that the Committee on Climate Change identified was needed in Labour's commitment to reduce carbon emissions. Instead, we need meaningful policies. We need proper incentives for consumers to improve the energy efficiency of their homes, such as our plan for a green deal for householders. We need proper information to be made available to consumers about energy-efficient appliances so that they can make the right choices and, as we have been calling for for years, we need to get smart meters rolled out to domestic households as soon as possible.

There is another aspect of the Bill with which we simply cannot agree. The requirement for the Government to take responsibility for carbon emissions produced outside this country would be extremely difficult to measure, let alone influence. Climate change figures are already hotly debated, so let us imagine the disagreements over which of the dozens of measurements to use when costing the total carbon footprint of a television built in Japan with parts made in China.

Such a measure would also be counterproductive in relation to the reduction of global emissions. Yesterday, the noble Lord participated in a long and interesting debate about the successes and failures of Copenhagen. The deepest disappointment came from our failure to persuade some developing countries of the opportunities that a move to a low-carbon economy will offer. Quite understandably, many countries are worried that they, the countries least able to afford such measures, are being expected to restrain their growth at huge cost to compensate for the extravagance of richer, more developed countries. We should be encouraging greater industry links with those countries in order to drive investment forward in their infrastructure and working practices. We need to work with those nations to build mutually beneficial agreements that allow for economic growth while simultaneously reducing carbon emissions.

I have not been very encouraging about the Bill, so I end on a more positive note. The noble Lord, Lord Teverson, is quite right in the fundamental principle behind the Bill, which is that the answer to carbon emissions lies with the consumer. The role of government must be to free companies to respond to the growing demand for low-carbon goods and services. Unfortunately, the Bill does not do that and I am afraid that we cannot support it. However, this has been a useful debate.

12.53 pm

Lord Faulkner of Worcester: My Lords, I thank the noble Lord, Lord Teverson, for bringing forward this Bill, which has generated an interesting and stimulating debate in your Lordships' House. I also thank all noble Lords who have taken part. The noble Lord, Lord Teverson, will know that, in accordance with normal practice, the Government do not normally support or oppose Private Members' Bills in this place. We make no exception in this case. I think that he will be able to tell from what I have to say that the Government have some reservations. He will have some indication of how we feel about the Bill, which may not be that far removed from the position of the Official Opposition.

We recognise the importance of the impact on emissions of the whole life cycle of the products that we consume. There is great value in working to understand better and to address consumption emissions, as that enables people and companies to recognise where and how greenhouse gases are emitted in the supply chain and thus where and how best to take action to mitigate them. The increasingly global nature of supply chains means that there is a more and more complex picture of where in the life history of a product the emissions actually arise. Some of these life-cycle stages are more accessible to government-led interventions to reduce emissions. Others are very much closer to the way in which individual businesses work within their supply chains. This issue is clearly highly relevant for businesses, which need to identify the impacts of their whole supply chain in whichever part of the world they operate.

The Government's sustainable consumption and production programme is working to identify and to help to reduce life-cycle carbon and other environmental impacts that are associated with UK consumption, wherever in the world those impacts occur. As well as evidence gathering, the programme looks at tackling embedded emissions through product supply chains—for example, through collaborative road mapping with a small number of industry supply chains. This is complicated work, which means engaging with the principal players in a number of sectors to develop new approaches for reducing environmental impacts at the crucial life-cycle stages. Some of the pilot work has been very encouraging—for example, in building up new forms of collaboration across the supply chain for clothing. This sectoral approach is in its early stages, but it offers a potential model for future collaborations along many other global supply chains.

Another contribution made by our sustainable consumption and production programme is in helping businesses to develop the technical tools to identify where they need to focus effort. A key example of this is the technique of carbon footprinting, through which a business can measure the greenhouse gas emissions of its products across their whole life cycle. This enables it to address the hot spots of its supply chain, wherever in the world they are identified. The UK has

[LORD FAULKNER OF WORCESTER]
played a leading part in developing these tools. The Government and the Carbon Trust worked with the British Standards Institution to pioneer a methodology for carbon footprinting—PAS 2050—which has attracted international interest. It is now likely that a global standard will be agreed, which will enable the major global supply chains to target greenhouse gas reductions across their operations.

Similarly, our work on behaviour change is helping to improve consumers' understanding of the whole life-cycle impacts of the products and services that they demand and to encourage more sustainable purchasing practices. Examples include DECC's Low Carbon Communities Challenge, which was announced in the low-carbon transition plan and launched in September 2009, and Defra's greener living fund and action-based research pilots.

In spite of the work that we are already doing to understand better and to address the emissions that are embedded in the products that we consume in the UK, we have a number of fundamental concerns with the approach proposed in the Bill. Indeed, we share many of these concerns with the noble Earl, Lord Cathcart, and I will expand on them further.

First, the approach in the Bill of setting a target for emissions on a consumption basis is not consistent with the methodology for measuring and allocating the responsibility for emissions to individual countries that is enshrined in both the international architecture and the Climate Change Act. Under the UN Framework Convention on Climate Change, the Kyoto Protocol and European emissions reduction targets, countries measure and report their emissions on a production basis. All greenhouse gases emitted on the country's territory are covered, regardless of where the goods and services to which they relate are consumed. UK emissions are published annually on this basis as national statistics and in accordance with international practice. Indeed, a real strength of the Act is that the targets and carbon budgets that it contains operate in a way that is consistent with European and international climate change policy.

Our second concern is that measuring and reporting emissions on a consumption basis would require that we take into account emissions embedded in the goods and services that we import into the UK but exclude emissions resulting from the production of goods and services that the UK exports. This would be an extremely complex thing to do and has scope for major inaccuracies. Estimates have been made in the past of UK emissions on a consumption basis—the noble Lord, Lord Teverson, referred to these—including in a government-sponsored study by the Stockholm Environment Institute, which was published in 2008, but we do not currently report our emissions regularly on a consumption basis. It would be extremely difficult to agree internationally a mechanism for allocating consumption emissions to different countries.

We accept that the Stockholm Environment Institute's estimates give an indication of a trend in carbon dioxide emissions relating to UK consumption, as they are in line with other similar studies, are based on accredited national and international sources and have been subject to a range of sensitivity tests. However, they can be viewed only as indicative, as the emission factors used are disaggregated to just four broad world regions and a limited number of product categories.

The Stockholm Environment Institute has separately made estimates of the UK's total carbon footprint, including estimates of other greenhouse gas emissions besides carbon dioxide, such as methane and nitrous oxide, which are the main types of other greenhouse gases. These estimates are generally regarded as being much less reliable and they need to be treated with caution. In addition, the Stockholm Environment Institute's calculations give only a very broad indication of the UK's consumption share of a region's production emissions. Efforts made by individual trading partners to improve the emissions intensity in a particular supply chain of importance to the UK will not show in the estimates unless they are significant enough to affect the average for the region as a whole. In this sense we do not consider that the estimates are sufficiently reliable for use in monitoring performance or setting targets, as proposed in the Bill.

Analysis of consumer-based emissions shows the importance of agreeing an effective international treaty that includes the main developing countries. This stands the best chance of achieving the reductions of greenhouse gases needed to limit the global temperature increase to 2 degrees Celsius. As my noble friend Lord Hunt of Kings Heath explained in his Statement to this House last week on the Copenhagen conference, and as he repeated in our excellent debate yesterday, the Government consider that the outcome of Copenhagen was disappointing in a number of respects. We share the view of my noble friend Lord Puttnam in that regard. However, it is also our view that the accord agreed at Copenhagen represents significant progress on which we can build.

In response to the question about the Government's position on consumer emissions in the international context, we consider that it would almost certainly be impossible to agree internationally on a mechanism for allocating consumption emissions to different countries and there might well be challenges under the international trade regime. Offers of mitigation targets currently announced are all on a production basis.

To give the impression of moving to a consumption basis could be very damaging while we are working with developed and developing countries to encourage them to table high-ambition mitigation offers by the end of January and while we are continuing to work through 2010 to turn the Copenhagen accord into a legally binding treaty. Establishing an international consumer-based mechanism would be impossible because of the lack of a political agreement on this approach and the lack of agreed methodologies to make the necessary estimates. No countries or trading blocs currently measure and report along those lines. The additional uncertainty introduced in the negotiations would be very damaging to the prospects for achieving a legally binding agreement and there might well be challenges under the international trade regime.

In our view, the best way to provide an accurate account of all greenhouse gases, globally, is to reach a broad international agreement on a production basis

with commitments for developing as well as developed countries to reduce emissions, according to their capabilities. For the first time, the Copenhagen accord will see developing as well as developed countries subject to measurement, reporting and verification of their mitigation actions through submission of their national communications every two years.

A further concern is that our ability to introduce policy measures to address consumer emissions—emissions from the production of goods outside the UK—is limited when compared to our ability to develop policy responses for reducing the emissions that occur within the UK. Perhaps that is why the Bill introduced by the noble Lord, Lord Teverson, does not include a duty to report on progress towards meeting the target, in contrast to the duty in the Climate Change Act for the Government to produce a report setting out the proposals and policies that will be used to meet the carbon budgets. It is also why our sustainable consumption and production programme is focused on changing patterns of consumer behaviour and on collaborative working with industry supply chains rather than on setting what could be seen as potentially inaccurate and misleading targets.

The noble Lord, Lord Teverson, raised the question whether it would be possible to ask the Committee on Climate Change to look at the issue of embedded emissions. Our view is that the committee has more than enough work to do in the next year to keep it busy. This includes the next annual progress report, which is due in June, and its advice by the end of the year on the level of the fourth carbon budget, as well as a report on low-carbon research and development and advice to the devolved Administrations. As I have explained, measuring and reporting emissions on a consumption basis would clearly be an extremely complex, time-consuming thing to do, with scope for major inaccuracies.

I hope that this has clearly established why we are concerned about proposals for legally binding consumer emissions targets. None the less, I thank all noble Lords for their speeches and I thank the noble Lord, Lord Teverson, for introducing his Bill. No doubt we shall be hearing more on this subject in the future.

1.05 pm

Lord Teverson: My Lords, I thank the Minister for his response and I am grateful for the general acclaim for my Bill around the Chamber, although perhaps my hearing is not so good these days and I did not quite hear it accurately. This has been an important debate and I thank all the Benches for participating.

To summarise, I take the point made by the noble Earl, Lord Cathcart, absolutely. Any climate change policy has to be built around achieving action. I agree with him that that is where the emphasis needs to be placed. However, what I would say is this. One of the easiest ways for the United Kingdom to meet its carbon reduction targets is to send offshore even more of its manufacturing and high-carbon-based industry. It could then meet the targets but not have an iota of an effect on total carbon emissions and thus on global warming. That is the nub of the issue and lies at the heart of this approach. I was not suggesting for a minute that the whole of the Kyoto process should change overnight; I was suggesting that this is something that we could lead on.

I am disappointed that the Government will not follow up on their excellent work through the Defra/Stockholm Environment Institute report and measure carbon consumption figures in the future on a trend basis. That would at the least have been useful, but I hear what has been said. I ask that the Bill be read a second time.

Bill read a second time and committed to a Committee of the Whole House.

Live Music Bill [HL]

Second Reading

1.06 pm

Moved By ***Lord Clement-Jones***

That the Bill be read a second time.

Lord Clement-Jones: My Lords, Members on these Benches believe passionately in live music. This involves nurturing creativity and allowing individuals to develop their talents to the full. My honourable friend Lembit Öpik, himself no mean harmonica player, put it well:

> "This is what performance art is all about. It is not about paperwork, it is not about red tape, it is about giving people the opportunity to express themselves in artistic form. In that sense, to be restricted by bureaucracy is the absolute antithesis of what such artists seek to do".—[*Official Report*, Commons, 22/10/09; col. 326WH.]

The Government's policy towards live music as underlined by the Licensing Act 2003 has consistently opposed these core values by instead creating a bureaucratic minefield which has stifled creativity and prohibited innocent and innocuous live music events taking place and artists being able to perform. It is with this in mind that today I am moving the Second Reading of the Live Music Bill, which is designed to address the shortcomings of the Government's approach to live music.

In 2002, the Government introduced the Licensing Bill and promised that they would make it much easier to host live music. At the time of its passage, Ministers were confident of the likely impact of the legislation. The noble Lord, Lord McIntosh of Haringey, at the time the DCMS spokesman in the House of Lords, in good faith told this House:

> "My view is that there will be an explosion of live music as a result of removing the discriminatory two-in-a-bar provision".—[*Official Report*, 26/11/02; col. 736.]

In fact, the Bill has significantly increased entertainment licensing control over live music. Among other things, the Bill abolished the two-in-a-bar rule, a long-standing exemption in pubs and bars for two performers. In effect, this became a none-in-a-bar rule. Under the Bill, most public performances and many private performances of music need a licence.

The Liberal Democrats opposed these changes on the grounds that separate legislation was already more than adequate to regulate most small-scale performances

[Lord Clement-Jones]
and that criminalising such performances unless licensed was unnecessary and disproportionate. My noble friend Lord Redesdale, together with the noble Lord, Lord Colwyn, and the Conservative Benches, forced defeats on the Government in the House of Lords, creating exemptions for incidental music and certain small-scale performances. Naively, perhaps, in the subsequent ping-pong we accepted a new clause to the Bill, Section 177, which the Government put forward as an exemption for live music in certain small venues. In 2003 the Bill received Royal Assent and became an Act of Parliament.

As feared, the Licensing Act has not delivered an increase in live music, despite these promises. In July 2007, the Live Music Forum, which had been set up in 2005 by the then Minister, now the noble Baroness, Lady Morris of Yardley, published its findings and recommendations on the impact of the Licensing Act on live music. The LMF concluded that, while the new law had a broadly neutral effect, the Act harmed certain small local venues and recommended an outright exemption for these. The LMF also reported a huge disparity in local authorities' interpretations of the law when issuing licences, and that the promised increase in live music had not occurred. In fact, it found that 29 per cent of smaller establishments that had previously operated without a public entertainment licence but used the two-in-a-bar exemption to put on live music did not apply for live music provision when the Act came into force.

In particular, the Live Music Forum called for the reform of Section 177. It argued that the current wording of the Act was convoluted and, in many respects, impenetrable. The forum was unable to find a single example where Section 177 was used by licensing officers or venue owners. The forum therefore recommended new exemptions for small gigs as a matter of some urgency.

The Live Music Forum report was followed in December 2007 by a BRMB survey commissioned by the DCMS on the impact of the Licensing Act on live music. It concluded that there had been a 5 per cent decrease in the provision of live music in secondary live music venues since the benchmark MORI survey of 2004. In restaurants and cafes the figures showed a drop of 12 per cent, and in church halls and community centres a drop of 24 per cent.

As a result, the then Secretary of State, James Purnell, pledged to explore exemptions for some venues. I shall deal with this later but, as we shall see, despite assurances by the Government, until last December this had been put on the back burner. In July 2008, the House of Commons DCMS Select Committee launched an inquiry into the Licensing Act. In May 2009, its report concluded that the Act hampered live music performances, especially by young musicians. The committee recommended an exemption for venues of up to 200 capacity and the reintroduction of the two-in-a-bar exemption which, as I have described, existed prior to the 2003 Act. As the chairman, Mr John Whittingdale, rightly said, young musicians often get their first break through performing live at small venues.

At first, the Government went along with the LGA, which seemed to be terrified of any changes to the Licensing Act and had put its faith in the minor variations procedure. As I made clear in the debate on 15 June last year on our Motion to regret the Government's decision to proceed with the draft legislative reform order, minor variations to an existing licence are no substitute for a new small-venues exemption under the Act. In its evidence to the Regulatory Reform Committee, which was included in the committee's second report, the DCMS warned that many live music applications would not qualify as a minor variation. The noble Lord, Lord Howard of Rising, was particularly effective in demolishing the Licensing Act and the vaunted merits of the order, particularly in the context of the burden on social and sports clubs and the fact that the words "adverse effect" could be used by local authorities to unreasonably reject applications.

The process is extraordinarily bureaucratic. Applicants are required, first, to advertise proposed minor variations on a white notice outside the premises for 10 working days; secondly, to give local residents and businesses the right to make representations in writing to the local authority; and thirdly, to require the local authority to consider any such representations received in the 10-day period in arriving at its decision. All this gives everybody the opportunity to prevent live music taking place, without any evidence of nuisance.

The order has been criticised, both by the Licensing Advisory Group and expert commentators. One commentator wrote in the *Morning Advertiser* in April last year:

> "What started off as a helpful gesture by the Department for Culture Media & Sport (DCMS) to overcome the elaborate procedure for varying a licence has turned into a pedantic nightmare ... We had a simple form of minor variations procedure under the old law, with the licensing justices giving instant decisions, and it worked pretty well. Residents were not prejudiced, but it gave operators the opportunity to alter their premises, usually for the better".

In any event, the order will not benefit the thousands of events in venues that are not already licensed under the Act.

As I illustrated last June, the absurdities and inconsistencies of the Act generally in respect of live music are manifest. The interpretation of the Licensing Act varies widely from local authority to local authority, with some taking a lenient view of incidental music and others a much more restrictive approach. We had the ridiculous situation where the former Secretary of State, Andy Burnham, last year went to the Knotty Ash youth and community centre to hear performances of live music on the centre's launch as a rehearsal and performance venue. That was very laudable, but it had no licence: the performances were illegal.

The provision of 30 pianos in London streets last June and July under the Play Me, I'm Yours scheme, backed by the mayor, Boris Johnson, was caught by the Licensing Act as provision of an "entertainment facility"; so even if no music is played they can still get you. Without a licence obtained from the local authority, the organisers would have been committing a potential criminal offence. It was a bureaucratic minefield, with every venue and street space that was not already licensed having to be covered either by a new premises licence or a temporary event notice.

A classic example occurred recently in Kettering, where the local council prosecuted HMV for allowing a singer, Faryl Smith, to sing one song from a record for the launch of her record in the store. I could come up with myriad more examples of the idiocies of the Act.

Ministers called the new licensing legislation a licensing regime for the 21st century. However, where live music is concerned, they actually turned back the licensing clock more than 100 years. A case in 1899 established that a pub landlord could let customers use a piano on his premises without an entertainment licence. Today, such a landlord could face criminal prosecution where the maximum penalty is a £20,000 fine and six months in prison. Let us contrast that with the freedom to show large-screen broadcasts of football matches without a licence under the legislation, because the Government granted that form of entertainment an explicit exemption. Why on earth should those broadcasts have an exemption and not live music? Is live music a greater threat to public order? It is certainly not.

A very effective demonstration in aid of live music was held by the Musicians Union and Equity last October in Parliament Square. The demonstration coincided with a full debate on the Select Committee's report held in Westminster Hall. At that point, the Government suddenly seemed to awake from their slumber and make proposals for an exemption for events attended by up to 100 people. They have now, several months after the announcement, launched yet another consultation on the issue. Why have they suddenly decided to do so, so close to a general election, when they have no hope of implementing any proposal before then? It must be a matter of speculation. Are they frightened of the LGA, but equally worried about the campaign mounted by the Musicians Union and Equity? We do not know.

That now makes more than six years of legislation, eight consultations—this is the ninth—two government research projects, two national review processes and a parliamentary Select Committee report. Mr Feargal Sharkey of UK Music—your Lordships may have heard him in the media—waxes particularly lyrical on this subject. The Department for Culture, Media and Sport wants responses by 23 March.

As it is, the proposals are inadequate. Under the plans, gigs for 100 people or fewer would no longer need a licence. Exempted venues would have to fulfil other requirements, including ensuring that the audience is contained within the building while the performance is taking place, to prevent noise escaping, and that exempt performances take place between 8 am and 11 pm. This will entail an LRO under the Legislative and Regulatory Reform Act 2006. There is therefore no possibility of seeing such proposals into law by the general election. The one really useful statement in the consultation paper is the estimated cost savings as a result of a small-venue exemption. More than £1 million of savings could be gained for small venues.

All the above motives—the desire to nurture creativity, to cut back bureaucracy, to save costs for small venue owners, and to eliminate the inconsistencies and absurdities of the Licensing Act—explain why I am bringing forward this Live Music Bill. The Bill amends the Licensing Act 2003 in four main respects. There is an exemption for live music in small venues that are licensed under the Licensing Act 2003. This exemption is conditional on a new Section 177, which can be triggered to review a licence and make live music in that venue licensable if complaints by local residents are made. Secondly, there is a reintroduction of the "two-in-a-bar" rule, so that any performance of unamplified and minimally amplified live music of up to two people is exempt from the need for a licence. The amended Section 177 does not affect this, making it a total exemption. Thirdly, there is an amended Section 177 to the Licensing Act 2003 that will act as an effective licence review mechanism for complaints about live music in licensed premises. Fourthly, there is a total exemption for hospitals, schools and colleges from the requirement to obtain a licence for live music when providing entertainment where alcohol is not sold, and the entertainment involves no more than 200 persons.

The rationale for this approach is as follows. The Licensing Act 2003 creates and regulates the three licensable activities—supply and sale of alcohol, regulated entertainment and provision of late night refreshment—subject to the operating schedule which forms part of every premises licence issued. Live music is classified as regulated entertainment under the Act, subject to very narrow exceptions, and therefore without an exemption small premises are bound by the same legislative burden and costs as larger premises in relation to being able to have or provide live music, which can be disproportionately prohibitive.

The Licensing Act 2003 created, as a safeguard to residents and other parties who are subject to noise and other disturbance, the review process. The Live Music Bill preserves this right for residents and businesses in the vicinity of licensed premises and explicitly allows for the exemption to be removed in circumstances where premises operating under the exemption are found to undermine the licensing objective of prevention of public nuisance. The LGA is completely wrong in its briefing about this, as it has been throughout the live music debate. An exemption for small premises, while still safeguarding residents in the vicinity of premises operating under the proposed exemption, is a measured and reasonable solution, which balances the human rights of all parties in so far as the legislative burden is reduced to a more appropriate level for smaller venues without loss of the safeguards introduced by the Licensing Act for residents and businesses in the vicinity.

The further exemption for unamplified and minimal amplified music involving no more than two performers partially reinstates the legal position prior to the Licensing Act 2003, and would permit a lone pianist or, for example, a singer and guitarist, to perform unamplified music at venues of any size, regardless whether they possessed a licence or not. This again is a proportionate solution, as it allows, for example, cafes to put on such entertainment without the cost of applying for a full licence.

The disapplication of any music-related conditions for licensed premises is necessary to reflect the position prior to the 2003 Act, where venues that allowed two

[Lord Clement-Jones]
in a bar would not have been subject to a public entertainment licence or other music-related conditions. The definition for minimal amplification is based on the Government's own definition under paragraph 3.22 of the guidance that they issue under the Act. The final exemption for hospitals, schools and colleges would permit such institutions to host live music entertainment, without the additional cost and administrative burden of a licence, but subject to a reasonable limit to the number of people attending. I urge the Government to support these proposals and take some heart to a response to a Written Question of mine last November about a proposed government consultation from the noble Lord, Lord Davies of Oldham. He said that,

"if the consultation overwhelmingly shows that stakeholders would prefer this to be extended to venues with a capacity of up to 200 people, then the Government would consider this"—

I take that as the Government at least having a partially open mind. I also welcome the recognition in the same response by the noble Lord, Lord Davies, that,

"other legislation exists to tackle noise nuisance and anti-social behaviour".—[*Official Report*, 11/11/09; col. WA171.]

My own proposals are not set in stone. If the Government show willing, we can compromise on a capacity figure. But let us remember that the Select Committee recommended that the appropriate figure was 200, a figure that is backed by the Musicians' Union, Equity and UK Music.

The Government have adopted one of my Bills in the Commons before now, the Tobacco Advertising and Sponsorship Bill, which the Minister strongly supported. Why not again? I hope that the Minister will take that as a favourable precedent.

This is the only way to ensure that this vital reform of the Licensing Act is in force before the general election. Clearly, we are not talking about large venues for established artists, which are doing better than ever, but the lower rungs of the ladder—that is, smaller venues—are being kicked away. I look forward to debate on this Bill, which I hope that Members of this House and the Government will support.

Phil Little's No. 10 petition on live music is one of the best supported on that site, and I know that this Bill would have great support, not only down the other end of this building through the Culture Media and Sport Select Committee but from all those who have an interest in the spread of live music in small venues. The pub trade is particularly concerned about the health of live music, and I commend Listen Up!, which now has 700 members from the pub trade, for its campaign to promote live music. It firmly believes that it could reverse the current trend towards the closure of pubs, which are closing at the rate of some 52 per week. I hope that the Government will respond to all these voices today. I beg to move.

1.34 pm

Lord Colwyn: My Lords, I thank the noble Lord, Lord Clement-Jones, for his introduction of the Bill. He has comprehensively covered all the aspects of this issue, which is important for tens of thousands of musicians, many of them young, who under current legislation find it increasingly difficult to find venues in which to practice and perform their art. It is also important for owners and managers of restaurants, club, cafes, pubs—anywhere that puts on live music.

I declare one or two interests. I am co-chairman of the All-Party Parliamentary Jazz Appreciation Group; I am a member of the Performance Alliance, a parliamentary group; I am a semi-professional trumpet player of limited ability who occasionally comes out of retirement to perform; I am a founder-director of Jazz FM; I am a patron of a new appeal by the National Youth Jazz Orchestra; I am a member of the Musicians' Union; and I have played in pubs on many occasions.

The House has heard that Section 177 of the Licensing Act was a last-minute compromise at a very late stage of the passage of the Bill in July 2003. The Bill had ping-ponged between the two Houses on the issue of an exemption for small gigs, which failed when the Liberal Democrats withdrew support when DCMS offered Section 177 and an exemption for Morris dancing.

The Section 177 amendment was intended to protect certain forms of live music in small premises, thereby encouraging musicians and providing venues to play and practise in. The whole process exposed the Act's absurd overregulation of the most innocuous live music against the light touch for canned entertainment such as big screen sport and recorded music in bars. The noble Lord, Lord Clement-Jones, has explained the exemption known as the "two in a bar" rule, which had been available since 1961 as an exemption from the general requirement to hold a public entertainment licence for live music.

This restrictive legislation had serious implications for musicians who were prevented from performing and learning to play to a live audience. Present regulation prevents musicians from entry-point opportunities into the music industry. Four out of 10 of 2009's biggest-selling artists were British, and they all started out by playing gigs in pubs.

Section 177 has proved to be a complex, unworkable provision introduced in the late stages of the debate. There was no exemption from holding the required licence, and the Government considered that such exemptions were not necessary to protect live music, but were forced to compromise in this House to secure passage of the Bill. On this side of the House my noble friend Lady Buscombe and I tried to convince the noble Lord, Lord McIntosh, that the Government had got this wrong, and I think we have been shown to be correct. This new Bill, which creates an outright exemption for certain small gigs and extends the exemption to other premises such as hospitals, schools and colleges, goes a long way to meet the demands of the Musicians' Union, the former Live Music Forum and the tens of thousands of musicians and music lovers involved with this debate over many years.

On Wednesday, I received a briefing from Greg Taylor of the Local Government Association, informing me that the LGA does not support this Bill. It believes that it would restrict the rights of local people and their directly elected councils, and deny them a voice in the licensing process. There is a concern from licensing

officers that small venues hosting music would lead to a surge in noise complaints, but there is no solid evidence to support this. If the public need protection from small gigs, there is a plethora of legislation already in place to address the risks of noise, nuisance, crime, disorder and public safety. How else could big screen sport in bars escape entertainment licensing?

In May 2009, the Culture, Media and Sport Committee considered the Act's impact on live music and concluded that,

"while the upper and middle end of the live music scene is still flourishing, live music in smaller venues is in fact decreasing".

It recommended that,

"the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. We further recommend the reintroduction of the "two-in-a-bar" exemption enabling venues of any size to put on a performance of non-amplified music by one or two musicians without the need for a licence. We believe that these two exemptions would encourage the performance of live music without impacting negatively on any of the four licensing objectives under the Act".

The Government rejected both recommendations, arguing that there is no direct correlation between audience size or performer numbers and the potential for noise nuisance or disorder.

The present rules are draconian. Pubs need to apply for a live music authorisation in addition to their premises licence, at a cost of £89. Alternatively, a one-off temporary event notice costs £21, but councils enforce an annual limit of 12 notices a year. The maximum penalty for an unlicensed provision is a £20,000 fine and six months in prison. The introduction of a minor variations procedure in June 2009 was useless. It allowed small changes to licences to be fast tracked for the £89 fee, on the condition that they advertise proposed changes to local residents. This proved time-consuming and difficult, and has not yet been used. This Bill's exemptions are more workable; they simplify the law by getting rid of excess rather than adding to it.

On 22 October, the Licensing Minister, Gerry Sutcliffe, said that the,

"Government wants to act very quickly",

to introduce a new small gigs exemption. He also suggested that his 100-capacity exemption proposal was open to negotiation. That statement coincided with an Equity and Musicians' Union demonstration outside Parliament. During the later Westminster Hall debate, John Whittingdale and other MPs were damning in their criticism of the Act's live music provisions. Mr Sutcliffe struck a conciliatory note, saying:

"I do not support local government being aggressive by putting preventions in place to stop live music. We must strike the right balance".—[*Official Report*, Commons, 22/10/09; col. 343WH.]

He had also said:

"Significantly, today's statistics show that there has been an 11 per cent. increase in premises licences with live music authorisation between 2007 and 2009".—[*Official Report*, Commons, 22/10/09; col. 341WH.]

Sadly, those statistics are almost meaningless. They do not measure actual live music provision, and a paper permission for live music does not necessarily mean that having live music is legal. Unless local authority licence conditions are implemented by the licensee, such as fitting a noise limiter or providing door supervisors, putting on a live gig would remain a potential criminal offence.

On 31 December 2009, the public consultation on an entertainment licensing exemption for small gigs was announced by DCMS, more than two years after it was first promised. The key proposal is to exempt gigs with an audience of up to 100, provided that performances are within buildings and do not take place between 11 pm and 8 am. The exemption may be revoked if there are complaints. It is likely that the DCMS amendment to implement this proposal is flawed as it fails to address the licensing of "entertainment facilities". Under the 2003 Act, the provision of entertainment facilities is separately licensable, irrespective of any actual performance of live music. This covers, for example, the provision of musical instruments, amplification or even a stage. Any new exemption has to ensure that such provision is also exempt.

During the licensing debate in the other place, Gerry Sutcliffe said:

"For facilities to be separately licensable in such situations would be absurd and was not intended under the 2003 Act. As part of the clarification, the consultation will propose a change to the definition of 'entertainment facilities' so that the mere provision of musical instruments, such as a pub piano, is not licensable".—[*Official Report*, Commons, 22/10/09; col. 341WH.]

It is hard to believe that the omission of this vital clarification within the published consultation was an oversight by DCMS lawyers and the licensing team, particularly given the long time they have had to come up with a solution.

Equity, the Musicians' Union and UK Live Music support an exemption for audiences or venues up to a capacity of 200. The Minister has suggested that the Government would consider expanding the exemption if that was the response of an overwhelming majority. On this side of the House, we believe that these exemptions will restore the original objectives of the Act. The exemptions will simplify the licensing process and offer a valuable concession to pubs, charitable fundraising and creative industries. The Bill's amendments consider that an adequate risk assessment and the removal of these bureaucratic features will not threaten the achievement of the 2003 Act's objective to prevent public nuisance, crime and disorder. Removal of pre-emptive legislation still allows local people the right to object to noise and disorder via local councils. I welcome the Bill.

1.36 pm

Lord Redesdale: My Lords, I speak yet again on this issue. I welcome the Private Member's Bill of my noble friend Lord Clement-Jones. I first declare an interest. I am chairman of Best Bar None, which gives awards to pubs that meet the highest standards. I also own a pub: the Redesdale Arms on the A68—on the Jedburgh Road. It is a particularly fine pub that does food and wine and is well worth a visit; it has rooms as well, if anybody wants to stay there. I thought I had better ensure that everybody understood my interest.

My declared interest in Best Bar None is because I come across a very large number of publicans. The real issue for them is the enormous amount of red tape

[Lord Redesdale]
that they face. Of course, the Licensing Act has increased that regulation. I have talked to a number of people who have put on live music in the past but do not believe that it is worth the regulation and the hassle that you have to put up with from the council to meet them.

That is a real issue. It is an issue of human rights. It is easy to say that this is about music, but it is actually about a Government who have become extremely repressive in how they put forward their views. They might turn around and say, "That's rubbish", but let us look at the issue. During the passage of the Licensing Act 2003, we had four government defeats in an attempt to stop the Government limiting unamplified music because it is a human right. The noble Lord, Lord Colwyn, said that I, leading that charge, "gave up". I do not think another Bill has had four government defeats. At that point I had used every possible method. I was rather surprised when, on the last day of the attempted push, the Musicians' Union wrote to me saying "We must start a great fight". They seemed rather slow on that.

Going further back, I say that the Government are incredibly repressive because, in the build-up to the 2003 Act, we were assured that it would cut back on bureaucracy and red tape and increase the number of musicians playing in pubs. Indeed, one aspect was to remove the "two in a bar" rule that everybody then saw as repressive. This Bill is about reintroducing that rule. We have moved so far back from the position that we were in before the Act that we are now actually trying to do something that we were trying to lobby against at the time.

I should take the noble Lord, Lord Colwyn, back to 2002, when he and I were in the Red Lion, where we had a large number of the press turning up. The purpose of that was to have two people playing music, and then for the noble Lord, Lord Colwyn, to blow his own trumpet and be thrown out because he would have been a third musician. Unfortunately, we did not get the press coverage that we thought we would receive, because the verdict on the noble Lord, Lord Archer of Weston-Super-Mare, happened, and the press seemed to be extremely interested in that event. However, the real issue is that there was interest in that. We have now come to a position where we are actually trying to reintroduce something that we were campaigning against.

I do not believe that the Government will do anything on this issue this side of the election. I am absolutely certain that the Minister will stand up and say that live music is in a wonderful position and that, anyway, it is the residents that we have to be concerned about. There is a large amount of legislation to deal with this and this was not an issue that we did not discuss in great detail during the passage of the Licensing Act. It was discussed at great length. We asked for evidence that could show that the legislation would increase the amount of live music performed, and that was categorically given. We suggested that that might not be the case and that the bureaucracy might hinder the playing of live music. That argument was rejected. We were assured that licensing was needed because there would be great danger if large numbers of people turned up out of the blue to listen to music—even though that was not the case before the Licensing Act and probably would be afterwards. Our voice was not as strong as those who wanted to put large-screen televisions showing sport in pubs, which has—I should like to know the figures—caused problems there; live music has not.

This has been a rather unfortunate situation for the Government. A lot of the issues that they said would never take place have done so. They include the example given by my noble friend of a young lady singing from her album, without amplification, in a branch of HMV because she was asked to. The shop was taken to court for that. We were expressly told that common sense would prevail, but there have been a hundred examples where common sense has not allowed such events to take place.

I very much hope that the Government take this seriously and that the Conservatives, if they win the next election, move quickly to change this position. While we quite understand the rights of local residents not to be disturbed—I agree that that is an important consideration—and that law and order is a prime consideration, enforcing this legislation without evidence, at the expense of some of the cultural lifeblood of our country, seems to be utterly ridiculous.

1.43 pm

Lord Howard of Rising: My Lords, during the debate in June last year on variations to premises' licences the noble Lord, Lord Clement-Jones, said that he would introduce a Bill to provide conditional exemption for live music in small venues. What a fine example we have of a politician keeping his promise. Before going further, I declare some interests. I am a borough councillor. I am also the owner of an ancient monument, president of my local cricket club and chairman of my local football club. They have to apply for licences under the 2003 Act.

This is a Bill which we on these Benches support. We give that support in the hope that this Bill may go some way towards achieving the original objective of the 2003 Act, which was, broadly speaking, to promote the development of live music, dancing, and theatre. That never happened—rather the reverse; there has been a decline. Her Majesty's Government recognised this and introduced the minor variations procedure in June 2009; but I am afraid that that has had no discernable beneficial effect.

The arguments in favour of today's Bill have been ably and eloquently expressed by my noble—and, if I may say so, over-modest—friend Lord Colwyn, the noble Lord, Lord Redesdale, and of course the noble Lord, Lord Clement-Jones. Rather than waste your Lordships' time by repeating the same very good arguments that have been put forward, I shall say only that I hope that Her Majesty's Government, knowing the problems with putting on small live music events, which are, after all, a significant platform for artists at the beginning of their careers, will be large-minded enough to recognise that their solution has not worked and that they will therefore support the Bill to make it simpler and easier to have small live music events.

1.45 pm

Lord Faulkner of Worcester: My Lords, speaking on another Bill introduced from the Liberal Democrat Benches a moment ago, I reiterated the traditional approach of neutrality that the Government adopt towards Private Members' Bills. I am happy to do the same again in this case, although I think it will become clear that we have even more reservations about the Bill introduced by the noble Lord, Lord Clement-Jones, than we do about that of the noble Lord, Lord Teverson. I shall explain why.

I shall also respond to the noble Lord's comment that I supported his Private Member's Bill on tobacco advertising and sponsorship. Indeed I did. I was proud to do so, and I was even more proud when the Government took it over as a government measure in the other place and it passed into law. That was a very much better Bill than the one that the noble Lord, Lord Clement-Jones, has brought before us today, and I think that on reflection he will realise that it was a rather more ground-breaking piece of legislation than is being suggested. However, I am very grateful to him for giving us the opportunity to talk about live music.

It has also been a very good opportunity to hear again from the noble Lord, Lord Colwyn, who is such a talented performer both in the pub and in your Lordships' House, and a very doughty defender of live music. We also enjoyed the contribution from the noble Lord, Lord Redesdale, and the rather brief, but none the less important, effort from the Lord, Lord Howard of Rising.

The important point to make is that the Government already accept that the criticisms of Section 177 of the Licensing Act need to be addressed and they are proceeding to do precisely that. The Private Member's Bill that we are considering now is similar in its intent to the Government's current proposal to exempt small-scale live music events from the Licensing Act by legislative reform order. I shall argue that that LRO does more for live music and, at the same time, takes more account of the needs of the live music sector and of the public and residents than the Bill that we are considering. As has been said, we are currently conducting a public consultation on the LRO, which is due to close on 26 March.

It is true that on a number of occasions in recent years we have had informal discussions with stakeholders about options for live music exemptions, but this is not the eighth or ninth consultation. This is the first public consultation on a possible exemption, and I urge all noble Lords to take it very seriously. It is an important opportunity for those who have an interest to set out their views and enter a public debate on the issues.

There are significant differences between the Government's proposal and this Bill, and I shall return to some of those in a moment, but first I want to lay out some of the facts about live music and the Licensing Act.

One intention behind the Licensing Act was to encourage a wider range of live music in pubs, bars and other venues by simplifying entertainment licensing requirements. Most importantly, the Act removed the need for a separate public entertainment licence, which could be prohibitively expensive, and replaced it with a single licence for both sales of alcohol and regulated entertainment.

Premises that did not apply for a live music authorisation when they applied for their licence can now use the minor variations process, introduced on 29 July last year, to add or extend authorisation for low-impact live music more easily and cheaply. We do not yet have any statistics on its use but we know of a number of cases when it has already been used to extend authorisation for live music. When we have that information I shall write to the noble Lord, Lord Colwyn, who claims that it has not been used at all up to now and to demonstrate the occasions when it has been brought into effect.

We accept that the partial exemption under Section 177 is extremely complex and it has been rarely used. That is one of the reasons for the introduction of the minor variations procedure and the legislative reform order on which the consultations are taking place. I want to correct one point made by the noble Lord, Lord Clement-Jones, about the ability of residents to make representations against minor variations. That was not originally a government proposal but was inserted into the Bill by our own Regulatory Reform Committee. That is not a major issue but it needs to be put on the record.

The noble Lord, Lord Colwyn, and others have referred to the representations made by the Local Government Association which is not keen on the Bill, but which supports the LRO. It says that the minor variations process has been strongly supported by councils as it makes it easier for venues to introduce live music but allows local people to have a say on what impact there might be for those living and working nearby. I do not want to go into a long debate with the noble Lord, Lord Redesdale, about human rights, but residents have human rights as well and it is only right that we take account of their needs as well as those of the music sector.

The Act also includes an exemption for incidental live music—that is, live music that is not the main reason for customers to be attracted to premises. We know that the Musicians' Union, local government and the licensed trade have recently worked together to produce leaflets promoting the new minor variations procedure and the existing incidental exemption among musicians, venues and local licensing officers. The Licensing Act also introduced a new light-touch system for the licensing of temporary events which has proved very popular.

As we know, the effect of the Licensing Act on some forms of live music provision has been a controversial subject—noble Lords have expressed that today. I shall not attempt to recite the history but some of the more negative predictions and assessments are simply not true. It is not the case that the Act has somehow killed off live music. Unfortunately the Government do not have trend data that directly describe the strength of the live music sector. I had hoped that we might be able to get more information on this. It should be emphasised that licensing is far from being the only factor influencing it. Tastes change and there is a huge number of commercial considerations.

[Lord Faulkner of Worcester]

However, there are some things that we do know. First, we know that a number of premises' licences with authorisation for live music increased by 11 per cent between 2007 and 2009. When club premises are included, the increase is 10 per cent. However, there is no direct link to the amount of music that occurs. It is obvious that licence-holders will not necessarily put on live music just because they have authorisation. Secondly, from the point of view of participation and attendance, the DCMS *Taking Part* survey tells us that more people are going to gigs. Between 2005-06 and 2008-09 there was a 3.1 per cent increase in the proportion of adults attending live rock, pop, country, folk, soul, R&B and world music events. Attendance at jazz concerts stayed around the same, while attendance at classical concerts fell. That is an indication of popular demand. Thirdly, the commercial live music industry appears to be thriving. PRS for Music, which is an independent organisation, estimated that the value of the sector increased by 13 per cent in 2008.

However, the Government recognise that the picture is not uniformly positive. Before the introduction of the Licensing Act, the Government set up the Live Music Forum, to which the noble Lord, Lord Clement-Jones, referred; chaired by Feargal Sharkey, it was an independent body to look into the issue. The forum reported in July 2007—I am grateful to the noble Lord, Lord Clement-Jones, for reminding us of this—that the effect on live music had been broadly neutral. But in common with other commentators, it suggested that the Licensing Act may have had a negative effect on the amount of live music at some smaller venues. The Taking Part survey indicates that smaller venues have lost market share to larger venues.

Research carried out for the DCMS in 2007 on the provision of live music found that there had been a decline of 5 per cent since 2004 in the number of secondary venues which had put on live music in the previous 12 months. The report also found that the Licensing Act did not appear to be a major factor in decisions relating to whether such secondary venues provided live music. So while the Government have brought forward an exemption to help small venues put on live music, there remain barriers, such as consumer demand, which are outside the Government's control.

I should like to turn to the important differences between the Government's proposals and those in the noble Lord's Private Member's Bill. The most important difference is one of process. Both these proposals would affect many stakeholders—pubs, clubs, village halls, charities, schools, musicians, residents and local government—and some of them are likely to have concerns about public protection issues such as crime and disorder, public safety and noise nuisance. The Government believe that all stakeholders should have the opportunity to give their views, which is why we are carrying out a public consultation on our proposal.

Consultation on the details as well the principles is essential. For example, both proposals would allow residents and others to apply for the revocation of the exemption of specific premises if there are any problems. The revocation process will be administered by local government. Surely local government representatives should be invited to give their views on how such a process will work in practice and the likely costs. The Bill also contains proposals to exempt schools and colleges from its provisions in respect of regulated entertainment if no alcohol is sold. I have no doubt that such an exemption would be welcomed by some schools, but I also think that the education sector should be given an opportunity to comment on it. I will return in a moment to the issue of schools. This is a subject on which there is some agreement but also some confusion.

The biggest difference concerns the maximum capacity of 200—which is what the noble Lord's Bill provides for, whereas the Government are consulting on their proposal for an exemption for a maximum size of 100, which is in line with the proposal of the Live Music Forum. Although size and venue capacity are only rough indicators of the likely impact of a live music event, larger events, broadly speaking, are likely to have a more adverse impact on residents. For example, it is likely that the music will need to be louder if it is to be heard by a larger audience, and there will be more people leaving when the event ends.

In view of these concerns the Government have proposed a maximum size of 100. However, we recognise that there are arguments on both sides. For example, smaller gigs may be less economically viable and not benefit professional musicians to the same extent. Respondents to the consultation can therefore disagree and suggest an alternative. As the noble Lord, Lord Colwyn, very fairly pointed out, the Minister with responsibility for licensing, my honourable friend Gerry Sutcliffe, has said that the Government would consider increasing the limit if there were an overwhelming consensus in favour of it. Audience size would appear to be a fairer mechanism for setting a cut-off point than a venue's capacity as otherwise larger premises would be disadvantaged. Under the Government's proposals, they would be able to hold smaller events to take advantage of the exemption.

I should answer the allegation of the noble Lord, Lord Colwyn, that the Government's LRO will not effectively exempt music because it fails to take the issue of entertainment facilities into account. We are proposing that small-scale live music events be exempted from the requirements of the Licensing Act 2003 in respect of the provision of regulated entertainment. This includes the provision of both entertainment and entertainment facilities. The Bill before us would allow exempt live music to continue until midnight. The Government's view is that, although late finishing times are certainly appropriate for some venues, midnight is too late for a blanket exemption, particularly on weekdays, since it would mean that customers are likely to disperse together in the early hours of the morning. The Government's proposal would require performances to end at 11 pm.

The exemptions proposed in the Bill would apply to events held indoors and outdoors or in permanent or temporary structures. We take the view that events held outdoors—for example, in tents—are more likely to generate noise nuisance. The Government's proposed exemption is therefore restricted to events held inside a permanent building.

The Bill would exempt live music events at premises licensed for alcohol and at schools, colleges and hospitals when no alcohol is sold. This may be said to discriminate against potential low-risk venues such as cafés and bookshops, which would be included in the Government's proposal. The Government agree that schools deserve special consideration. This is why schools and colleges are already exempt from paying application fees and annual fees when they have a premises licence that is for regulated entertainment only, including live music. However, our understanding is that this exemption is not commonly used. There is good reason for this. Here I should like to address some of the misunderstanding that exists about the licensing of music in schools. It is simply not the case that a typical school concert or school play is licensable. These are generally private events for pupils and parents. Private events are not licensable unless they are for consideration and with a view to profit. This is the rather basic reason why the fee exemption is not frequently used: it is not generally needed.

On the other hand, it sometimes seems to be implied that schools used to be wholly exempt from licensing law and that school concerts were generally made licensable by the Licensing Act. Neither is the case. If a school hall is used for a rock concert, this remains licensable, and I think that reasonable people would consider that it should be. Some schools, such as music schools, sometimes put on commercial-type events. However, some events at schools, such as fund-raising events held by parent-teacher associations, or events held by external bodies, may be licensable. In many cases, alcohol is sold—for example, a glass of wine at the interval—so that these events would not benefit directly from either of the proposed exemptions or the existing fee exemption. Nevertheless, I hope your Lordships will agree that the sale of alcohol at schools requires regulation.

In the same way, such performances of live music at hospitals are very unlikely to be licensable. Fund-raising events may well involve sales of alcohol and therefore require a licence. But the Government remain prepared to look again at the needs of schools and hospitals. This would not be limited to regulated entertainment. The exemption of hospitals from the provisions of the Licensing Act in respect of late night refreshment, for example, deserves consideration.

The Bill seeks to reintroduce a variant of the old exemption for one or two musicians performing in a premises licensed for alcohol—the "two in a bar" exemption. The old exemption was not universally popular with musicians and was not widely used. A limit on the number of performers discriminates against musicians who perform in larger bands. It does not discriminate against the noble Lord, Lord Colwyn, if he is on his own with his trumpet, but representations have been made by larger groups of musicians. The new condition that the music must be non-amplified or "minimally amplified" means that many of these events are likely to be already exempt under the incidental live music exemption. If we then consider that an event that is "minimally amplified" and has two or fewer musicians is unlikely to be performed before a substantial audience, it is hard to see that many additional events would benefit from this exemption.

I think your Lordships will understand from what I have said that while we have no intention of deviating from our normal stance of neutrality towards Private Members' Bills, we have strong reservations about this Bill. We believe that a more appropriate measure is the legislative reform order, on which the Government are consulting. On the legislative timetable, the LRO, unlike a Private Member's Bill, can be carried over from one Parliament to another, so the coming of the general election would not mean that the issue would die and have to be taken up again from scratch by any new Administration in a new Parliament.

I hope that I have managed to answer the main points made in the debate. I am most grateful to all noble Lords who have taken part in it and I am sure that we shall continue our discussion in due course.

2.05 pm

Lord Clement-Jones: My Lords, I thank all noble Lords who have taken part in today's debate. Although the noble Lord, Lord Colwyn, did not blow his trumpet today, he was extremely eloquent and his support is, as ever, extremely welcome. He explained the importance of live music and its impact on the health of our creative industries extremely well. We recognise his consistent support over the years for live music. I thought that he comprehensively demolished the LGA's briefing along the way. He cited something else that should have given us heart but which, in the light of the Minister's reply, perhaps did not. I cited a Written Answer to me from the noble Lord, Lord Davies; he cited Mr Sutcliffe as being prepared to compromise. I must admit that if that is compromise, I am probably a Dutchman, from what I heard the Minister say.

The noble Lord, Lord Redesdale, who himself has been an extraordinarily able supporter of live music, was very eloquent—particularly about its impact on the pub trade and about the history, how we were assured about the Act, especially Section 177, which, it turns out, is not a partial exemption at all but only a potential way to save costs under a very complex set of conditions that have never been invoked. We were sold a pup at the time.

The noble Lord, Lord Redesdale, made it absolutely clear that the proponents and supporters of the Bill do not disregard the human rights of residents; in fact we are extremely mindful of them. Indeed, local residents would keep all their rights of review of licences. If premises are seeking to shelter under an exemption, if there is noise or nuisance, local residents are entitled under my Bill to call for a review. I am sorry that the Minister and the LGA may well be in collusion to try to paint it as a way of steamrollering local residents, but that is absolutely not the case.

I have no doubt that we will debate at length the details of the LRO consultation and whether it deals adequately with entertainment facilities. As I read it, the issue of putting a piano in a public place, which occurred last summer, is not cured by the Government's proposals. We shall see.

I particularly value the contribution of the noble Lord, Lord Howard of Rising. Brief though it may have been, it was extremely welcome. I welcome the support of the Opposition Front Bench; we appreciate it.

[Lord Clement-Jones]

If the Minister was being neutral, I would hate to see him in hostile form. I thought that he made an extremely poor fist of neutrality, especially when he has an LRO out that accepts the case that we make in principle. He may not accept the details, but it was a pretty grudging way to accept that the purposes of the Bill are entirely laudable and grounded in the facts. If one burrows into *Hansard*, one will find that, although it is very grudging, he agrees entirely with what I said about the figures in the surveys and so on.

The question is: does the Minister's LRO do more for live music than our Bill? He tried to extol the virtues of the temporary event notice. He tried to claim that schools and hospitals were in absolutely fine shape. I am very grateful to my friends in the Box, but the fact is that there is no case law. Events that are open to friends count as public if they are open to anyone. If I go to a school performance and I bring along my next-door neighbour, it becomes a public event. That is a complete anomaly. The Government are not correct in what they said about that.

We can argue the toss about 100 or 200; I am perfectly flexible. There is no direct correlation between numbers of musicians and noise. We believe that 200 is a proportionate capacity that would serve a need. We do not believe that local residents would be put at risk. We believe that there is an element in local authorities that wants to control everything under its aegis. We do not think that that is healthy for the growth and flourishing of live music.

The Government have already agreed that the minor variations process is not adequate; they would not be bringing forward this LRO if they thought that it was. Yet the Minister devoted several minutes to extolling the virtues of the minor variations process. I recognise that the Delegated Powers Committee inserted that extra wording, but the Government could have resisted. It is not plausible for them to claim that the minor variations procedure is not very good because the Delegated Powers Committee made it so. The fact is that the minor variations procedure is bureaucratic for precisely that reason, whatever the Delegated Powers Committee situation. For all the issuing of leaflets—I am sure that it is highly laudable for there to be lots of leaflets about temporary event notices, incidental music and minor variations—they will not cure a poor process.

I hope that the Government recognise that we are all working towards a better process for the exemption of small live music events. Nobody is saying that the Licensing Act has killed live music—that statement would be disproportionate—but we are saying that live music in small venues has been affected. There is no question of that. I believe that, despite the Minister's comments, the Government now recognise that and that they are at least trying to do something about it.

The sale of alcohol in schools is deliberately not covered by the Bill. We recognise that that would be a step too far. It could turn schools and hospitals into venues if we suddenly started allowing the sale of alcohol.

There are flaws in the statistical evidence. I believe that there is currently an inquiry within the DCMS about the statistical basis on which it has been working. The Government have already admitted that they do not know how many premises among those in the 11 per cent increase between 2007 and 2009 that the Minister mentioned would not have required a licence under the old regime, including schools, hospitals, private charity functions and so on. The Government may quote some of these statistics, but the statistics are not very robust.

As his final commendation for the LRO, the Minister mentioned that he could carry it over whereas I could not carry over my Private Member's Bill. I am very happy to make another Second Reading speech after the general election, and I hope that whoever is in power will be more sympathetic to my Bill than the current government Front Bench. As time goes on, it will become clearer and clearer in certain areas that this is an issue, particularly because of the interest of publicans, and politicians, who often ply their trade in pubs during general elections, will realise that this is an electoral issue. This is something that local people want and, ultimately, they will not be denied.

I have not properly acknowledged UK music in this debate. Mr Feargal Sharkey has been a tower of strength. There are others, such as the National Campaign for the Arts, which has now given us its support; trade unions; the original Live Music Forum, which is run by Phil Little; and growing numbers of organisations, such as Listen Up and *thePublican* organisation. This is a growing movement. I believe that it is irresistible and that the Government are not going far enough. The Bill represents that mood much better and more closely than the Government's legislation. I want this to proceed in the next few months before the general election, and I very much hope that the Government will have second thoughts and adopt it.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 2.15 pm.

Written Answers

Friday 15 January 2010

Armed Forces: Craigiehall

Question

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what consideration they have given to the future of the Army headquarters at Craigiehall, near Edinburgh; and when they will make a decision on its future. [HL1142]

The Minister for International Defence and Security (Baroness Taylor of Bolton): I refer the noble Lord to the Answer my honourable friend the Minister for Armed Forces (Bill Rammell) gave in the other place on 5 January (*Official Report*, col. 32W). I can, at this stage, only reiterate that it is too early to say when the Army's top level review will conclude and what impact its findings will have on particular establishments or locations.

Armed Forces: Medals

Questions

Asked by ***Lord Richard***

To ask Her Majesty's Government whether they will authorise the granting of a commemorative medal to those who served in Bomber Command during World War II; and what are the reasons for their decision. [HL886]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The Ministry of Defence has a long-standing policy not to issue commemorative medals to service personnel other than for Royal Coronations and Jubilees.

Since the end of World War II, the Committee on the Grant of Honours, Decorations and Medals (known as the HD committee), which is responsible for recommending to Her Majesty The Queen on the award of new medals, has a consistent and well-established policy that it will not consider the belated institution of awards and medals for service given many years earlier. The reason for this policy is that the present HD committee cannot put itself in the place of the committee which made the original decision and which would have been able to take account of the views of all interested parties at the time. In addition, if an exception were to be made for one case, then it would be almost impossible to refuse to reconsider every other claim for the retrospective institution of an award or medal.

There were no medals awarded purely for service in a particular command during World War II. Those who completed the minimum qualifying period of service in operational areas were eligible for the 1939-45 Star and those with long service in non-operational areas received the defence medal. In addition to the 1939-45 Star and defence medal, a series of campaign stars were created for participants in particularly hazardous campaigns, and many Bomber Command personnel qualified for the much prized aircrew Europe Star or, for example, the France and Germany Star.

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government whether they are considering the award of a United Kingdom national defence medal for Her Majesty's Armed Force personnel who have served since the end of World War II. [HL933]

Baroness Taylor of Bolton: The arguments in favour of the medal were set out in May 2009 in a document prepared by the National Defence Medal Society entitled, the *National Defence Medal—Veterans Recognition Report*. The points made in the report have been carefully considered. My honourable friend, the Minister for Veterans, wrote to the society on 20 September 2009, stating that it has been concluded that it is not appropriate to institute a new national defence medal.

The HM Armed Forces Veterans Badge was introduced in May 2004. The lapel badge is a fitting tribute, where veterans can demonstrate that they have served their country as members of the Armed Forces. Many veterans wear the badge on a daily basis and many more on parades.

Crown Dependencies

Question

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government how the costs of imprisonment on the United Kingdom mainland of a person convicted for a criminal offence in a Crown Dependency are shared. [HL987]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The transfer of prisoners between the United Kingdom and the Crown Dependencies (the Bailiwick of Guernsey, Jersey and the Isle of Man) is governed by the Crime (Sentences) Act 1997. The criteria for transfers were set out by the then Home Secretary's Statement to Parliament on 28 October 1997.

Where a prisoner meets the criteria for transfer, the cost of detention following transfer falls to the receiving jurisdiction in the United Kingdom. Where the transfer of a prisoner falls outside the normal criteria then the cost of detention is met by the transferring jurisdiction. In each case the cost of the actual transfer of the prisoner is met by the transferring jurisdiction.

Democratic Republic of Congo

Questions

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what discussions they have had with the government of the Democratic Republic of Congo regarding concerns about corruption, impunity and human rights abuse in that country. [HL1147]

Lord Brett: We lobby the Government of the Democratic Republic of Congo (DRC) vigorously through our embassy in Kinshasa on the human rights situation in the country and we welcome President Kabila's zero tolerance policy on human rights abusers. We continue to press for measures to be taken on impunity for serious abusers, including the handover of Bosco Ntaganda to the International Criminal Court. We take the issue of impunity seriously, and have lent support to developing the justice sector in DRC. We are providing around £80 million over five years to increase accountability of the security sector through strengthened oversight mechanisms, technical assistance and training.

We also lobby strongly for, and support, action to be taken on sexual and gender based violence (SGBV). Our action to combat this is focused on four levels: prevention; strengthening medical and psychosocial response; support during the judicial process; and advocacy to generate political action by the DRC Government. The Security Council recently passed Regulation 1888 which was co-sponsored by the UK. It renews Security Council Regulation 1820 on women and conflict, and creates a technical task force to look at sexual violence, as well as a UN special envoy.

The UK in addition continues to push for legal action against five senior commanders of the Armed Forces of the DRC (FARDC) accused of committing sexual violence and who were named by the UN Security Council during their visit. We will continue to stress the importance of ensuring the implementation of the UN peacekeeping mission's policy of withdrawing support from FARDC units implicated in serious human rights abuses.

We are working with the international community, particularly the World Bank, European Commission, International Monetary Fund and the UN Development Programme, to tackle corruption in the DRC. We are supporting government institutions to develop a more efficient and transparent public financial management system, and are working to improve the quality of government audit and budgeting processes. In addition, through a new civil society fund, we are starting work to make Parliament and civil society stronger in holding government agencies to account.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government whether they have assessed British-owned or British-based arms-brokers dealing with armed groups in the Great Lakes region of Africa. [HL1148]

Lord Brett: We are not aware of British or British-based arms brokers dealing with armed groups in the Democratic Republic of the Congo (DRC). Any such brokers dealing with armed groups would be liable for sanctions, and their activities would be subject to domestic export control legislation. We take our obligations under sanctions very seriously and will not hesitate to support sanctions against any person or company against whom there is sufficient evidence, including UK-based companies or individuals.

We fully support and welcome the work of the UN Group of Experts, the panel of five UN-appointed officials responsible for investigating compliance with the terms of the arms embargo and the sanctions regime which apply in DRC, into the activities of armed groups in the eastern DRC and how they are funded.

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government how they, the European Union Special Representative and the United States special envoy to the Great Lakes region of Africa are working (a) to create a permanent and effectively monitored ceasefire in the Kivus, (b) to end the trading of metals from allegedly inhumanely mined minerals in the Congo in European and American markets, (c) to ensure that there is effective justice following alleged deployment of rape as a weapon of war, use of children as soldiers, and other alleged war crimes and crimes against humanity, (d) to reduce the spread of HIV/AIDS and incidences of fistula, and (e) to increase access to education. [HL1149]

Lord Brett: (a) Any permanent ceasefire in the Kivus will require close co-operation between the Governments of the Democratic Republic of the Congo (DRC) and Rwanda. We welcome the recent rapprochement between Rwanda and DRC—including the recent exchange of ambassadors—which has lead to greater co-operation and stability in the region. Our ambassador in Kinshasa and High Commissioner in Kigali are in close contact with their respective host Governments and continue to engage on this issue.

(b) The UK fully supports the work of the UN Group of Experts which has led investigations into the companies and individuals benefiting from the illicit trade in natural resources. We are working with the Government of DRC to promote the mining sector and the trade of minerals in a more regulated and transparent way which will inhibit the opportunities of illegal groups to exploit the mining and trade. We also take very seriously our obligations under sanctions and will not hesitate to support sanctions against any person or company against whom there is sufficient evidence, including UK-based companies or individuals.

(c) The UK supports international efforts to prevent crimes against humanity. We have been working with partners on an emergency justice project to help bring the most serious crimes in eastern DRC to justice, including specific provision for crimes of sexual violence. We are working within a security sector reform programme to end the culture of impunity for the security forces, for example providing barracks, pay, etc, to reduce the predation of the army on civilian populations.

The UK is equally committed to playing an active role in international efforts to protect children affected by armed conflict as a member of the UN Security Council Working Group on Children and Armed Conflict and through the European Union. The UK has also provided very significant financial support to a number of programmes that help children affected by armed conflict. The UK strongly supports the work of international courts and tribunals which are trying

the alleged perpetrators of the most serious crimes of concern to the international community including those against children.

(d) The Department for International Development (DfID) supports a programme of HIV/AIDS prevention, which includes the distribution of condoms and behaviour change and helping the Government develop a national strategy for tackling HIV/AIDS.

(e) DfID leads the international donor group in DRC on education and supports the Government's aspiration to achieve universal free primary education. It is supporting the DRC's primary and secondary education strategy through a teacher census and a school mapping exercise, and we continue to support universal access to education through a scheme for providing insurance for primary school children to attend school.

The UK works with a range of partners on these issues, including the EU and the United States.

Elections: Postal Votes

Questions

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many voters requested postal votes for the general elections in (a) 1997, (b) 2001, and (c) 2005. [HL942]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): At the national level, data are collected on the number of postal votes issued in each constituency. Neither the Ministry of Justice nor the Electoral Commission collect data on the total number of postal ballot papers which were requested by voters. The Electoral Commission has confirmed that the number of voters who were issued with postal ballot papers for the past three general elections was as follows:

General Election Year	*Numbers of voters issued with postal ballot papers*	*% of voters issued with postal ballot papers*
1997	937,205	2.1
2001	1,750,000	4
2005	5,362,501*	12.1*

* Data not available for two of the 646 parliamentary constituencies.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government how many voters requested postal votes for the European Parliament election in 2009. [HL943]

Lord Bach: At the national level, data are collected on the number of postal votes issued in each constituency. The Electoral Commission has confirmed that 6,318,501 voters were issued with postal ballot papers for the European parliamentary election in 2009.

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government which 10 parliamentary constituencies had the most requests for postal votes in 2005. [HL944]

Lord Bach: At the national level, data are collected on the number of postal votes issued in each constituency. The Electoral Commission has confirmed that the 10 parliamentary constituencies where the greatest number of postal ballot papers were issued as a proportion of the electorate was as follows:

Name of constituency	*% of electorate (GB only*)*
Newcastle upon Tyne North	45.4
Stevenage	45
Rushcliffe	39.9
Newcastle upon Tyne Central	36.7
Newcastle upon Tyne East and Wallsend	35.4
South Shields	35.2
Jarrow	33.1
Hackney South and Shoreditch	30.6
Tyne Bridge	30.4
The Wrekin	30.4

* Different absent voting arrangements apply in Northern Ireland

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government which 10 parliamentary constituencies had the fewest requests for postal votes in 2005. [HL945]

Lord Bach: At the national level, data are collected on the number of postal votes issued in each constituency. The Electoral Commission has confirmed that the 10 parliamentary constituencies where the fewest number of postal ballot papers were issued as a proportion of the electorate was as follows:

Name of constituency	*% of electorate (G.B only*)*
Stoke-on-Trent North	5.4
Stoke-on-Trent Central	5.3
Liverpool Walton	5.3
Nuneaton	5.2
Bootle	5.1
Airdrie and Shotts	4.9
Luton North	4.9
Coatbridge, Chryston and Bellshill	4.9
Stoke-on-Trent South	4.7
Brent South	4.5

* Different absent voting arrangements apply in Northern Ireland.

Government: Office Equipment

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government further to the Written Answer by the Parliamentary Under-Secretary of State for Communities and Local Government, Barbara Follett, on 9 December 2009 (*Official Report*,

House of Commons, col. 390W), what was the average purchase price, excluding value added tax, of a 500 sheet ream of white A4 80 gsm photocopier paper paid by the Department for Business, Innovation and Skills and each of its agencies in the latest period for which figures are available. [HL992]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): The Department for Business, Innovation and Skills currently pays £1.65p for each 500 sheet ream of white A4 80 gsm photocopier paper.

I have approached the chief executives of the Insolvency Service, Companies House, National Measurement Office and the Intellectual Property Office and they will respond directly to the noble Lord.

House of Lords: Website

Question

Asked by ***Lord Norton of Louth***

To ask the Chairman of Committees how many hits there were on the House of Lords homepage on the Parliament website in each month in 2009. [HL1138]

The Chairman of Committees (Lord Brabazon of Tara): The number of page views for the House of Lords homepage on the Parliament website in 2009 was as follows:

Month	*Number of page views*
January	35,404
February	32,920
March	35,482
April	24,394
May	19,930
June	19,188
July	16,641
August	9,505
September	20,737
October	36,684
November	39,387
December	25,724

Houses of Parliament: Publications

Question

Asked by ***Lord Norton of Louth***

To ask the Chairman of Committees how many copies of the latest version of *A Guide to Business* have been printed; and at which outlets in the Palace of Westminster they are made available to visitors to the Palace. [HL1137]

The Chairman of Committees (Lord Brabazon of Tara): The print runs for the latest versions of *A Guide to Business* were as follows:

Language	*Copies printed*
English	45,000
Spanish	8,000
French	6,000
German	6,000
Italian	6,000
Chinese	5,000
Russian	5,000
Japanese	2,000
Welsh	2,000

The English language versions of the guide are available in the Printed Paper Office, at Peers' Entrance, outside Room 19 (First Floor West Front), in Peers' Lobby, in Strangers' Gallery and in the Information Office. Foreign language versions are available in Westminster Hall, Peers' Lobby, Strangers' Gallery and the Information Office.

Houses of Parliament: Website

Question

Asked by ***Lord Norton of Louth***

To ask the Chairman of Committees how many hits there were in 2009 on each guide to the House of Lords printed in a language other than English and available on the Parliament website; and whether he will ensure that in future the links to guides from the Parliament homepage are not printed solely in English. [HL1141]

The Chairman of Committees (Lord Brabazon of Tara): *A Guide to Business* is available in English, Welsh, Chinese, French, German, Italian, Japanese, Russian and Spanish. The English version was downloaded 469 times in 2009, the German version 87 times and the Spanish version 83 times. No data are currently available in respect of the other language versions. All of the translated content on Parliament's website is available from a single languages page. Parliament's web team is currently investigating the provision of links to the foreign language versions of the guide in their respective languages at a future date.

Parliamentary Education Service

Question

Asked by ***Lord Norton of Louth***

To ask the Chairman of Committees what is the financial contribution by the House of Lords to the Parliamentary Education Service; and what is the overall estimated annual cost of providing facilities for visitors to the House. [HL1140]

The Chairman of Committees (Lord Brabazon of Tara): In financial year 2008-09, the House of Lords contributed £312,486 to the Education Service. Other Lords expenditure on visitor services was £289,051 over the same period. This does not include associated security costs or retail and catering costs and revenues.

Prisons: Drugs

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 1 December 2009 (*WA 31*), whether Mr Ellis Sherwood was addicted to drugs when he was sentenced to prison. [HL927]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): Mr Ellis Sherwood was convicted and sentenced to imprisonment in July 1988, although he had been in prison on remand since November 1987. Specific information as to whether Mr Sherwood was addicted to drugs at the time he was sentenced to imprisonment is not available.

Professor Peter Lawrence

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government further to the Written Answer by Lord Drayson on 14 December 2009 (*WA 187*), what percentage of Professor Lawrence's recommendations have been implemented by the concordat to support the career development of researchers; and how the research councils have responded to the arguments in Professor Lawrence's article online at the PLoS Biology website or by other means. [HL968]

The Minister of State, Department for Business, Innovation and Skills and Ministry of Defence (Lord Drayson): The concordat to support the career development of researchers was launched in 2008. As a result a range of initiatives are being undertaken to address the issues related to Professor Lawrence's concerns about career development for researchers. More details are contained in the first annual report on implementation of the concordat published in December 2009 at http://www.researchconcordat.ac.uk/documents/FundersForumDecember09.pdf.

The research councils are continually working to improve the peer review system. An important aspect of this work is reducing the burden on the research community.

Town and Village Greens

Questions

Asked by ***Lord Greaves***

To ask Her Majesty's Government why the National Common Land Stakeholder Group was not consulted on the proposal to consult in spring 2010 on whether to reform the town and village greens registration system. [HL961]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The review of the framework for registering new town or village greens will consider both whether changes are needed to the existing framework, and possible options for change. Our intention to consult was discussed with the national common land stakeholder group on 7 December 2009. The framework has been discussed extensively with members of the group over the past year, and we hope that they will continue to play a full part in the planned consultation process.

Asked by ***Lord Greaves***

To ask Her Majesty's Government what will be the timescale and cost of the proposed consultation in spring 2010 on whether to reform the town and village greens registration system; and whether the consultation will include all commons or only town and village greens. [HL962]

Lord Davies of Oldham: The consultation will relate solely to town or village greens, and is expected to begin in March 2010 and remain open for a minimum of 12 weeks. The costs of the consultation are not yet known, but are expected to be minimal, and will be accommodated within existing budgets.

Asked by ***Lord Greaves***

To ask Her Majesty's Government what representations they received on the town and village greens registration system between the implementation of Section 15 of the Commons Act 2006 and the commissioning of the Study of Determined Town and Village Green Applications, produced by Countryside and Community Research Institute and Asken Limited. [HL963]

Lord Davies of Oldham: My department has received many representations about the framework for registering new town or village greens, and particularly requests for assistance and explanation from members of the public. We have also received representations from Members of Parliament, local authorities and others about the consequences of applications for registration, in so far as they affect local authorities, landowners and others.

Asked by ***Lord Greaves***

To ask Her Majesty's Government how they will implement the recommendations in Sections 7.7, 7.8 and 7.9 of the Study of Determined Town and Village Green Applications, produced by Countryside and Community Research Institute and Asken Limited. [HL964]

Lord Davies of Oldham: We will consider options for better integration between the framework for registering new town or village greens and the planning system, as part of our forthcoming review of the framework. Those options will have regard to the recommendations to secure better integration included in the report prepared by the Countryside and Community Research Institute and Asken Ltd.

Turkey

Questions

Asked by ***Lord Patten***

To ask Her Majesty's Government what assessment they have made of whether Turkey has developed or is developing the technology necessary to manufacture nuclear weapons. [HL1036]

Lord Brett: The Foreign and Commonwealth Office has not received any information that Turkey is developing the technology necessary to manufacture nuclear weapons. Turkey is a signatory to the non-proliferation treaty and as such has agreed not to develop such weapons. Turkey has civil nuclear sites declared to the International Atomic Energy Agency under safeguards and brought an additional protocol into force in 2001 providing the highest standards of transparency.

Asked by ***Lord Patten***

To ask Her Majesty's Government whether their stance on the treatment of Armenians by Turkey in 1915 and 1916 takes account of its being a criminal offence in other European Union member states to deny that that treatment was genocide. [HL1121]

Lord Brett: The Government are aware that several EU member states have adopted legislation recognising the crimes and massacres of 1915 and 1916 as genocide. Terrible suffering was inflicted on Armenians living in the Ottoman Empire in the early 20th century. We must ensure that the victims of that suffering are not forgotten. The Government's main concern is how we can ensure that the lessons are learnt and relationships are rebuilt to ensure a peaceful and secure future for everyone living in the region.

For this reason, we believe that it is first and foremost for the Turkish and Armenian people to address their common history. We welcome the recent signature of protocols on establishing and developing relations between Turkey and Armenia as an important step in this direction. In particular, we welcome the fact that the protocols provide for an intergovernmental sub-committee to examine historical issues. It is important that this process is owned by the parties directly concerned.

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