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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
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# House of Lords

*Wednesday, 10 July 2013.*

*3 pm*

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

## Dyslexia
*Question*

*3.06 pm*

*Asked by* ***Lord Addington***

To ask Her Majesty's Government what steps they are taking to make apprenticeships accessible to dyslexic people.

**Lord Addington:** My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my declaration of interest.

**Baroness Garden of Frognal:** My Lords, final data for 2010-11 show that 18,940 learners participating on an apprenticeship programme self-declared that they had dyslexia. They had a success rate of 72.6% compared to 76.4% overall. All apprenticeships are stretching and prepare individuals for sustained employment. Dyslexia should not present an insuperable barrier to those candidates who demonstrate competence and commitment in their chosen field. Access to Work and additional learning support are two possible sources of funding to help provide equipment or other assistance for apprentices with dyslexia.

**Lord Addington:** I thank my noble friend for that Answer. The fact remains that dyslexia is a problem that affects people in reading and writing, that a written assessment is made at the end of an apprenticeship, and assistive technology, which is made available to those in the university sector, is not allowed to be used. Bearing that in mind, will my noble friend give me an assurance that this situation will be changed and reviewed in the immediate future?

**Baroness Garden of Frognal:** As my noble friend knows very well, new assistive technology is advancing at a very rapid rate, with apps and packages such as Prismo, Livescribe, Dragon and others. Dyslexia affects different people in different ways. Some solutions will suit some people, while other solutions will suit others. If it would be helpful, I will ask officials to set up a meeting with stakeholders, which would include the British Dyslexia Association and the Adult Dyslexia Organisation, to help to ensure that compatibility with assistive technology is considered when tests and other assessments are developed.

**Baroness Whitaker:** My Lords, how much of the assistance to which the noble Baroness referred, which I am sure is very welcome, has been made available to Gypsies and Travellers?

**Baroness Garden of Frognal:** I am afraid that I do not have those figures to hand. If I can find details for the noble Baroness I will write to her.

**Lord Walton of Detchant:** Does the Minister accept that whereas developmental dyslexia is the commonest and best known of the specific learning difficulties, there are a number of other less common specific learning difficulties such as developmental dyspraxia—serious clumsiness—and developmental dyscalculia, which means difficulty in calculating and the use of numbers? Is it not the case that people with these difficulties also have special education and training needs and require just as much attention as those with dyslexia?

**Baroness Garden of Frognal:** Yes, indeed, my Lords. There is a range of disabilities which can provide hurdles to young people embarking on apprenticeships. The National Apprenticeship Service looks at different ways of supporting diversity within apprenticeships and we recently commissioned a study from Peter Little to look at accessibility. We are implementing an action plan as a result of his report and he himself will help us to implement that.

**Lord Martin of Springburn:** My Lords, many schools throughout the United Kingdom encourage young boys and girls to take up apprenticeships while they are still at school. In other words, they are given day release and special training, which would help people with special needs. Will Her Majesty's Government consider expanding this facility to as many schools as possible?

**Baroness Garden of Frognal:** We already encourage schools to promote apprenticeships as a career path for people while they are at school, so that they will consider setting themselves up with the right sort of programmes of learning before they leave. Businesses increasingly go into schools to talk about possibilities, so there are ongoing programmes all the way through, which should help with what the noble Lord seeks to achieve.

**Lord Brookman:** My Lords, apprenticeships are one thing, but I am sure the Minister will agree that quite a number of young people at university are dyslexic and have other problems. Can the courses not be designed in such a way that these young people will end up with a degree rather than be frustrated and probably leave university not long after entering it?

**Baroness Garden of Frognal:** There are a great number of students at university who are dyslexic. The universities have their own methods of dealing with them. By and large, they have well established programmes of support and assistance to ensure that dyslexic undergraduates become dyslexic graduates.

**Baroness Wilkins:** The noble Lord, Lord Addington, has been asking about apprenticeships and dyslexia for a very long time. Is it not time that real action was taken and something was done?

**Baroness Garden of Frognal:** Yes, indeed. The point that the noble Lord made was about assistive technology. In my answer I said that it was developing very fast and offered to get the interested parties together to see whether we can find a way forward with that. On the subject of dyslexic apprentices, I point out that the apprentice of the year is a dyslexic woman called Emma Rogers, who gives credit to her college at Weston for having helped her through. She is a tremendous role model.

**Lord Swinfen:** My Lords, what help is being given to dyslexic children at school?

**Baroness Garden of Frognal:** With the increasingly high profile of dyslexia and other forms of disability, it is becoming part of the teacher training programme, and teachers are very much more aware of trying to recognise the signs at an early point, when more help can be given to children, rather than, as so often happened in the past and can still happen, leaving it undiagnosed until pupils are quite advanced in the educational process. Schools have different ways of dealing with it, and by and large we get very good reports of good practice.

**The Lord Bishop of Chester:** My Lords, I speak as the father of two dyslexic boys. My observation of dyslexia is that it often takes young people longer to find their feet in life, especially if the dyslexia is not properly diagnosed. Will the Minister confirm that there are no age restrictions on admission to apprenticeships, because it is often a bit later in life that kids who are dyslexic are ready to take up apprenticeships and the like?

**Baroness Garden of Frognal:** The right reverend Prelate makes a very valid point. The apprenticeships we have been focusing on particularly are the ones for the younger age group. However, apprenticeships are certainly available for adults, and are being taken up in rather larger numbers by adults than they are by younger people. The possibilities are increasing for people with dyslexia to come into a very useful work-based programme of learning.

**Lord Davies of Coity:** My Lords, I certainly welcome the Government's approach to apprentices with dyslexia. However, I would like to know what the Government are doing when the apprentices become craftsmen, because apprentices will become craftsmen but will still have dyslexia. How will the Government cope with that?

**Baroness Garden of Frognal:** In a great many practical craft areas, dyslexia is no handicap. You can see absolutely wonderful examples of craftsmanship in this country achieved by people with a whole range of disabilities. We want to promote craftsmanship in the country as much as we can.

## Syria

*Question*

*3.14 pm*

*Asked by* ***Lord Wood of Anfield***

To ask Her Majesty's Government what steps they are taking to ensure that the proposed international peace conference on the Syrian conflict takes place in the near future.

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My Lords, all our efforts have focused on securing a successful outcome at the forthcoming Geneva conference. A negotiated political settlement remains the best way in which to end the current bloodshed. The US, Russia and the UN are working intensively on the details of the conference; it is inevitable that there will be challenges, but the UN Secretary-General has stressed that the three parties are committed to convening the conference as soon as possible.

**Lord Wood of Anfield:** I thank the Minister for that Answer. Given the failure of the G8 summit to agree a date for the start of the Geneva 2 talks, does the Minister think on reflection that it was a mistake for the Government to spend the run-up to the G8 raising the volume on the possibility of the UK arming the Syrian rebels? Does she agree that it would be damaging for the prospects of an international peace conference if the Government were to repeat the mistake in the coming weeks and months?

**Baroness Warsi:** The Government have consistently approached this matter by responding to the situation on the ground. I do not think that they can be criticised for actually responding to it and encouraging agreement when we think that it is possible. The countries that we are trying to get agreement between—the US and Russia, with the UN of course playing a facilitating role—are all committed to Geneva 2 and to a transitional executive authority that would be in accordance with the wishes of the Syrian people. It was right, in the run-up to the G8, to get as much agreement as possible, and it continues to be right to continue to push Russia and the US to come to an agreement to bring the coalition and the regime around the table.

**The Lord Bishop of Exeter:** My Lords, does the Minister accept that, if the international community is to have any hope of starting to resolve this dreadful situation, all parties to the conflict need to be at the negotiating table? If that is the case—and I ask this particularly in the light of the fourth Question on the Order Paper—how does she respond to the suggestion that this ought also to include Iran?

**Baroness Warsi:** The right reverend Prelate will be aware that this question has been raised in the House before. Our view is that those parties that were party to Geneva 1 should be party to Geneva 2. The challenge that we have at this moment is to get the opposition and the regime around the table to agree a road map.

Of course, if other parties can play a constructive role, that, too, would be appreciated, but the role that Iran is playing in Syria at the moment is not considered to be constructive.

**Baroness Falkner of Margravine:** Does my noble friend agree that, in addition to the importance of having Iran at the table, it will also be critical to the success of the conference to have credible members of the Assad Government there, if not President Assad himself? Moreover, the role of Hezbollah, which is often seen to be in alignment with Iran, is actually rather independent. Lebanon is a neighbour and is hugely affected by the civil war in Syria. Will she also consider, in trying to move Geneva 2 forward, whether they might invite all the key players in an open gesture so that we might get reconciliation and agreement at the end of that?

**Baroness Warsi:** I can assure my noble friend that we are trying to do all we can to bring the parties to the table. At the moment, the challenge has been in relation to the regime. We feel that people from the regime should be credible, and should be those who can take decisions and make sure that they are subsequently effected. To try to broaden that beyond the regime at this stage is not something that we think would be constructive.

**Lord Foulkes of Cumnock:** My Lords, further to my noble friend's question, will the Minister not concede that the Syrian Government have agreed, the Russians have agreed and the Americans have agreed to participate? Did she see a report by Reuters that the leader of the Syrian National Council has said that it is holding out to get more arms and waiting until then to strengthen its negotiating position? Surely, the British Government's policy in holding out the prospect of giving it arms is therefore counterproductive.

**Baroness Warsi:** I have said on many occasions at this Dispatch Box and maybe should say again that no decision has been taken to arm the Syrian opposition. The noble Lord will be aware that the national coalition has just elected a new president, Ahmed Assi al-Jarba, who has made it his job, among other things—indeed, he did so before his election—to broaden the coalition to include more people within it, to make sure that he unites the coalition. He is committed to the Geneva process.

**Lord Selkirk of Douglas:** Will the Minister make sure that the future housing needs of the refugees who are now in temporary provision are looked at and discussed with the relevant Governments, bearing in mind that many of those concerned cannot return to their original houses, which have been reduced to rubble?

**Baroness Warsi:** My noble friend will be aware that the largest humanitarian appeal ever has been launched as a result of the situation in Syria. The United Kingdom has made the largest contribution it has ever made to a single humanitarian appeal—£350 million. Indeed, the Secretary of State for International Development was in Lebanon earlier this week pledging further support for Syrian refugees in Lebanon. The long-term solution is to resolve the political situation on the ground so that these people are allowed to return. There are more than 4 million people displaced within Syria and 1.7 million displaced outside it. There is no conceivable way, even as an international community, that we could meet the housing needs of that many people. The solution has to be to create the climate for them to return to their own homes.

**Lord Soley:** Is the Minister aware that the reason that the Russians are reluctant to set a date, and they are reluctant, is that they want the Assad regime to regain as much control of territory as it can to strengthen its hand in negotiations? That cannot be good for Syria or anyone else in the long run, but we need to be realistic about it. There is a reluctance to set a date because the regime wants to extend its control on the land so that it can negotiate from a position of strength.

**Baroness Warsi:** My Lords, I cannot hypothesise about the reasoning for the Russian's position. Of course, we have different views on handling this crisis, but we have shared fundamental aims. We are both committed to ending the conflict, to stopping Syria fragmenting, to letting the Syrian people decide who governs them and to preventing the growth of violent extremism. We are hopeful that, because we are committed to the same aims, we can reach an agreement on how to get there.

## Alcohol: Minimum Pricing

*Question*

*3.22 pm*

*Asked by* ***Lord Brooke of Alverthorpe***

To ask Her Majesty's Government when they will publish their response to their consultation on the introduction of a minimum unit price for alcohol.

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** My Lords, the public consultation on the Government's alcohol strategy closed on 6 February. We will publish our response in due course.

**Lord Brooke of Alverthorpe:** I am grateful for small mercies. Will the Minister confirm that the principal problem leading to more than 10 million people drinking excessively is the easy availability of cheap alcohol? Will he also confirm that that is still the central plank of the Government's policy in their alcohol strategy? Secondly, when are we likely to start to see some progress on this issue, and will the Government please embrace it with the kind of enthusiasm which the previous Labour Government did when they were tackling the difficult issue of the tobacco industry and smoking? Until we take on the drink industry and some of the vested interests we will not start to see the

[Lord Brooke of Alverthorpe]
problem resolved in the way that we need it, given the issues that arise for the health service from excessive drinking.

**Lord Taylor of Holbeach:** The noble Lord rightly focuses on the elements of the Government's alcohol strategy that were put out to consultation. I have explained that a response to that consultation will be delivered in due course. Availability is one of many factors but to suggest that this Government have not been tackling the problem underestimates what has been achieved. The late-night levy has been introduced. The early morning alcohol restriction order, which was created under the previous Government but not commenced, has been commenced by us and we have sought to rebalance the licensing arrangements so that the ability of individuals in the vicinity to object to licences is now greatly strengthened. I totally accept what the noble Lord has said and indeed the Government's strategy will demonstrate that.

**Baroness Hollins:** Canada has introduced and evaluated a minimum unit price for alcohol. By introducing a 10% increase in the minimum unit price for some drinks there has been a decrease of 33% in wholly alcohol-related deaths. Given this evidence, when will the Government commit to including a minimum unit price as part of their alcohol strategy?

**Lord Taylor of Holbeach:** This is just the sort of evidence being evaluated by the Government. I accept that we also have the Scottish experience whereby the Scottish Parliament has passed legislation on this issue. That is subject to a court appeal but we are taking note of what is going on elsewhere.

**Lord Avebury:** My Lords, I am sure that the Government have looked at the evidence produced by the Institute of Alcohol Studies which shows that a 50p minimum unit price would reduce deaths per year by 3,000, hospital admissions by 98,000 and crime incidents by 40,000. Have the Government made any estimate of the savings to the public purse that that reduction would produce?

**Lord Taylor of Holbeach:** The cost of alcohol to society is estimated at £21 billion, £11 billion of which is due to alcohol-related crime. These figures are part and parcel of the consideration the Government are giving to the issue.

**Lord Turnberg:** My Lords, there is a clear relationship between the price of alcohol and severe liver disease—we have known about that for ever—and the number of hospital admissions and deaths from liver disease are closely related to the price of alcohol. The Government can talk about it for a long time but when will we see some action.

**Lord Taylor of Holbeach:** My Lords, the figure of 1.2 million admissions to hospital in 2011-12 in England speaks for itself.

**Lord Cormack:** My Lords, how long is "due course"?

**Lord Taylor of Holbeach:** I think noble Lords are well aware how long "due course" may be.

**Baroness Smith of Basildon:** My Lords, for all the talk of consultation, the consultation on the alcohol strategy specifically ruled out consulting on minimum alcohol pricing. It said that the Government were committed to introducing a minimum unit price, but added:

"However, in other areas, this consultation seeks views".

The Home Secretary said:

"We will … introduce a minimum unit price for alcohol".

What has changed the Government's mind? Has private lobbying forced this U-turn?

**Lord Taylor of Holbeach:** I can certainly counter that allegation. The response will be a comprehensive review of alcohol and the way in which we tackle alcohol abuse in this country, and it will be available in due course.

**Baroness Finlay of Llandaff:** When do the Government plan to start to pilot sobriety schemes as a way of reducing reoffending rates among those whose crimes have been alcohol-fuelled?

**Lord Taylor of Holbeach:** That is an interesting suggestion. I have no information on it but will certainly take it up.

**Lord Glentoran:** My Lords, does the noble Lord agree that the previous Government had at least 10 years in which to react to this and that the price of alcohol and alcohol pricing will do nothing other than probably damage the Government's income? It will do nothing to achieve what we need to achieve—that, surely, is about getting in among communities.

**Lord Taylor of Holbeach:** I certainly agree with my noble friend that the price of alcohol is not the only issue at stake. Lots of local communities are taking positive action in this area. I have been to see the night-time economy in the centre of Nottingham. Street ambassadors, taxi marshals and street pastors have helped to make that area of Nottingham safe at night, which has done a lot to improve the economy of the area. There is a big role for community: it is not just a matter of the price of alcohol.

**Lord Rea:** My Lords, further to the question asked by the noble Baroness, Lady Hollins, about the Canadian experience, does the Minister agree that it has reduced sales and off-sales at supermarkets and the like—the very places to which binge drinkers go to "tank up" before a night out?

**Lord Taylor of Holbeach:** The information that the noble Baroness gave was helpful and I am grateful for it.

## Iran

*Question*

*3.29 pm*

*Asked by* ***Baroness Williams of Crosby***

To ask Her Majesty's Government whether they will re-establish full diplomatic relations with Iran to coincide with the inauguration of President Hassan Rouhani on 3 August.

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** My Lords, diplomatic relations between the UK and Iran are not severed, but they are at their lowest levels possible. Our respective embassies are closed, but Sweden looks after UK interests in Iran and Oman looks after Iranian interests in the UK. Until we can be confident that Iran will abide by its obligations to protect our staff and allow them to carry out their functions, we cannot have a diplomatic presence in Tehran.

**Baroness Williams of Crosby:** I thank the Minister for that rather disappointing Answer and point out that President-elect Rouhani was not only elected by a clear majority on the first ballot of the Iranian people but had a majority of more than 12 million people over his nearest rival, the mayor of Tehran. In the past week, he has not only called for the clergy to cease to interfere in the private lives of Iranians and called upon Iranian state television and radio to address Iran's problems much more honestly and fairly, but has also said that the young people of Iran will benefit from having clear access to the internet.

Given that, and also given that there are now thousands of young Iranians on the streets praising their new president, might we as a country not make at least some gesture, at the point at which he becomes the elected president on 3 August, which will re-open lines of contact more closely between Britain and Iran. France and other European nations are already establishing their willingness to work more closely with the new Government.

**Baroness Warsi:** My noble friend has much more practical experience on this issue than I. Having visited the country on a number of occasions, she has seen the situation on the ground. I can assure her that we are open to an improvement in the relationship between the United Kingdom and Iran. I acknowledge that this was a predominantly peaceful election with a large turnout and that Mr Rouhani, who will be inaugurated as president in August, has described his win as "victory over extremism".

Having said that, it is important that we see these words translated into action: there is a whole series of issues on which we want to see a positive approach from Iran. We also have to acknowledge and accept that, although the election was positive and decisive, a very large number of candidates—678—were disqualified, including all 30 of the women who wanted to stand.

**Baroness Symons of Vernham Dean:** The Minister's caution is welcome to many of us in this House. In the 22 days up until 8 July—only two days ago—75 people were executed in Iran. One of those was only 15 at the time of their arrest and some of these executions were mass ones, with as many as 21 being executed at the same time. Surely the Government are right to exercise caution. The mullahs are still very much in charge, no matter who takes over as president in August.

**Baroness Warsi:** Of course the noble Baroness is right. Supreme Leader Khamenei still has a huge amount of influence in many spheres of life in Iran. She is right to say that the human rights situation in Iran is dire. In 2012 there were reports of over 350 executions and 162 executions as of May this year. It has more journalists in prison than almost any other country. Opposition leaders remain detained in prison after two years. We have real human rights and other concerns in Iran. We are open to improving this relationship, and there have been opportunities when officials have met, such as during the E3+3 talks, but it is important, as the noble Baroness says, to remain cautious.

**Lord Phillips of Sudbury:** My Lords, would my noble friend not accept that it is precisely because of the permanent history of Iran and its human rights infractions that we should support the president just elected? He showed considerable courage in his election campaign and would be immensely supported in his undoubted wish to move away from the dark side of Iranian life if we were to restore diplomatic relations without preconditions.

**Baroness Warsi:** I understand my noble friend's points, but the one thing that I and most of us who have been involved in foreign policy realise is that the situation is never black or white. There are always many grey areas, as is the case here. The new president has made some positive remarks, but it is important that they are translated into action. However, I can assure my noble friend and other noble Lords that we have contact with the Iranians. For example, last year at the Heart of Asia conference, as part of the discussions on Afghanistan, the Foreign Secretary met Foreign Minister Salehi in the margins of the meeting. There are therefore opportunities for discussions to take place, even at the highest level. However, in terms of restarting diplomatic relations and having an embassy—which, let us not forget, was ransacked in 2011 and where our officials and staff came under attack—it is important that we do so cautiously.

**Lord Anderson of Swansea:** My Lords—

**Lord Davies of Stamford:** My Lords—

**Lord Hylton:** My Lords—

**The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford):** My Lords, it is actually the turn of the Cross Benches. Perhaps we may have a quick question and a quick answer.

**Lord Hylton:** My Lords, surely we need direct contact. Will the Government seek assurances from the Iranians that if we sent in a chargé d'affaires, he would be properly protected? Fuller representation can wait until later.

**Baroness Warsi:** I think that we are proposing official-to-official contact, possibly even in a third country, beforehand. That would be the normal course of events, not just in the case of Iran.

**Lord Davies of Stamford:** My Lords, all of us hope that Rouhani will prove to be more reasonable and rational than Ahmadinejad. Is it not important that nobody should have any illusions; that we should make it absolutely clear that sanctions cannot be relaxed until there is real evidence, through inspections or otherwise, that Iran is not proceeding with a nuclear weapons programme; and that, in view of the lamentable record on human rights and other matters that the noble Baroness has just set out, we should reserve even symbolic concessions on our side until the Iranian regime makes some positive move forward?

**Baroness Warsi:** Sanctions are there for a purpose. They are targeted. They are for a specific issue and we have been careful to note that humanitarian goods are protected. However, the noble Lord is right. We have to make progress on substantive issues, and nuclear is one of them.

## Financial Services (Banking Reform) Bill

*First Reading*

*3.37 pm*

*The Bill was brought from the Commons, read a first time and ordered to be printed.*

## Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013

*Motion to Approve*

*3.37 pm*

*Moved by* ***Lord Gardiner of Kimble***

That the draft order laid before the House on 9 May be approved.

*Relevant documents: 2nd Report from the Secondary Legislation Scrutiny Committee, 2nd Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 8 July.*

*Motion agreed.*

## Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013

*Motion to Approve*

*3.38 pm*

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

That the draft regulations laid before the House on 11 June be approved.

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

*Motion agreed.*

## Marriage (Same Sex Couples) Bill

*Report (2nd Day)*

*3.38 pm*

***Schedule 4 : Effect of extension of marriage: further provision***

*Amendment 84*

*Moved by* ***Lord Alli***

**84:** Schedule 4, page 36, line 20, leave out sub-paragraphs (2) and (3) and insert—

"( ) Omit sub-paragraph (1)."

**Lord Alli:** My Lords, I shall speak also to my manuscript amendment, Amendment 84A.

The amendment is, on the face of it, about pensions, but it is also about equal treatment of the ones we love. This is the only point in the Bill where we treat same-sex couples who get married prejudicially when compared with opposite-sex couples. All married couples should be treated equally. It is a principle that we have fought throughout the Bill to maintain. I know that it is a principle that the noble Baronesses, Lady Stowell of Beeston and Lady Northover, and the noble and learned Lord, Lord Wallace of Tankerness, have defended. It is something that the majority of this House, regardless of party affiliation, has defended. If we let this clause go through as it is, it will be the first and only time that we breach that principle. Let me explain why.

If I were to marry a woman and was a member of an occupational pension scheme and died, my wife would be entitled to a survivor's pension from my occupational pension scheme backdated to, I think, 1988. If I were to marry a man and was a member of the same occupational pension scheme and died, my partner's survivor's pension benefit would be backdated only to 2005, the date on which we introduced civil partnerships.

The Bill takes the inequality in the Civil Partnership Act and applies it to same-sex marriages, instead of taking the position of opposite-sex couples and equalising the pension arrangements. In effect, that means that

same-sex couples are treated as civil partners for those schemes. That might be necessary if there was a huge cost to the public purse, given that we are in difficult economic times. However, let me make it clear in absolute terms that no public money is required to make this change. I will repeat that, because the Government may try to imply that there would be: no public money is required to make this change. If I am wrong, I am more than happy for the Minister to explain why. The cost is to private occupational pension schemes; that is in Bill. The Government's estimate puts the maximum additional cost at approximately £80 million for those private schemes. By their own admission, that is a drop in the ocean, given the size of those pension funds.

The Government know that this is wrong. In 2005 the Government changed the rules of their own pension scheme for civil partnership survivor benefits, because it felt wrong to them to apply this principle to public service pensions. Equally, two-thirds of the private occupational pension schemes in this country believe that it is wrong and have changed their policy. We heard from the spiritual Benches that the Church of England has changed its pension scheme arrangements to reflect this. Why, therefore, let one-third of occupational pension schemes discriminate against married couples in the future only on the basis of sexual orientation? It is worth mentioning that, in order to qualify, the scheme member will have to have fully paid up towards the scheme. That requires a private occupational pension fund to disregard the contributions made prior to 2005 to stop the survivor's benefit coming through.

I said in Committee that when you lose your husband, wife or long-term partner, it is, by all accounts, a terrible experience. The last thing you want to do is to have to argue your case to a pension fund trustee. Given that we have this legislation, it must be insulting to be told that having married, you are now to be treated as a civil partner.

Why are the Government opposed to this amendment? It is the Treasury and DWP. I know that the Minister will be forced to read out whatever they have asked her to read out. I suspect that it will go something like this. First, "We foresee problems with this amendment, as there may be unforeseen implications,"; or, secondly, "Even though there is no direct cost to the Treasury, we can see the possibility that someone could take a case that might lead to the possibility that we might at some time have to equalise pensions for men and women"—by the way, it would be a miracle if that case came off; or, thirdly, "Let us throw in a spurious cost: £2 billion, £3 billion or £4 billion—the Minister to choose whichever number they wish"—that is to do with gender equalisation of pensions, not occupational pension schemes—but noble Lords Lordships will be so bored and confused that they will not care; or, fourthly, "Let us make out that it creates an inequality because this is an equality Bill"; or, fifthly, "Let us say that we do not like to legislate retrospectively even though we changed our own pension funds retrospectively as soon as we could".

Yesterday, I met the pensions Minister by the kind invitation of the noble Baroness, Lady Stowell. At the end of our discussion, I could honestly say that I was no clearer about the objections of the Treasury or DWP to this amendment. The pensions Minister gave the usual unconvincing and unintelligible Treasury line. The Government are making a mountain out of a molehill here. This is a tiny issue affecting a small number of people at a terrible time of need.

I have also tabled a manuscript amendment which seeks to give the Government an alternative. I am calling it the "Lord Lester principle". Basically, it offers the Government a two-tier process: first, a review of the issues involved and a report back; and secondly, order-making powers to implement their decisions, as we did with humanist marriages. If the Minister feels that the Government need more time, I would be happy to discuss these alternatives to try to find a solution before Third Reading. If the Government are not prepared to do that, I will move my manuscript amendment, Amendment 84A, and seek to test the opinion of the House. I beg to move.

*3.45 pm*

**Baroness Howe of Idlicote:** My Lords, as in Committee, I am pleased to support the amendment moved by the noble Lord, Lord Alli. As he has pointed out, the amendment represents a crucial opportunity to ensure that the introduction of same-sex marriage in this country is achieved with exactly the same basic benefits and insurance rights for male/male and female/female as for male/female. If we do not address this final discriminatory hurdle now, it will be several decades before all gay couples achieve equality. For gay men and women, it will mean decades of waiting as they continue to live with the reality that their loved ones may not be provided for when they die; decades in which individuals who have worked and contributed to their pensions, planned and been prudent, are subject to the whim of employers and pension providers, who may choose to pay a pittance in survivor benefits for no other reason than the gender of their spouses. If we do not remove this last remnant of historical injustice, the "second tier" of marriage will continue in contradiction of all the calls for exactly equal treatment that we have heard again and again over the past few days in your Lordships' Chamber.

A brief look across the Atlantic may help to illustrate the point. Two weeks ago, in the landmark case of United States v Windsor, the Supreme Court considered the case of Edith Windsor and her spouse and partner of 44 years, Thea. They lived together in New York, a state which recognises same-sex marriages, and when Thea died in 2009 she left her entire estate to Edith. Had they been a heterosexual couple, Edith would have inherited the entire estate tax free. However, US federal law prevents their marriage being recognised for the purpose of inheritance tax and Edith was hit with a bill for $363,053. The Supreme Court found the law to be unconstitutional. A key plank in its reasoning was that the treatment of Edith and others like her had the effect of creating a separate sub-set of legal marriages that were treated less favourably. To use the words of Justice Kennedy,

"it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition",

and,

"the principal purpose and the necessary effect of this law are to demean those persons who are in lawful same-sex marriage".

[Baroness Howe of Idlicote]
The effect of this judgment was to grant legally married same-sex couples access to the same federal entitlement available to heterosexual married couples including tax, health and pension rights.

Questions of taxes and pensions may seem mundane to some, but I can confidently say that this change in the law would mean the world to those people whom it affects. Among them is a client of Liberty, John Walker. I mentioned him when your Lordships debated this issue in Committee. John and his partner have been in a loving, committed relationship for more than 20 years, and they registered for a civil partnership at the earliest opportunity. Yet John's partner is currently entitled to a fraction of the survivor benefits which would be available to a female spouse, even one John met and married today.

It cannot be right to continue a two-tier discriminatory marriage system. Surely John deserves the peace of mind of knowing that his partner will be equally provided for. Is that not exactly what the Government's commitment to securing real equality for gay couples really means?

**Lord Lester of Herne Hill:** My Lords, I too have put my name to this amendment. After two such full speeches by the noble Lord, Lord Alli, and the noble Baroness, Lady Howe of Idlicote, it would be a waste of your Lordships' time for me to say anything more than that I agree with both of them, but I also believe in the art of the possible. That is why I very much hope that manuscript Amendment 84A, or some form of it, will be agreed by the Government, because in that way we will have some hope of getting real change.

**The Lord Bishop of Guildford:** My Lords, the noble Lord, Lord Alli, has already spoken of some support from these Benches for his amendment. I will not repeat what I said at an earlier stage, but I wish to support him again, and also, as the noble Lord, Lord Lester, has just said, to support the device of regulation as a practical way forward.

**Baroness Noakes:** My Lords, my heart is completely with Amendment 84 in the name of the noble Lord, Lord Alli, but I have trouble in my head to completely agree with the amendment, mainly because we are opposing a retrospective burden without any evidence of what that impact might be. I completely understand the case for the individuals who are affected. We do not know where the cost will actually be borne. The cost is low overall, but it is not correct to compare it to the amount of assets under management, as was done in Committee, because the instance might be in very small pension schemes. It might be the instance of a relatively small scheme with a relative small number of members, one highly paid member with a civil partner—or married in a same-sex couple—who is very much younger. That would have a very disproportionate impact on the actuarial valuation of the liabilities in that small scheme, which could be a charity or a small business. I would be much more comfortable if we knew what the impact was. We may still, knowing the impact, go ahead, and that is why I strongly support Amendment 84A but have a little difficulty with Amendment 84.

**Lord Higgins:** My Lords, like my noble friend who has just spoken, I, too, have serious reservations about this amendment. Indeed, I am opposed to it. I take that view in the light of experience—some eight or nine years on the Front Bench on work and pensions and as a former chairman of a pretty large company pension scheme. This amendment would effectively remove the discretion of the trustees to exercise their powers in a way that is favourable or unfavourable to a particular group of people in the pension scheme. We do not know the exact cost, although the noble Lord, Lord Alli, put it at £80 million. I leave it to my noble friend on the Front Bench to say what the effect would be on public finances but the reality is that this would affect a number of pension funds.

We have to look at this in context. If there was one individual disaster, more than any other of Gordon Brown's time as Chancellor of the Exchequer, it was the change that he made to the taxation of company pensions towards the beginning of the Labour Government. The result has, undoubtedly, been the decimation of final salary pension schemes and a transfer to defined contribution schemes. Either way, we have seen the finances of pension funds seriously deteriorating and, in many cases, funds giving up the final salary scheme or giving it up as far as new members are concerned.

As the noble Lord pointed out, a number of trustees have gone along with what the amendment does. However, some have not, and we must leave them the discretion. There may be good reasons why they have not, not least financial ones. It may be that some scheme is tottering—as many have been over the past 10 or 15 years—to the point where it needs to be decided whether the scheme should be closed or changed from a final salary to a defined benefit scheme and so on. It is wrong retrospectively to put a charge on the funds in such a scheme, to which the existing members are contributing but not the people coming into the scheme. Indeed, if we were to accept the amendment, we may find people in a same-sex marriage are brought into the final salary part of the company scheme when others, in the defined contribution part of the scheme, have not been allowed the same benefits. That would, I think, be unfair.

We should leave it to the overall discretion of the trustees. No doubt, over time, it is likely that many more will create the situation that the noble Lord, Lord Alli, speaks of, if they have not yet. However, we should leave it to the discretion of the scheme and the trustees of the scheme—it is their responsibility—and not retrospectively impose a cost on those schemes. That, I think, would be wrong.

**Lord Deben:** My Lords, throughout this debate, we have had to say to groups and individuals who are very unhappy about this legislation that, in the cause of equal marriage, they will have to contain their unhappiness. We have said, for example, to registrars—I use the example because I voted the other way in that case—that they will have to accept the change in the law.

It worries me that the moment that we talk about money, all sorts of people who have been perfectly happy up to now start being concerned. I hope that the right reverend Prelate will not be upset when I say

that I remember, in the debates in the Synod of the Church of England, that everybody was very happy until you started talking about money. Once you talked about money, it was surprising how all kinds of other issues were brought in. One of the things about pensions is that it can be more expensive for people if they get married than if they do not. Nobody goes around saying, "That is a pretty mean thing to do. That means less for the rest of us". That is not how a pension scheme works.

It seems to me perfectly acceptable for the Government to have the opportunity—which the noble Lord, Lord Alli, with characteristic care, has offered—to look carefully in case one or two of the worries of the noble Lord and the noble Baroness who have spoken before turn out to be true. There might be something that we have not really thought through and it would be wrong to exclude that possibility. However, I do not think that this House can say that, for the time going forward, one sort of marriage will work in one way and another will work in another way. After all, we opposed an amendment that delicately pointed towards that by a majority of more than 200. It seems to me that Mammon is getting into this, and Mammon should always be very carefully considered before Mammon is allowed to win. I hope that the Minister accepts at the very least that every effort will be made to ensure that this Bill means what it says, which is equal marriage, and that it does not mean equal marriage until it comes to money, when the Treasury gets in on the act.

*4 pm*

**Lord Elton:** My Lords, I remind my noble friend that we are advised to make friends of both God and Mammon. In this context, we are under the shadow of an enormous majority in the Second Reading debate, in which the House accepted the principle of equality. In Committee, I sought to apply that principle to the process of converting a civil partnership into a marriage by requiring those undergoing that process to swear an oath similar to that sworn by those getting married. I withdrew it partly at the request of my noble friend on the Front Bench and partly out of prudence in order to consider it before the next stage, which is the current stage. My noble friend was ahead of me at the Dispatch Box with an arrangement which comes just about to the same place with regard to my marriage—or, rather, to my amendment.

**Noble Lords:** Oh!

**Lord Elton:** I assure noble Lords that it is very difficult to get close to my marriage. My noble friend put forward an arrangement that gave the Government time to think and gave the Secretary of State the power to review and to act if it seemed appropriate. I think I was a little ungracious in moving my own amendment because I was so pleased with how clever my own drafting had been. However, that was the principle that I sought to support.

I was rather surprised that the noble Lord, Lord Alli, who had been quite supportive of my amendment in Committee, came forward with all sorts of reservations and was unable to support it earlier. Your Lordships will now be expecting me, with a certain satisfaction, to say that I cannot follow him so far. However, I am a man of principle, and I think that we need to have equality through this Bill. Amendment 84A gives the Government the power to pull out of this if necessary. I remind them that, during the time that they are considering, reviewing and consulting, they might go through the same reviews and consultations with the insurers as they have done over, for instance, flooding. The Government are used to talking to insurance companies and can at least find out where the shoe pinches, and this amendment would allow them to do so. I do not support the first amendment in this group, which locks them in, but I believe that the second one is a reasonable proposal, which honours the principle that we reluctantly have accepted; but, having accepted it, I think we should be gracious about it.

**Baroness Lister of Burtersett:** My Lords, I support the first amendment for reasons of principle, about which the noble Lords have spoken. The principle of equality is very important. It seems to me that, in Committee, the Minister was unable to respond with any arguments at all based on principle. They were purely pragmatic arguments, which I do not think noble Lords found very convincing.

Amendment 84A, which I support, is very much in line with the recommendation of the Joint Committee on Human Rights, which argued that,

"we consider that the Government should carry out a full review of pension provisions in relation to survivor pension benefit entitlements of same sex married couples and civil partners to ensure that there is no unjustifiable discrimination in pension scheme provisions".

**Baroness Royall of Blaisdon:** My Lords, I have added my name to manuscript Amendment 84A, tabled by my noble friend Lord Alli, because we believe that this is the most sensible course of action at this stage. Like my noble friend, we want to ensure that there is no discrimination in the Bill and that there are not two tiers of marriage. I, too, am extremely grateful to the Minister for managing to arrange a meeting with the Pensions Minister yesterday.

We have always accepted that there would be some direct cost to private pension schemes. However, £18 million, which is the figure often quoted, is a drop in the ocean for schemes worth an estimated £76.4 billion. The Government have asserted that equalising pensions benefits for civil partners and married couples of the same sex after this Bill could leave the public sector liable for costs of up to £3 billion to £4 billion. However, they have been far more reluctant to explain where those costs might come from.

As my noble friend said, the Government have already acted to equalise survivor benefit entitlements for civil partners with those of widowers for public sector and contracted-out schemes. The £3 billion to £4 billion estimate is based on the assumption that the removal of the legal exemption for civil partners will leave the Government being forced to equalise the entitlements of widowers with widows, thus levelling everyone back to 1978. But why they believe this to be a significant risk remains unclear.

[Baroness Royall of Blaisdon]

The 1978/1988 distinction between widowers and widows was based on the historic position of women as being largely dependent on their husbands for income. Indeed, the courts have only recently upheld this distinction in the case of R v Iain Cockburn and Secretary of State for Health, where the judge ruled that there was an "objective and reasonable justification" for this because there had been, as the Government argued, a progressive realisation of gender equality and the initial rules had been set up to recognise the weaker economic position of widows.

Without the provision within this Bill, female spouses of same-sex marriages would, we presume, simply be treated as widows for the purposes of survivor benefits and male survivors as widowers. But nothing in my noble friend's Amendment 84 would affect the historic male/female distinction that the courts have so recently upheld. To argue against this on the basis of retrospectivity is also flawed as the Government violated this principle themselves when levelling civil partners back to the entitlements of widowers, as they quite rightly did for public service pensions and contracted-out schemes.

In some sense, it could be said that by creating a different entitlement for widows and widowers of same-sex marriages from those of opposite-sex couples the Government are actually weakening their case against future challenges to widow/widower distinction. However, despite agreeing with my noble friend that the Government's argument here is extremely tenuous, we want to offer the Government an opportunity to remove this inequality in the most appropriate way, as noble Lords on the Benches opposite have also said, and that is why I have added my name to the manuscript amendment today.

By voting for Amendment 84A, noble Lords will be saying, "We are not happy about the provisions within the Bill as it stands so we are leaving them there in parenthesis, as it were, for now until the Government have come forward with firm proposals for how to deal with this clear inequality". It is quite clear to us that, one way or another, the Government will have to sort this out. It is better to do this through a process that they can own rather than be forced by the courts to do it later, as undoubtedly they would have to do.

I urge the Minister to accept Amendment 84A. I realise that the Government may well have to come back with tweaks at Third Reading but we want to right this inequality and this is a very fine way forward. It gives the Government some space to reflect, to look, to review and then come back, using the order-making power, to get rid of this inequality. I trust that the Minister will be able to accept this amendment.

**Baroness Stowell of Beeston:** My Lords, I must first say to my noble friend Lord Elton that I am in charge of many things at the moment, but one thing I am not in charge of is flooding. I would rather not add that to my portfolio for now. Before I respond in detail to the debate, I need to make a correction to the figures previously used by the Government in debates on this issue, about the number of schemes using the Equality Act exception relating to civil partners. The Government had stated that two-thirds of private occupational pension schemes already go further than the 2005 exception. This is incorrect. The correct figure is one-third. However, this does not change the estimated £18 million increase in liabilities that would arise from removing this exception, as that was already based on one-third of schemes.

The pensions system as a whole is full of differences in treatment as a result of changes in society and social attitudes. Such changes are introduced prospectively, so as not to place new unfunded burdens on pension schemes which could not have been taken into consideration in their funding assumptions. The current Equality Act exception, which this Bill also applies to people in same-sex marriages, recognises that pension outcomes in the present always reflect different accruals in the past, and that changes should be forward looking, rather than be retrospective.

Governments of all parties have sought to equalise pensions over time. What they have not done is try to equalise pension outcomes in the present, thereby breaking the link between past accruals and present outcomes. The standard approach is based on the principle that it is not right to impose costs on schemes, meaning they would have to pay out new amounts that were not promised in the past, whatever the exact scale of those costs.

Avoiding imposing retrospective costs on pension schemes is the standard principled approach which has been taken by successive Governments. That is the approach the previous Government took when civil partnerships were introduced in 2005, and when they brought forward the Equality Act in 2010. That is the approach we have taken in this Bill, by aligning the pension position of same-sex married couples with that of civil partners.

This approach means that pension schemes take time to catch up with societal changes, but over time the anomalies reduce and eventually disappear. Making any change to the position set out in the Bill would mean placing retrospective costs on the schemes. The Government understand that the current position is not perfect, but it is based on the principle that we should not seek to impose retrospective costs on private pension schemes—costs that were not planned for when benefits were being accrued.

The noble Lord, Lord Alli, seemed to try to dismiss the arguments that I was going to put forward before I had even had the opportunity to do so, but the Government's case is quite clear. It is a strong one and I shall go through it properly. The two amendments in this group have different effects, as we have already established. Amendment 84, moved by the noble Lord, Lord Alli, would mean employers having to pay survivor benefits to civil partners in respect of their deceased spouse's service prior to 2005, when civil partnerships first became possible. This amendment does not meet what I believe the noble Lord is trying to achieve, which is to give parity in provision of survivor benefits between same-sex married couples and opposite-sex married couples.

As well as going against the standard principled approach of avoiding imposing retrospective unfunded burdens, removing the current exception in the Equality Act would potentially lead to a much wider range of discrimination claims against pension schemes. There

would be a significant risk of a domino effect, leading to full equalisation of survivor benefits at a significant cost to schemes and the taxpayer. The noble Lord, Lord Alli, said that no public money would be required to make this change. I disagree.

In addition to its impact on private sector schemes, the amendment would also impose a direct cost on public service schemes which would, at least, have to pay survivor benefits to surviving female civil partners based on pre-1988 service. This is because if the amendment were passed, not paying benefits to surviving female civil partners based on pre-1988 service would be discrimination on the basis of sexual orientation. To remove any such discrimination, public sector schemes would have to equalise pension benefits for surviving female civil partners and same-six married couples with those for widows which are based on accruals from 1978. At the moment, benefits for those female survivors are currently based on accruals from 1988. Therefore, there is an immediate cost to the taxpayer.

*4.15 pm*

The amendment would remove statutory provisions that mean it is not discriminatory for occupational schemes to pay survivor benefits only to civil partners based on the service of a deceased partner since 2005. It would also remove the provision in the Bill that extends this exception to same-sex married couples. If the intention is not to alter the existing arrangements that apply to civil partners but instead ensure there is no discrimination between same-sex married people and opposite-sex married people, Amendment 84 will not achieve that. It would impact immediately on those occupational schemes that currently make no provision for civil partners based on service prior to 2005. An alternative approach—which may be what the noble Lord, Lord Alli, would like to achieve—would be to equalise the position of same-sex married couples with that of opposite-sex married couples. However, there is significant uncertainty as to whether a change of that kind would in fact have that result, given that the Government would need to consider carefully whether different treatment of civil partners and married same-sex couples in this regard would be capable of justification.

Further, instances of inequality between men and women run through the pensions system because—as I have explained—rights built up in the past reflect the different social attitudes of those times. This means there are pre-existing differences in treatment between men and women. These differences mean that any change short of full equalisation would deliver only partial equalisation; anything less could lead to new gender discrimination arising in the schemes. Removal of the current exception in the Equality Act would potentially lead to a much wider range of discrimination claims against pension schemes. As I said, there would be a significant risk of a domino effect leading to full equalisation between widows and widowers across the public service schemes, at a significant cost to the taxpayer. We do not know for certain what the full costs of that domino effect would be but in 2011 the Government Actuary's Department estimated the cost of equalising survivor benefits for widows and widowers in the public service schemes at between £3 billion and £4 billion. That gives an idea of the potential costs to the taxpayer of full equalisation. It also indicates why Governments—including the Government of the noble Baroness, Lady Royall—have avoided imposing retrospective changes on schemes.

While I understand the concern that as regards pension benefits same-sex married couples will be placed in a different position from opposite-sex married couples, this demonstrates the need to consider very carefully whether any departure from the established approach is appropriate and what the costs and legal implications of any change would be. It would be irresponsible of any Government to commit themselves to potentially imposing significant costs on businesses and the taxpayer without undertaking an assessment of the full scale of those costs. While it has taken me quite some time to read this out, and it is very much the Government's position, just the fact that it is very complicated and hard to understand justifies me in saying that this is not easy to solve in one fell swoop.

**Lord Lester of Herne Hill:** I may be wrong but is it not the case that there was retrospectivity to give effect to the EU principle of equal pay for equal work?

**Baroness Stowell of Beeston:** My noble friend introduces a new, very complicated matter and I am struggling with the complicated matters in front of me.

**Lord Higgins:** My Lords—

**Baroness Stowell of Beeston:** I am going to conclude very soon. Would my noble friend allow me to make some final remarks?

**Lord Higgins:** This seems to be the appropriate point to interrupt the very clear exposition my noble friend is making. I put this case to her: there is a company that has a final salary scheme for existing members and then, later in time, introduced a defined contribution scheme. The people in the defined contribution scheme cannot get all the benefits in the original scheme. None the less, the people under this retrospective legislation would be able to do so. They would be more privileged than the people in the existing defined contribution scheme.

**Baroness Stowell of Beeston:** That is an interesting point. My understanding of Amendment 84 is that its proposals would only apply to those who are currently in a defined benefit scheme. This is not about introducing the benefits of a defined benefits scheme to those who are only in a defined contribution scheme. I do not think that what my noble friend is suggesting is what is proposed in the noble Lord's amendment.

As I have tried to explain, any change to the arrangements set out in the Bill would impose costs on the public purse, which would be considerable. The House should therefore be aware that any change to the position set out in the Bill would have a cost to the public purse, so an amendment to the Bill on this issue would infringe the House of Commons' financial privilege.

**Lord Alli:** I was with the noble Baroness up to that point. I really think that the Government cannot say that there is a public cost, money coming out of the Treasury, for a section of the Bill marked "Part 6: Occupational Pensions and Survivor Benefits", at page 36, which is limited to occupational pension schemes only. There is no public money, and the Government cannot say that there is. It is so clear that the House should not be put in a position of believing that public money is being spent on this.

**Baroness Stowell of Beeston:** I hope that I have been able to explain through my answer so far that there is a cost to the public purse in Amendment 84. Therefore, the amendment would infringe the House of Commons' financial privilege. I have explained to the House why the Government believe that that is so.

Given the potential uncertainty and scale of these costs, we should be clear about what the implications and costs of the change might be before we make any legislative commitment in this area. I think that we can agree that this debate demonstrates the need for us all to be much better informed about the wider implications of equalising entitlement to survivors' rights. Some of the points made by my noble friends Lord Higgins and Lady Noakes demonstrate that there are issues which need proper and careful consideration.

All that said, I can see the sense in what the noble Lord, Lord Alli, is trying to achieve via manuscript Amendment 84A that he has tabled today, which includes a review and order-making powers. I am grateful to him for reflecting further following the meeting we had yesterday with the Pensions Minister, my honourable friend Steve Webb.

I am conscious of the strength of feeling that has been expressed in this debate, and have considered the points that have been made very carefully. While I cannot accept the noble Lord's amendment in its form today, I am willing to take it away and discuss it further with my ministerial colleagues with the firm intention of bringing back a government amendment at Third Reading. I therefore hope that the noble Lord, Lord Alli, will feel that he need not move Amendment 84A today.

**Lord Alli:** My Lords, I thank the Minister for that answer. Before I move on, I will add a few things. It took eight minutes before all five of my responses were used. I mention that because this is a very complex area—I accept that. However, there is a lot of smoke here. The issue that most concerns me, and the reason why I intervened, is that there is no public money. I say that having looked very deeply into this issue. To those in Committee, I said that I had the honour at the beginning of my career to be the publisher of *Pensions* magazine, *Savings Market* and *Insurance Age*. Therefore, I have spent time understanding the pensions market. The £2 billion to £3 billion to which the Government refer is about taking out the gender discrimination between widows and widowers. Recent judgments have upheld that principle. It has nothing to do with occupational pension schemes.

The second correction that I wanted to make was on the issue about the Civil Partnership Act and why it was put in place. Under the Civil Partnership Act, there is no corresponding civil partnership for straight people, so the read-across between opposite-sex couples and same-sex couples did not apply with civil partnerships. In this instance there is a read-across of a prejudicial treatment of two types of married spouses. That is my concern.

The final issue is that the cost is so minimal—£18 million at the low end and £80 million at the high end. The actuarial assumptions are so hard to make. Actuaries, in my experience, do not build the cost of gay people into their schemes. They do not look at whether someone is straight or gay and discount the rate. Historically, they do not go back and say, "Some gay people will have married because history allowed them to do so or society forced them to do so". I am fairly sure that the actuarial calculations will remain pretty static. Those are the issues involved.

I thank all noble Lords who have contributed to this debate and given support. In particular, I thank the noble Baroness, Lady Howe of Idlicote, and the noble Lord, Lord Lester of Herne Hill, for adding their support to Amendment 84. I also thank my noble friend Lady Royall of Blaisdon for adding her name and support to Amendment 84A. Of course, I also thank the Minister. We have all been on a huge educational process on pensions; I fear that there may be another week of pensions mania, for which I deeply apologise. I thank her for her response; it is what the House had hoped to hear and I am very pleased with it. On that basis, I beg leave to withdraw Amendment 84.

*Amendment 84 withdrawn.*

*Amendment 84A* not moved.*

*Amendment 85*

*Moved by* ***Lord Armstrong of Ilminster***

**85:** Before Clause 12, insert the following new Clause—

"Legislative definitions

(1) For the purposes of legislation regulating or relating to marriage—

(a) there shall no difference or distinction be made between lawful marriage of same sex couples and lawful marriage between a man and a woman, save as provided for in this Act or as required to give effect to any difference or distinction which is made necessary by reason of physiological or biological differences of gender or consequences thereof;

(b) where it is necessary to make legislative provision regulating or relating to marriages between same sex couples but not marriages between a man or a woman, or marriages between a man and a woman but not marriages between same sex couples, lawful marriage between same sex couples may be defined as same sex marriage, lawful marriages between same sex couples may be defined as same sex marriages, lawful marriage between a man and a woman may be defined as opposite sex marriage and lawful marriages between a man and a woman may be defined as opposite sex marriages;

(c) all legislation regulating or relating to marriage having effect before the passage of this Act continues in effect in relation to opposite sex marriages save as varied or modified by any provision of this Act;

(d) the Secretary of State or the Lord Chancellor may by order vary, modify or repeal legislation regulating or relating to opposite sex marriage, if it appears that such variation, modification or repeal is required as a consequence of the passage of this Act."

**Lord Armstrong of Ilminster:** My Lords, I move the amendment standing in my name and in the names of my noble and learned friend Lord Mackay of Clashfern and my noble friends Lady Williams of Crosby and Lord Lea of Crondall—if a Cross-Bencher may be allowed to have noble friends in all parts of the House.

What are the purposes of this amendment? The preamble makes it clear that it is limited to legislation regulating or relating to marriage. The primary purpose of the Bill is, I take it, to enable same-sex couples to be married, to enjoy the same rights and privileges and be subject to the same laws, duties and obligations as married man-and-woman couples already enjoy and are subject to. On Monday, the Minister said that,

"there is one institution of marriage and we are opening the door to it … There will be only one door and all couples will be invited to walk through it".—[*Official Report*, 8/7/13; col. 33.]

*4.30 pm*

The first subsection of the proposed new clause supports and restates that purpose. The institution of marriage will be like a club, in which all lawfully married couples, whether in same-sex marriages or in man-and-woman marriages, will be equal members enjoying all the privileges and pleasures afforded by the club and accepting the rules of the club and the duties and obligations of membership.

Once the Bill reaches the statute book, there will be, within the single institution of marriage, two forms—or "types", as the noble Lord, Lord Alli, said just now—of marriage. There will be a high degree of uniformity within the institution between the two forms of membership. However, as in any club, not all members will be exactly alike. There will be some fundamental physiological and biological differences that all of us recognise and understand and which no human legislation can ever completely smooth over or eradicate. We should be doing the cause a disservice if we were to pretend that it will or might be otherwise.

The amendment is intended to provide for the greatest possible degree of uniformity in legislation between same-sex couples and man-and-woman couples and for situations in which, because of these fundamental differences, it may be necessary, not just desirable, to introduce legislation that applies to marriages of man-and-woman couples but not to marriages of same-sex couples, or, conversely, to marriages of same-sex couples but not to marriages of man-and-woman couples.

When or even whether such a situation is likely to arise, I cannot predict. However, our debates on the Bill have already shown that the development of the law on marriage in the new circumstances will be, for some time at any rate, a complicated and delicate business. It is more likely than not that such a situation will arise within the next few transitional years after the Bill is passed as the new institution settles down. If that is so, we should be foreseeing it and providing for it now.

The definitions of the two forms of marriage suggested in the amendment are dry and factual. It would be possible to find, in the great heap of riches of the English language, apt words of greater evocative moment, although perhaps not of greater pith. I rather think that "traditional" should not be one of them. The word has too limited a shelf life for use in legislation. Innovations tend to become quickly encrusted with tradition. That is part of the process of establishing them, and the youngest traditions are often the strongest. We know what traditional marriage means today, but I hazard a prediction that within a generation of the passage of the Bill—perhaps even within 10 years—gay and lesbian marriage will become as traditional as heterosexual marriage. However that may be, the definitions in the amendment have been adopted because they are already in the Bill. That is what I call the line of least resistance.

My noble and learned friend Lord Mackay of Clashfern particularly hopes that the noble Lord, Lord Phillips of Sudbury, and the noble Baroness, Lady Howarth of Breckland, will be gratified to note that the amendment is 100% bracket-free.

These definitions are permissive not mandatory. The amendment makes it clear that they may be used in legislation, not that they shall be used. If in future anyone wants to use different definitions in new legislation, they will be free to do so.

We offer this amendment to improve the Bill, not to weaken, dilute or frustrate its purposes. It is completely even-handed, neither expressing nor implying any value judgment between the two forms of marriage within the single institution of marriage. It cannot be interpreted as implying that one form of marriage is superior or inferior to the other. I commend the amendment to your Lordships as a strictly limited, practical, realistic, sensible and undogmatic proposal for dealing with problems that are likely to arise in relation to the application of legislation to the institution of marriage as it will be once the Bill has been enacted. I beg to move.

**Lord Lester of Herne Hill:** My Lords, some of the amendments moved in the course of our debates have been eccentric. However, respectfully, I should say that Amendment 85 is among the most eccentric, not least because of its very distinguished authors—a former Cabinet Secretary, a Lord Chancellor and my noble friend Lady Williams of Crosby, whose deeply held religious convictions as a Catholic I fully respect.

Leaving aside its extraordinary length and detail, Amendment 85 is moved in the face of the overwhelming and decisive decisions made by the House on Monday to reject similar attempts to classify and separate opposite-sex and same-sex marriages. In paragraph (a), the amendment declares that,

"there shall no difference or distinction be made between lawful marriage of same sex couples and lawful marriage between a man and a woman, save as provided for in this Act".

If the amendment stopped there, it would be completely unobjectionable although also completely unnecessary, but it does not stop there. It continues by making an exception,

"as required to give effect to any difference or distinction which is made necessary by reason of physiological or biological differences of gender or consequences thereof".

It is probably my fault, but I do not understand what that is meant to mean. Most men and most women are biologically different and sexual intercourse between a man and woman, a man and a man and a woman and a woman may reflect those differences of biology and

[Lord Lester of Herne Hill]
anatomy, but how do those differences require future or existing law regulating or relating to marriage to treat traditional, conjugal and new consensual marriage differently? We are beyond the watershed for children, and I shall be grateful for an explanation of what this has to do with the law rather than the *Kama Sutra*.

Paragraph (b) seeks to separate the two forms of marriage using about 100 words instead of a bracket. We have already firmly rejected that attempt; I respectfully ask what the point is of rehearsing the arguments again and again.

Paragraph (c) is unnecessary because it goes, or should go, without saying, that existing legislation will continue in effect in relation to opposite-sex marriages except as amended by the Bill. As to paragraph (d), given the vague obscurity of the earlier parts of the amendment, its meaning and effect would puzzle Henry VIII and his Lord Chancellor as well as the current holder of that high office. If the noble Lord tests the opinion of the House, I hope that the amendment will be rejected.

**Lord Pannick:** My Lords, I agree with the noble Lord, Lord Lester of Herne Hill, though possibly not in relation to the *Kama Sutra*. The point being made by the noble Lord, Lord Armstrong of Ilminster, as I understood it, was that provision should be made in this Bill to confer power to address problems that may arise in consequence of this Bill when enacted. Of course, Clause 15(2) already does that. It says:

"The Secretary of State or Lord Chancellor may, by order, make such provision as the Secretary of State or Lord Chancellor considers appropriate in consequence of this Act".

For the avoidance of doubt, Clause 15(3) states that any such provision that may be made,

"includes provision amending UK legislation".

That would seem to me amply to address any concerns.

**Lord Deben:** Perhaps I may say just one thing because I was attacked—not attacked, but charmingly referred to—by the noble Baroness, who said that I was being a bit jokey about adultery. I really was not being jokey about adultery. I think that I am coming back to my mother again on this. What is being proposed here is another version of the amendments that we have had all along. This one says: "We cannot find anything at the moment, but we might find something in the future. So in case we do find something in the future, we will put something in at the moment—and by the way, that means that we can point to the thing that we put in at the moment, which shows that there is a difference, and that is what we meant in the first place". I am not a lawyer but, if I may dare say to the two noble lawyers who went before me, I do not need to refer to the law. All I can say is that this is one of the most ingenious attempts that we have had so far. I do not think that they can do it again, but it is another go. Even if it has been charmingly presented by the noble Lord with such elegance and beautiful English, for which we all honour him, the fact is that it will not wash. It is another go. Let us not take it, and if it is voted on, let us increase the majority to more than the 200 that we had last time.

**Baroness Thornton:** My Lords, I agree with the noble Lord, Lord Deben, that this is an elegant amendment. However, although it might be bracket free, it has an awful lot of commas and sub-clauses. I have listened very carefully to the noble Lord, Lord Armstrong, and the supporters of this amendment who did not speak but are distinguished Members of your Lordships' House, to see whether there are new arguments to justify passing an amendment that would—like the ones that we discussed on Monday and in Committee—undermine the purpose of the Bill, which is to put same-sex marriage on the same basis as opposite-sex marriage, and although I pay tribute to the noble Lord, Lord Armstrong, for this ingenious amendment which seeks to undermine the Bill through secondary legislation, its effects are the same as those of the amendments that went before. I am still puzzled as to why those noble Lords feel that same-sex marriage somehow undermines opposite-sex marriage and, indeed, their own.

We do not believe that the Bill needs to provide for two classes of marriage—one gold and one base, which would be the effect of the amendment—but we do feel that the time has perhaps come to stop having this argument. I and my colleagues will not support the amendment.

**The Advocate-General for Scotland (Lord Wallace of Tankerness):** My Lords, I thank the noble Lord, Lord Armstrong of Ilminster, for his amendment. I think that we were all very grateful to him on Monday evening when, in view of the hour, he decided to degroup it so that we could debate it today.

Even allowing for the intervening hours, however, it will not come as a surprise to the noble Lord or to anyone else that we do not feel able to accept this amendment however—to use my noble friend Lord Deben's word—ingenious or, as my noble friend Lord Lester said, extraordinary it is. As the noble Baroness, Lady Thornton, said, it contains within it, in paragraph (b), the same distinction between a marriage of a same-sex couple and a marriage of an opposite-sex couple that was embodied in Amendment 1—admittedly without the brackets, although I am not sure if it is for better or for worse.

The amendment which my noble and learned friend Lord Mackay of Clashfern moved sought to have two different institutions of marriage in law: one for same-sex couples and one for opposite-sex couples. As my noble friend Lord Deben said, this is another attempt. In all fairness to my noble and learned friend Lord Mackay of Clashfern, when moving his amendment on Monday he said:

"This is the minimum that seems to work, although I and other noble Lords think that it may be possible to go further. The later amendment of the noble Lord, Lord Armstrong, to which I and others have added our names, indeed goes further than the minimum".—[*Official Report*, 8/7/13; cols. 13-14]

*4.45 pm*

The vote on Amendment 1 on Monday was very decisive—with 119 voting content and 314 voting not content. This House has therefore made clear its view that it would not be right to draw a distinction in the Bill of the kind set out either in Amendment 1, on which we voted, or in Amendment 85. As has been

said on more than one occasion as the Bill has been debated in your Lordships' House, the Bill is about inclusivity and fairness, and this amendment strikes at the heart of that intention. We do not accept that there should be a separate term or institution in law for marriages of same-sex couples. We want them to be able to marry, plain and simple, in the same way as opposite-sex couples can. My noble friend Lady Stowell of Beeston, when replying to the amendment moved by my noble and learned friend, said that it is,

"very simple. There is one institution of marriage, it is one of the most important institutions that we have, and we want gay and lesbian couples to be a part of it in exactly the same way as any other couples who wish to be married. These amendments create two separate, potentially legal institutions and, therefore, undermine the fundamental purpose of the Bill".—[*Official Report*, 8/7/2013; cols. 31-32.]

It is because of that principle that we cannot accept the amendment. Amendment 85 would create considerable confusion in terms of the effect it would have sitting alongside Clause 11, as it deals with much the same subject matter—how marriage for same-sex couples and opposite-sex couples is to have effect and be interpreted in law—but adopts a different approach and makes no provision about the interaction between the two. This confusion about how it might work is another reason, in addition to the one of principle, why this amendment should be rejected. I hope that the noble Lord will withdraw the amendment. However, if it is pressed to a Division, I hope that the House will see fit to defeat it.

**Lord Armstrong of Ilminster:** My Lords, I am grateful to noble Lords who have taken part in this brief debate. I did not expect to please the noble Lord, Lord Lester, but I do not myself think that the amendment deserves the obloquy that he attempts to throw upon it. None the less, given the views that have been expressed, I do not think that it would be right to force a Division. Therefore, with some regret, I beg leave to withdraw the amendment.

*Amendment 85 withdrawn.*

***Schedule 5 : Change of gender of married persons or civil partners***

*Amendment 86*

*Moved by* ***Baroness Stowell of Beeston***

**86:** Schedule 5, page 40, line 10, after "with" insert "this Part of"

**Baroness Stowell of Beeston:** My Lords, in moving Amendment 86, I will speak also to the other government amendments in this group. I am pleased to have this opportunity to talk about a group affected by the Bill who are often overlooked in our debates—that is, those men and women who are transgender. I would like to put on record my thanks to all those who have sent me many e-mails over the past few days.

This Bill will, for the first time, enable couples who wish to remain married when one spouse obtains gender recognition to do so. This is a welcome development for transpeople who have in the past been faced with the difficult choice between obtaining gender recognition or staying in their marriage. Although the Government do not believe that it is justified, I none the less understand that there is a real fear among some transpeople that the Bill will allow their spouse to veto their attempt to get a full gender recognition certificate, if they do not wish to remain married.

I have listened very carefully to the views that have been expressed in Committee and in meetings with noble Lords about this issue. Indeed, I am very grateful to the noble Baronesses, Lady Thornton and Lady Gould, and to my noble friend Lady Barker, who made time to discuss their concerns with me in some depth. Having done so, I am grateful for the opportunity, through Amendments 87 and 88, to make clear that all the non-trans spouse is being asked to give their consent to is whether they wish to remain married if their spouse changes their legal gender.

It is important to explain why this consent is needed, because some people have questioned why the consent of a non-trans spouse is needed in these circumstances. The reason is this: a party to a marriage obtaining gender recognition is a life-changing decision for the applicant and their spouse. The marriage will no longer be contracted between a husband and a wife of the opposite legal gender, which is why it is right that both spouses have the right to agree to a proposal to change the terms of their marriage before the change takes place.

Regardless of the non-trans spouse's view about the future of the marriage, the applicant is still able to get their gender recognition. Transpeople whose spouses do not give their consent to remaining in the marriage will be in the same position as they are now: it will be open to either spouse to commence proceedings to end the marriage before the full gender recognition certificate is issued. I am very pleased to table these amendments, which I hope will put it beyond any doubt that a spouse will never be able to veto a trans applicant's ability to obtain gender recognition. I hope that these amendments, which make it clear what both parties to the marriage are agreeing to, will allay the concerns that have been expressed. I commend these amendments to the House.

As to Amendments 86, 89 and 133, I said in Committee that the Government have been considering carefully what can be achieved within the scope of this Bill to assist transpeople who made their transition to their acquired gender a long time ago but have not applied for gender recognition up to now because they would have had to end their marriage. The Bill now gives such people the opportunity to obtain gender recognition while remaining married, if their spouse is content for the marriage to continue. However, applicants who made their transition a long time ago may find it difficult to obtain the required medical reports from gender dysphoria specialists.

These amendments will assist such applicants by making the new fast-track procedure available to transpeople who are or were in protected marriages or civil partnerships and who transitioned six years prior to the commencement of these provisions and by

[Baroness Stowell of Beeston]
reducing the amount of medical evidence they will be required to submit to the gender recognition panel. Such applicants for gender recognition will be required to submit one medical report, either from any medical practitioner, including a GP, or from a registered psychologist who practises in the field of gender dysphoria.

I can assure the House that a great deal of time and consideration has gone into developing these amendments and I hope that they further demonstrate the positive changes the Bill is seeking to make to the lives of married transpeople. I therefore commend them to the House.

**Baroness Gould of Potternewton:** My Lords, I begin by thanking the Minister for her tolerance and forbearance throughout our discussions on this very complex issue and for taking the time to meet me and the noble Baronesses, Lady Thornton and Lady Barker, to see if it was possible to arrive at a common view. Before looking at how successful our talks were, I want to say, on behalf of the trans community, how much we appreciate the inclusion in the Bill of the clauses that remove anomalies in respect of married transpeople who wish to apply for recognition by removing the requirement for them to be single at the point of gender recognition and so removing the obligation to dissolve their existing marriage or civil partnership. Equally important to the community is the concession on spouses' survivor pensions, ensuring that no ongoing financial penalties will be incurred should a transperson in an existing marriage gain gender recognition. The Minister has just referred to the fast-track procedure, which is also very much appreciated.

However, there came a little disappointment because we have been unable to resolve the concerns over spousal consent. We appreciate that the amendments that the Minister has outlined clarify the position in respect of married couples and the definition of a statutory declaration of consent. However, in reality, it makes little difference in terms of that consent; the divorced would probably not be en route to registering a civil partnership. It makes little difference for the transperson. It does not really matter if the spouse is going to consent to the marriage or give consent for recognition. The principle thrust of opposition to the schedule remains unchanged.

There was a temptation to try to arrive at a further amendment that might resolve the differences between us, but that would have required a lot of detailed discussion and deliberation. Although I am not wholly happy with what we have in front of us, I suppose that it is, in some ways, a step in the right direction, which I acknowledge. I hope that there may be another opportunity for that discussion to take place and, when it does, I hope that the Minister will again be co-operative, as she has been, in trying to resolve our differences.

This is almost certainly the unfinished business of the Bill. There is no doubt that the transgender community is angry and will continue to be angry until we manage to achieve some resolution of the problem because its members remain concerned that the Bill provides a spousal veto. Therefore, at this stage, I seek the Minister's assurance that after the Bill becomes law this issue will be considered in post-legislative scrutiny.

**Baroness Barker:** My Lords, I freely confess that one of the happiest days of my life was when I gave up speaking on pensions matters in your Lordships' House. I never thought that I would come across anything more complex until we came to this legislation. This is not necessarily a complex issue, but when the Minister talks about a fast-track procedure, she is talking about a procedure that has gone on for at least two years. That is the level of difficulty. I thank the Minister. She, like the rest of us, has been on a very fast learning curve and has dealt with these issues with great sensitivity and dedication.

The noble Baroness, Lady Gould, is right; we are perhaps 90% in agreement. The people directly affected by this issue are grateful for the advances made in the Bill. I am sure that the very small number of people who will be directly affected by Amendment 89—people who have not gone through the process of acquiring a full gender recognition certificate because they would have had to divorce their spouse to do so—will be extremely pleased. I am pleased to be accompanied by a number of Bishops today, and I think it is apt to say that one of the couples who I know will be directly affected are active members of their church. Their marriage was very important to them and they did not wish it to be broken up in these circumstances. We have enabled a small number of people to live their lives with greater dignity. That is important.

The noble Baroness, Lady Gould, is right; people in the transgender community believe that there is still a possibility that spouses who are very angry and upset will retain the capacity to delay the process of divorce and therefore of obtaining gender recognition for some time, mostly by starting divorce proceedings and then not actioning them. That remains an issue. I agree with the noble Baroness that we have probably gone as far as we can in the Bill and that the issue is perhaps something to which we should return in post-legislative scrutiny.

The Bill has achieved an important step forward for a small number of people who, in the course of their ordinary lives, put up with an awful lot of hostility. We have made their lives a bit better and enabled them to live with a little more dignity. For that, this House should be very proud of what it has done.

*5 pm*

**Baroness Thornton:** My Lords, government Amendments 86, 87, 88, 89 and 133 will provide a fast-track procedure for gender recognition where individuals have been living in the acquired gender for a long period and clarify that the consent of a spouse means consent to the marriage continuing, not consent to gender recognition. There is no doubt that we wholeheartedly welcome these amendments; we would like to put on record our thanks to the Minister and her team for the amount of work that they have put in on this issue.

This is an issue that colleagues in both Houses have been pushing throughout the Bill's passage, and we have made progress with the Government on pensions and the fast-track procedure. However, as my noble friend Lady Gould has said, consent is a very sensitive issue, and the transgender community has reacted with outrage at the idea that their final recognition

through gender recognition certificates should or possibly could be vetoed by their spouse, particularly if they were estranged or if the relationship had broken down.

Like the noble Baroness, Lady Barker, and my noble friend Lady Gould, we think we have made great progress, but this issue is unresolved and a community that has faced enormous discrimination and prejudice is very concerned about it. We need to keep a watching brief on this issue, and we will need to return to it, certainly in post-legislative scrutiny, if not in another Bill that comes along in which we can find some other way of doing it.

**Baroness Stowell of Beeston:** My Lords, I am grateful to all noble Baronesses who have contributed to this debate, who are the same noble Baronesses who I have met to discuss these matters.

I will be very brief in responding to the points that have been made. The noble Baroness, Lady Gould, raised the question of post-legislative scrutiny. I certainly expect the Bill's impact to be considered and that the issue of spousal content will be part of that process. That would be a matter of form, so I can give some reassurance in that regard at least.

My noble friend Lady Barker mentioned the fast-track procedure and the length of time. The fast-track procedure reduces the amount of evidence that a transperson must submit to the gender recognition panel. Therefore it saves them from having to obtain new, additional evidence, which may be difficult and time-consuming. It does not affect the length of time from application to the issue of the gender recognition certificate; it is about the process prior to that point.

In concluding, I want to say how grateful I am for the generous remarks that have been made and to remind all noble Lords that the Bill is about allowing same-sex couples to marry. We have allowed transpeople who are already married to stay married. That is an enormously positive step forward, and we should not lose sight of that. However, it is worth pointing out also that because those transpeople are already married, it is essential that both spouses confirm that they want to remain married because their marriage is a legal contract that will change. When we get married—although, as we all know, I am not married. I have been to weddings, even if I have not had one of my own—on our wedding day we take somebody to be either our lawfully wedded wife or our lawfully wedded husband. That is a legal contract between two people. This Bill has enabled us to ensure that if one of those people is transgender and wants to have transgender recognition, they are able to do that and to remain married to the person who they fell in love with and married some years before. That is an important thing that we have been able to make happen. I take on board the points that have been made in the debate, but I am pleased that we are at least able to acknowledge the big step forward that this Bill will allow us to take.

*Amendment 86 agreed.*

*Amendments 87 to 89*

*Moved by* ***Baroness Stowell of Beeston***

**87:** Schedule 5, page 40, line 21, leave out from "declaration" to end and insert "by the applicant's spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate ("a statutory declaration of consent")"

**88:** Schedule 5, page 46, line 7, leave out from "consent"" to end of line 13 and insert "has the meaning given by section 3(6B)(a),""

**89:** Schedule 5, page 46, line 13, at end insert—

*"Part 2*

*Alternative grounds for granting applications for gender recognition certificates*

*Introduction*

15 The Gender Recognition Act 2004 is amended in accordance with this Part of this Schedule.

*Alternative grounds for granting applications*

16 Section 2 (determination of applications): after subsection (3) insert—

"(3A) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A."

17 After section 3 insert—

"3A Alternative grounds for granting applications

(1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section.

(2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3B and meets the conditions in subsections (3) to (6).

(3) The first condition is that the applicant was a party to a protected marriage or a protected civil partnership on or before the date the application was made.

(4) The second condition is that the applicant—

(a) was living in the acquired gender six years before the commencement of section 12 of the Marriage (Same Sex Couples) Act 2013,

(b) continued to live in the acquired gender until the date the application was made, and

(c) intends to continue to live in the acquired gender until death.

(5) The third condition is that the applicant—

(a) has or has had gender dysphoria, or

(b) has undergone surgical treatment for the purpose of modifying sexual characteristics.

(6) The fourth condition is that the applicant is ordinarily resident in England, Wales or Scotland.

(7) The Panel must reject the application if not required by subsection (2) to grant it."

*Evidence for granting applications on alternative grounds*

18 Section 3 (evidence): after subsection (8) insert—

"(9) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A."

19 After section 3A (inserted by paragraph 17) insert—

"3B Evidence for granting applications on alternative grounds

(1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3A.

(2) The application must include either—

(a) a report made by a registered medical practitioner, or

(b) a report made by a registered psychologist practising in the field of gender dysphoria.

(3) If the application is based on the applicant having or having had gender dysphoria—

(a) the reference in subsection (2) to a registered medical practitioner is to one practising in the field of gender dysphoria, and

(b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant's gender dysphoria.

(4) Subsection (2) is not complied with in a case where—

(a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or

(b) treatment for that purpose has been prescribed or planned for the applicant,

unless the report required by that subsection includes details of it.

(5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3A(3) and (4).

(6) The application must include—

(a) a statutory declaration as to whether or not the applicant is married or a civil partner,

(b) any other information or evidence required by an order made by the Secretary of State, and

(c) any other information or evidence which the Panel which is to determine the application may require,

and may include any other information or evidence which the applicant wishes to include.

(7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a marriage under the law of England and Wales, of Scotland, of Northern Ireland, or of a country or territory outside the United Kingdom.

(8) If the applicant is married, and the marriage is a protected marriage, the application must also include—

(a) a statutory declaration of consent by the applicant's spouse (if the spouse has made such a declaration), or

(b) a statutory declaration by the applicant that the applicant's spouse has not made a statutory declaration of consent (if that is the case).

(9) If the application includes a statutory declaration of consent by the applicant's spouse, the Panel must give the spouse notice that the application has been made.

(10) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.".

*Membership of Panels determining applications on alternative grounds*

20 Schedule 1 (Gender Recognition Panels), paragraph 4: after sub-paragraph (2) insert—

"(3) But a Panel need not include a medical member when determining an application under section 1(1)(a) for a certificate to be granted in accordance with section 3A."."

*Amendments 87 to 89 agreed*

*Amendment 90*

*Moved by* ***Baroness Stowell of Beeston***

**90:** After Clause 13, insert the following new Clause—

"Marriage according to the usages of belief organisations

(1) The Secretary of State must arrange for a review of—

(a) whether an order under subsection (4) should be made permitting marriages according to the usages of belief organisations to be solemnized on the authority of certificates of a superintendent registrar, and

(b) if so, what provision should be included in the order.

(2) The arrangements made by the Secretary of State under subsection (1) must provide for the review to include a full public consultation.

(3) The Secretary of State must arrange for a report on the outcome of the review to be produced and published before 1 January 2015.

(4) The Secretary of State may by order make provision for and in connection with permitting marriages according to the usages of belief organisations to be solemnized on the authority of certificates of a superintendent registrar.

(5) An order under subsection (4) may—

(a) amend any England and Wales legislation;

(b) make provision for the charging of fees.

(6) An order under subsection (4) must provide that no religious service may be used at a marriage which is solemnized in pursuance of the order.

(7) In this section "belief organisation" means an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics."

*Amendment 90 agreed.*

***Schedule 6 : Marriage overseas***

**91:** Schedule 6, page 48, line 33, leave out sub-paragraph (2) and insert—

"(2) An Order in Council may, in particular, make provision—

(a) prohibiting the solemnization of such marriages according to particular religious rites or usages; or

(b) permitting the solemnization of such marriages according to particular religious rites or usages.

"(2A) Sub-paragraph (2)(b) is subject to sub-paragraphs (2B) and (2C).

(2B) An Order in Council may not make provision allowing the solemnization of forces marriages of same sex couples according to the rites of the Church of England or Church in Wales.

(2C) If an Order in Council makes provision allowing the solemnization of forces marriages of same sex couples according to particular religious rites or usages (other than those of the Church of England or Church in Wales), the Order in Council must also make provision to secure that such a marriage may not be solemnized according to those rites or usages unless the relevant governing authority has given written consent to marriages of same sex couples.

(2D) The person or persons who are the relevant governing body for that purpose are to be determined in accordance with provision made by an Order in Council under this Part of this Schedule."

**92:** Schedule 6, page 48, line 41, at end insert—

"(4) If section 8 applies, the Lord Chancellor may, by order, make such relevant amending provision as the Lord Chancellor considers appropriate to allow for the solemnization of forces marriages of same sex couples according to the rites of the Church in Wales.

(5) For that purpose "relevant amending provision" means—

(a) provision amending sub-paragraphs (2B) and (2C) by omitting the words "or Church in Wales";

(b) provision amending any Order in Council made under this Part of this Schedule;

(c) provision amending any other UK legislation (including legislation contained in this Part of this Schedule).

(6) In making an order under sub-paragraph (4), the Lord Chancellor must have regard to the terms of the resolution of the Governing Body of the Church in Wales referred to in section 8(1)."

*Amendments 91 and 92 agreed.*

*Amendment 93*

*Moved by* ***Lord Wallace of Tankerness***

**93:** Schedule 6, page 50, line 8, leave out sub-paragraph (3)

**Lord Wallace of Tankerness:** My Lords, government Amendments 93 and 128 to 132 amend provisions in the Bill relating to marriage in consulates and on Armed Forces bases overseas to exclude their effect in relation to Northern Ireland. Clause 13 repeals the Foreign Marriage Act 1892 which applies UK-wide. Schedule 6

makes provision to replace that regime of consular and Armed Forces marriages overseas with a new regime providing for marriages of both opposite-sex and same-sex couples in consulates and on Armed Forces bases.

The legislative consent Motion concerning the Bill which the Northern Ireland Assembly agreed on 24 June does not cover Clause 13 or Schedule 6. In light of the terms of that legislative consent Motion, these amendments amend the extent provisions of the Bill so that the relevant provisions which would fall under the Northern Ireland Assembly's legislative competence do not extend to Northern Ireland. The effect of these amendments is that opposite-sex and same-sex couples marrying under the law of England and Wales in consulates and on Armed Forces bases overseas will be married under new procedures to be introduced by an Order in Council to be made under Schedule 6. These new procedures will also apply to opposite-sex couples marrying under the law of Scotland, and in due course to same-sex couples as and when the law in Scotland is changed to allow them to marry.

However, couples marrying under the law of Northern Ireland will marry under the existing legislative framework; namely, the Foreign Marriage Act 1892. This will mean that those officiating in marriages overseas will have to operate two distinct systems when conducting marriages depending on whether they are marriages under the law of England, Wales or Scotland on the one hand, or the law of Northern Ireland on the other. While this will add to the complexity of the system, it is a consequence of the Northern Ireland Assembly not having given legislative consent to the relevant provisions in the Bill, and so to be consistent with the convention we must make amendments to reflect that.

Perhaps I may turn to government Amendment 106 in this group. It is a technical amendment which provides for the definition of "England and Wales legislation" used in the Bill also to be applied to the Marriage Act 1949. The amendment inserts an interpretation provision for the definition into that Act. Finally, government Amendment 125 is minor and technical. It adds the definition of "superintendent registrar" to the list of defined expressions already set out in Clause 17(2). This is necessary for completeness.

I commend these amendments as they will improve the Bill and I hope that your Lordships will feel able to support them.

*Amendment 93 agreed.*

***Clause 14 : Review of civil partnership***

*Amendment 94*

*Moved by* ***Baroness Deech***

**94:** Clause 14, page 13, line 13, at end insert—

"(1A) The review under subsection (1) must deal with the case for amending the criteria in the Civil Partnership Act 2004 which define the eligibility of people to register as civil partners.

(1B) The review must in particular consider—

(a) the case for extending such eligibility to—

(i) unpaid carers and those they care for, and

(ii) family members who share a house,

provided that they have cohabitated for 5 years or more and are over the age of eighteen, and

(b) the case for creating a new legal status that would confer all the benefits of civil partnerships upon those mentioned in paragraph (a) without amending the criteria for eligibility for civil partnership."

**Baroness Deech:** My Lords, my noble and learned friend Lord Lloyd, the noble Baroness, Lady O'Cathain, and the noble Lord, Lord Cormack, have added their names to this amendment. I will not repeat the arguments that I made in Committee save to remind your Lordships that I am seizing this opportunity, which has presented itself in no other Bill or foreseeable Bill, to extend the hand of equality and a glimmer of hope of support to the thousands—mostly women; this could be a gender issue—of people who are siblings and have lived together for many years. I also want to help carers, who are often but not always family members, where the younger people have cared for the older ones for many years, but who then find themselves in a bad situation when the older ones die. We now have a chance to recognise and assist them through the study which the Government have already committed to carrying out in the context of civil partnerships.

It was admitted in the European court in Strasbourg that the situation is discriminatory, but it was held that the Government were justified in this discrimination because they had placed the advantages of marriage firmly in one area and nowhere else. The justification for the discrimination that exists against people living together in a co-dependent, supportive and loving arrangement has gone. The Berlin Wall of marriage has come tumbling down and there are others who are coming out who need our help and support in the name of equality.

This is not merely about money, albeit that a great deal of time has been spent on financial arrangements and pensions in the past few days. It is not just about money—it is about the advantages conferred by marriage and civil partnership and, shortly, same-sex marriage. That means the right to live in a home, pensions, medical consent, responsibilities and rights in relation to children and many other rights and obligations attaching to that status.

If noble Lords read the amendment carefully, they will see that I am not pressing for a change in the law in this Bill; I am merely asking that the Government study the situation when they undertake a review of civil partnerships, as they have pledged to do. I cannot imagine anyone hard-hearted enough to block this, although I gather that the Government are not sympathetic, and I fail to understand why. Certain objections to this amendment were voiced at Second Reading and in Committee. The opponents of same-sex marriage argued a while ago that its existence would undermine traditional marriage. This was stoutly denied by, inter alia, the noble Baronesses, Lady Royall and Lady Barker, and the noble Lords, Lord Marks and Lord Alli. Why, they said, should recognising the existence of one union have any impact, let alone an adverse one, on another, causing the older union to be less respected or more fragile? Their arguments were, and are, persuasive. If recognising same-sex marriage has no impact on heterosexual marriage, then recognising a union, contract or arrangement of some sort for siblings and carers likewise can have absolutely no impact on same-sex marriage.

[Baroness Deech]

I am not arguing for an exact same union—far from it. The amendment suggests that a formal contract or union could be established which in no way detracts from civil partnerships as they exist now and has no religious connotation or connection. For example, in France, a pacte civil de solidarité—known as "PACS"—exists for some heterosexual couples and same-sex couples; it has most of the advantages and status of marriage, but can be terminated very readily by a letter from one to the other or by a marriage entered into by one of the two. It is popular. It presents a model for adaptation.

The noble Lord, Lord Alli, argued in Committee that lending a helping hand to siblings and carers would devalue civil partnerships. I said then, and I repeat, "I do not get it". Not only do I not understand the fears and what seems like protectionism of those able to succeed in achieving a same-sex marriage, I cannot understand the logic. There are no limitations on equality; it is not rationed. We can all have it. There is enough to go round. It is not a situation where equality for some means nothing whatever left for others. On the contrary, those who make the case for equality in unions, even with the very small differences that we have debated in the past few days, ought to be generous to others. This is simply a study, and to deny to others what they seek for themselves sets an unfortunate precedent.

Love and commitment come in many forms, not necessarily with sex, as has been pointed out. Ordinary people will recognise the love and care that some family members—if only there were more of them—give to each other and will find it incomprehensible to treat them as less deserving or inferior when the opportunity, which may come once in a generation, presents itself to study their situation in this Bill.

*5.15 pm*

In Committee, the noble Baroness, Lady Farrington, was worried about incest. That is extraordinary. My amendment refers to people who have cohabited voluntarily for more than five years and are over 18. It cannot be seriously suggested that two sisters, or a father and daughter, who are already living together in a co-dependent household and taking care of each other, are guilty of incest—a punishable crime. The length of cohabitation referred to in my amendment also answers the argument that family members might be forced by others to enter a union. It will be their free choice, because what I am suggesting will come about only if those people had already been living together for a long time. In any case, duress vitiates contracts and marriage in English law.

As I said, if the Government study the situation and decide that these people need help, whatever they come up with need not be called a civil partnership—I am certain it would not be. It might be called a family contract, for example, and be terminable by letter or by the marriage of one of the two. There is nothing wrong with that. If one of two siblings or carers gets married, that is a very happy outcome and their rights and obligations will lie elsewhere.

If noble Lords support this amendment, it will show that we take equality, love and commitment seriously for all and do not confine it to groups which have attracted support. It will show that we all look out for each other, including for our citizens who are taking care of each other, and that we want to grant them all the equality that they need, as enshrined in the European Convention on Human Rights and our own Equality Act. Equality for one person in no way detracts from the equality of another. As I said, the Berlin Wall that once existed to separate marriage from all other unions has fallen. To mix my metaphors, those who are achieving equality should not pull up the ladder behind them when the opportunity presents itself, as it does today, to extend support—or at least to inquire into the need for support—to those others. The debates on the Bill have proved an epiphany. There is no ration of equality and no limit on respect. I beg to move.

**Lord Cormack:** My Lords, I have my name on this amendment and am delighted to support it by speaking briefly. The noble Baroness, Lady Deech, has spoken, as she did last time, very eloquently. All I wish to add and to say to your Lordships is that a review is to happen. If that commitment had not been made, it could have been argued that this amendment was an intrusion and that it was not appropriate or fitting to debate it during the course of this Bill. However, the Government gave this undertaking in another place and, if the Government are to have this review of civil partnerships and attendant matters, then it is surely right, as the noble Baroness has argued so forcefully, that these other relationships should be taken into account. In the name of equity and in the name of decency it is right that your Lordships' House should say, "Please include these relationships in the review". That is all that we are asking. We have no guarantee what those who conduct the review will finally determine, but to exclude this from their terms of reference would be entirely wrong and I beg your Lordships to support the very sensible and extremely modest suggestion that the noble Baroness has made.

**Lord Lloyd of Berwick:** My Lords, my name is also attached to this amendment. In my speech in Committee, I gave two examples within my own experience of couples whose cases ought to be considered in the forthcoming review. One was the former Bishop of Lewes, who shared a house with his sister for many years until his death; and the other was a man, living in our village, who was paralysed many years ago in a riding accident and has been looked after ever since by a young friend of his. My noble friend Lady Deech, in moving the amendment, made it clear that she was not asking for a change in the law now and not even asking for a new review. There is already going to be a review, as the noble Lord, Lord Cormack, has pointed out.

Under the Bill as drafted, Clause 14 states that the review can consider,

"other matters relating to civil partnership".

It seems to me, therefore, that, on the ordinary meaning of those words, it is for those who oppose this amendment to say why those other matters should not include the two cases that I have mentioned, the case of the sibling and the case of the long-term carer, both of whom are covered by this amendment. The point that there is to

be a review anyway was made by the right reverend Prelate the Bishop of Ripon and Leeds in Committee, and it was echoed by the noble Lord, Lord Pannick. Since other matters will be considered in that review relating to civil partnership, this seems to be the ideal occasion to consider the points which everybody agrees are worthy of consideration.

What are the objections to the amendment? I start with the objection raised by the noble Lord, Lord Marks, who I am sorry to see is not in his place. He said that accepting this amendment would,

"undermine the whole notion of civil partnerships, which are about loving relationships between people living together as couples".—[*Official Report*, 24/6/13; col. 535.]

So far, no one could possibly disagree with that. However, he went on to say that such relationships must, to be within the meaning of civil partnership, be sexual relationships. Where does he get that from? As far as I know, nothing in the 2004 Act confines civil relationships to sexual relationships. Why should civil partnerships not include the sort of platonic relationship that the noble and learned Lord, Lord Mackay, referred to in the debate on Monday?

The noble Lord, Lord Elystan-Morgan, argued that non-sexual partnerships might not come within the Long Title of the Bill; but why not? It refers only to "civil partnerships", not partnerships of a particular kind.

The noble Lord, Lord Alli, argued that to include carers would inhibit the further development of civil partnerships to a point where they might be blessed by the church. This, he said, would not be possible if civil partnerships included carers. Surely it would not be beyond the wit of the church to devise a method by which it would bless some civil partnerships but not others, so why should the whole notion of civil partnerships be devalued just because this amendment is accepted?

As the Minister said, the argument advanced by the noble Lord, Lord Alli, was just the sort of argument that should be considered when the review takes place, and I agree. I can understand why the noble Lord, Lord Alli, desires that civil partnership should continue to develop in the way in which he wants, but why should he stand in the way of civil partnership being developed in the way in which we want, which would include siblings and carers?

Finally, in objecting to the amendments, the noble and learned Lord, Lord Wallace, agreed with the argument of the noble Lord, Lord Marks, and I say no more about that. He said that it would undermine the current understanding of a civil partnership—but why? I hope he will explain that further. Secondly, he said it would be difficult to cover the case of the siblings because of the rule about consanguinity. It would lead to the legitimisation of relationships that are currently prohibited. I would give the same answer to the noble and learned Lord as he gave to the noble Lord, Lord Alli: that is just the sort of matter that should be considered when this review takes place.

As we know, the review is going to take place. I hope that the Minister will accept this amendment and allow these matters to be considered in that review.

**Baroness Butler-Sloss:** My Lords, I, too, support the amendment. I will make two points, picking up on what the noble and learned Lord, Lord Lloyd of Berwick, has said.

First, if both spouses are in agreement, consummation is not a necessary part of marriage. You can perfectly well have a platonic marriage throughout the entire period of that marriage. Consequently, that point goes. Secondly, the Government have opened the door. Okay, it was a deal done in the House of Commons, but the door is actually open under Clause 14, which states that:

"The Secretary of State must arrange … for the operation and future of the Civil Partnership Act 2004 in England and Wales to be reviewed, and … for a report on the outcome of the review",

but that,

"Subsection (1) does not prevent the review from also dealing with other matters relating to civil partnership".

That absolutely opens the door for the amendment that the noble Baroness has put forward. I find it very difficult to understand why it cannot at least be considered.

**Baroness Hooper:** My Lords, as an example of the category of person that the amendment is intended to cover, I support it.

Having lived for some 30 years in a shared household with my sister—a jointly owned home, with shared management and payment of household overheads, and the commitment of a happy family relationship, sharing everything but sex—it is therefore disappointing to find that the ties of blood and family love are less important than other bonds, and that the concept of equality does not cover this.

Sadly, my sister died three years ago so I gain nothing personally from this, but others can. I therefore fully support all that the noble Baroness has said in moving this amendment so clearly and helpfully, and I trust that your Lordships will give it very sympathetic consideration.

**Lord Alli:** My Lords, I listened carefully in Committee to the arguments why sisters, brothers, fathers, sons, mothers and daughters should be allowed to have civil partnerships, and I will try to address some of the issues raised by the noble and learned Lord, Lord Lloyd of Berwick.

First, on the development of civil partnerships in terms of religious organisations, I set out in Committee why I believe that the gap between where we are today and same-sex marriage is too big for many churches to make in one step. I believe that I will see a day in the not too distant future when civil partnerships will be celebrated in churches. If we were to broaden civil partnerships beyond the scope that they have today, we will endanger that.

*5.30 pm*

This amendment would also, via the civil partnership review, extend eligibility for civil partnerships to unpaid carers and those whom they care for. I am very confused about this. I do not understand what prevents that happening today. If you are a carer and are of the same sex, you can have a civil partnership today. If you are opposite-sex, you can have a civil marriage. We do not

[LORD ALLI]
inquire into the nature of either of those institutions. All the benefits that the noble Baroness, Lady Deech, asked for, and all the benefits that the noble and learned Lord, Lord Lloyd of Berwick, wanted are available. So for unpaid carers, the notion being asked for exists and can happen today. The issue therefore boils down to brother, sister, father, son, mother and daughter.

**Lord Lloyd of Berwick:** Before the noble Lord moves on to that point, does he advance the same argument that Lord Marks advanced, that there must be a sexual element in every civil marriage? That, I feel, is the difficulty with the argument the other way.

**Lord Alli:** I have the same answer for same-sex marriage and opposite-sex marriage. We do not ask that question; we just do not. We say that if you say you are married, you define the nature of your own marriage. The state intervenes only in the breakdown of that marriage, when you cite the grounds for your divorce and can choose adultery or unreasonable behaviour. It is the same for civil partnerships. However I understand that, like marriage, the majority of civil partnerships start with a sexual component. That must be broadly understood.

I have two principal objections to the proposition of the noble Baroness. The first is about the nature of the relationship in a civil partnership. The noble Baroness seeks to use the civil partnership to review the Government's tax and inheritance law. That does not deal with the nature of civil partnerships as I understand it. They were devised and brought into being to recognise a loving and—I accept this point—in most cases, a sexual relationship, between two individuals of the same sex. It was devised to give those sexual relationships a status in law, but not exclusively sexual. In many cases, it gave them the same benefits as married couples. It specifically excluded relationships that were exempted from marriage, such as mothers, daughters, fathers and sons, brothers and sisters.

Because of my personal view of civil partnerships—which is probably the view of the majority of people in this country—the very notion of giving access to civil partnerships between family members is the same as giving access to marriage to a brother and a sister, a father and a son, and a mother and a daughter.

**Lord Cormack:** The fact is that there is to be a review. That is not in doubt. What possible exception can the noble Lord take to those who are conducting it looking at the relationships mentioned by the noble Baroness in her speech? As I said in my brief remarks, the review may come to the conclusion that they should not be included, but why does he want to stop these relationships being considered by the review?

**Lord Alli:** I thought I was giving three reasons. My first was about trying to get the churches to take a step and view civil partnerships as part of that transition, where they can recognise the stunning relationships between a man and a man and a woman and a woman without having to cross the line into marriage. The second, which I believe the noble Lord seeks, already exists for unpaid carers. They can enter a civil partnership in which they are the same sex. They can enter civil marriage and get those benefits. The third is that—

**Lord Pearson of Rannoch:** Is my noble friend saying that two sisters could do that? Could he make himself clearer? I did not understand that.

**Lord Alli:** The third component is the one I was coming to, about the nature of the relationships in civil partnerships. I do not view civil partnerships as a financial transaction between two people. As I said, they are based, initially but not exclusively, on a sexual relationship between two same-sex people. That sexual relationship, which often mirrors marriage, forms the basis of it. I know—actually I do not know—that your Lordships do not like talking about sex but sex is part of the foundation of marriage as it is the foundation of civil partnerships. For that reason, for me, civil partnerships are akin to marriage. The thought that a father could marry a son, a mother marry a daughter or two sisters or two brothers marry—substitute the phrase "civil partner"—is what makes it feel wrong. Civil partnerships make it feel like a relationship that should not be allowed. I do not question the sincerity of the noble Baroness, Lady Deech. I believe she sees this as a piece of paper that brings a financial benefit.

This amendment is one part of a process. It should be up to the Government of the day to decide on their inheritance tax policy. The Chancellor and the Treasury set out and have a well-documented process for consultation. I said in Committee—and in 2004 to the noble Baroness, Lady O'Cathain—that I, like many, think the current inheritance tax is unfair, particularly when it comes to family homes. I would be in favour of inheritance tax being paid on the death of the second or third survivor so the Treasury would suffer only a deferral of inheritance tax. But that is not a discussion for this Bill. It is a conversation to be had with government. I assure the noble Baroness that I will write to the leader of my party and advocate a change in policy to reflect that. I hope the noble Baroness understands why I do not support the amendment. We debated it in 2004 and the arguments have not much changed. However, the experience of civil partnerships might have helped the noble Baroness understand why this amendment could be seen as hurtful to those people who value their civil partnerships in a different way.

Finally, I risk the groans of the House by saying that in the intervening years since 2004 I have not noticed a single amendment tabled to another Bill to push this very point. Plenty of other Bills going through the House could have addressed it, including the Care Bill going through the House as I speak. I hope the noble Baroness and those who support this amendment will forgive me if I see it and the intervening nine years and ask: why now and not at any time over the past nine years? Whatever the reason, this is neither the time nor the place for civil partnerships to be used as a means of inheritance tax. I hope that the noble Baroness can recognise that and will withdraw her amendment.

**Lord Lloyd of Berwick:** I am sorry to interrupt the noble Lord. He said that the noble Baroness moving the amendment is to some extent motivated by the need to provide the financial benefits. That is not my reason at all. Of course, there will be financial benefits, but my reason lies far deeper than that. Civil partnerships should be available to the people covered by this amendment.

**Lord Alli:** I understand that. However, the noble and learned Lord is trying to break the notion of civil partnership as we understand it. I say to him that the issue of the churches being able to bless civil partnerships should be taken on board when considering the labour laws.

**The Lord Bishop of Chester:** My Lords, the noble Lord, Lord Alli, raises the standard of debate on this issue. We on these Benches have enjoyed his contributions and deeply appreciate his commitment and share many of the things that he wants to achieve. However, just as he sometimes disagrees with me, I am going to have to slightly disagree with him over this. I do not know what the Church of England will do about services of dedication or blessing in relation to same-sex marriages. It is not entirely clear to me that extending civil partnerships to other dependent relationships might not actually increase the likelihood that the church would be able to move in this area. It is arguable both ways. Indeed, if you have two people whose lives are intertwined in a sort of covenantal way, as the amendment of the noble Baroness, Lady Deech, indicates, they may well want some sort of blessing or dedication upon that interdependence, without the sexual relationship.

The issue for me is partly that when civil partnerships were introduced, they mirrored marriage too much. Many people on these Benches were in favour of legal arrangements to support and protect in every way people whose lives were interdependent. We had a problem precisely because it was all narrowed down too much, to same-sex couples. There has, however, always been support from these Benches for a proper legal arrangement to support people whose lives, for one reason and another, are interdependent.

Moving on, we have not heard the word "justice" mentioned much, although the noble Lord referred to the situation as being "unfair". There is a deep issue of justice here, across our society, which, given what the equal marriage Bill is trying to achieve we ought at least to acknowledge.

Another issue has not been mentioned at all so far. In our society we now have an increasingly diverse range of family structures and patterns. Allowing some form of legal support between people who find themselves not in marriage, and not wanting to be civil partners in that sense, would have a deep civilising effect upon society. We have a lot of single parents now. Maybe a single mother is bringing up one child, and that child may not marry. They may find themselves sharing a home as they have done since that child was a baby. We have increasingly diverse patterns of family life. Something ought to be there to provide support and, indeed, blessing in every sense for those who find themselves in that situation.

I hope that the review of civil partnerships will be able to look at the issues which are specified in the amendment. Certainly, I, in those terms, would be delighted to support the amendment.

*5.45 pm*

**Baroness Farrington of Ribbleton:** My Lords, the noble Baroness, Lady Deech, referred to me by name. The issues that various noble Lords have raised, particularly those just raised by the right reverend Prelate, are incredibly important: the diversity of family patterns and the circumstances in which people find themselves. Personally, I would like to debate and look in particular at the role of carers—the relationships they form with other members of the family or, in the example given by the noble and learned Lord, Lord Lloyd, someone for whom they assume a responsibility because of the way they feel about that person. I would be delighted to debate that issue, not even in a review, but now. I have waited for a long time, because during the civil partnerships debate in your Lordships' Chamber the issue was raised quite frequently. However, I do not believe that this is the vehicle for doing that.

The noble Baroness, Lady Deech, referred to "cohabiting". If you ask the average person in the street the meaning of that word, you will get a variety of responses. If you ask a councillor, they would think of somebody who is claiming that their benefit in the past has been withdrawn because of the nature of their relationship with somebody in the house. These are complex issues. They need seriously to be developed, in the right way and at the right time. I fear that this is exactly the wrong time. If you ask anyone outside your Lordships' House, including a boy of 12 to whom I spoke, this is about marriage and for people who wish to get married because they love each other in a particular way. I hope that all noble Lords will resist the temptation to tackle the subject of this amendment at the wrong time and in the wrong place.

**Lord Cormack:** We are not seeking to determine it this afternoon. We are merely asking that those experts, presumably dispassionate, and in whom we can all have confidence, should look at this and make the review a little more comprehensive than is at present envisaged. That is all we are asking.

**Baroness Northover:** My Lords, I remind noble Lords that we are on Report. If noble Lords have already spoken, unless with the permission of the House they are asking a question of a noble Lord, they should not speak again.

**Baroness Farrington of Ribbleton:** My Lords, the noble Lord, in speaking in support of this amendment, has got exactly the right wagon but is seeking to attach it to the wrong train, which is going to the wrong place. I absolutely agree that this issue must be dealt with. However, I do not believe that noble Lords who have spoken are actually saying that they think the Bill is about anything other than same-sex marriage. Therefore, I hope that noble Lords will find another vehicle to attach their wagon to, in which case I, too, as my noble friend Lord Alli said, will be their supporter.

**Lord Dear:** My Lords, as somebody who once drove teams of horses with wagons behind them at a competitive level, may I be allowed to make a very small interjection? Although my name is not on the Marshalled List, as there was no room for it, I support my noble friend Lady Deech. I cannot add anything to the power of her argument or to the impeccable logic that she showed when she advanced the amendment.

The words "equity" and "decency" have already been used in support of this amendment. I would add "generosity", "compassion" and certainly "appropriateness". As she has already said, this amendment seeks to correct a prior-acknowledged discrimination. It asks the Government only to consider this within the terms of a review—not to change the Bill but simply to cause the review panel, the review body, to look at this issue. I was not in your Lordships' House when the matter was debated eight or nine years ago. However, I have been told by many noble Lords whom I respect that there have been many attempts to try to couple this issue on to the appropriate wagon or stagecoach, and it has not been found. Here is an opportunity for us to do that. It will not get in the way of the current Bill. I certainly do not intend to do that, and I am quite sure that my noble friend does not, either. The time is right for a review, and if my noble friend presses her amendment, I will vote in favour of it.

**Baroness Berridge:** My Lords, when discussing previous amendments in Committee and on Report, much was said about teachers being required to teach the law of the land. I do not envy their task, as the law regarding different personal relationships has become rather complex. That was best exhibited by the exchange just now between the noble and learned Lord, Lord Lloyd of Berwick, and the noble Lord, Lord Alli, about whether civil partnerships are a sexual union. I have friends in civil partnerships who, when they went to the register office, were separated and asked questions to ensure that their relationship was sexual. Although these matters need clarifying, I shall state my understanding of the situation.

Opposite-sex marriage is understood to be a sexual relationship because it can be ended by annulment and by divorce on the grounds of adultery with a member of the opposite sex. Civil partnerships are same-sex and, for the reason I outlined, treated as sexual, but there is no annulment. Platonic friends can marry if they are of opposite sexes or of the same sex, but the lack of annulment for same-sex marriage may lead the institution to develop very differently. I agree with the right reverend Prelate, who stated what the position is in modern Britain. The demographics of our country are changing rapidly. In the 2011 census, 29% of UK households were single-person—not single-parent—households. The fact that two people can live more cheaply than one is becoming increasingly important with rising living costs, poor returns on private pensions, and high housing costs.

We could end up seeing someone who wants to say to their best friend, with whom they share a house, "You can depend on me. I am your first port of call". The commitment would be not merely financial, or about inheritance tax, or being one household for the purpose of benefits. With an ageing population, the Government should be pleased if this kind of development occurred under the same-sex marriage Bill.

Of course, that analysis means that carers, as outlined in the amendment, can already marry and gain the financial benefits outlined. If we were to see such a cultural development, the injustice to family members would be even more apparent. One might even see deeply religious people of the same sex who currently oppose the Bill getting married, if same-sex marriage develops in our culture in the way I outlined. That kind of development might even make it easier for marriage to be used mischievously for immigration purposes. We just do not know.

The amendment would give clarity and direction to this review. The review would give the Government time, which they have not had with such a speedy legislative process, to look at the whole legal relationship landscape.

I noted the comment of the noble Lord, Lord Alli, that it feels wrong to him. It was a very subjective, post-modern comment. It feels wrong to me to close down the area of discussion that a review would enable. If it was so wrong to put this wagon or coach on these horses, the amendment would not have been allowed on to the Marshalled List.

I support the amendment, because it would be unjust if everyone—and I mean everyone—except family members would be able under our law to promise a lifelong, non-sexual commitment or dependency.

**Baroness Kennedy of The Shaws:** My Lords, I oppose the amendments in this group. It is disingenuous of those who tabled and support them to suggest that those who do not see the purpose of them are being hard-hearted. I was shocked to hear lawyers who have spent their lives in the law not recognising the implications of extending a law that is essentially about marriage, or a commitment to a sexual relationship—that is what it is about—and imagining that a civil partnership between a father and daughter, or a brother and a sister, should be blessed, as was even suggested, and that it may come to that because of the great multiplicity of relationships that there are. I cannot believe that I heard senior lawyers endorse this. I can only believe that they did so because they want to dilute the purposes of what civil partnerships are about.

**Baroness Deech:** My Lords, on a point of order, I do not think that anyone has suggested that fathers and daughters, or brothers and sisters, should get married. This is about asking the Government to include the position of carers in an inquiry. That is all.

**Baroness Kennedy of The Shaws:** The point of my opposing the suggestion that that should even be considered in the review is that we know that it will continue the debate that has taken place in this House over the past weeks, and because it is intended to undermine the Bill, the purpose of which is to end discrimination against gay people. The Bill is about civil rights. The right reverend Prelate on the Bishops' Benches suggested that this would all be about recognising important relationships that are somehow on a par

with a couple who choose to be with each other because of their sexual attraction to each other, their love for each other and their desire to stay together. I cannot imagine that the church would think that that was a good thing.

I cannot imagine it because we know that this is about choosing a partner whom you intend to be with. It is about the yearning among human beings to choose someone as your love, to be with your beloved and to share your life with them. That is very different from the relationships between brothers and sisters, and fathers and daughters. We should think of the implications of a civil partnership being extended to a father and daughter. Are we going to put an age limit on it? Is the father going to be able to enter into such a civil partnership with his 22 year-old daughter, or his 18 year-old daughter? We have to be conscious that this is yet another way of trying to scupper the Bill. The intention is to continue the debate and the argument long after the Bill has passed. Therefore, I urge everybody who cares about making sure that there is an end to discrimination towards gay people in this nation to vote with those who are against the amendment.

**The Lord Bishop of Chester:** My Lords, I did not want to speak again, but given the way in which—

**Baroness Stowell of Beeston:** As my noble friend pointed out earlier in the day, we are on Report, so the only basis on which we are allowed to speak twice is if we are asking a specific question of the person who is speaking. The right reverend Prelate has already spoken.

**The Lord Bishop of Chester:** The guideline is that a Member is allowed to explain himself on an important point. That is what the guidelines say, and that is all I wish to do. I want to make it clear that I do not wish to extend civil partnerships as they are now to the sorts of relationships that are in the amendment. Clearly, if family relationships and carer relationships came into civil partnership, it could change the nature of civil partnership. I understand that that would be within the terms of the review.

**Baroness Kennedy of The Shaws:** I will respond very briefly to the right reverend Prelate. Over the weeks I have listened to people of strong religious faith saying that extending marriage would undermine a social institution. What could undermine the social institution of committed sexual relationships more than the idea of fathers and daughters entering into a contractual partnership? If we care about social institutions, we should recognise that that would be a good way of undermining them.

*6 pm*

**Lord Anderson of Swansea:** My noble friend is coming to the view that a review will come to a certain conclusion. We do not know what conclusion that review will come to. The question is surely that we know that under Clause 13—and this was a fairly late addition by the Government—there will be a review of civil partnership. We also know, under Clause 2, that it does not prevent the review also dealing with other matters relating to civil partnership. Are those who are against the amendment suggesting that the review should be stopped from dealing with those matters?

Part of our problem as politicians—or Members of this House, who may not consider themselves politicians—is that we face this disconnect between what we are doing here and public opinion. In my own judgment, having served 30 years in the other place, public opinion would consider this an important matter. When faced with the sort of examples given by the noble and learned Lord, Lord Lloyd, and the noble Baroness, Lady Hooper, they would say that there is a certain injustice in this matter. We remove ourselves from this view of justice coming from public opinion if we say that it cannot be included in the review, which, if it was able to look at this, might say that it was not properly within its terms. I do not know what the Government consider to be the specific terms of the review, or whether they will define what the review can or cannot do. On the face of it, the review will be able to deal with such matters, and may reject them. But public opinion and most of us would say that these are important matters, which deserve to be dealt with and may be dealt with by the review, which may say that it is not properly within its purview or that it is not something that should be dealt with at all.

In my view, it is proper for the review to deal with that matter, under the terms of the clause, and I look to the Minister to say in terms whether the Government recognise that this is a problem. Do the Government recognise that the examples given by the noble and learned Lord, Lord Lloyd, and others refer to something that is considered unjust by a great number of people in this country? If so, even if the Government try to remove this from the review, will they deal with it in some other appropriate way?

**Baroness Barker:** I have listened to and taken parts in these debates ever since the noble Baroness, Lady O'Cathain, first raised them during her then opposition to civil partnership. There remains one point that is fundamental to this discussion and which has never been answered properly by those people who have advanced them, such as the noble Baroness, Lady Deech.

The rights and responsibilities of adults who voluntarily enter into relationships with other people are wholly different from the rights and responsibilities of family members—people born into the same family. If we were to treat them in the same way, as is achieved in the noble Baroness's amendment, it is wholly possible that a member of a family could find themselves under an obligation to a family member to enter into a relationship, in particular to preserve the right of the family to property. That sets up some potentially damaging and ugly relationships within families, which is a consequence of what she proposes which she would really not like to see come to pass.

To answer the noble Lord, Lord Cormack, I do not think that that potential should enter into law and I do not think that it should form even part of any review. Therefore, I wish today to make that statement as strongly as I possibly can; I shall vote against this amendment and do so in the knowledge that there are

[Baroness Barker]
people who will support me in supporting carers in a whole variety of different ways, which are wholly appropriate and far better than this.

**Lord Pannick:** My Lords, I find this a much more difficult issue than all noble Lords who have spoken so far. There are very strong arguments on both sides of the case and I very much hope that noble Lords on each side would recognise that.

My reason for speaking is that I spoke in Committee in favour of this amendment, and I am in a very unusual position in that the debates that we had in Committee on this issue have actually caused me to change my mind. The reason I have changed my mind is because I think that there is a very real injustice done to the people for whom the noble Baroness, Lady Deech, has spoken, but I am not persuaded that this is an appropriate vehicle by which this injustice should be addressed. The noble and learned Lord, Lord Lloyd of Berwick, says, sotto voce, "Why not"—and I will tell him. The purpose of the review is very simple; it is to assess whether the existing civil partnership regime, which is part of the law of the land, continues to serve a useful purpose now that we will have same-sex marriage. That is a very narrow purpose, and I do not think that it is appropriate that a review should consider whether a civil partnership should be used as a means to address a very real injustice which, if it is to be addressed, should be addressed through the taxation system and other means. That is why I have changed my mind and why I much regret that I cannot support the noble Baroness, Lady Deech.

**Baroness Thornton:** My Lords, this amendment would seek to extend the civil partnership review to include unpaid carers and family members who live together. I am just going to read the amendment, because of the discussion that took place between my noble friend Lady Kennedy and the right reverend Prelate. It refers to,

"unpaid carers and those they care for, and … family members who share a house … provided that they have cohabitated for 5 years or more and are over the age of eighteen".

If that does not mean fathers, daughters, sisters and brothers, I am not quite sure what it means. So I think that my noble friend had a point in her indignation about that matter.

The problem before the House has been very adequately explained by various noble Lords. This is an issue about legitimate support for carers and the protection of people, sisters and brothers, growing old together and sharing a home, who require a new regime that protects their interests in their home and all the other things. That is to do with carers, tax and inheritance, and it is to do with compassion and the other issues that noble Lords have mentioned. But it is not appropriate to use those words—in terms of pulling up ladders, and so on—in this Bill.

This review is about civil partnerships, as explained by the noble Lord, Lord Pannick. I am not going to read out my note, because he said it much more eloquently than I could.

**Lord Anderson of Swansea:** It is proposed by the noble Baroness, Lady Deech, that the review should deal with,

"the case for amending the criteria in the Civil Partnership Act 2004".

Is my noble friend suggesting that the criteria themselves should not be amended in any way? What would she suggest should be the criteria employed by the review? Will we seek to limit what it can review?

**Baroness Thornton:** The noble Lord, Lord Pannick, very adequately, concisely and accurately explained exactly what the review is about.

The point is that the claims that the noble Baroness has explained to us are legitimate. As my noble friend Lord Alli said, the last time I heard the noble Baroness speak with such passion about these issues, apart from in Committee on this Bill, was during the passage of the Civil Partnership Bill.

In the mean time I can recall at least two carers Acts put forward by my own Government. There was the free personal care Bill, and there have been numerous discussions about finances and inheritance tax. Although we may not necessarily discuss those matters in this House to conclusion, certainly there are plenty of Members of Parliament in the other place who can and could put down amendments. I would be more sympathetic, perhaps, if I thought those things had happened, but they have not. My noble friend Lady Kennedy is right when she says that you have to question the purpose of this amendment when all those opportunities have been missed. We ask the noble Baroness not to press this amendment but if she does I will be voting against it.

**Lord Wallace of Tankerness:** My Lords, I thank the noble Baroness, Lady Deech, for moving the amendment and the other noble Lords who have put their names to it. It would amend Clause 14, under which the Secretary of State will arrange for the operation and the future of the Civil Partnership Act 2004 in England and Wales to be reviewed. The amendment requires the terms of the review to be extended to consider first, the case for enabling carers and family members who live together to register civil partnerships and secondly the case for creating a new legal institution to give carers and family members the same benefits as couples in a civil partnership.

I recognise, as we did in Committee, that many views have been expressed very passionately. I listened in particular to my noble friend Lady Hooper, who made an important contribution to this debate arising from her own circumstances. I agree with the noble Baroness, Lady Thornton, that, in many respects, the issues that have been raised about inheritance or the rights to have a say, for example, about funeral arrangements or related matters are issues in their own right. I will say more later about whether there has been a clamour for them, but my principal position is that this is not appropriate for a review of civil partnerships.

First, there is the issue of the nature and purpose of civil partnerships. They were designed to provide rights and responsibilities akin, to use the word of the noble Lord, Lord Alli, to those of marriage for same-sex couples. I note that the right reverend Prelate the Bishop of Chester thought that they possibly mirrored marriage too much. I think he said that was the view when they were brought in. These rights and responsibilities were provided because under the Civil Partnership Act

people were unable to marry because they were the same sex. As civil partnerships are akin to marriage they have a formal means of entry and exit. They have imported the prohibited degrees of affinity parallel to those in marriage law. They have similar rules governing deathbed civil partnerships and financial and property arrangements.

*6.15 pm*

I believe that seeking the extension of civil partnerships to family members is tantamount to seeking to allow marriage between close family members within the prohibited degrees of affinity. We have decided as a society that it is undesirable for close family members, such as siblings or a parent and child, to marry. I accept, as the noble and learned Baroness, Lady Butler-Sloss, said, that the issue of procreation does not always arise, such as in a marriage between a man and a woman who are both pensioners. Nevertheless, they can still bring great companionship to each other. No one questions that that devalues that marriage or the concept of marriage in any way. However, we would not think it right for even a brother and sister over the age of 60 to marry as over generations our society has said that is not appropriate and not right. Even where procreation is impossible, that is not something that should happen.

My noble friend Lady Berridge said that she had heard of situations where couples had been separated and questioned about a possible sexual relationship. I suspect that couples being separated before they can marry is in certain cases intended for the prevention of sham civil partnerships. A couple have to have a face-to-face meeting with a registrar where the registrar takes notice of the marriage and needs to assure him or herself that they are indeed a genuine couple who actually know each other and that it is not a sham civil partnership for immigration purposes. It is not to ensure that there is a sexual relationship between them.

Regarding carers and those they care for, there is, as the noble Lord, Lord Alli, pointed out, nothing in general to prevent them marrying or entering into a civil partnership at present. The noble and learned Lord, Lord Lloyd of Berwick, referred again to the man who was paralysed after a riding accident and his younger carer. I am sure that, in personal terms, that is a very real relationship. As I understand it—I think that it was said in an earlier debate—the younger carer was male as well. There is nothing in the law as it stands at present as to why they cannot enter into a civil partnership. It would be wholly wrong and inappropriate to speculate why they have not. There may be many cases of carers up and down the country where a civil partnership has not proceeded because they do not feel that that is right because of the way in which civil partnerships have developed or the origins of them.

As was discussed in Committee, the change would mean that couples would have to dissolve the civil partnership if either party wanted to marry or enter into a civil partnership with someone else from outwith their family whom they loved, with all the financial implications and legal and practical difficulties involved in a dissolution. That is why I believe that shoehorning such relationships into the existing regime of civil partnerships will not work. I listened carefully to the noble Baroness, Lady Deech, and she said that perhaps it could be ended by a letter or simply by someone going off and marrying someone else. That fails to understand what Parliament legislated for when it established the institution of civil partnership. It was an institution with a very formal means of entering into it and a very formal means of leaving it. I understand where the noble Baroness was coming from and why she was arguing that case, but what she was actually arguing for was not a civil partnership at all. Again, that is why we do not believe that this should take place in the review of the nature that we propose.

I accept, too, that not as much has been said in this debate about the financial benefits of inheritance tax. I salute those who argued the case for the extension of the review in Committee and quite openly and frankly talked about inheritance tax. It was commendable frankness. However, I do not think that treating civil partnerships as a vehicle for gaining tax or property benefits is appropriate. Indeed, it is disrespectful for those who enter into civil partnerships because of a mutual love, be it sexual or a desire for companionship. The noble Baroness, Lady Kennedy of The Shaws, put it very starkly about fathers and daughters, but as the noble Baroness, Lady Thornton, pointed out in terms of this amendment, that would indeed be possible in civil partnerships. However, there are other possible situations which could arise that underline that civil partnerships are not really intended for families. What do you do with two siblings caring for a mother—which of the two would form a civil partnership with the mother? What about two sisters and a brother living together? Who would form a civil partnership with whom? Imagine the contentiousness of the choice and the sense of rejection if one sibling were preferred to the other. Who would an elderly father living with two sons choose to form a civil partnership with? These examples illustrate that it is not appropriate.

The other issue is whether benefits equivalent to those enjoyed by civil partnerships should be made available to carers and other family members. The noble Lord, Lord Anderson, asked whether there was a clamour for this. There is no correspondence filling up the in-trays of my ministerial colleagues on this issue, and I rather suspect from the comments made by the noble Baroness, Lady Thornton, that the same was true for those who were in ministerial office before the present Administration. Since 2004, as far as we are aware, this issue has been raised only once during debates on the Finance Bill in the other place. I appreciate that in this House we cannot raise amendments to the Finance Bill. However, my information is that there has been only one such amendment, to the 2008-09 Finance Bill, tabled by the right honourable Member for Birkenhead, Mr Frank Field. Other than that, the issue has not been raised in an amendment. Carers UK—in a parliamentary briefing which I understand it did not circulate to parliamentarians but which I am happy to make available and put in the Library—said:

"In 2004 we reviewed an amendment to the Civil Partnerships Act"—

Bill, as it was then—

"as it was passing through the House of Lords, that carers should also be able to form a civil partnership. At that time, we foresaw a number of complex and difficult problems with this approach

[Lord Wallace of Tankerness]
and did not feel it was the right way to solve the challenges that carers face. Our view remains the same in 2013".

As my noble friend Lady Barker said, there are a host of other issues with regard to carers, some of which we are addressing in the Care Bill currently before your Lordships' House, but I do not believe the way to tackle them is as proposed in this amendment.

The issue is whether these matters should properly be included in the civil partnership review. The argument was made—I say, prima facie, with some logic—that if we are going to have a review, this matter should be included. However, as I have said before, what is proposed is a fundamental change which is very different from civil partnerships as they were established and as they have developed. That point was well made by the noble Lord, Lord Pannick, who said that the review will examine the consequences of the Bill for the existing civil partnership regime—indeed, whether there is a need for the institution of civil partnerships following this Bill or whether they should be extended to opposite-sex couples. That is the proper remit of the review. I accept that other issues arise which have been very properly aired and which can be followed up in other pieces of legislation with regard to specific rights and responsibilities. However, it is not the purpose of the review to seek to transform civil partnerships from a legal union of a committed and loving couple into something which is very different in nature and has been described as simply a contract which you can get out of by writing a letter or marrying someone else. Therefore, although it was important to have this debate, I ask the noble Baroness to withdraw the amendment.

**Baroness Deech:** My Lords, the comments made by some noble Lords have revealed misunderstandings on their part. I did not have the privilege of being a Member of this House in 2004, but at that time the House passed an amendment that would have included siblings and carers within civil partnership. Having checked my iPad, I see that I raised the matter in 2008, 2009 and 2012, and in some of those years more than once. However, having studied the Care Bill, I did not see a hook on which to hang it. The amendment that your Lordships passed in 2004 was rejected in the other place and complications arose at that time. That is why an inquiry would be so apt. Civil partnerships were invented in 2004 and another form of union could be invented now.

It is not right to jump to the conclusion, as some noble Lords have, that this means that family members will marry each other or have a civil partnership. That is not the case at all. I seek an inquiry. There is, of course, no question of incest and, anyway, there is no prohibition now on siblings living together. I do not believe that the police go knocking on their door to see whether incest is taking place. Some carers do get married. We have all read of elderly gentlemen marrying much younger ladies who care for them, often to the dismay of family members who are worried about inheritance. Inventing a new covenant or contract would probably be much more acceptable. However, it would, of course, be a question of choice. We are not talking about marriage, civil partnership or incest but about an inquiry given that civil partnership is to be examined. The wording is broad enough to allow for this.

No matter what hopes may be expressed by the noble Lord, Lord Alli, on religious marriage in the future or on the future of civil partnerships, I cannot find it in my heart to stand in the way of a study of equality. Just because something else may happen in the future, how can we stand in the way of an inquiry into equality? As the noble Lord, Lord Pannick, knows, as he was counsel in the relevant case, the Strasbourg court said that the treatment of the sisters was discriminatory but could be accepted because in this country there was this rigid division between marriage and all other unions, which no longer exists. Therefore, the review is discriminatory. How can we say that this is not the right vehicle in which to examine the issue? That is not the way that this House normally treats questions of equality and justice.

It is not just an issue of finance or of money-grubbing; I listed many of the other advantages of marriage and civil partnership, only a few of which are financial. Moreover, same-sex marriage is likely to come about long before the proposed inquiry reaches any sort of conclusion. Therefore, the two will not impact on each other. We need a debate on this, as the noble Baroness, Lady Farrington, said, and here is the very vehicle for it.

The noble and learned Lord, Lord Wallace, assumed that there would be no choice in the matter and that people would be forced into these unions. That is not the case at all. I keep repeating this because it seems to be misunderstood: I seek an inquiry into an existing discriminatory situation. That is all the amendment calls for. The people I am discussing do not all have to be treated in the same way. One is not suggesting that an inquiry, even if it went the way that I would hope, would end up saying that sisters, fathers and children should be treated as if they were civil partners. That is something to be decided in the future. Although, as I say, this is not just about finance or property, let us not overlook the fact that many a marriage, certainly in the past, was most definitely about property, but I am not suggesting that that is the case today, or that this is about money. As learned Members of this House well know, various other statutes deal with tax and inheritance for people who live together.

I do not think that a matter of justice is ever inappropriate. We have talked about carers for years and years since I have been here. This is a chance to do something for them in an inquiry. I am getting letters from sisters. I do not know what to write back to them if this House rejects this opportunity, which may not come up again for years. How can I write to them and say, "The House was presented with your situation but decided that it was not appropriate even to look into it"? If this House sees discrimination, it should allow it to be looked at in an inquiry. That is all I am asking for. Therefore, I wish to test the opinion of the House.

*6.26 pm*

*Division on Amendment 94*

*Contents 89; Not-Contents 267.*

*Amendment 94 disagreed.*

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*6.42 pm*

*Consideration on Report adjourned until not before 8.12 pm.*

## Royal Mail
*Statement*

*6.43 pm*

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** With your Lordships' permission, I propose to repeat a Statement made in another place by my right honourable friend the Secretary of State for Business, Innovation and Skills. The Statement is as follows.

"Today, I have laid a report in Parliament announcing that the Government have decided to proceed with a flotation of Royal Mail shares on the London Stock Exchange via an initial public offering.

A sale will initiate the final stage of the Government's postal sector reforms. The overarching objective of these is to secure the universal postal service—the six-days-a-week service, at uniform and affordable prices to all 29 million address in the UK, which is vital to the UK economy.

Over four years ago, the independent review of the postal sector led by Richard Hooper concluded that the universal service was under threat. The previous Government accepted the review's package of three main recommendations but the Bill to implement them, which would have permitted a minority sale of Royal Mail shares, was withdrawn. In 2010, Richard Hooper's updated report confirmed his initial findings and that a package of measures was needed to secure the universal service. Through the Postal Services Act 2011, we have implemented two elements of that package by establishing Ofcom as the postal regulator and taking on Royal Mail's historic pension deficit.

As set out in today's report, we will now implement the third and final element of the Hooper recommendations by selling shares through an IPO in this financial year. We will retain flexibility around the size of stake to be sold, as this will be influenced by market conditions, investor demand and our objective to ensure overall value for money for the taxpayer. It is our intention to dispose of a majority stake, taking into account shares sold and those allocated to employees. The IPO will include a retail offer to enable members of the public to buy shares on the same terms as the big institutional investors.

At the time of the IPO, the Government will allocate 10% of the shares to an employee share scheme. These shares will be free to eligible employees, recognising that many might otherwise find them unaffordable, and I want to strengthen employee engagement by ensuring that employees own a real stake in the business. Employees must retain their shares for at least three years, giving longevity to the scheme. Our scheme will be the biggest employee share scheme of any major privatisation for nearly 30 years. Eligible employees will also receive priority in allocation if they purchase shares in the retail offer. I would like to reassure employees that ownership change does not trigger any change in their terms and conditions. The CWU will continue to be their recognised representative, and employees' pensions will continue to be governed by the trustees. As part of a three-year agreement, Royal Mail is also prepared to give assurances on the continuation of a predominantly full-time workforce, a commitment to provide and enhance existing services to customers using the current workforce with no change to the current structure of the company in relation to these services, and no additional outsourcing of services

Royal Mail is now profitable and its overall financial position has improved. This is partly due to the Government's action so far. But considerable credit is due to the management and the workforce who have implemented a modernisation plan. The challenge now is to maintain this positive momentum. In recent history, Royal Mail's core UK mail business has swung between profit and loss. In the 12 years since 2001, it suffered losses in five of those years and over 50,000 jobs have been lost. Resting on the current level of progress is not enough.

Under public ownership, there is simply not the freedom to raise capital in the markets. A share sale will not only give Royal Mail commercial disciplines, it will also give Royal Mail future access to private capital, enabling the company to continue modernising and to take advantage of market opportunities such as the growth in online shopping, building on its success in parcels and logistics. Recent estimates indicate that this market is worth £76 billion in the UK.

There are various myths that need to be rebutted. Contrary to what is being claimed, Royal Mail, after a sale, will still be the UK's universal service provider.

This includes services to urban and rural areas and free services for the blind. Only an affirmative resolution in Parliament can change these minimum requirements. Free services for the Armed Forces are entirely independent of ownership, and Royal Mail is fully reimbursed for these services by the Ministry of Defence.

Ofcom's primary duty is to secure the provision of the universal service. It also has duties to promote competition where that benefits consumers. However—and let me make this absolutely clear—should the two duties be in conflict, it is the universal service that takes precedence. In March, Ofcom published a statement on its approach to end-to-end competition, making clear that should a threat to the universal service arise from such competition it has the powers to take any necessary action. While Ofcom is clearly the most appropriate body to assess and react to such threats to the universal service, the Government, as a safeguard, have retained powers to direct Ofcom with respect to certain regulatory levers such as reviewing the financial burden of the universal service and taking mitigating action to ensure that the universal service is maintained.

I confirm also that Post Office Limited will remain publicly owned, although we will continue to explore mutualisation. This Government have made a commitment that there will be no further closure programme. Royal Mail and Post Office Limited signed a 10-year commercial agreement in 2012 to ensure that they continue to be strong business partners.

The Government's decision on a sale is the practical, logical and commercial decision, that is designed to put Royal Mail's future onto a long-term sustainable basis. It is consistent with European developments, where privatised operators in Austria, Germany and Belgium have profit margins far higher than Royal Mail, and have continued to provide high-quality services.

Now the time has come for the Government to step back from Royal Mail and allow its management to focus wholeheartedly on growing the business and planning for the future. It is now time for employees to hold a stake in the company and share in its success. This Government will give Royal Mail the real commercial freedom that it has needed for a long time, and I commend this Statement to the House".

My Lords, that concludes the Statement.

*6.50 pm*

**Lord Young of Norwood Green:** My Lords, I thank the Minister for repeating the Statement. I should declare an interest as a former joint general secretary of the Communication Workers Union and, many moons ago, an apprentice in Royal Mail when it was called the GPO.

We opposed the Government's privatisation of Royal Mail during the passage of the Postal Services Act 2011, and we oppose it today. Maintaining Royal Mail in public ownership gives the taxpayer an ongoing direct interest in the maintenance of universal postal services in this country; helps to safeguard Royal Mail's vital link with the Post Office; and ensures that the taxpayer can share in the upside of modernisation and the increased profits that Royal Mail delivers. Despite that, the Government have pressed on regardless with this sale and they have failed adequately to justify why they must sell now.

On one side, there is an unusual coalition against this move: the Opposition; the Conservative-supporting Bow Group, which described this move as "poisonous"; the Royal Mail's employees, who are represented by the CWU; and the National Federation of SubPostmasters. The right honourable Michael Fallon, Member for Sevenoaks and Minister for Business and Enterprise, wrote to a constituent in 2009 saying that he, too, was opposed.

On the other side, there is the Government, which now includes the Minister of State. The Government are ignoring the huge changes that they acknowledge have taken place since the passage of the Act. Chief among them is the more than doubling of Royal Mail's profits to £403 million and the significant progress on the modernisation programme, which calls into question the assertions that there is no prospect of Royal Mail being self-financing in the future.

I noted carefully the Minister's reference to the package that Hooper recommended; it is true that Ofcom and the pensions arrangements were part of that package. However, he did not recommend full-scale privatisation, but an injection of private capital.

We have a number of concerns. The Government are rushing to sell the business without making the case as to why the sale of shares in Royal Mail, through an initial public offering, must be carried out now; nor have they illustrated how a sale will deliver maximum value for the taxpayer. They have failed to show that the climate for an IPO now is a good one or how much capital would be injected into the Royal Mail business as a result. Instead, they are pressing ahead with a fire sale this financial year in a desperate attempt to cover the gaping hole in George Osborne's failed economic plans.

There are further points that the Government have failed to address. First, there is the timing of the sale. No evidence has been provided to demonstrate that the Government will secure best value for money for the taxpayer from a sale at this point in the Parliament. Additional years of profitability may well increase the sale value in future years.

Secondly, there are unresolved competition issues. Legitimate questions regarding the fairness of competition posed to Royal Mail by other postal operators—given that other postal service operators are not subject by the regulator to the same high performance and service quality standards as the Royal Mail—have not been resolved. The different services required of Royal Mail by the regulator arguably put Royal Mail at a disadvantage compared to its competitors.

Thirdly, there are the funding needs of the business. To what extent will Royal Mail be able to raise capital from other sources to meet its funding needs if it enters into private ownership?

Fourthly, there is the impact on the Post Office network. In January 2012, a 10-year deal was entered into between Royal Mail and the Post Office under which Royal Mail would continue to use the Post

[Lord Young of Norwood Green]
Office to deliver a range of Royal Mail services. However, there are no guarantees that this arrangement will continue on expiry of the agreement.

Fifthly, there is the impact on consumers and businesses. Royal Mail assets could be sold off, generating large, short-term profits for the private company: for example, high-value urban centres could be sold off to be replaced by distant depots, making it worse for the consumer. What assurances can be given that regulation will be sufficient to protect consumers from being ripped off in the same way that they were after transport and energy privatisations?

Sixthly, there is the issue of postcode access for businesses. As part of the proposed sale, it has been reported that the Royal Mail maintenance of post-office codes is up for sale, with a wider negative impact on business. I would welcome the Minister's response on that point.

Finally, in relation to employee ownership, we welcome the giving of 10% of the shares in the business to its employees. However, if that is such a good idea, and given that the Government are proposing fully to mutualise the Post Office, why is the share being given to Royal Mail employees not larger?

In conclusion, I have the following questions for the Minister. First, Royal Mail faces competition from other postal service operators which are not, as I have said, subject to the same high performance and service quality standards as Royal Mail, putting it at a competitive disadvantage. How will that not depress the sale price, and what will the Minister do about it?

Secondly, this cannot be allowed to put the Post Office at risk. What guarantees can the Minister give that a privately owned Royal Mail will renew the agreement under which the Post Office provides Royal Mail products, which is essential to the Post Office's future?

The Minister said that the universal service obligation is fully protected; that it will take precedence; and that if things start to go wrong, Ofcom will renew the financial burden. What exactly does he mean by "renew the financial burden"?

We believe that this is an ill-thought-out process that will not benefit the taxpayer, the consumer or the employees, and believe that the Government should think again.

*6.57 pm*

**Viscount Younger of Leckie:** My Lords, I am sorry that the noble Lord, Lord Young of Norwood Green, takes such a negative view of the privatisation programme with Royal Mail. I agreed with hardly any of the points that he made and I will attempt to address them as best I can.

On the rationale for the sale, I reiterate that the Government's overarching objective is to protect the universal postal service; that is one of the key aims of this privatisation. To do that Royal Mail needs future access to private capital and commercial disciplines to be able to continue its modernisation programme and seize the opportunities for growth. It is important, as I mentioned earlier, to focus on the market for online shopping. For example, it is vital that the Royal Mail is able to upgrade its sorting technology, improve the way in which the tracking of parcels gets through the system and update its methods of delivery—there are 40,000 Royal Mail vehicles, for instance. There are many good reasons, therefore, why it is necessary to raise this particular money.

In terms of doing that through a private sale, as opposed to finding funds from public money, if Royal Mail remained in public ownership, there would be competition with the education and health services in fighting for limited resources. There is a good reason for the move to private funds.

On the so-called "fire sale", as my right honourable friend the Secretary of State for Business, Innovation and Skills said today in the other place, it must be the longest fire sale in history. At this stage, I pay tribute to the previous Government and to the noble Lord, Lord Mandelson, who is in his place, for what he did in the privatisation of Royal Mail. It was a process that he started and we are completing it.

It is not a fire sale; rather, it has been long in the planning. The announcement today follows more than two years of preparation since Parliament passed the Postal Services Act 2011. It is a commercial transaction, and the Government will follow normal commercial practices in setting the share price and delivering value for money. A further point to make is one that I mentioned earlier. Deutsche Post and Österreichische Post have enjoyed good profits as a result of their successful privatisation programmes, and we do not want to be behind the curve. That is another good reason for moving to privatisation.

On employee ownership, I am delighted to confirm once again that employees will be given 10% of the shares for free, while on top of that through the special allocation process they will have the opportunity to purchase further shares. We believe that that is a very good deal for the employees. The objective is to tie employees in and align them to the strategy of the company. Overall, as I have said, I do not agree with the noble Lord, Lord Young, in terms of all his queries. I believe that we are on the right track.

*7.01 pm*

**Lord Fowler:** My Lords, my noble friend referred to this as being the biggest employee share scheme following privatisation for almost 30 years. The last one was that of the National Freight Corporation, which I handled myself. Perhaps I may remind my noble friend that the reaction on the Labour Benches and of the unions was exactly the same on the NFC as it is today to the Post Office, although I do not think that anyone would now remotely argue against the NFC.

Although I congratulate the Government on this decision, does he not feel that it is a great pity that it was not taken 25 or 30 years ago? Does he realise that if it had been, at this point, Royal Mail might have been leading in the international carriage of parcels rather than leaving it to the German post office to take that advantage? It is an enormous lesson for us, so perhaps I urge my noble friend that privatisation should come back on to the Government's agenda. A number of other companies could be privatised—here I am thinking in particular of BBC Worldwide. That would be to the benefit of the public and of the people who are working for it.

**Viscount Younger of Leckie:** I thank my noble friend for that comment. In harking back 25 years, he makes an extremely good point; hindsight is very nice. I cannot remember exactly where we were with Royal Mail 25 years ago, but I am delighted that we are where we are at the moment. I believe that the conditions are right to privatise. The chief executive of Royal Mail has done an excellent job in turning the business around, with profits of over £400 million. The climate and the time are right, and I believe that there is an appetite, but let us see what investors think about it.

**Lord O'Neill of Clackmannan:** My Lords, some of us on this side of the House who supported a minority shareholding did so because we wanted an improvement in the quality of the management. Frankly, we had despaired of that ever happening. That is because it takes particular skill for a manager to run a monopoly in a capitalist system at a loss, but that is what the managers of the Post Office succeeded in doing for a number of years. Circumstances have changed because the nettle of parcels has been grasped by the Post Office in a quite spectacular way. However, at the same time we now have day-by-day diminution in the volume of postal mail that requires to be delivered. The fact is that the length of the walk, the final mile that postmen have to go, is exactly the same regardless of the number of letters they have to carry. That is the most vulnerable part of the operation. It is not the parcels that will be the problem; it will be the cost of delivering letters. Frankly, the assurance that the Minister has given us this evening does not in any way give us comfort. All we can see is a weakening of the universal postal service when it becomes too expensive to subsidise under the economics of this flawed scheme.

**Viscount Younger of Leckie:** The noble Lord may not be surprised to hear that I do not agree with his assessment. It is true, however, that since 2006, the fall in letter volumes has been as much as 25%. The market is changing and we need to keep ahead of it. I would remind the House again that Germany and Belgium are ahead of the game. The injection of private capital into Royal Mail will help with the change, but there is a double benefit in that, through legislation, the universal offering remains strong. It is set in stone, which is a very important point to make.

**Lord Razzall:** My Lords, as the noble Viscount will be aware, we on the Liberal Democrat Benches are very much in support of this. Indeed, the Liberal Democrat element in the coalition, starting with Ed Davey who was the responsible Minister in the early days of the coalition, are absolutely delighted to see this culmination now. As the noble Viscount rightly said, it is very nice to see the noble Lord, Lord Mandelson, in his place because it was he who started this process many years ago despite considerable opposition from his own side, which appears to continue.

Perhaps I may put three questions to the Minister. The noble Lord, Lord Young, raised a perfectly valid point when he asked whether the Government are satisfied—have they had advice from whoever is running the IPO for them, who presumably will have been taking soundings from the institutional shareholders who they are expecting to invest—that those shareholders will be prepared to put up the necessary capital to invest in Royal Mail, which was the whole purpose of the privatisation exercise in the first place? Are the Government satisfied that this structure will provide the necessary capital to continue the modernisation process in Royal Mail that we all know lies behind the whole privatisation drive?

Secondly—this is an important point—the Government have chosen to take the IPO route, which I must say was slightly surprising to some of us. We had assumed that the more likely result would be either some form of trade sale or a private sale. Can the Minister confirm that if the IPO was to fail for whatever reason—particularly listening to the noises that are coming from the trade union movement at the moment—the Government will continue the process of selling off shares in Royal Mail? If that happens, it is probable that the buyers would be a private equity group, who are less likely to be sympathetic to the interests of the trade union movement than would be the case under an IPO.

Thirdly, perhaps I may reflect for a moment on the 10% of shares that are going to the employees. As the noble Viscount will know, the Liberal Democrat element of the coalition has pressed for this strongly right from the start. Can he confirm the numbers that have appeared in the newspapers recently of the value of this to the employees of Royal Mail? The numbers that I have seen show that the average Royal Mail employee is being paid approximately £19,500 per annum, and on the likely price of an IPO, every employee will receive shares worth about £1,900 to £2,000. If those numbers are correct, that is clearly a significant sum to be put into the hands of the well deserving employees of Royal Mail.

**Viscount Younger of Leckie:** In answer to my noble friend's first question about the appetite of shareholders, the indications are that there is clear interest in purchasing shares in Royal Mail. I would not want to go further, because it is not my role to speak on behalf of investors, but my noble friend makes a very good point. The most important thing for Royal Mail is to have flexible access to capital to allow it to innovate and capture market opportunities, such as the strong growth in the parcel market driven by online shopping, as I mentioned earlier. That is what an IPO will deliver for Royal Mail. It should not have to come cap in hand to Government and compete with schools and hospitals when it needs to innovate or commit to future investment.

The second question concerns the IPO route as opposed to other methods. It is true to say that, having got to this point over a good number of years, the IPO route was clearly the preferred route. I am certain that other options were looked at. My noble friend's question was, if the IPO route were to fail, would other methods be used? I do not wish to be drawn on that or to speculate, only to say that it is our firm belief that the IPO route is the right route and that is the route that we will be following.

The final question concerned employees. I am delighted to hear that my noble friend is very much in favour of giving 10% of shares free to employees. I will not be drawn on the actual valuation, because a prospectus will be produced in due course, which will set out the terms of the IPO. The valuation will, of course, depend

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on investor demand and market conditions at the time. What my noble friend has read in the papers, as he will probably know, is pure speculation.

**Lord Martin of Springburn:** My Lords, I think that the Minister will agree that many of those who retired from the Royal Mail worked very hard to get it into the very good shape that it is in just now. Has any consideration been given to allowing those who are in receipt of a Royal Mail pension—in other words, former sorting staff and postmen and postwomen—to buy shares? My thoughts go to the fact that in my previous constituency—although it is known as Glasgow North East, it was known as Springburn at one time—we have a lovely sorting office, which I pass every week when I come to the House of Lords. It is known as the St Rollox sorting facility. Several hundred people work there. They have changed their hours, adjusted to the new situation and worked very hard. I would be deeply saddened if any organisation took over and vacated the site at St Rollox and went somewhere else, which would mean that the loyal men and women—some of whom I am related to—who perhaps get up at four or five in the morning and walk to their work in the Springburn area, would lose their jobs. Some of the newer delivery companies, such as TNT and FedEx, tend to go into great industrial estates, but the only way to get to these facilities is by private transport and not public transport. Has any consideration been given to securing jobs in the communities in which they already exist?

**Viscount Younger of Leckie:** I thank the noble Lord for those two points. His first question was whether it might be considered that shares be given to those who have worked for a long time for Royal Mail and that their hard work might be rewarded. It is fair to say that the employee share scheme is designed to secure the future success of Royal Mail and the universal service and we therefore consider it appropriate to include only the current workforce, who deliver the universal service and can influence and benefit from the future success of the company. Share awards will be made only to those employees who have been in employment for the relevant qualifying period, which happens to be a number of months. I listened carefully to the noble Lord's second point; I know Springburn, so it is familiar to me. I am sorry to hear that there has clearly been some disruption to individual lives regarding the transfer of the sorting office. My only response to that is that it is very much up to the Royal Mail management to—

**Lord Martin of Springburn:** Maybe I have given the wrong impression. Everyone is fine in St Rollox. My worry is that, if some of these new companies come in, they might close the facility and move the machinery somewhere else.

**Viscount Younger of Leckie:** It is useful to have the clarification from the noble Lord. In that case, my point is still the same. It is very much up to the Royal Mail management to look very sensitively at those personnel issues. I have no doubt that they will do that if there is a particular move in that way. Change, as we know, is always difficult and it affects individuals. The noble Lord makes a very good point.

**The Lord Bishop of Exeter:** My Lords, I welcome the affirmation in the Statement—the Minister has repeated the affirmation twice—that the Royal Mail will still be the UK's universal service provider and that this will include services to urban and rural areas alike. However, may we be assured that not only will there be universal coverage but there will continue to be uniform pricing? Too often the residents of rural areas, especially remote and sparsely populated areas, face higher costs for public services. Can the Minister affirm unequivocally that a privatised Royal Mail will be required to maintain a universal pricing structure and that residents, whether of Westminster or of west Devon, will continue to pay the same price for the service that is offered?

**Viscount Younger of Leckie:** In answer to the right reverend Prelate, through the Postal Services Act, Ofcom has the primary duty of securing the provision of a universal service. I can confirm that this will be secure in the hands of the privatised Royal Mail. What is protected is not only the six-days-a-week letter service to every address in the UK and free services to the blind, which I mentioned earlier, but also affordable prices, which are monitored by Ofcom. On the specific question, Royal Mail stamp prices for the universal postal service will continue to be regulated by Ofcom, which has a duty to ensure that they remain affordable. For example, Ofcom has put in place a safeguard cap on second-class letters and parcels to ensure that the service remains affordable for all users. I hope that that reassures the right reverend Prelate.

**Lord Bates:** I am grateful to my noble friend for the Statement, which I very much welcome. Has he had an opportunity to read Richard Hooper's report, which was commissioned by the previous Government and paves the way for today's announcement? It identified some major hurdles to Royal Mail achieving its competitive position: the elimination of restrictive labour practices; increased levels of automation; and a culture change towards customers. Will he advise us on what progress has been made towards that? Will he also reflect on the point made by IMRG that parcel deliveries are going to increase by 70% over the next four years due to the growth in online sales, providing a real opportunity for a revitalised Royal Mail in the private sector, if it can sort out those inherent problems?

**Viscount Younger of Leckie:** My noble friend's questions allow me to say that there is tremendous market opportunity for Royal Mail when it is privatised. On the automation programme and the changes that the chief executive has brought about with the rest of the board of Royal Mail, there is extremely good progress to report. I am glad that my noble friend has endorsed that. As to the market itself, we know that there is a tremendous opportunity in terms of future online shopping opportunities, but it will be up to the Royal Mail board following privatisation to use the flexibility of private capital to look at the market and to take even greater advantage of the opportunities for the company.

**Lord Grade of Yarmouth:** I thank the noble Viscount for the Statement and fully applaud this decision, which is belated in the extreme. It is clear that one of the great rationales for this privatisation is the increasing competition and the threats from technology that the Royal Mail faces. The idea that a state-owned operation of this kind cannot face those challenges in the nimble way that is required in business today seems to be unarguable and I absolutely applaud the decision. However, I have two quick questions. I am not asking the Minister to name it, but is there a price at which the Government would not sell? Secondly, are there any considerations about potential foreign takeovers in due course?

**Viscount Younger of Leckie:** My noble friend would probably be surprised if I gave an accurate answer to the first question, so I will pass on that one. In terms of the price, as I mentioned, the prospectus will be produced at some point between now and April 2014, which is the period during which we anticipate the sale will take place. Market conditions and investor demand will also be part of that aspect.

**Lord Young of Norwood Green:** I raised a number of questions that the Minister did not answer and, before he sits down, I request that he addresses those in writing. I do not have time to reiterate them all. I also could not help but observe that the right reverend Prelate did not get an absolutely explicit answer on the uniform tariff and the universal service obligation. Maybe I missed something.

**Viscount Younger of Leckie:** I will be very happy to write to the noble Lord, Lord Young, on any questions that I have not managed to answer.

## Government Archives and Official Histories

*Question for Short Debate*

*7.22 pm*

*Asked by* ***Lord Rodgers of Quarry Bank***

To ask Her Majesty's Government what is their latest assessment since February 2008 of the arrangements for preserving Government archives and preparing official histories.

**Lord Rodgers of Quarry Bank:** My Lords, as noble Lords will have recognised, the title, or description, of this debate is a reprise. In a short debate on 5 February 2008, I expressed my concern about two separate but related issues. One was the way in which ministerial and other papers are kept when they leave departments but are not destroyed or sent to the National Archives at Kew. The other was the need to continue the long-standing series of official histories and how best to choose, organise and publish the books.

As I explained in my debate in 2008, my interest in the first issue arose from the fate of government papers when I was seeking documents from my time as Secretary of State for Transport. After six months of fruitless exchanges between me and the department, I finally abandoned hope of anything substantial. The departmental records officer where the papers were stored in Hastings apologised for—in his words—"an unsatisfactory situation". He recognised quite openly how this had arisen. The essential discipline—these are my words—had been lacking to ensure that they were properly catalogued, remained in the correct files or changed their names appropriately and to ensure that they were returned when they had been borrowed.

In the end, I wrote to the then Cabinet Secretary on the general question of government records and their condition. I said that some departments took great care of their archives but others did not, especially when departments were chopped and changed. I understood that his predecessors had reminded Permanent Secretaries that they were obliged to keep accurate records and to keep them in good condition. I received a helpful reply. Eventually, he said that within a year or so he would again remind Permanent Secretaries of their duty in this respect.

Since the previous debate, most, if not all, Permanent Secretaries have retired or gone elsewhere. Some departments have adopted new names and policy areas have been changed. So where are the papers now and has today's Cabinet Secretary reminded new Permanent Secretaries of their responsibilities in keeping records? Or is it now the head of the Civil Service, Sir Bob Kerslake, who keeps Permanent Secretaries up to the mark? Put simply, can the Minister reassure me that government papers as I have described them are now in good order?

I turn to official histories. On the previous occasion, five years ago, I mentioned *Problems of Social Policy* by RM Titmuss, published in 1950—a seminal study of poverty and deprivation in wartime—as the first official history I had read. Another I mentioned was *SOE in France* by MRD Foot, which I was required to read out of ministerial interest at that time. I then referred to *Churchill's Man of Mystery: Desmond Morton and the World of Intelligence*, an unusual choice even among the eclectic selection of titles in the current series. It was this book about Desmond Morton that focused my mind on some wider policy questions about the official history programme: the timetable, the shape of the programme, the publisher, the contracts with authors and the marketing of the books. The Desmond Morton book seemed to be a one-off, as it had a well designed jacket and told a fascinating story. It should have sold well, been serialised in newspapers and been considered for a television programme. I asked how many copies had been sold—at £49, about twice the usual price—and whether the book had been reviewed in magazines and journals. In replying to the debate, the Minister was full of good will but no figures or substantial response.

However, after the debate, things began to move. Before the end of that year the Cabinet Office said that it was commissioning "a fundamental review" and that Sir Joe Pilling, a retired civil servant, would undertake it. He took evidence quickly and widely, and his report was completed by April 2009. A second, associated report was written by Bill Hamilton, a literary agent, about the publishing arrangements. These

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were internal classified reports but, two years later, when the noble Lord, Lord Hennessy, intervened with the Cabinet Secretary, it was decided to make them publicly available on the Cabinet Office website. I welcomed this step although I was bothered that some key paragraphs in the Hamilton report had been removed as they were "commercially sensitive".

The principal terms of reference for the Pilling report were to review the official history programme and consider whether it should continue. Sir Joe Pilling's recommendation was strongly positive. He said that,

"the overwhelming weight of evidence supported the continuation of the programme".

He then went on to make detailed suggestions to ensure that the programme was,

"better, stronger and more useful".

I should say that in 1997, the Prime Minister nominated three Privy Counsellors—the noble Lord, Lord Healey, the noble and learned Lord, Lord Howe of Aberavon, and me—to be asked whether they were content with the subject and the author for each proposed book in advance of the Prime Minister's formal approval. This led to my interest in the whole official histories programme and how it was put together and published. In this respect, I have much exceeded my proper and limited role.

However, I have kept in touch with the noble and learned Lord, Lord Howe, from time to time. At the beginning of my inquiries he shared my view that the programme appeared to fall "not short of chaos". Later, he wrote directly to the Cabinet Secretary expressing his concern. Then, in a letter to me on 25 August 2010, copied to the noble and learned Lord, Lord Howe, and the noble Lord, Lord Healey, Sir Gus O'Donnell—now the noble Lord, Lord O'Donnell—said that, since the current programme of official histories was coming to an end:

"Given the current challenging economic climate, I am sure that there is likely to be a hiatus in commissioning new titles".

That is where things stand. There is now a hiatus and a gap in the official histories. The last volume of the existing programme was commissioned five years ago, so the break in the sequence is already lengthening.

I am grateful to members of the official histories team at the Cabinet Office for their helpful responses to my persistent inquiries over a long period. However, I do not know who decided that there should be a hiatus. Was there a ministerial decision, and, if so, by whom and when? If a new programme either marks time or goes ahead, what are the financial consequences? Is stopping official histories because of the "challenging economic climate" really justified? As I said earlier, given the deletions in the Hamilton report, there are no relevant figures and costs, but they must be peanuts against public expenditure.

I think the latest book published in the existing programme is the second volume of *The Official History of Britain and the European Community* by Sir Stephen Wall. It is outstanding and wholly relevant to the possibility of a new referendum in the next Parliament. I remain disturbed about the publishing and marketing arrangements for official histories, given that this book is priced at £70—a ridiculous figure.

History never stops, and the Secretary of State for Education is very anxious that Britain's own story is recorded and studied. To stop official histories is short-sighted. Although the Minister cannot announce today a reversal of this unhappy situation, I hope that the Government will make an early decision to resume the publishing programme.

*7.32 pm*

**Lord Prescott:** My Lords, I congratulate the noble Lord, Lord Rodgers, on raising the matter of government archives and records. I was a bit unsure whether my experience, which I wish to relate to the House, fitted into this, but in his first few words he made clear the kind of chaos that is associated with records and archives. That has been exactly my experience in the past two years, although it does not go back as far as that of the noble Lord, Lord Rodgers.

I need to set the background as to why I needed access to the records. The background came from the dirty tricks department in the Department for Communities and Local Government led by the Secretary of State, Mr Pickles, who decided to go back to my record of expenditures in the department in 2004-06. There was clearly a political reason. He spelt out all the expenditures that were done with government procurement cards in my name. That meant, of course, that the information was given to the press. There were PQs here and in the Commons. There were stories of me running around everywhere, eating in the best restaurants and so on. They were just not true but they were put out, and they were politically inspired. My concern was how to get access to the information and challenge it.

In 2011, I wrote to the then Cabinet Secretary, Sir Gus O'Donnell—now the noble Lord, Lord O'Donnell—saying that I was very concerned about the allegations because they were not true. He wrote two letters to me, which I have here, and I spoke to him about these. In his first letter, dated 18 November, he said that there had been some fraudulent expenditures, that the person had been caught and disciplined and that I should have been told before this information was released—that is supposed to be the normal courtesy, although it normally does not apply to me. Five days later, I received another letter from him contradicting his earlier letter. This one had his name stamped on it but was without a signature. I ended up with two letters from the Cabinet Secretary. The essential difference between the two letters was that both the information about finding the criminal, the person responsible, and the comment about my not being told had been deleted from the second letter. Clearly, I got a little concerned about who signed what where. I then asked Sir Gus O'Donnell, who said that he had signed only one letter and knew nothing about the second one. He was still in that early stage before his retirement. I clearly wanted to know, so I asked the department, but it would not give me the information.

I then applied to the Information Commissioner under the Freedom of Information Act. He looked at the matter and said that he backed the Secretary of State. I went to another appeal but again he backed the Secretary of State. What was he backing? He was

backing the view, under Section 36 of the Freedom of Information Act, that if it is in the public interest not to tell you, he can deny you access to that information. The Cabinet Secretary and the Information Commissioner made it clear that they knew who the person who gave the instruction. Since they will not give me the information, I suspect that we are back to the old SPADs—Mr Shapps was the Minister at the time, and Mr Pickles was Secretary of State. Somebody directed the Cabinet Office over the weekend to change the letter. They did not say to Sir Gus O'Donnell, "We're changing your letter. Is that all right?". It was a political intervention to take out two important bits of information and therefore certainly relevant to what I was concerned about.

The Information Commissioner confirmed that the information was available but said that it was not in the public interest to tell me because it was a high-profile public case. I am not sure that is a sufficient answer. Why is it a high-profile case? It is because they released the information to the press about my expenditures. That is what has made it high-profile. That then becomes the justification for the Information Commissioner not to tell me why it is not in the public interest. Telling you what is happening could have a "chilling effect" on civil servants. We are talking about political intervention here, not civil servants. One civil servant does not do this. This is a direct intervention on essential information by somebody in the Department for Communities and Local Government and with the Cabinet Office over the weekend.

My concern, therefore, is how do I get that information? I cannot get it through the Information Commission, who confirms the decision by the Secretary of State, Mr Pickles. What can you do about that? I know that it is difficult when you are up against the Information Commissioner who takes that view, but I am still concerned about this political intervention. There are many expenditures in that department and they are all listed. According to the department, I must have eaten myself around the ruddy world, and in all the best restaurants, of course. Therefore, I wonder whether I can get access to my diaries. One expenditure of more than £1,000 was spent in a hotel on Christmas Eve. Your Lordships will not be surprised to learn that I was not in London having a do; I was at home. I need the diary to be able to prove that these allegations against me are just wrong.

I then went to the Cabinet Office to ask for the information, but remember that the Information Commissioner says that I must appeal if I want to go to the final body for appeal, and I have to do it within 28 days. So I wrote to the Cabinet Office and I rang them there. I said that I wanted the information from my diaries. They told me that they were very difficult to find. In the end, I got a letter this morning telling me that they had found them—this is weeks later. The trouble is that the appeal has gone. Is that the normal service that one can expect? I know that if you are a privy counsellor you are supposed to get some privilege. I am not one now, but I was one then, so I should still have access to the information on the fast track—I expect the slow track from now on. However, the circumstances are such that I could not get the diaries. I needed the diaries to show where I was on what dates and perhaps throw doubt on all the expenditures involved. To that extent, I am frustrated. I did not think that I could bring the matter up until I heard the noble Lord, Lord Rodgers, talk about delay in access to information, which Ministers have passed. If the Government can get it—and they have, in my case—and so can the Ministers, why not I, the man whom they are attacking? That is what I call political dirty tricks. I hope that they will read this speech. I just felt there was frustration and there was a chance in the debate of the noble Lord, Lord Rodgers, to put my point of view before the eminent people who will follow and who have direct experience of what happens in the Cabinet Office.

*7.39 pm*

**Lord Hennessy of Nympsfield:** My Lords, I am left breathless, but I will try. I thank the noble Lord, Lord Rodgers of Quarry Bank, for giving us the opportunity to debate this important theme. I declare an interest as president of the Friends of The National Archives and as a teacher of contemporary British history at Queen Mary, University of London.

I will concentrate on a special oeuvre within the genre of official histories: those dealing with the secret services. Two very fine ones have appeared since the noble Lord, Lord Rodgers, last enabled your Lordships' House to discuss official histories: first, *The Defence of the Realm: the Authorized History of MI5*, spanning the years 1909 to 2009, by Professor Christopher Andrew, which was published in 2009; secondly, the following year saw the publication of Professor Keith Jeffery's *MI6: The History of the Secret Intelligence Service 1909 to 1949*.

Both books brim with their own special mixtures of analysis, swash and buckle, operations and organisation. Both studies kindle that fascination to which we Brits are so susceptible when reading about the King's or the Queen's most secret servants in either fictional or non-fictional form. It is here in that strange, twilit terrain between the facts of Professor Andrew and Professor Jeffery and the imaginations of the spy novelists that one finds the real utility of intelligence history. Spying and counterspying are activities that uniquely lend themselves to fantasy and conspiracy theory. The meticulous, careful reconstructions and assessments filtered through the minds and pens of Chris Andrew and Keith Jeffery are the best antidote we have to what one astute critic called the "snobbery with violence" practised by Commander Bond on both page and screen.

Part of the special utility of secret service official histories and historians is that they possess another virtue, a Heineken lager quality, for they can reach those parts of the secret state that others cannot reach because of the stratospheric classification levels of many of the documents on which they draw and the care needed to avoid blowing both human and technological techniques, the sources and methods of the craft that remain of enduring value.

The paper product of our secret agencies does not flow that easily into the public domain on the tide of the 30-year—soon to be 20-year—rule. But the appearance

[Lord Hennessy of Nympsfield]
of the official histories of the Security Service and the Secret Intelligence Service has provided a scholarly bonus —a Keynesian multiplier effect—which I had not anticipated. Once the volumes had been published, a proportion of the retained files on which Professors Andrew and Jeffery had drawn could be prepared for declassification at the National Archives, and indeed were.

At Kew last May the Foreign Office, the Cabinet Office and the National Archives mounted what can only be called a cornucopian release, drawing on two of the most secret collections the British state has ever created. The FCO batch covered the Foreign Office's dealings with the SIS—the province of what the FCO euphemistically calls the Permanent Under-Secretary's Department—covering the years 1903 to 1951 and shedding much new light on how the secret state coped with successive threats from the Kaiser, Hitler and Stalin. The second tranche flowed from what I call the Cabinet Secretaries' "too hot to handle" cupboard, formally known as the Cabinet Secretary's Miscellaneous Papers. This batch covered the years 1936 to 1951 and contained material which, in my judgment, is of continuing value to today's guardians of national security in the secret agencies and in Whitehall.

I particularly have in mind the report prepared for Mr Attlee and a small group of Ministers in 1951 on *The Secret Intelligence and Security Services*. Written by that great technician of state, Sir Norman Brook, the Cabinet Secretary to four Prime Ministers, it painted for Ministers a vivid and unsparing portrait of how the secret world had fared and was faring against the toughest target British intelligence had ever faced: Stalin's Russia.

I hope that the current heads of service and the Cabinet Secretary will read the Brook report. Not only is it an exemplar of concision and penetration and the jargon-free language at which Whitehall excelled before departments sought the assistance of management consultants, it is a model for how such a review might be commissioned today; for example, if the Prime Minister wished to review the workings of the secret world as a whole with now more than three years' experience available of his National Security Council as the taskmaster and pacemaker of the agencies.

I profoundly hope that the current austerity will not dam the flow of official histories for the foreseeable future, not least those dealing with the secret world. It would be hugely beneficial, for example, if Cheltenham could authorise an official historian to start work on a volume designed for the general reader, embracing as much as can safely be divulged about the Government Communications Headquarters and its predecessor institutions to complete the secret agency set, as it were, and make it three.

I like to think that in this House we have a keen sense of history across all our Benches; in fact, I know we do. I know, for example, that the noble Lord, Lord Cormack, would have added his wisdom to our deliberations this evening had he not been involved with our other business today. I will finish by giving my thanks to all those across the departments and agencies who provide us with such a rich paper trail—although regrettably not to the noble Lord, Lord Prescott—and those who care for the documentary product permanently at the National Archives. We are truly in their debt.

*7.45 pm*

**Lord Butler of Brockwell:** My Lords, I, too, am grateful to the noble Lord, Lord Rodgers, for initiating this debate—at least I was until I heard the speech of the noble Lord, Lord Prescott. I am tempted to say that things must have gone downhill since my day but actually I think I can solve his problem for him. Unless things have very much changed, he does not have to go to the Information Commissioner to get the papers either about his diary or about his restaurant bills. Certainly it always was the case—I believe it still is—that any former Minister can consult the papers which he himself dealt with. My advice to the noble Lord, Lord Prescott, if he finds himself being traduced again, is to go directly to the department and ask to see them and not to bother with the Information Commissioner.

**Lord Prescott:** I went to the Cabinet Office.

**Lord Butler of Brockwell:** I think the noble Lord should have gone to his own department.

I very much endorse what the noble Lords, Lord Hennessy and Lord Rodgers, said about the value of both the official histories and the National Archives, and the importance of good record-keeping in government, not just for the benefit of academic historians but because of their relevance to current decision-making. When the Government make decisions when they are not fully aware of the history of the subjects they are discussing. they are like a driver who goes out into the traffic without having taken the trouble to check in his rear mirror before taking action on the road. In that respect, both the files and the official histories are very valuable.

However, files and official histories are not enough. We need something else to exploit the lessons of history for policy decisions. If, when a crisis arises, there is no official history on the subject—certainly, if there is, it ought to be consulted; but it will be a monumental work that does not cover all areas of government policy—it is too late to go back to the archives. We need to ask what else is needed to exploit the lessons of history when they are necessary for informing policy decisions.

Of course, it would be impossibly expensive to employ enough historians in government to cover the vast span of each department's responsibilities. But it is not too expensive for each department to have a historical adviser who would not necessarily be able to give advice on all major issues but who would have sufficient tendrils into the academic world to know where such advice could be obtained. It is not sufficient for this advice simply to be fed into the department. A historical adviser must be present at the table when major decisions are taken.

Of course, there were many in the Foreign Office and State Department who were fully aware of the complexities of both Iraq and Afghanistan when policy decisions were being taken on those countries. The

question is whether they had the opportunity to make themselves fully heard by the decision-makers. In this respect, I admired the practice of Margaret Thatcher as Prime Minister, whose first step when taking a major decision was to hold a seminar of experts. The seminar she held when facing the unification of Germany has become well known. It did not necessarily overcome her prejudices but it was certainly a counterweight to them. It said that under the pressure of economies, all departments, with the notable exception of the Foreign Office, had disbanded their historical sections. If that is so, it is a grave disadvantage to the operation of government.

Will the Minister tell me, either in replying to the debate tonight or by writing to me, whether it is true that all departments except the Foreign Office no longer have historical sections? If that is untrue, which departments still have them? I also invite his comment on whether, even if departments cannot afford historical sections, they should at least have a historical adviser. Without such, government decisions will be taken blindly.

*7.50 pm*

**Lord Liddle:** My Lords, I, too, welcome the debate initiated tonight by the noble Lord, Lord Rodgers. I want to make one simple point very strongly in favour of official history and about wanting to make official history more contemporary, not less. I believe that history is vital to people when facing difficult decisions. In the years that I spent as an adviser in government, one thing that struck me a great deal was the lack of institutional memory in government departments. Even in a long-serving Government such as the Labour Government from 1997 to 2010, Ministers changed jobs frequently and, except in one or two cases, it was very unusual to have Ministers who had a long period of office in one department.

Apart from the ministerial merry-go-round, there were frequent changes in the Civil Service. For instance, one of the most striking things in the book by my noble friend Lord Adonis on education is that, in the case of the academy programme, eight different people were in charge of it in the Department for Education in nine years when he was the relevant person at No. 10 and a junior Minister in the department. There is far too much changing around and as a result there is a lack of institutional memory. I remember when my noble friend Lord Mandelson came back from Brussels and went to BERR, I think it was called, and started to think about industrial policy, there was very little available that one could turn to that analysed the strengths and weaknesses, from the perspective of government records, of government policies in the past.

More history and more contemporary history would be good for us. The most recent official history that I have read is Sir Stephen Wall's excellent book on Britain and the European Community from 1963 to 1975. It made me reassess what was probably a rather too jaundiced view of Harold Wilson. Stephen has given us the benefit of the minute books of the Cabinet Secretaries, so you know what each Minister said in Cabinet meetings, and you come to admire Wilson's skill in handling questions such as the Common Market at Cabinet. The lessons for what we are currently going through—the renegotiation that the current Prime Minister proposes—come out of that book extremely strongly.

Taking the Europe example again, the reason why I would like some more contemporary examination of the records is that many of the issues that will be raised if there is a renegotiation in the next Parliament were raised during the European convention in the period from 2000 to 2003. Many of these issues about competences, repatriation of powers and the legitimacy and accountability of European institutions were thoroughly gone through then, yet I suspect that there has been no proper examination of the lessons of that experience by officials internally and certainly none by historians externally. So let us have more official history, and let us make it more contemporary.

*7.55 pm*

**Lord Bew:** My Lords, I, too, thank the noble Lord, Lord Rodgers of Quarry Bank, for securing this debate and, indeed, for opening up this whole question with his debate five years ago. I must declare an interest, as secretary to the All-Party Group on Archives and History and, like my noble friend Lord Hennessy, as a working professor of history in Queen's University Belfast. One of the effects of the important debate introduced by the noble Lord, Lord Rodgers, five years ago was the production of the Pilling report. The noble Lord referred to it tonight. There is a striking sentence by Sir Joe Pilling at the heart of his report endorsing the project of official histories. He said that he had come to see the work of publishing official histories as,

"the gold standard of accountability to the country from those who have been privileged to hold senior office".

It is for that reason that Sir Joe Pilling advocates essentially an improvement and an increase in the production of official histories.

I recall that five years ago I referred to the history of MI6—which my noble friend Lord Hennessy mentioned tonight—by my colleague Keith Jeffery. It was then basically something that existed on Keith's desk, but now it shows how these things can sell. One of the many points that are so important about that book is that it has sold hundreds of thousands of copies across the world. It may be because the Chinese copy actually has a gun smoking on the cover, but none the less it is an indication that no definite economic death follows the production of official histories. It is important to understand that the work of producing official histories is of great significance.

However, there is a darker side to Sir Joe Pilling's report. If you read between the lines, he was aware as a member of the Dacre committee with Sir David Cannadine that it was likely that we would move from a 30-year rule. Actually, the Dacre committee recommended moving to 15 years, but in practice it is now a 20-year rule. Sir Joe is also clearly aware that this will become an argument for the state to say that it does not need these official histories any longer. He clearly tacitly acknowledges that that argument is just around the corner. It is the argument that is related to the hiatus that has been announced in the context of austerity. I can completely understand it, there is a

[Lord Bew]
forceful logic to it, but there is another hiatus, if I might put it like this. It would be forcefully true when the 20-year rule comes into effect and will be much truer in five, seven or eight years from now insofar as it has truth today. We still have a pressing need in public areas for a certain type of work in an official history programme.

Let me explain what I mean and take the case of the history of the Northern Ireland Office. If you want to look at the volume of official publications on Northern Ireland on the shelf of our library, you will find a shelf of official publications including the report on Bloody Sunday and the Finucane report. There are hundreds of thousands of pages, mostly dealing with matters of that sort, occasions when the state has been seen to behave not very well. I have no objection to that; I was the historical adviser to the Bloody Sunday tribunal report. However, it is somewhat ridiculous that there is no account of the work of those officials on the British side who struggled to bring about a peace process. It is astonishing that we are silent on the more creative, positive, though no doubt deeply flawed aspects of the work of our state officials while we are so loud in announcing some of the rather bad things that went on. That seems an astonishing way to proceed.

The same point can be made about how aspects of Foreign and Commonwealth Office history in the 1940s and 1950s have been dealt with in recent times. We now seem to think that the way to educate the public about what happened in the past is to apologise or to have a large and expensive inquiry about something very bad. That may well be necessary, but this is the case for a proper, official history programme. With the hiatus that still now exists, particularly in the Northern Ireland Office, the many arguments there have been about legacy in Northern Ireland, the sense there that the past has not been properly dealt with and the small sums involved, there is a case for the Government to reconsider their approach of austerity.

There is a further point made in Sir Joe Pilling's report that is worth drawing attention to. He says that the internet now allows you to publish a lengthy set of footnotes and a lengthier text—the full scholarly history—but a 200-page shorter version as the book. That seems another way for government to avoid unnecessary expense. In other words, I am arguing that this can be done quite cheaply. I would like to see the Government reconsider the force of the Pilling report of 2009.

*8 pm*

**Lord Thomas of Swynnerton:** Forgive me for speaking in the gap. I agree very strongly with the arguments of my noble friend Lord Butler for a historical adviser to many government departments. I had the privilege of accompanying the noble Lord, Lord Carrington, on a visit he made in 1981 to South America. It was not at all clear what I was doing, but I accompanied him as a historian of the Spanish world. When we got to Brazil, an official of the Brazilian Foreign Minister asked me what my mission was. I said, "I am Lord Carrington's historical adviser". He had not appointed me; I appointed myself. The Brazilian official said, "What a good idea —we must have one too".

*8.02 pm*

**Lord Stevenson of Balmacara:** My Lords, I declare an interest as a board member of the Brown Archive Trust, a Scottish registered charity that owns the personal papers of Gordon Brown MP, which are in the process of being deposited with the Churchill Archives Centre in Cambridge. I congratulate the noble Lord, Lord Rodgers of Quarry Bank, on securing this debate and on his persistence in sponsoring earlier debates on similar themes. He does us all a great service.

This has been a very high-quality debate, which has possibly fallen into three topics. First, there was official histories: the balance of opinion seems clear that they are a very important part of the overall architecture of the responsibilities of governance and accountability. I hope the Minister will be able to give us some thoughts on that when he comes to reply. I certainly find them fascinating. They are important, and we ignore them at our peril. Secondly, there was the question picked up initially by the noble Lord, Lord Rodgers, and graphically explained by my noble friend Lord Prescott: are the papers in good order? I want to come back to that later on. Thirdly, there was the interesting point from the noble Lord, Lord Butler, about historical advisers. I will also be interested to hear the response of the Minister to that.

I will focus on e-mails. I have done some work on the Brown papers—the papers relating to the Administration headed by Gordon Brown. I thank the staff in the Cabinet Office and Treasury for their expertise and support when I had to access the files for various issues in the past year or so. I have had some sense of what my noble friend Lord Prescott was saying but by and large my experience has been good and I have been able to find the papers I needed reasonably in the time. I am grateful to those who supported us in that.

However, Mr Brown's Administration was the first that was almost entirely digital. Papers, minutes, notes and messages were all exchanged electronically, and the key evidence of meetings and events—which I notice is one of the main foci of the National Archives' work—were in electronic form, as were the diaries. Of course, there are some traditional papers in the manila files which characterise the way Whitehall keeps its data on Administrations, but they are mostly simply print-outs from the electronic system. I know to my cost, because I spent many hours looking at them, that the paper files contain some very substantial gaps. My main concern is that the e-mails that support and exemplify how policy was decided are not generally incorporated into the paper files. Indeed, the e-mail files are kept separate and no work seems to have been done on them since the end of Mr Brown's Administration.

Can the Minister explain what the government policy is here? I am assured—and have some evidence to back this up—that e-mails are being kept and that technology is being looked at so that they are progressively kept alive. However, keeping records is not the same as keeping records permanently. If you keep records permanently, it means that somebody has assessed the records and found them to have enduring long-term value, selected them, made them safe and secure and

can find them when they are required. Keeping records indefinitely means we cannot find a basis to set a retention rule on them.

Although staff in No. 10 were encouraged to file material, we need a lot more than that. The current standard seems to be that e-mail accounts get removed after the Government change or a member of staff leaves. Surely that should happen only after a pre-exit process in which an archivist and an employee go through the e-mail account together and decide how to deal with the e-mails or in a post-exit process where an archivist looks for e-mails that need to be kept and ensures that they are catalogued and tagged for future access. That approach would at least recognise that, in the real world, people cannot be relied on comprehensively and routinely to deal with their individual e-mails by filing or deleting as they go along. E-mail communications are exchanged with such frequency that backlogs quickly scale up to a size that makes patient sifting and sorting virtually impossible.

We also need to recognise that the electronic way of working is intrinsically different from earlier, paper-based systems and our archiving needs to reflect that. E-mails typically deal with several different topics in one chain. How are they to be broken up and filed across those various aspects? Even if an individual never used their work e-mail account for non-work correspondence, their account is still likely to contain personal information of a sensitive nature exchanged with colleagues. That needs to be addressed. E-mails within a ministerial context are often political in nature: issues that perhaps should not reach the permanent archive but should be made available to those parties involved. Also, within e-mails it is hard to establish electronic document management systems that work. Access to e-mail archives is problematic because the information contained in the totality of the archive—virtually accessible if you go straight into an e-mail archive—is so sensitive that the National Archives might well have difficulty in imposing a rule that does not exclude very large amounts of information. That point was made earlier.

Of course, this is a very general area. I am sure that the issues that I have touched on here work in commercial companies as well as in government. A quote from an eminent historian of American higher education, Winton Solberg, is worth recalling at this stage:

"historical research will be absolutely impossible in the future unless",

archivists find,

"a way to save e-mail".

We need an approach to e-mail that results in staff leaving behind an e-mail account that their colleagues and successors can routinely access and use, without unduly harming either the account holder or people mentioned in their correspondence. We also need defensible access rules and, importantly, retention rules. I suspect it is beyond the ability of a single organisation to develop such an approach because it involves changes to available tools in the technology, to the way we think of an e-mail account and to how we ask colleagues to treat e-mails. I look forward to hearing from the Minister about what progress has been made in this crucial area.

*8.08 pm*

**Lord Ahmad of Wimbledon:** My Lords, I thank my noble friend Lord Rodgers of Quarry Bank for initiating this debate. I am sure the House is fully aware of his longstanding interest in these matters and the great experience he brings to bear in debates such as these, as demonstrated by his contribution today. I also thank all noble Lords for the valuable contributions they made which raised several important questions. I hope that I am able to address most, if not all, of the issues. I will write on any questions left outstanding.

I also pay tribute to my noble friend for his work within the privy counsellors' group, the "three wise men" as they are often referred to in this particular area. If debates such as this are about prompting interest, as a Minister in the Government, this was a new area for me. It has certainly prompted my interest, and I am looking forward to my visit to the National Archives in the next couple of weeks or so.

Turning first to official histories, my noble friend Lord Rodgers and the noble Lord, Lord Bew, referred to the reviews commissioned by the then Cabinet Secretary, the noble Lord, Lord O'Donnell, and conducted by Sir Joe Pilling and Mr Bill Hamilton. They recommended that the official history programme should be continued under the auspices of the Cabinet Office under the name "the public history programme". They proposed substantial changes to raise the profile and relevance of the programme, including an increase in the involvement of sponsor departments and outside bodies, a revamping of the publishing arrangements and an enhancement to its governance procedures.

Several noble Lords referred to the fact that, given the current economic constraints, the Government do not plan to implement the proposed changes at the current time, and I will return to this. However, we are moving forward with the completion of the existing programme, which will conclude with the publication of *The Official History of the Joint Intelligence Committee: Volume 2* in 2016. Work on this volume will, we hope, be completed by the end of 2015, after which point the recommendations will be revisited.

My noble friend Lord Rodgers referred to expense. Without incurring disproportionate expense, it is not possible to determine the overall cost of the current series of official histories. However, for the last year for which published costs are available, 2006-07, the net cost was £176,000. This cost includes fees and expenses of historians and research assistants and costs associated with publication, but excludes staff costs of Cabinet Office administrative support and accommodation-related overheads. Noble Lords will understand that until the future shape of any programme has been determined it will not be possible to estimate the likely future costs. I reiterate the words of my noble friend Lord McNally when he previously answered a debate on this subject:

"As for the official history programme, a good deal of work is already in progress, and I hope that we can review future work in happier economic circumstances. I emphasise again my enthusiasm for the programme of official histories. It would be a tragedy if we were to allow them to wither on the vine".—[*Official Report*, 17/1/12; col. 547.]

I share his sentiments.

[Lord Ahmad of Wimbledon]

The noble Lord, Lord Hennessy, in his excellent contribution to today's debate, referred with his usual aplomb to the histories of MI5 and the Secret Intelligence Service written, respectively, by Professor Christopher Andrew and Professor Keith Jeffery. I should clarify for the House that these were authorised histories, more akin to departmental histories, and were not commissioned under the official history programme. The noble Lord also suggested that an authorised or official history of GCHQ would be a valuable addition to those recent intelligence histories. In fact, nearly all of GCHQ's records of the period roughly corresponding to that covered by Professor Jeffery's history of SIS have already been released at the National Archives. I agree with the noble Lord that it is therefore open to any historian—indeed, we have historians in the Chamber—to write their own history of GCHQ. I look forward to such books being written.

Turning to the arrangements for preserving government archives, we have grounds to be optimistic given the progress made in a number of areas since 2008. First, on the responsibility for public record keeping, in line with the Public Records Act 1958, government departments are responsible for their records up to the point that they are transferred to the care of the National Archives. The National Archives provides departments with guidance and supervision, but decisions on which records to select for permanent preservation remain the departments' own.

On guidance, in June 2009 the Cabinet Office and the National Archives revised the guidance on the management of private office papers. November 2010 saw the revision of the Civil Service Code, which now emphasises the importance of keeping accurate official records and handling information as openly as possible within the legal framework. In December 2010, the *Cabinet Manual* was issued, and this includes a section on official information and maintaining official records for departments. A question was raised by my noble friend Lord Rodgers about reminding Permanent Secretaries about their accountability for record keeping in their departments. It is from the *Cabinet Manual* that Permanent Secretaries should draw their guidance.

The noble Lord, Lord Prescott, raised several issues in his contribution, which I am sure we all found entertaining. To save on the high cost of file storage in central London, certain records have been outsourced to secure locations outside London. Regrettably, I am informed that mislabelling of the box containing the diaries of the noble Lord, Lord Prescott, led a more extensive search being required. I am sorry for any delay that that caused. However, I am sure that all noble Lords are delighted to learn that he has now perceived a positive response, and I am sure we are all looking forward to the publication of the noble Lord's diaries; I am sure that they will make an entertaining read for us all.

**Lord Stevenson of Balmacara:** I am sure that my noble friend Lord Prescott can speak for himself, but I think his point was that there are points, particularly in today's world, where it is vital for people to be able to respond quickly and precisely to allegations made, for whatever reason, in the press. I accept the Minister's general point, but I do not think he responded to my noble friend's point. Can he give us some assurance about how quickly these things can be dealt with in future?

**Lord Ahmad of Wimbledon:** First, I have apologised for the delay. It has been recognised that that should not have happened. Of course measures have been taken to ensure that the archive records should be labelled properly. I give an assurance that that has been done.

**Lord Prescott:** The labelling?

**Lord Ahmad of Wimbledon:** I am sure that the noble Lord will agree with me that labelling matters; it is good to know whose diaries are where.

In response to another point raised by the noble Lord, Lord Prescott, the noble Lord, Lord Butler, is absolutely correct that former Ministers can see their papers within their former departments. I assure the House that this is also outlined in the *Cabinet Manual*, which is available online. The noble Lord, Lord Butler, also talked about the coverage of historical advisers and sections across Whitehall. The FCO still has a historical section, the head of which is Patrick Salmon. I will write to the noble Lord on the coverage of historical advisers across Whitehall in general and, of course, place a copy of that letter in the Library.

On other initiatives, the National Archives' information management assessment programme began in 2008. To date, most of the departments of state and several key agencies have been assessed and the remainder will be assessed during 2013-14. The National Archives is also about to begin a series of ongoing reassessments. The published reports of these assessments highlight good practice and make targeted, pragmatic recommendations for improvement. The National Archives works with each department to develop an action plan to address any risks and issues identified in the report.

The noble Lord, Lord Bew, referred to the 20-year rule. As noble Lords will be aware, from 1 January this year central government began its 10-year transition from the previous 30-year rule to the new 20-year rule. To smooth this transition, the National Archives has, with the active participation of departments across government, comprehensively revised its guidance and processes for the selection and transfer of records. The National Archives has been tasked to collect and publish regular reports on departments' progress in reviewing and selecting records for permanent preservation during the transition period. The most recent report, with returns from 84 departments and agencies, was published on the National Archives' website on 1 July. This level of transparency around government's records management is, I suggest, unprecedented. With these reports and the transition itself, we have come a long way from the days, prior to the Freedom of Information Act, when our best hopes for transparent government lay with such excellent initiatives as the one led by the noble Lord, Lord Waldegrave.

The noble Lord, Lord Stevenson, rightly raised digital records. Much work has been carried out to clarify and address the challenges presented by the

shift from paper to digital records in the business of government. The National Archives now has greater confidence that the much discussed black hole in our history wrought by obsolete digital formats is unlikely to materialise on the scale that had once been feared. However, it is important that in the National Archives programme new technology is fully embraced. Digital continuity is also now taken much more seriously across government than it was five years ago. The programme of training instigated by the noble Lord, Lord O'Donnell, during his time as Cabinet Secretary has certainly aided a better understanding of our digital records and improved usability and accessibility. Of course, there remains the challenge of reviewing large volumes of digital records for sensitivity ahead of their potential release under the 20-year rule, and the National Archives is working with other expert bodies to develop solutions.

I am pressed for time but, in conclusion, we all recognise that there remains much to do to ensure that government records in all forms survive for future researchers and historians; indeed, that was expressed by all noble Lords today. However, I hope that noble Lords will take from today's debate some reassurance that these issue continue to be explored and addressed and, more importantly, that much more of the Government's work in this area is open to scrutiny by Members of this House than ever before.

The noble Lord, Lord Butler, said in his contribution that Governments need to look at history. He referred to the late Lady Thatcher and her policy of a panel of experts; I think that we can learn a great deal. The National Archives represents our history. I suppose, as a Minister of the current Government, that it is apt to finish with a quote from Sir Winston Churchill, who said:

"Study history, study history. In history lies all the secrets of statecraft".

**Lord Prescott:** And do not forget to label them.

## Marriage (Same Sex Couples) Bill

*Report (2nd Day) (Continued)*

*8.20 pm*

*Amendment 95*

*Moved by* ***The Lord Bishop of Leicester***

**95:** After Clause 14, insert the following new Clause—

"Amendment of Education Act 1996

(1) Section 403 of the Education Act 1996 is amended as follows.

(2) After subsection (1B) insert—

"(1BA) Nothing in subsection (1B) prevents teaching the tenets of the relevant religion or religious denomination concerning marriage and its importance for family life and the bringing up of children to registered pupils at schools which have a religious character."

(3) After subsection (2) insert—

"(3) For the purposes of subsection (1BA)—

(a) a school has a religious character if it is designated as a school having such a character by an order made by the Secretary of State under section 69 of the School Standards and Framework Act 1998 ("the 1998 Act"); and

(b) "the relevant religion or religious denomination" means the religion or denomination specified in relation to the school under section 69(4) of the 1998 Act."

**The Lord Bishop of Leicester:** My Lords, I will speak to Amendment 95, and I am glad to do so after a dinner break which I hope will have had the effect of moving noble Lords to see that this amendment merits the support of all sides of the House, whatever our disagreements may have been in the many days of debate thus far.

This amendment would ensure that there is no conflict between the guidance issued by the Secretary of State on the teaching of sex and relationships education, which includes teaching on the importance of marriage, and the obligation of schools of a religious character to teach in accordance with their trusts. It will ensure that while such schools will continue to have guidance issued by the Secretary of State about the teaching of marriage as it will be defined by the Bill, it does not prevent them, within the context of sex and relationships education, in the words of the amendment, also from,

"teaching the tenets of the relevant religion or religious denomination concerning marriage and its importance for family life and the bringing up of children".

It is important to stress what this amendment is not about. It is not about seeking opt-outs for teachers, pupils or schools of a religious character from teaching about marriage as the Bill defines it. I, personally, would have no part in proposing that. Nor is it about seeking so-called protections for schools or teachers from the need to promote same-sex marriage. Many in this Chamber and outside, as I know from many conversations, still remain haunted by the ghosts of Section 28. To anyone who is feeling so haunted this evening, I offer the rites of exorcism. Let me be crystal clear: this amendment is categorically not about turning back the clock to those regrettable times. It is about reconciling two principles that have been the cause of many heated debates in this House: the principles of equality in marriage and respect for religious freedom. The focus of the amendment is on schools of a religious character, and how teaching on marriage will and should take place once the Bill becomes law.

An earlier version of the amendment was tabled in Committee by my friend the right reverend Prelate the Bishop of Ripon and Leeds. During the debate on that amendment it was unfortunate that the substance of the proposal was lost amid extended discussions about protections for teachers and schools and freedom from coercion about what to teach. I will address some of those misconceptions shortly but for now I will ask your Lordships not to be distracted by matters that have already been gone over at length and settled. They are not any part of the aim or purpose of this amendment.

This amendment seeks to bring clarity and to resolve a conflict between what schools of a religious character are legally obliged to do on the one hand—to meet the terms of their trusts—and what on the other hand they will be legally obliged to have regard to in terms of statutory guidance from the Secretary of State about the teaching of marriage. The Bill as it is sets both legal obligations on potentially a collision course.

[The Lord Bishop of Leicester]

The substance of my case for the amendment is that without it, governing bodies of schools of a religious character will be left in a dilemma as to how marriage should be taught and may even be encouraged, through their legal obligations, to require teachers, who must teach according to the tenets of the faith, to disregard the Secretary of State's guidance altogether. No one in this House, not least those on these Benches, would like to see a situation arise in which schools of a religious character are left in any confusion or doubt, or in which they might frame a policy about teaching marriage that ignores the existence of same-sex marriage entirely. I therefore hope that the amendment will command the support of noble Lords on all sides of this debate.

I shall not repeat in detail the points made in Committee by the right reverend Prelate the Bishop of Ripon and Leeds. The situation can be summarised as follows. All schools of a religious character, whether Church of England, Roman Catholic, Methodist, Jewish or other faiths, of which there are several in my own diocese of Leicester, are legally required to ensure that teaching takes place in the school according to the tenets of the respective faith. Church of England schools, for example, are established on trusts that require them to provide education in accordance with the tenets of the Church of England. They are legally obliged to comply with that requirement in their trust deeds, and a failure to do so would result in the governors acting unlawfully.

As far as teaching sex and relationships education goes, all maintained schools are required to "have regard to" guidance issued by the Secretary of State for Education under Section 403 of the Education Act 1996. That guidance says that pupils must,

"learn the nature of marriage and its importance for family life and the bringing up of children".

I will clarify the point here, which is the very specific area of sex and relationships education. The principal provision of Section 403 of the Education Act 1996 requires SRE to be,

"given in such a manner as to encourage pupils to have due regard to moral considerations and the value of family life".

Section 403 then builds on that general requirement by requiring the Secretary of State of State to issue guidance on the nature of marriage, and so on, and requiring heads and governing bodies to have regard to it. We are not talking here about teaching the tenets of the religion in a general sense but in this very specific area of sex and relationships education and moral considerations on the value of family life. That is why this particular area impinges on the tenets of the religion in a way that education generally does not. That is the reason to address this situation specifically.

After the Bill becomes law, the references in the guidance will of course be taken to mean marriage as the Bill defines it, which as anyone observing these debates will surely know by now, is not exactly how the tenets of the great majority of the world faiths define it. This leaves schools of a religious character with two competing legal duties. One says that the teaching has to be according to the tenets of the faith, while the other says that they must have regard to the guidance.

Why might that be a problem? Some may wonder why schools cannot just teach both alongside each other in a sensible way. That, of course, is certainly the approach we want to see in Church of England schools. However, the crucial point is that there are strong legal grounds to conclude that the obligation to comply with the terms of the trust deeds of a school of a religious character outweighs the duty to have regard to the Secretary of State's guidance. One is a duty to comply and the other is a duty to have regard. Unless Members of the House accept the amendment and resolve the conflict in the Bill, there is nothing to stop some schools of a religious character making a decision on legal grounds to set aside the guidance altogether. I am sure that noble Lords are aware of the diversification of provision being pursued by the Department for Education and the potential for a wider range of providers to enter the system. I contend that this makes it more necessary than ever to ensure that governing bodies are not tempted to set aside the guidance in this way. The amendment will give necessary space for schools of a religious character to stay within the terms of the statutory framework and significantly reduces the risk of them declining to teach about the changed legal nature of marriage at all.

*8.30 pm*

In Committee, many noble Lords, including those on the Front Benches, questioned the necessity of the amendment. I hope that I have addressed that point adequately. Others, including the noble Lords, Lord Lester and Lord Pannick, argued against the amendment on the basis that schools will not be compelled to teach against the tenets of the faith, and that adequate protections exist already in domestic law. Those arguments are beside the central point. Although there are protections in the Human Rights Act, it is surely the best course for Parliament to make Section 403 of the Education Act 1996 compliant with that Act, rather than making schools fall back on requiring the courts to make decisions about compliance. While Section 403 also specifies that the Secretary of State's guidance must ensure that pupils are,

"protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned",

that paragraph applies only to the religious and cultural background of the pupils. In a city such as Leicester, many of our schools have pupils from many different religious and cultural backgrounds learning together. The amendment is concerned with the institutional religious character of the schools.

It is clear that schools of a religious character will continue to teach about marriage according to the tenets of their faith once the Bill becomes law. The key question is whether that fact should be addressed within or outside the statutory framework. Not only do we on these Benches think that an inclusive approach is best for Church of England schools, we believe that it is in the best interests of all those who support the principles of the Bill.

The amendment is necessary, moderate and eminently sensible. I repeat that it is not about creating opt-outs and protections for church schools. It will not give licence to schools of a religious character to ignore the

fact that same-sex marriage exists, or to teach it without due respect and sensitivity. In fact, it will do the opposite. It will not undermine or threaten the Bill in principle or in practice.

The day after the Second Reading debate and vote—in which, incidentally, I abstained—I issued a statement, as Convenor of the Lords Spiritual, in which I said:

"It is now the duty and responsibility of the Bishops who sit in the House of Lords to recognise the implications of this decision and to join with other members in the task of considering how this legislation can be put into better shape".

That statement came in recognition of the rapid and dramatic swing in the pendulum of social and cultural norms that the passage of the Bill has demonstrated. A wise Parliament and Government will recognise that when the pendulum swings this far and fast, there comes a moment when making concessions designed to create a satisfactory space for adjustment to the rate of change is sound politics. I put it to the House and to the Minister that much clarity and social benefit will arise from the amendment, and that the argument that it is unnecessary does not hold water. A sympathetic response from the Minister would go a long way to dispel the concerns of this Bench. I beg to move.

**Baroness Cumberlege:** My Lords, I support the amendment of the right reverend Prelate the Bishop of Leicester. We know that parents go to great lengths to get their children into faith schools, which are hugely popular. Some 30% of schools are faith schools. Parents value the ethos, discipline and character of the schools, which teach the importance of marriage for family life and for bringing up children. Of course, that is nothing new. It is built into our existing law. As the right reverend Prelate said, Section 403(1A) of the Education Act 1996 requires the Secretary of State to issue guidance to ensure that pupils,

"learn the nature of marriage and its importance for family life and the bringing up of children".

We know that in future the word "marriage" in Section 403 will mean both opposite-sex and same-sex marriage, so when the Bill is enacted it will change the meaning of "marriage".

As I understand it, the amendment is designed to tackle a problem that will arise by reason of the wording in Section 403(1A) that requires more than ensuring that children learn about the law of the land. The section puts an obligation on the Secretary of State to ensure that children, I repeat,

"learn the nature of marriage and its importance for family life and the bringing up of children".

Those words are of concern because they entail more than the teaching of fact or law. They require schools to teach that marriage is valuable and beneficial for family life and the bringing up of children. As the right reverend Prelate said, it could be in conflict with the Secretary of State's guidance.

In this amendment, we want to ensure that schools with a religious character are able to continue ensuring that pupils learn about the importance of marriage for family life, and that they are not prevented from doing so by the redefinition of marriage in Section 403 caused by the Bill. It is a modest amendment that will alleviate the concerns of many schools about the conflict that could arise, which was outlined by the right reverend Prelate.

I am sure that noble Lords will say that it is simply not needed. That argument has been used against a lot of the amendments that have been put forward. However, I was reminded of Voltaire, who said:

"Define your terms, you will permit me again to say, or we shall never understand one another".

It is important that we understand each other, especially as legislators, and are clear about what we consider to be the law of the land.

The Government last Monday saw no harm in redefining some of their terms. Previously, we were told that it was not necessary to clarify parts of the Bill but, in Committee, the Government, generously perhaps, put forward amendments to further clarify the wording around the Public Order Act and the definition of "compel"—amendments which we consider have really improved the Bill. Our aim is not to allow schools with a religious character to avoid teaching the law of the land; as the Minister rightly pointed out,

"such schools do already teach about topics that may be considered sensitive, such as divorce, and they do so without issue".—[*Official Report*, 24/6/13; col. 567.]

But we think that all schools, including schools with a religious character, should teach the law, and this amendment has been very carefully drafted to ensure that schools will not be enabled to ignore any guidance requiring them to do so. It is not designed to prevent schools educating them about the law. On the contrary, we want schools to teach the law, to ensure that it is taught with clarity, is even-handed and, as they understand it, within the character and ethos of faith schools, without conflicting with the Secretary of State's guidance.

**Lord Pannick:** My Lords, I understand the concerns that have moved the right reverend Prelate and the noble Baroness, Lady Cumberlege, but I think that the amendment is inappropriate, for these reasons. Section 403, which the amendment addresses, is concerned with sex education. There are many contexts in which sex education raises religious issues, including homosexuality, contraception, and no doubt many more. I cannot understand why there is a need for a specific statutory provision in Section 403 to address the impact of same-sex marriage on sex education when there is no need for a statutory provision to address other issues that may have a religious dimension.

The right reverend Prelate referred to Section 403(1A), which, as the noble Baroness pointed out, says that the guidance to be issued by the Secretary of State must put sex education in the context of marriage and family life. But there is a very good reason why the guidance requires sex education to be put in the context of family life and marriage. That is because sex education should not be taught simply on the basis of physicality; it should be presented, as I am sure that all noble Lords would agree, in the context of responsibility and the development of relationships. Surely, if and when sex education addresses homosexuality, it should equally be taught in that same context of responsibility and other relationships and, as a result of this Bill, that will include same-sex marriage. For this amendment to be adopted would, I am afraid, run counter to everything else that we are seeking to achieve in this Bill.

**Lord Cormack:** My Lords, I rise to give my support, not surprisingly perhaps, to the right reverend Prelate the Bishop of Leicester, who moved this amendment with balance and moderation, even though with a quiet passion. I do not believe that the acceptance of the amendment can do any damage whatever to a Bill that is shortly to complete its passage through your Lordships' House. We are not debating tonight the rights and wrongs of same-sex marriage as against traditional marriage or rehearsing again the arguments that we specifically add extra definitions to two forms of marriage within the Bill. In this amendment, we seek to give a degree of reassurance to those who are concerned at the enormous social change that the passage of this Bill will bring about in our country. There is no point in anyone denying that there is going to be enormous social change.

Those parents who send their children to faith schools or denominational schools, whether they be Church of England, Roman Catholic or any other faith, have a right to expect two things above all. The first is that their children be brought up and taught to understand the realities of the society in which they live. Of course it is right—and the right reverend Prelate stressed this—for guidance given by the Secretary of State to be not only received but followed. Of course it is necessary that my grandchildren—and many of your Lordships have grandchildren—should be brought up to understand that Parliament has, in its wisdom, decided to effect a major change to the social fabric of our land. But if that change is to come about with a degree of mutual tolerance and understanding—and, yes, good humour—it is important that the second requirement to which parents look should be fulfilled. Their children should be taught the basic tenets of the faith.

There need be nothing incompatible between these two aims. I believe that the manner in which the right reverend Prelate introduced the amendment showed that that is foremost among his aims and objectives and those of his colleagues on the Bishops' Bench. There are times when we in this House can benefit from the guidance and wisdom of the Lords spiritual. I believe that tonight is one of them. The acceptance of this amendment will show sensitivity and understanding on the part of the Government. It will do nothing to damage the cause of those who believe passionately—and I respect their beliefs—in the essential not just rightness but necessity of the legislation before us. There are many who believe that it is utterly necessary. I do not share that view, but I hope that when we have finished our deliberations on this Bill, either next Monday or whenever we have to re-debate amendments sent back from another place, in all parts of this House there will be a spirit of mutual tolerance and acceptance of what we have enacted. That will call for a degree of charity on the part of us all, whichever side we have taken in this debate. If we can assist in laying the foundation for that spirit of charity tonight, as the Bill approaches its final stages, we should do so.

I warmly commend the amendment and even more warmly commend the spirit in which it was moved and I very much hope that it can be accepted without a Division by your Lordships' House.

*8.45 pm*

**Lord Alli:** My Lords, I have spent some time trying to understand the issues raised by the right reverend Prelate the Bishop of Leicester in this amendment. As I understand it, the right reverend Prelate is worried about the teaching of marriage in faith schools and academies as part of sex and relationship education. He has explained his concerns and in particular the conflict that he perceives between the guidance issued by the Secretary of State and the teaching of the tenets of the religion as protected in the Bill.

I am sorry that I cannot support the right reverend Prelate on this amendment, for many of the reasons that the noble Lord, Lord Pannick, outlined. I am also afraid that, if we agree to this amendment, which I do not believe is absolutely necessary, it will provide a foothold for those who are opposed to this Bill to reopen old debates and old wounds. I believe that it has the potential to be quite destructive in the hands of those who do not want this Bill to succeed.

While I cannot support the amendment, I want to put on record my growing appreciation of the new direction of travel within the Church of England. I did not know that the most reverend Primate the Archbishop of Canterbury would be in this place, but anybody who heard his presidential address to the General Synod cannot but have been impressed by his thoughts on the matter. He said that, after listening to our Second Reading debate, he could not fail to be struck by the,

"overwhelming change of cultural hinterland".

He said:

"Predictable attitudes were no longer there".

He committed the Church of England to work tirelessly against homophobic bullying in the schools that it runs and among the children whom it educates. I want to pay tribute, once again, to him for fuelling this journey which, I believe, can only help society as a whole.

I also pay tribute to the right reverend Prelate the Bishop of Leicester. I know that this Bill is not what the Church of England wanted; it would rather that this Bill had not come about. However, the right reverend Prelate, under difficult circumstances, has navigated very choppy waters with some skill and conviction. It is not the right reverend Prelate's amendment I fear but those who would use it against us and do the opposite of all that he wants. That is why I cannot support the amendment. I hope that the right reverend Prelate will understand that. I also hope that he will not test the opinion of the House because I, like many in this House, have no appetite to vote against him, for the reasons already given.

**Baroness Brinton:** My Lords, I support the comments made by the noble Lords, Lord Alli and Lord Pannick, particularly the compliments paid to the right reverend Prelate and the most reverend Primate for their work on this issue. I want to raise a slightly different issue. The right reverend Prelate referred to the difficult balance that faith schools have to strike between complying with the tenets of their trust deeds and having due regard to the directions of the Secretary of State. I absolutely understand that. It may be helpful to quote an Oral Question of Monday 8 July on the new sex and relationships curriculum. I asked about academies,

but the answer that I was given refers to all schools. I asked about academies not having to provide sex and relationships education. The noble Lord, Lord Nash, replied:

"My noble friend is quite right that academies are not obliged to teach sex education, although, if they do, they have to have regard to the Secretary of State's guidance on these matters. I repeat the point that Ofsted inspects for all social, moral and cultural provision in schools, and we will be ensuring that it focuses on this point".—[*Official Report*, 8/7/2013; col. 6.]

I raise that point because I see a distinct parallel for faith schools with the way that religious education is taught, whereby the schemes of work that the Church of England has for covering a range of other faiths are sensitive and educational but do not promote those faiths. I absolutely see that parallel here, in that faith schools are not required to promote same-sex marriage but merely to educate pupils about it. Often we get bound up in the idea that SRE is taught only in sex and relationship education classes. However, young pupils will ask about this at peculiar times. Therefore, a school needs a policy. I have seen many faith schools' policies on SRE that recognise that fact and all staff are empowered in that regard. Therefore, I hope that the right reverend Prelate does not press the amendment because I believe that schools of a religious character can find the protections that they need in the existing Education Act.

**The Lord Bishop of Guildford:** My Lords, this debate has moved into a different manner of speech by virtue of the gracious response of the noble Lord, Lord Alli, to the right reverend Prelate the Bishop of Leicester. Indeed, if I may say so, there was graciousness on both sides. I hope that, irrespective of whether the amendment is pressed, and whatever the result of the Division might be if it is pressed, we can have an assurance from the Front Bench that the possible conflict between trust law and the directions of the Secretary of State, to which schools have to have due regard, will be given further attention. If that happens, I believe that we could have a way forward along which we could all walk. I look to the Front Bench to be given an assurance in that area, if that is possible, given the positive exchanges between the noble Lord, Lord Alli, and the right reverend Prelate the Bishop of Leicester.

**Lord Eden of Winton:** My Lords, I know that this amendment refers to all faith schools but I hope that I may be forgiven if I concentrate my remarks on the only faith schools about which I know anything at all—the Church of England schools. In doing so, I am encouraged to some extent by the report that I read of what the Prime Minister told the national parliamentary prayer breakfast, which took place recently in Westminster Hall. I wish to quote briefly from the article in the *Times* of 26 June this year, which reported that the Prime Minister said at that prayer breakfast:

"It is encouraging that Christianity still plays such a vital role in our national life. It has had an immense historic influence in the development of our culture and institutions and it motivates British people to wonderful acts of service and self-sacrifice. We are a country with a Christian heritage and we should not be afraid to say so".

Throughout our debates on the Bill, frequent reference has been made to freedom of speech and equality of treatment and esteem and to the fact that marriage is seen and acknowledged to be the building block of society. Family life and the bringing up of children is one aspect of marriage that will change as a result of this Bill becoming law, though its importance must remain a significant feature in our life. Ideally, the family includes a mother and father, maybe siblings, maybe uncles and aunts and, I hope, grandparents. Grandparents have a significant role in the nurturing and upbringing of children. The aim of a family should be to provide a stable and secure environment for the nurturing of children.

Church schools—and this goes for schools of all faiths—can help families by providing moral guidance and a set of standards that they seek to have upheld. This is of increasing significance in our life today when the pressures on children and family life are so enormous. We have recently had several references in this House to video games and other pressures to which children are subjected. The more we can hold on to standards that are enshrined in the values of faith schools, the better it will be for the nurturing of children. Because of the change in the definition of marriage that will inevitably follow the passing of this Bill, it is very desirable that, notwithstanding the observations of the noble Lord, Lord Pannick, these words form part and parcel of the Bill: church schools should be encouraged to teach the tenets of religion,

"concerning marriage and its importance for family life and the bringing up of children".

Those words need emphasis over and over again because there are many, many people beyond this House who are afraid that those principles of married life will be undermined by this Bill.

**Lord Elystan-Morgan:** I rise with very considerable trepidation, with humility and, if I may say so, with some dubiety in relation to this issue. I come from Welsh nonconformist stock. I am a Welsh Presbyterian and my family have been Welsh Presbyterians for well over 200 years. However, I appreciate and respect the Church of England, the position that it occupies in the history of this land, its status as an established Church and all faith schools. As a lawyer or, more accurately, as a retired lawyer, my question is whether there is a point where a faith school or a body operating under any trust is entitled, if it so wishes, to go contrary to a principle that had been clearly and specifically spelt out in an Act of Parliament. The answer must be in the negative.

I do not know exactly what the circumstances might be in relation to this section under the Education Act 1996. If the right reverend Prelate is right to say that the amendment is no more than making an assurance doubly so—in other words consolidating a line that is already there—I would accept it. On the other hand, if the amendment allows the whole principle of the Bill to be endangered and imperilled, one must oppose it.

*9 pm*

The wording of the amendment is very wide and encompasses all manner of possibilities. Subsection (2) states: "Nothing in subsection (1B)"—a reference to the 1996 Act—

[Lord Elystan-Morgan]

"prevents teaching the tenets of the relevant religion or religious denomination concerning marriage and its importance for family life and the bringing up of children to registered pupils at schools which have a religious character".

Does that mean—as it seems to me that it must mean—that a teacher in a faith school could say, "Of course Parliament passed an Act in 2013 in relation to same-sex couples, but we believe that it is wrong. Everything that our church or denomination represents suggests that it is utterly wrong, and not only wrong but evil"? What does that create? That is not a licence that can be allowed to anyone who operates within the democratic principle of the rule of law and the rule of Parliament. If I am wrong about that, I apologise. If I am right, the amendment should be rejected.

**Baroness Farrington of Ribbleton:** My Lords, I am seeking to obey the rules of the House and not repeat things said in Committee.

Faith schools teach children. I say that because my county of Lancashire, where I chaired the Education Committee for 10 years, had the largest percentage and number of faith schools. I should point out that not all parents in counties such as Lancashire choose faith schools. They are the nearest schools, and parents cannot choose to have their children's travel to a non-faith school paid for, whereas they could be paid for travel to a faith school. I tell the noble Baroness, Lady Cumberlege, that that is the case. Noble Lords have referred to the fact that the option for faith school education entitled children's travel to be paid for.

However, faith schools seek to teach the whole community, wherever they are. I have been around for so long that I remember *Faith in the City*, Geoffrey Duncan and those who argued that the role of faith schools was to teach the whole community in which they were located. Some of the faith schools in Lancashire had a majority of Muslim pupils, and probably still do. However, those schools taught the children. That was the issue—the teaching of the children. The confidence of those Muslim parents was based on the fact that the school would respect the views of the parents as well as teach the children about the beliefs of that community. Some noble Lords in this debate have spoken as though this legislation will create a new set of circumstances among the communities, the families and the friends of the children who go to the school. That is not the case: this legislation recognises what is happening in our communities. It may be giving a new name to civil partnerships, but those relationships actually exist now in the families, homes and communities of the children who will be in the schools.

I have tremendous respect for the aims of the right reverend Prelate the Bishop of Leicester. In fact, many years ago, the Bishop of Leicester gave a lecture at my wedding on the importance of marriage and education, but it was not the right reverend Prelate who is with us tonight. I have been married too long for it to be this young right reverend Prelate.

I listened very carefully to the noble Lord, Lord Baker, although I did not always listen to him, when he was in office in government. He explained that we do not need to change the 1996 Act to secure the benefits that the right reverend Prelate is seeking to achieve. Some noble Lords have talked as though our schools are places where ideas are promoted. These days, even young children, and certainly 13 year-olds, will ask questions; but the idea that a teacher can go into a classroom and tell children of 13 what to think or know is pretty ludicrous. Those children are growing up in the world; they recognise it. In fact, we are recognising the world of those children who recognise it.

A 12 year-old said to me, "What are you doing in the House of Lords?" I said, "Same-sex marriage". The child said, "Why should there be any argument about that—who is arguing?" I said, "Well—some of the people from religious backgrounds." The child said to me, "You know, I could go off God." That was a child in a church school in rural Essex. I said, "You really mustn't blame God for what some of the religious followers say. It isn't always God who is wrong; it may be their interpretation." I hope that the right reverend Prelate will not feel the need to press his amendment and that the Minister will be able to assuage any fears he feels.

In closing, I want to say how important it is that all children in all our schools—and I am certain that the denominational schools feel this—ought to be able to love and respect all members of their communities and families. Those children know that those people are there now. Perhaps we are a bit late in recognising it.

**Lord Elton:** I hope that my noble friend will be able to clarify for us the perceived conflict between the guidance and the documents—the names of which I forget—under which the faith schools have to operate. It seems to me that what these amendments ask is not the big thing it is suggested it is. Surely it must be right for church and other faith schools to teach about the world as it is and as it changes. The world is changing, but faiths do not necessarily change at the same rate or, indeed, at all. However, they are part of the world and therefore must be taught.

What is at issue is whether there can be recruiting or promoting of the particular faith—it need not be Christianity—or the particular orientation, which need not be heterosexuality. That is what is at issue. I would like my noble friend to assure us that there is a legally proof way through this which preserves the right of all faiths to explain to children what the tenets of that faith are while at the same time addressing the actual world which the children will grow up into without being in fear of being in breach of the law. I believe I am right in saying that the original concern of the right reverend Prelate was not so much with teachers as with the foundations. We have not heard so much about them, but this has to be available as a protection to the foundations of schools. In my view, it should not be phrased in such a way as to threaten in any way the intentions of this Bill.

**The Lord Bishop of Winchester:** My Lords, I support the right reverend Prelate's amendment. Neither the equal marriage Bill nor this amendment would change the doctrinal position of religious organisations. In fact, the Bill recognises in Clause 1(3) that the doctrine of the Church of England remains that marriage is the union of one man and one woman.

This amendment is about religious educational institutions, as the right reverend Prelate has said, operating within the ethos of their faith and charitable foundations, while giving due regard to the breadth of opinion on the nature of marriage, including equal marriage. It ensures a true diversity while allowing for a particular perspective to be honoured. The Human Rights Act, Articles 9 and 10 of the European Convention on Human Rights and Section 403 of the Education Act 1996 may seem to preserve religious freedom or the exercise of discretion in selecting materials for SRE teaching, but the legal process proving that, if these freedoms are challenged, might be lengthy and very expensive. It is better to amend at this stage and thus resolve the conflict between different legal requirements.

The amendment will protect and promote religious freedom, and thereby enable the ongoing contribution to the common good of the religious traditions and diversities of this country. Marriage makes a great and fundamental contribution to our society. It is better that all views are included and encouraged for all to flourish. There is no homophobic Trojan horse in this amendment; rather, there is a recognition of true diversity of opinion. God willing, we will move beyond homophobic attitudes, and this amendment is one way to do that. It would ensure that true diversity is taught in a faith context and would provide formation for the almost 1 million children for whom the Church of England is responsible in its schools.

**Baroness Byford:** My Lords, I have sat patiently through many of our debates, but I did not speak during the Committee stage. I should like to support the amendment moved by the right reverend Prelate the Bishop of Leicester. What it seeks from us all, and particularly from the Minister who is to respond, is clarity. In passing this Bill—and I am sure that it will pass—we are actually changing the law. I do not accept some of the contributions which say that there is no need for it because the issue is covered. I do not think it is, and therefore this amendment is extremely important.

I question why so many parents, often from no faith at all, choose to send their children to faith schools. What is it about faith schools that they think their child will benefit from? Many people who I speak to will say, very sensibly, that while they themselves do not have a particularly strong faith, there is something within the teaching in faith schools that is extremely important. Into that comes marriage and the sorts of things that we talked about earlier.

To me, this amendment is about seeking clarification and whether we can still teach the religious freedoms and teach about marriage based on one man and one woman. I was grateful for the contribution of the noble Lord, Lord Alli, earlier, but extremely dismayed when he said that it could be used against us. Against whom? This is an inclusive Bill. It might be something that some of us are struggling to come to terms with, but to use the argument against what is being proposed in this Bill I found deeply concerning.

*9.15 pm*

Church of England schools and other religious faith schools need to know where they stand with regard to their legal requirements. I am sure that members of the teaching staff will do that in the best way that they can. If one goes further than just marriage and looks at children and the nurturing of children, one of the questions that I am sure they will pose is, "Who is my mum and who is my dad?". I mentioned this once before in Committee in a brief interjection, because it is something that will not go away. A child is naturally going to say, "Who is my mum and who is my dad?" In same-sex marriages, that is something that will have to be overcome. People who are teaching need to be clear as to what advice is being given to them on that topic. We have talked a lot about the theory and well-being of the move towards same-sex marriages, but many of my e-mails—I am sure other people's are the same—reflected concerns about the implications that that has for children. How will children react? How will that balance out?

Briefly, the amendment is very moderate and I do not think that it divides the House as have others, which have sought special compensation or special thoughts. It is a genuine attempt to try to get clarity on where we are and where we can go in future. I hope that the Minister, rather than giving us a no answer, as we have sadly had over many of the issues raised, will be able to enlighten and help us on the way ahead, because that is what we are after.

**The Lord Bishop of Exeter:** My Lords, I had not intended to speak. I know that it is unusual for there to be so many interventions from these Benches. I believe that one point has not yet been as fully made as it might have been. I was prompted to these remarks by listening to the noble Baroness, Lady Farrington. I agreed with most of what she had to say, but I was led to a very different conclusion. I fully agree with her understanding of church schools and what they exist for. For that reason, I have always refused to fall in with lumping church schools in that easy category of faith schools. The Church of England schools—this is particularly true of the primary sector—exist as part of our mission to the whole community. We are there to serve the community as a whole. To that end—I speak as a former teacher, governor and chair of boards of education—our schools have always sought to hold to an integrity which involves being true to the church's teaching and to trust law, and true to the law of the land. That is absolutely at the heart of the dual system, which has underpinned much of the education of this country for a very long time.

This Bill introduces in a novel way a potential conflict between trust law and education law. The amendment in the name of my noble friend the right reverend Prelate the Bishop of Leicester seeks to reconcile that potential conflict in the Bill. That seems to me to be hugely important. I am not a lawyer, but I know that there is a recognised branch of jurisprudence which goes under the heading "conflict of law". I also know that the study of that subject teaches that where the conflict between different laws has to be resolved, it always raises questions of jurisdiction and normally raises questions of supra-jurisdiction—a jurisdiction greater than the two parties to the conflict.

There is deep concern in this country at present about the loss of jurisdiction from the High Court of Parliament. I enter a final plea to the Minister, and to

[The Lord Bishop of Exeter]
all those on the Front Benches, to consider the advantage of having a potential conflict between trust and educational law dealt with in the Bill, rather than leaving it to a jurisdiction which may well be beyond the High Court of Parliament.

**Baroness Royall of Blaisdon:** My Lords, I, too, pay huge tribute to the most reverend Primate the Archbishop of Canterbury for what he said in his first speech to the General Synod as head of the church and the Anglican communion about the changing attitude towards gays, the need to fight prejudice against homosexuals and the fact that the church looks, in his words, "out of step". I am also grateful to him, and the right reverend Prelates the Bishop of Leicester and the Bishop of Ripon and Leeds, for the way in which they have considered the Bill. I have absolutely no doubt that they will ensure that Church of England schools will teach about same-sex marriages in a factual way, without any prejudice, and that they will naturally also teach about their own views of marriage, as is right and proper. I also know that they are absolutely against any opt-outs. I wholeheartedly agree that marriage is a very good thing for society and that it should be celebrated.

I understand the concerns that have been expressed about the pace of change by both the Church of England and the Catholic Church, with which I had an excellent meeting last week, for which I am grateful. It is true that it will take a while for some people to get their heads around same-sex marriage, but they will, and they will be comfortable with it. I have had several conversations over the weekend with people who have in the past expressed concern but have already changed their views. Both the vote and the debates in this House and the speech by the most reverend Primate have had a real impact on those people.

On the issue at hand, we have said throughout our deliberations on the Bill that, in our view, amendments pertaining to teaching and faith schools are not necessary. Teachers are already able to teach according to their religious tenets. That will not change, nor will the ability of faith schools to operate within the tenets of their faith. Some people, while generally accepting that point, say, "Why not give comfort to those who are concerned by putting something in the Bill?". I understand that the right reverend Prelate is making a legal point. Others, including those on the Bishops' Bench, want to ensure that the legal and religious definitions of marriage can be taught alongside one another in an appropriate way. I am well aware and grateful that the Bishops do not agree with those who are seeking "protections".

I also know that the reasoning behind the amendment is to give space for schools of a religious character to stay within the terms of the statutory framework and to reduce the risk of them declining to teach about the changed legal nature of marriage at all. I warmly welcome the fact that the Church of England is clearly determined to pursue this inclusive approach for its own schools and to commend it to others. Indeed, that is exactly what should happen under the Bill as drafted, when it becomes law.

I realise that the Church of England and many in the Catholic Church would not wish to see any return to those dreadful days of prejudice but, as has been said many times, prejudice still exists. I know strong professional men and women who are still hesitant, even unwilling, to come out at work. As we do not believe that this amendment is necessary, and because we do not want to risk the way in which it could be interpreted by those who are intolerant or homophobic, I regret that we cannot support it. However, as other noble Lords have said, I hope that the Minister, while not accepting the amendment, will be able to give the necessary reassurance and clarity to the Bishops—and all Members of this House—and to those of other faiths.

**Baroness Stowell of Beeston:** My Lords, I, too, pay tribute to the most reverend Primate the Archbishop of Canterbury and to the right reverend Prelate the Bishop of Leicester. I am grateful to the right reverend Prelate for the important statement that he issued after Second Reading and to which he referred.

During the past few months, the Secretary of State, my right honourable friend Maria Miller, and I have enjoyed some very constructive, productive and valuable discussions with both the most reverend Primate and the right reverend Prelate and their officials on a range of matters. Something I valued greatly was having the opportunity to get to know Members on the Bishops' Benches better than I had done up to that point. Our discussions included their concerns about religious freedom for faith schools, which the right reverend Prelate talked about in moving his amendment, and I am grateful to him for the very careful way that he did.

In responding to the right reverend Prelate and to all noble Lords who have contributed to this debate, I start by stressing that schools with a religious character provide an excellent education for their pupils, while reflecting their beliefs across the curriculum, including in sex and relationship education. We really value the work that faith schools do and I would like to make it clear that there is absolutely nothing in this Bill that affects the ability of faith schools to continue to do this in the future.

The right reverend Prelate the Bishop of Leicester has explained that there is a specific concern—echoed by other noble Lords who have contributed tonight—that without this amendment a potential conflict could arise between a school's duty to teach its faith ethos and its responsibilities under Section 403 of the Education Act. I understand the importance of this issue and I can assure noble Lords that the Government have considered it very carefully. Noble Lords will have heard me say on many occasions during the passage of this Bill that we are considering this area, and we have done so with great care. However, we believe that this provision is unnecessary. Clearly, I need to reassure the House on why we have come to that view.

In schools of a religious character, teachers deal admirably with teaching about marriages that may not be recognised as such according to the tenets of the relevant faith—for example, marriages of divorcees or, for some religions, mixed-faith marriages. In order to take account of this distinction, they already interpret their duties under Section 403 of the Education Act

according to their religious tenets. Faith schools must take the guidance into account when developing their policy on sex and relationship education and, in doing so, can also take into account other matters, including in particular relevant religious tenets. This is already recognised by the current legal framework.

I will expand a little on this and I will respond specifically to the question put to me by the right reverend Prelate the Bishop of Guildford. "Have regard to" means just that. Having regard to a provision does not mean that it must be followed assiduously should there be a good reason for not doing so. This was made clear in the decision of the Privy Council in Barber v Minister of the Environment in 1997. Faith schools must take the guidance into account when developing their policy on sex and relationship education and, in doing so, can also take into account other matters, including in particular relevant religious tenets. A relevant faith tenet is a perfectly sensible reason in this context and one that the current legal framework recognises.

*9.30 pm*

The right reverend Prelates the Bishop of Guilford and the Bishop of Exeter sought assurance that there is no legal conflict between a school's trust deeds and its obligations in relation to the guidance. I can happily give that assurance. Faith schools must take into account the requirements placed on them by their trust deeds when determining their policy on sex and relationship education. The requirement on schools to have regard to the guidance ensures that they can take other relevant factors into account, including their trust deeds. They are required not to follow every element of the guidance but simply to have regard to it.

We are concerned that, as well as being unnecessary, the amendment could be unhelpful. As is noted in the report of the Joint Committee on Human Rights following its scrutiny of this Bill, some are making the argument for clarification in this area as a way of protecting faith schools from being required to "promote or endorse" marriage of same-sex couples. We are clear that no school is under any duty to promote or endorse any particular view about marriage. I recognise what the right reverend Prelate the Bishop of Leicester said about the ghosts of the past, but we have heard in our debates about the real concern that gay people still have when it seems that a duty to explain might equate to promoting gay marriage. That seems an argument against teachers being able to inform children in an appropriate way that we are not all the same.

My noble friend Lord Cormack talked about the parents who send their children to faith schools and the importance that they attach to their children being able to learn about the tenets of their faith at school. My noble friend Lady Byford made a similar point and stressed that that was the reason behind the decision to send children to faith schools. My noble friend Lord Cormack said that he hoped that we would be able to give some comfort to those who need it in the face of enormous social change, as I think he described it. I understand the point that my noble friends are making in this regard. As I hope they will remember, I acknowledged at Second Reading that we all deal with change at a different pace and it is perfectly reasonable for people to need some time to adjust to social change, but I do not think that this amendment is the way to give people comfort in order to adjust to social change.

A point that I do not think has been made so far this evening is that some parents who send their children to faith schools are gay. We should not assume that all parents who send their children to faith schools are straight couples. That is the kind of sensitive issue that we are dealing with. I understand the strength of conviction and complete sincerity of the right reverend Prelate and his colleagues in bringing forward this amendment, but I am trying to explain how complex it is in how it gets interpreted and the effect that it has on what I think we are all trying to achieve: an accepting and tolerant society in which we all understand and respect one another.

The Government do not believe that there is a need to legislate on this matter, but I note and understand the desire for additional clarity to be provided to all schools and teachers. As I have mentioned several times over the past few weeks, we have secured the agreement of the Equality and Human Rights Commission to work with the Government to review the commission's guidance and statutory codes of practice. Perhaps I have not been as clear as I need to be that among the codes of practice that it produces there is a specific code for schools and teachers, and this guidance is about the Equality Act 2010. The EHRC will review that guidance in light of this Bill becoming an Act, so new guidance from the EHRC will go out to schools specifically to help to ensure that there is clarity around the fact that belief that a marriage should only be between a man and a woman must be respected. That is something that we know people very much want and it is something that we are very much committed to providing.

The Department for Education will also work with relevant organisations that provide advice on teaching sex education, as well as the Catholic Education Service and Church of England Education Division, to ensure that those organisations' advice to schools makes it clear that faith schools are able to explain relevant religious tenets when teaching about marriage.

Of course I recognise that my response will disappoint many noble Lords, not just the right reverend Prelates on the Bishops' Bench. My noble friend Lady Byford referred to concessions and I am sorry that this is not an amendment that we can accept. We have made several amendments to the Bill and accepted concessions. Changing the Public Order Act was one and the other, which we talked about on Monday, was around clarifying the word "compel". We felt able to make those changes because we thought that it was possible to clarify and give people the greater confidence that they wanted that the protections in the Bill are robust. However, as I said at Second Reading, we would make such changes only where we were confident that by clarifying we did not introduce something else that would then call into question what we are trying to achieve.

It is on that basis and after much careful consideration within government that we have come to the conclusion that we have. I recognise that this will be disappointing news. However, by being as clear as I can about the other efforts that we will make to ensure that there is

[Baroness Stowell of Beeston]
clarity in schools, I hope that this is of some comfort to the right reverend Prelate who moved the amendment and to all those who supported it in the Chamber this evening.

**The Lord Bishop of Leicester:** My Lords, I am grateful to all those who have spoken in what has been a serious and gracious debate. I know that I speak for my noble friend the most reverend Primate in expressing gratitude for the tributes that have been paid to his leadership, particularly at the General Synod, and in so many other ways. It is a leadership for which we are growing more and more appreciative, both in the church and in the nation. I thank the Minister for the care, attention, accessibility and understanding that she has unfailingly shown in the conversations that we have had leading up to this debate. I also thank the noble Baroness, Lady Royall, for helpful conversations in which we have been able to make clear our genuine concerns.

I think that it was Paul Newman in "Cool Hand Luke" who said: "What we have here is a failure to communicate". At times in this debate it has felt a bit like that because, as those who listened carefully to what was said in support of the amendment know, what I am trying to do is to ensure that the Bill prevents faith schools from opting out of teaching about same-sex marriage. We really are on the same side of the argument and it seems at times that this message has not been heard.

I shall make some specific responses to certain noble Lords. To the noble Lord, Lord Pannick, I would say that Section 403 is the only education provision that refers to marriage and it is the meaning of that word that is being altered by this Bill. We do not need to amend other legislation, as he has suggested, because other education legislation does not deal with marriage. Therefore, the amendment does not run counter to the Bill. It says that there is room for both religious and legal understandings of marriage and that they can live alongside each other in religious schools.

I would just clarify the question that the noble Lord, Lord Elystan-Morgan, put to us. The position is that there is a difference between a requirement to have regard to statutory guidance and an obligation to comply with the terms of a trust deed. The latter is an unqualified legal obligation. The former is a duty to have regard and is therefore weaker, hence the danger of some religious groups going their own way if the potential conflict is not resolved. That is the point that I tried to make.

On the point made by the noble Baroness, Lady Farrington, the concern is not that the Bill is changing what goes on in homes and communities but that it changes the law. We need to ensure that the new law and teaching about marriage in church schools can happily coexist. I do not believe that this amendment in any way erodes, undermines or attacks the central purpose of the Bill; rather, it strengthens it.

Having said all that, I know that it is late and that we have much more work to do. The Minister has given what I take to be an undertaking that, if it comes to a conflict, the Government recognise that the trust deed overrides the requirements of the Secretary of State's guidance. On that basis, I beg leave to withdraw this amendment. I reserve the right to consider the implications of this debate further in case we want to bring some of this back at Third Reading.

*Amendment 95 withdrawn.*

*Amendment 95A*

*Moved by* ***The Earl of Listowel***

**95A:** After Clause 14, insert the following new Clause—

"Education: duty of the Secretary of State to provide information

The Secretary of State must provide evidence-based information to teachers on the implications of the measures in this Act for the raising of children and the promotion of family life."

**The Earl of Listowel:** My Lords, my purpose in moving this amendment is to obtain a statement from the Government of their assessment of the impact of same-sex parenting on child development. I would appreciate a careful and thorough assessment from the Government, perhaps with the aid of an appropriate mental health professional and a statistician, to look across the research that we have currently on this issue and produce a report. In the first place, a letter to me and placed in the Library would be very welcome. Perhaps that might be the basis of further work that could also help with the support for schools that the Minister was just talking about in helping them manage this new piece of legislation.

I will try to be brief, given the hour. I thank the Minister for meeting with me at Committee stage to discuss my concerns. That was very generous of her. I also thank the noble Baroness, Lady Thornton, who I see in her place, for her kind words on my work in the course of Monday's business.

A twofold challenge makes me ask these questions. First—I know that this is debatable—the Bill might give a significant, inadvertent nudge to same-sex couples and to teachers, doctors and child and family social workers. Many of us agree that marriage has traditionally been seen as the last and very important step before one starts a family. For many professionals, the Bill might seem to encourage them to think that same-sex parenting is just as good as or even better than heterosexual parenting and nudge them towards, for example, giving IVF, making placements with same-sex foster carers or adoptive parents, or teaching children that same-sex parenting is no longer problematic or debatable. For context in this, your Lordships might recall debates on the Human Fertilisation and Embryology Act a few years back, where the duty was removed for clinicians to ensure that those taking part kept in mind the interests of the child of having contact with the father. I fear a gradual erosion of that traditional norm that the best situation for every child is to have a mother and a father.

The second difficulty concerns research. The phenomenon of same-sex parenting is relatively new, and research only stretches back about 30 years. Typical problems are that the samples are of small numbers and too narrow, and that the duration of study was

too short. Another problem is that the science is undertaken under pressure of polemic from both sides. There are people here who desperately want this to be proven to be absolutely unproblematic, and others who desperately want this to be shown to be the wrong thing to do entirely. The truth lies somewhere in between and is sometimes hard to find.

*9.45 pm*

The noble Baroness has in the past alluded to research from Melbourne, Australia, the largest cohort study so far, of about 400 families with perhaps 750 children, which is now considering them at the age of 17. It is encouraging that such large cohort studies are taking place. Again, however, we need to look at these very critically, and look at the samples that they are taking. I will come to the details of what might be considered as we examine that research critically.

On Monday, the noble Lord, Lord Winston, pointed to the research of Professor Susan Golombok at the University of Oxford, pointing to positive outcomes for children in same-sex parenting arrangements. That is interesting research, and I am sure that we are all grateful to the professor for perhaps the most important piece of research in this country. However, from memory —I have not looked at it for a couple of years—it is of a small sample, about 60 families, and, again, only to the age of 18. We do not know what happens to the adult children of same-sex families. The point that I am trying to stress is that it is still early days and the evidence needs to be looked at critically. I notice that people seem to jumping to a conclusion about what that research points to too soon.

Looking at the evidence matters because we are dealing with a phenomenon which our past experience suggests may be problematic for children. We know from experience that boys growing up without fathers are at greater risk of poorer outcomes than those with fathers. We know that male same-sex relationships can be of brief duration, and that unstable parental relationships are harmful to a child's development.

Of course, there is the "common sense" argument. Many of us would think that it is just common sense to expect that children will do best if they have a mother and father. I listened with great interest to the noble Baroness, Lady Farrington, quoting a child in the earlier debate. I met some foster carers yesterday who gave me an example of a five year-old who was offered two fathers by his social worker, and his comment was, "that would be just silly".

I will quote an academic, Loren Marks of Louisiana State University, who has written a very interesting paper assessing the evidence so far, *Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting*, published in the journal of *Social Science Research* in July 2012. In her conclusion, she writes: "We now turn to the overarching question of the paper. Are we witnessing the emergence of a new family form that, unlike cohabiting, divorced or single-parent families, provides a context for children that is equivalent to the intact family? Even after an extensive reading of the same-sex parenting literature, the author cannot offer a high-confidence data-based 'yes or no' response to this question. The data are insufficient to support a strong claim either way, and thus insufficient to produce a definitive, binary statement. Such a statement would not be grounded in science. Representative, large-sample studies are needed—many of them, including high-quality longitudinal studies. Although some same-sex opponents have made some egregious overstatements and, conversely, some same-sex parenting researchers seem to have implicitly contended for an exceptionally clear verdict of no difference at all between same-sex and heterosexual parents since 1992, a closer examination leads to the conclusion that strong assertions, including those made by the American Psychological Association were not empirically warranted".

I apologise for quoting at such length, but I hope that that may have been helpful. She goes on a bit further about specifics—the Minister has a copy of the report.

In conclusion, I repeat that same-sex parenting is a new phenomenon with potentially important consequences for children. I recognise that the Minister disagrees with my concern that the Bill is perhaps a cue for people to promote or encourage the notion that same-sex parenting is no longer a matter which people feel has some issues around it. I understand that. However, I would be grateful if the Minister could write to me with an analysis of the current evidence, perhaps with the aid of a statistician and a relevant mental health professional. My noble friend Lady Hollins is a former president of the Royal College of Psychiatrists and is currently the president of the British Medical Association, so she might be able to advise on who could help the Minister to reflect on that research. I would be most grateful if the Minister could help with this assessment on the effect of same-sex parenting on child development, and I look forward to her response. I beg to move.

**Baroness Barker:** My Lords, my maiden speech in your Lordships' House, which I am sure all of your Lordships will remember, was a three-minute speech on a motion put forward by the noble Earl, Lord Listowel, about supporting counselling for young homeless people. That was two minutes more than I needed to say what I knew about the subject. Ever since then, the noble Earl, Lord Listowel, is somebody to whom I have paid the utmost attention. His consistent devotion in this House to the cause of children and their well -being is an example to us all. He never ceases or gives up campaigning for that, and is doing so again today.

I agree with him only to the extent that it is important that in future research is undertaken on the effects of the Bill and on families which will come into being when the Bill is passed. I disagree with him, because I think that I detected in what he said that he starts from a base position of belief that somehow this will be bad. I do not, necessarily. This is a very hopeful Bill, which will bring a great deal of stability to families in future—families that have not had stability until now.

It is very helpful that the noble Earl led us into thinking about these matters. I sat and thought during the last debate about how much of a change the Bill will bring about. When I was at school, nobody talked about being gay at all. If they did, they talked about it at best only in terms of a joke, but often in pretty horrible terms. Nobody in their right mind would talk about being gay—we did not. In order for people of

[Baroness Barker]
my generation to lead the lives we felt we had to lead, we had to go away. Lots of us went off and lived in other places. That will not be an option for many young gay people in future. That is why it is so important that in the communities in which they live they, and their families are understood and accepted, and schools—including church and faith schools—will have a very important part to play.

The noble Earl is right: there is very little research into these issues, not least because not that many families have been able to take part in the research. What research there is is often seized on and used in a very partial way, either by those who take the view that I do or by those who take a more cautious approach. Professor Golombok's work is peer-reviewed research of the highest level. She may be misinterpreted at times for different purposes, but it is the beginning of an important piece of work. It is also interesting that organisations such as Barnardo's have begun to look at the effects of earlier legislation on children.

As ever, I take my hat off to the noble Earl, Lord Listowel, for having children first and foremost in his mind. I do not think that his amendment is necessary, and I do not think that the Minister will be able to accept it. However, I am glad that he has raised the issue and put it on the agenda for social researchers in future. He is right that this legislation deserves to be researched and tested just like any other.

**Lord Alli:** The noble Earl has the same effect on me as Tony Benn. Whenever I listen to Tony Benn, I am always convinced. I believe him. He is amazing. When I walk away, I realise that he said the opposite thing to what I believed, and that in my view he was wrong. The noble Earl believes that children brought up in same-sex relationships will do much less well than those brought up by heterosexual parents. That is the noble Earl's central premise, and every argument he puts forward is about proving it. On Amendment 1, he supported two classes of marriage. On Amendment 46, he contended that there was no definitive research on the subject of children in same-sex relationships, and that the arguments were finely balanced. Given that the noble Earl believes that there is no definitive research, how can he then ask the Secretary of State to provide evidence-based research as part of the guidelines on what to teach? If there is no evidence-based research, how can the Secretary of State use it to inform teaching guidelines?

It is worth reminding ourselves, as the noble Baroness, Lady Barker, did, that my noble friend Lord Winston, who is now in its place, referred on Monday to,

"research on children who are being raised by people who are gay—either lesbian or male homosexual … There is now a large and incontrovertible body of research evidence—particularly from Professor Golombok of the University of Cambridge—which shows that on average such children do better than children who are born in the normal way of current marriage".—[*Official Report*, 8/7/13; col. 28.]

The central point is that, at worst, there is no evidence-based research. At best, it does not support the noble Earl's premise. Therefore, I have to do what I always do with what Tony Benn says. I have to nod and smile at the noble Earl and say that while I recognise and value his contribution, it is nonsense.

**Lord Elton:** My Lords, perhaps I might come to the noble Earl's aid to some extent. I support his request for evidence-based research, and will add that the evidence presented should be tested. I am well aware of a body of research put forward to the Government during their initial inquiries before they drafted the Bill which was very seriously challenged by apparently well qualified people. The challenge was never answered or rebutted. I will happily write to the Minister about this because it should be looked into further. Where advocates of a cause commission or present research, it is as well to test it very carefully before taking it at face value.

**Lord Singh of Wimbledon:** I rise briefly to say that, in the next amendment, I will produce some evidence-based research that very much supports the concerns of the noble Earl, Lord Listowel.

**Lord Pannick:** I agree entirely with everything that has been said by the noble Lord, Lord Alli. But the concern of the noble Earl, Lord Listowel, is about the implications of the measures in this Bill. I can see no reason whatever for thinking that it could be any less favourable to the interests of a child to be brought up by parents in a same-sex marriage than to those of a child being brought up by parents in a civil partnership. I would have thought that the stability and status of a marriage would be as beneficial to the child as it will be to the partners of same-sex marriage.

*10 pm*

**Baroness Brinton:** Very briefly, I shall build on the comments of the noble Lord, Lord Pannick. We are often obsessed with a view of what is normal, as if in every classroom in the land all children come from a traditional, normal background. I know from the children whom I come across daily in schools that they know from their own experience that their friends come from single-parent families, whether through bereavement, divorce, separation, kinship carers, foster parents and, yes, children of civil partnerships. Some children know that they were born by IVF and have more than two parents. The father of one child I know married the woman who had first been his mother-in-law, and later she became his step-sister-in-law before becoming his wife. That is something to do with family values in the 21st century.

The point made by the noble Lord, Lord Pannick, about the value of a stable relationship is absolutely key—and that is what the research should be looking at. The research quoted from Cambridge already demonstrates that there is really strong evidence in that sort of same-sex relationship.

**Baroness Thornton:** My Lords, I am building again on the wise words of the noble Baroness, Lady Brinton, and the noble Lord, Lord Pannick. There is no need to attach this amendment to this Bill. The Secretary of State is already bound to provide guidance to teachers under all circumstances, and will do so with regard to this Bill in the right and appropriate manner. This is not the way to do it. The amendment is not appropriate, as noble Lords can see if they read it themselves that the research is commissioned in this Bill.

**Baroness Stowell of Beeston:** My Lords, I am very grateful to the noble Earl, Lord Listowel, for moving this amendment and for taking the time and trouble to come to have a discussion with me, which I enjoyed very much. I echo what my noble friend Lady Barker said about his commitment to the interests of children and his dedication to that—and how he makes contributions to all our work in the House with that specific goal in mind.

In answering the debate, I wanted to make some specific points to assist all noble Lords and the noble Earl, Lord Listowel, in particular. I wanted to emphasise that the Bill does not change the position for children in families of same-sex couples. The Government believe that the principles of long-term commitment and responsibility, which underpin marriage, are a good basis for providing children with the support and protection that they need throughout their childhood. As the noble Lord, Lord Pannick, has said—and we very much agree with him—extending marriage to same-sex couples will mean that children of those couples will be able to benefit from the stability of a family founded on marriage in the way in which other children benefit. We think that that is a good thing.

The noble Earl, Lord Listowel, and other noble Lords referred to comments that the noble Lord, Lord Winston, made in the debate on Monday on concerns about the ability of same-sex parents to bring up children. Those concerns are effectively not supported by the available evidence; the noble Lord made the point that there was no evidence to support the concern that some might have. Research has shown that there is no negative impact on children's self-esteem, psychological well-being or social adjustment if they are brought up by same-sex parents. This includes lesbian couples—the noble Earl, Lord Listowel, raised the point about there being no father figure in the family.

It is an obvious point, but important none the less, that when gay couples decide to have a child or children the decision has to be a conscious one. Therefore, it is safe to assume that, having made that decision, they will be very conscious of the needs of that child and would address of all of them. No doubt two lesbian women would ensure there were male role models to play a part in the children's lives. The noble Earl and I discussed this when we met privately. As I said in the previous debate, I am aware that some people respond to change in different ways. However, it is important to be clear that same-sex couples will approach their decision to become parents as seriously as any other couple; perhaps more so because they have had to make that decision very consciously. The Golombok report, *Growing up in a Lesbian Family*, which has been referred to, supports this view. There are other reports—all of which seem to have very interesting names—and I am sure if I start trying to say them I will mispronounce them so I will not. However, there are other studies coming out of the US.

The noble Earl referred to a report by Loren Marks in the USA and quoted quite extensively from it. The American Psychological Association took great interest in that paper. It issued a statement saying that, on the basis of a remarkably consistent body of research on lesbian and gay parents and their children, it and other health professional and scientific organisations had concluded that there is no scientific evidence that parenting effectiveness is related to sexual orientation. Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children.

I understand the noble Earl's request for me to provide some analysis of the available research. I hope he will forgive me but I will be happy to write to him because I do not think that this debate justifies the use of resources to carry out the kind of analysis he has called for. I will ensure that letter is in the Library and I will copy it to my noble friend Lord Elton. I will obviously be interested to receive the letter my noble friend said he will send to me about another issue related to this debate. I hope the noble Earl feels able to withdraw his amendment.

**The Earl of Listowel:** My Lords, I am grateful to the Minister and to those who have spoken in this debate. I am mindful of the hour so I will be very brief. I still suggest it is very early days in this phenomenon—the noble Baroness, Lady Barker, referred to the difficulties at present with the small number of families in this position. I am very grateful for the care with which the Minister made her response and I look forward to receiving her letter. I beg leave to withdraw the amendment.

*Amendment 95A withdrawn.*

*Amendment 96*

*Moved by* ***Lord Singh of Wimbledon***

**96:** Before Clause 15, insert the following new Clause—

"Referendum provisions

(1) A referendum is to be held in England and Wales on the issue of same sex marriage.

(2) The referendum is to be held on 24 October 2013.

(3) If the Secretary of State is satisfied that it is impossible or impracticable for the referendum to be held on 24 October 2013, or that it cannot be conducted properly if held on that day, the Secretary of State may be order appoint a later day as the day on which the referendum is to be held.

(4) Any day appointed by order under subsection (3) must be before 1 November 2014.

(5) Where a day is appointed under subsection (4), the Secretary of State may by order make supplemental or consequential provision.

(6) The Secretary of State must by order make provisions for the conduct of the referendum.

(7) An order under this section may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(8) The question that is to appear on the ballot papers is—

(9) Those entitled to vote in the referendum are the persons who, on the date of the referendum, would be entitled to vote as electors at a parliamentary election in any constituency."

**Lord Singh of Wimbledon:** My Lords, the need for a referendum is important for two reasons. First, as we all know, no attempt whatever was made to consult the electorate before the last election, or through Green or White Papers, on the proposed redefinition of marriage, which millions see as an essential building block of society. Respect for the electorate demands their explicit consent for this major social change.

[Lord Singh of Wimbledon]

Secondly, many of us hoped that the wider implications of this legislation would be discussed and genuine concerns listened to in the progress of the Bill in the other place and in your Lordships' House. Sadly, this has not happened. What is concerning about the support for the Bill is the narrow crusading zeal with which genuine concerns are either ignored or brushed aside. Many of us concerned with making ours a fairer society for all welcomed the civil partnership legislation which gave legal rights and dignity to the gay community in our wonderfully diverse society. The legislation recognised both dignity of difference and equality of respect.

The Sikh gurus from whom I take my cue taught the importance of recognising and respecting difference and the right to differ, but they also taught that all of us, men and women, are equal members of one human family. I vainly hoped that some of this sort of thinking would become evident in this debate. Sadly, those pushing the Bill, perhaps because of a collective guilty conscience over past persecution of homosexuals, looked only to the supposed wishes of the gay community with no thought for the rights of others.

Three tactics have been used as spoiling measures to stifle genuine debate. First, past persecution of gays has been used to demand unreasonable reparation from the wider community by appropriating, distorting and diluting the accepted meaning of marriage without consideration of the consequences for family relationships and the care and nurture of children.

Secondly, we have seen a deliberate misuse of language to suggest that sameness and equality—I mean equality of opportunity and equality of respect—are one and the same thing, and that to recognise and respect genuine difference amounts to prejudice and notions of superiority. The absurdity of this argument is self-evident. Cricket and football are different sports but this does not mean or imply that one is superior to the other, yet in seeking to blur difference in gay and heterosexual relationships in Monday's debate, the learned noble Lord, Lord Lester, put forward this same spurious argument. He said:

"The attempt to define same-sex marriage differently from opposite-sex marriage while claiming that they are somehow equal would inevitably be seen by ordinary men and women in the street—and by me, as a not very ordinary man in the street, I suppose—as attempting to give the traditional view of marriage a superior status".—[*Official Report*, 8/7/13; col. 16.]

I believe that the man in the street is far more discerning and would resent being wrongly patronised in this way.

Thirdly, as we have heard this evening, statistics have been used to confuse debate. A small survey—the Cambridge survey—has again been quoted. It is said to have found that some children do better with gay parents. Perhaps that is so, but why ignore a much larger and more extensive survey of 3,000 people conducted by the University of Texas over a number of years on a random population which included interviews with children who had grown to become adult? It showed that the children who flourish best, measured in categories such as education, employment status, depression, crime, welfare dependency and drug misuse, are those who spend their entire childhood with their biological mother and father. All other family arrangements did significantly less well. The worst outcomes were in children brought up by their mother in a lesbian relationship. Are we doing our children any favours if we simply refuse to look at such studies?

*10.15 pm*

Following concerns I voiced in Committee, I was pleasantly surprised to receive a letter from the government office. At the bottom of a politely phrased letter was a note that a copy of the letter would be placed in the Library. I welcomed this as genuine discussion, wrote a response and sought to place that in the Library. I was told that only the Government can do that. So it was not genuine debate but another attempt to promote a narrow, government view.

In summary, the electorate as a whole has been treated with contempt, not only because of an absence of consultation prior to the previous election, but because of a continuing reluctance to consult on the merits of the issue after the Government took office. Worse, the very meaning of the word "consult" has been redefined to limit it to discussion on an already agreed course of action. The express concerns of religious communities have also been almost totally ignored. One of the supposed safeguarding locks is, in fact, an open opt-out door: an open invitation to opt out of clearly defined religious practice in a way that can only promote division and dissent.

It is beyond doubt that the implications of this major social change have not been properly considered either in this House or in the country. The Government should withdraw the Bill for proper consultation with the electorate and affected bodies. If not, they should have the courage to allow the electorate to have a say on the merits of the legislation in a referendum on the lines suggested in the amendment. The man or woman in the street should be allowed to give their views on a measure that affects all of society. I beg to move.

**Baroness Turner of Camden:** My Lords, I have not spoken before this evening, mainly because I have very much wanted to listen to what other people had to say. However, I really feel rather annoyed about this amendment. Why on this particular Bill? In the past year or so, we have sat through legislation from this Government on an enormous range of issues: welfare, employment law, foreign policy intervention and so on. Has there been any pressure for a referendum on these issues? No, there has not. However, we now have the opportunity, at long last, of producing legislation to try to and put right the discrimination which gays and lesbians have suffered for many years. We are aiming to do that, and we are doing it. We have voted in favour of the Bill, in this House and in the other place, with an overwhelming majority. The law is now absolutely clear: it says that the marriage of same-sex couples is lawful—I repeat, is lawful. Yet this amendment suggests that a referendum be held on 24 October 2013 and that there should be a statement on the ballot paper which says:

"At present, the law in England and Wales defines marriage as the union of a man and a woman. Should the law be changed",

et cetera. By the time we reach October, the law will quite clearly not be the same as indicated in this proposed new clause. It will have changed because we will have voted to change the law to make the marriage of same-sex couples lawful.

I listened with amazement as the noble Lord who moved the amendment suggested that somehow or other that was not popular. In my view, this legislation is very popular, particularly with younger people. Perhaps much older people have some doubts about it but, generally speaking, younger people are all in favour of it. I was pleased that after the Second Reading debate, when I looked at my computer, I had messages from all sorts of people, including younger people, saying, "Well done, well done", about my speech. We do not need a referendum. We should throw this amendment out. It is not worthy at all. Why should it be in the Bill? The amendment is entirely discriminatory, and I urge your Lordships to oppose it.

**Lord Fowler:** My Lords, I note, with respect, that the noble Lord who introduced the amendment says that the arguments were not considered in the Commons. What I think he actually means is that they were considered; it is just that he does not agree with the conclusion that both Houses came to. That tends to happen in a democracy. We make our decisions on the basis of the arguments. I do not think that one can argue for a referendum on the basis that one disagrees with a decision. There is not a great deal of difference, frankly, between what we are debating now and what we debated in Committee.

I leave aside the wording of the question that would be put, which seems to say, "The present law is excellent, or are you one of that band of eccentrics who thinks that it should be changed?". I am not sure that the Electoral Reform Society would totally agree with such a question being asked in a referendum. However, my objection is much broader than that.

I am not opposed to referenda on constitutional issues. My Government made a mistake back in 1972; we should have had a referendum before we went into the Common Market. I am glad that Mr Cameron is promising a referendum after his negotiations on Europe and before the matter comes to the Commons after the next election. What I cannot support is holding a referendum after a Bill has gone through both Houses of Parliament and after our extensive discussions in both Houses. The Bill has been approved by massive majorities. There is no question about that. It is not on the margins; there have been massive majorities for the Bill. That is particularly the case for Members of Parliament because it is they who, at the next election, have to answer to their constituents. That is what parliamentary democracy is about.

You cannot have a situation whereby legislation in Parliament goes through the Commons and the Lords and then we have a referendum on it. It makes complete nonsense of the role of Parliament and of parliamentary democracy. One of my underlying concerns about some of the opposition to this legislation is that we are going against our fundamental beliefs in parliamentary democracy and the role of this House. This House, at this stage, should not be considering an amendment of this kind. Its only purpose can be to wreck the Bill as a last chance to ditch it, and we should not have any part in it. Therefore, with respect to the noble Lord, to whom I have listened previously, and again now, I am totally unconvinced by his argument.

**Lord Waddington:** My Lords, my noble friend Lord Fowler is making rather a meal of it. I can think of only one justification for having a referendum, and that is to allow the Prime Minister to get off the hook on which he has impaled himself by bringing forward this Bill in the first place. Everybody knows that the Bill came forward to Parliament in a most disreputable fashion. We have gone over this many times, so I will say it in a sentence or two. Three days before the election, the Prime Minister said that he had no plans to bring forward such a Bill; there was no reference to it in any party manifesto; there was nothing about it in the coalition agreement; and there was no proper consultation. The result is that UKIP is having a field day—

**Lord Fowler:** My noble friend accuses me of making a meal of it, but he is making a massive feast of the whole thing. Surely, every argument he has just produced has been debated and debated again, at Second Reading in both the Commons and the Lords.

**Lord Waddington:** The trouble is that my noble friend has not listened to the end of my argument, which is that as a result of the Prime Minister's behaviour, UKIP has been gleaning Tory votes throughout the country. If we do not do anything about it, at the next general election UKIP will no doubt be making hay as a result. I suggest to my noble friend that the only real justification for having a referendum is to help the Prime Minister by removing the whole issue from the public arena well before the next general election.

**Lord Carlile of Berriew:** My Lords, listening to the little exchange that has taken place in the past few minutes between two distinguished noble friends who are members of the Conservative Party led me to think about whether an alliance between UKIP and the Tory party—which, of course, has been mooted—might be regarded as a same-sex marriage.

Leaving aside that little bit of private grief in the Conservative Party, I agree with every word that has been uttered by my noble friend Lord Fowler and will not repeat it because I could not say it as well as he. Like many people in this country, I have great admiration for Lord Singh. We hear him on the public radio from time to time, and he utters very wise words—mostly. However, I say to the noble Lord that, regrettably, on this occasion he has let us, and himself, down. I invite him to reflect upon whether the proposed amendment is a proper use of the debating procedure of your Lordships' House; what he said sounded to me awfully like a Second Reading speech.

In order to ascertain whether that would be a justified comment, I spent some little time looking at the noble Lord's biography and bibliography to see what other issues that he has suggested would be suitable for a referendum because they have an ethical or moral component. There are none: this is special pleading. I urge your Lordships to reject the amendment on that simple basis.

**Lord Pannick:** My Lords, perhaps I may remind noble Lords that the Constitution Committee, of which I was then a member, recently produced a report on

[Lord Pannick]
referendums. We said that there are significant drawbacks to the use of referendums, essentially for the reasons given by the noble Lord, Lord Fowler. Our advice to the House was that they should be confined to fundamental constitutional issues. This is not a fundamental constitutional issue. I say to the noble Lord, Lord Waddington, that helping out the Prime Minister, if he needs help to get off any hook, is not a fundamental constitutional issue.

**Lord Alli:** My Lords, I, too, do not want to help the Prime Minister, but let me say that I am most grateful for the Prime Minister's help. He has shown huge personal courage in bringing forward this Bill, for which many of us would want to pay tribute to him.

Perhaps I may say this to the noble Lord, Lord Singh: a December 2012 MORI poll showed that 73% of people agree that gay people should be allowed to marry. On 5 February, at Second Reading in the House of Commons, it was 400 to 175 on a free vote. On 21 May, at Third Reading in the House of Commons, it was 366 to 161 on a free vote. On 4 June, at Second Reading in the House of Lords, it was 390 to 148 on a free vote. On 8 July, the first day of the Report stage in the House of Lords, the votes were 344 to 119 on Amendment 1, followed by votes of 278 to 103, 163 to 32 and 84 to 15. The noble Lord seeks to suggest that this is undemocratic and unconstitutional, but in doing so I fear that he is treading on very dangerous ground. He risks insulting the integrity of both Houses of this Parliament.

*10.30 pm*

**Lord Anderson of Swansea:** Not, my Lords, of insulting the people, who have never had a chance to speak on this and whose views are rather uncertain. The noble Lord, Lord Alli, has set out his litany of votes and I cannot gainsay that in any way, but I can certainly gainsay him on the polls which have been taken. If he is so confident about the view of public opinion, he should have no hesitation about going forward and agreeing to this referendum. Indeed, it is something which was discussed last Friday in the other place. The Foreign Secretary was really quite lyrical about referenda. Perhaps I may remind him of what he said:

"That is why every Member of the House who is a true democrat can and should unite behind the Bill"—

this was a referendum Bill on the EU—

"It is about letting the people decide … Ultimately, it would be up to the voters to decide, and that is the essence of democracy".—[*Official Report*, Commons, 5/7/13; col. 1191.]

Certainly there is no constitutional objection to referenda on the part of the Government. I concede that referenda have mostly been held on constitutional issues, although there are examples in our history of referenda on issues that were manifestly not constitutional. The first referendum that I was aware of was in relation to the opening of public houses in Wales. Even those who want to stretch their imagination could hardly suggest that the opening of public houses in Wales is a referendum issue.

I follow the noble Lord, Lord Singh, and I adopt what he has said. This was an amendment which I broadly put forward myself in Committee. The only difference is that, having listened to the objections then, such as that it was just a delaying device and 2015 would be too late, the noble Lord has brought the date forward to 2013. However, I am not convinced that the wording is as it should be. As was said in Committee, it should probably be left to the Electoral Commission, which is the normal pattern. But I think that the noble Lord, Lord Fowler, did a great disservice to the amendment which has been put forward by distorting it in the way that he did, as if the current position is perfect and only some zealots wish to alter it: do you agree with the zealots or not? I think that this wording is fairly reasonable, and the only reason I object to it is that I think that it should come from the Electoral Commission and not be on the face of the Bill.

The basic argument for having a referendum is the fact that the Government have no mandate for this—certainly no mandate from the people. The commitment was not included in the 2010 Conservative, Liberal or Labour manifestos. The subsidiary argument is the speed of the passage of this Bill. Not only was it not mentioned in the manifestos, not only did a number of the relevant pressure groups not come to this view in respect of gay marriage until a year or two ago, but there has been an unholy haste about this Bill which is difficult to understand. It is rather as if there has been a mass conversion equivalent to that of, say, an African tribal leader who mass converts many of the members of his tribe.

Noble Lords have suggested that there have been occasions in the past when legislative changes have been made without a mandate. That is true, of course, but none has been as fundamental as that set out in the Bill before us today. Although laws defining marriage have changed incrementally over the years—the noble Lord, Lord Elystan-Morgan, gave a whole series of those—nothing has been as fundamental as this one: changing the basic definition of marriage. I suppose that a case could be made for an exception to the electoral mandate principle if it were apparent by other means that there was consensus in public opinion.

I concede that there have been majorities in both Houses, but there is no clear consensus in public opinion. It depends very much on the question that has been asked. Opinion polls have been fairly evenly divided. Some have suggested that there is a majority against, some that there is a majority in favour. If further proof of the absence of consensus were needed, however, let me quote from the Government's own analysis of their consultation process:

"Overall, views were divided. Of the 228,000 responses to the consultation, 53% agreed that same-sex couples should be able to have a civil marriage ceremony and 46% disagreed ... However, these figures do not take account of those petitions we received, which were universally opposed".

Moreover, the need for a referendum set out in my speech in Committee was compounded by other failures of due process. I shall not repeat what I said in Committee regarding the failures of due process during the passage of the Bill. I have made the point that the Government are not against referenda in principle.

One argument advanced in our earlier debate was that it would not be appropriate to have a referendum when the Bill was passed with such a clear majority in another place. That, however, as the noble Lord, Lord Singh, has properly pointed out, misses the point. No one questions the majorities, the facts are there. If the referendum is opposed in order to make good the lack of any mandate, the votes of MPs on this issue are not relevant because there was no electoral mandate at the time for an issue which is manifestly a fundamental one.

Other noble Lords objected to the idea of having a referendum simply because they considered the redefinition promoted by this Bill to be a self-evidently good thing and recoiled at the idea that it should be subject to a vote. If it was, of course, such a manifestly good thing, why have so many colleagues come to this realisation so speedily and at such a late stage? Had this vote been taken three years ago, it would not have had those majorities—perhaps not even one or two years ago, so it is not such a manifestly good thing.

Another argument advanced by the Minister, and advanced earlier in this evening's debate, was that referenda should be preserved for constitutional questions. Apart from the fact that Parliament is completely free to apply referenda whenever it sees fit, the key point is that the marriage Bill raises important constitutional questions. I refer to the implications for the establishment of the Church of England, as explained by the right reverend Prelate the Bishop of Chester in his important Second Reading speech. Moreover, Aidan O'Neill QC in his legal opinion on the Bill suggests that it risks partial disestablishment. The Government have made this a constitutional question by disregarding due process and by conducting a consultation which, in my judgment, was a bogus consultation that ignored many of the questions, because the majority were, in fact, against it.

To conclude, it is increasingly common to hear politicians express their profound concerns about the disconnect between political institutions and their passionate commitment to reaching out and listening to the people. This is an opportunity to do so. My judgment is that there is profound discontent and not just among the older generations on this issue.

I am still waiting to hear from the Minister why there is such unprecedented haste in pushing through this Bill. There must be some good reason, or some reason behind the reason, which I would like to hear. We should not seek to kid ourselves that we can proceed on this basis and expect anything other than unhappy consequences. Rather than this being a law that was developed in a proper way and that rests on a constitutionally appropriate foundation, everyone knows that it was pushed through without proper regard for constitutional convention. There was certainly no mandate and there has certainly been substantial haste, as yet unexplained.

To date, the Government have not provided any compelling reason for not supporting a referendum. If they believe that the tide of history over the past year or two since their damascene conversion is on their side and they have no constitutional objection to it—I cite the two referenda in general and the rather lyrical references to referenda in the speech of the right honourable Foreign Secretary last Friday—they should have no hesitation in providing for a referendum so that the people can decide on this issue.

**Lord Martin of Springburn:** My Lords, I have always looked forward to the wisdom of the noble Lord and of the noble Lord, Lord Waddington, and it is nice to see them disagree with one another and disagree so well. It is often the case that the Minister gets to the Dispatch Box and says, "Well, this amendment is not suitable but perhaps we can get something else". I think that there should be some consultation with the people. For everyone arguing that this is a democratic process, which should therefore be good enough for the people, we should remember the problems that this generation and generations before us have had. In Northern Ireland, we had a Government who kept saying, "The majority rule and forget about the minority or about consulting with the people. We are the ones who will push through the legislation and that will be the end of it".

I just point to several such matters. The noble Lord, Lord Fowler, will recall that the Scottish people were the first in the British Isles to get the poll tax. That was because of a democratic decision in the other place, even though some MPs, including me, said at the time, "You're creating a rod for your own back". However, it was not until the poll tax came to the rest of the United Kingdom that people readily acknowledged that we were wrong. The argument that it goes through both Houses and that is the end of it and people have to accept it, is nonsense. We could be creating very serious problems. Noble Lords should bear in mind that it is normally the case that the Opposition question the Government, if that is what they want to do. However, the Opposition are supporting, not questioning, the Government on this legislation. That is where I feel that there should be some consultation.

Noble Lords will recall that the last time that the Labour Party and the Conservative Party got together, it was when the Conservative Party supported the then Labour Government in going into Iraq and seeking to remove Saddam Hussein. At the time, the Liberals said that there was a feeling out there in the country that this was wrong. Ever since then, we have been asking ourselves whether or not it was the right thing to do. I am on my feet not because there needs to be a referendum but because we need to find some way of consulting the people about the difficulties that we have got here. We are not passing a complete piece of marriage legislation. The Government have been shrewd enough to exclude the Church of England and the Catholic Church and to say, "We are not forcing you to do this". Therefore we are not getting a piece of marriage legislation in the normal sense of the word. Of course the dates are down here in the amendment, but amendments can be changed or replaced by something more suitable to the Government and ultimately to the House. Let us find a way of consulting the people about what we are putting through both Houses.

*10.45 pm*

**The Earl of Listowel:** My Lords, I rise briefly to thank my noble friend for alluding to the research that he did and for his support on my previous amendment.

[The Earl of Listowel]
I will look with great interest at the research to which he refers. He also gives me the opportunity to reflect on the Minister's reply with regard to research in this area. I perhaps should have pointed out that the Loren Marks research was initially a criticism of a conclusion produced by the American Psychological Association two or three years previously. She wrote that particular paper from a critical point of view on its conclusion that all the research so far pointed to there being no problems with same-sex parenting. That was why she wrote that paper. It is hardly surprising, therefore, that the American Psychological Association should come back and be very critical of her research, so I would not take the association's damning criticism too much to heart. I think that Loren Marks is well worth reading and listening to.

I offer my sincerest congratulations to my noble friend on bringing forward this amendment at this late point in the Bill. From a man of faith representing one of the great religions, it is absolutely right that we should be hearing a very conservative point of view regarding the family. It is very important that there are these strong, conservative voices, deeply steeped in religion, to stand up against us modern people, who are much less rooted in tradition and more flexible. It is very important that people such as him stand up on these occasions and put a strongly conservative point of view, even at this late stage in the Bill. I wish that he had been here when we were discussing the Human Fertilisation and Embryology Act and that we had heard his comments then on the removal of the assumption that it is in the best interests of children for fathers to be involved in their lives. Again, I recall the Good Childhood Inquiry report, produced by the Children's Society and the Church of England a few years ago. It highlighted that, with increased rights and freedom of choice for adults in the 20th century, which so many of us welcome, the downside for children has often been that parents' greater choice has meant that many more children grow up with their father no longer in their family. I think it is very helpful to have my noble friend's voice here.

Finally, I thank the noble Baroness, Lady Barker, for her very kind comments. I had forgotten that she made her maiden speech in my first debate, and I appreciated what she said.

**Lord Norton of Louth:** My Lords, perhaps I may deal briefly with this in bullet form. The point that has just been made about parenting is totally irrelevant to what this Bill seeks to achieve, and it is certainly irrelevant in terms of the amendment before us, to which the noble Lord, Lord Singh, did not really speak. When he does, I think we would be interested to hear why, under subsection (9), on those who would vote in the referendum, he would exclude Members of your Lordships' House.

We keep hearing about public opinion as if somehow it is divided—no, it is not. Every poll that has put the question in a neutral way has produced a very clear result. What is remarkable about opinion is not that it is divided but how consistent it has been. As Lewis Baston has written in the latest issue of *Total Politics*:

"A typical result for a neutrally worded question is support somewhere in the low- to mid-50 per cent range and opposition in the mid-30 per cent range",

before concluding:

"While there may be some legislative twists and turns in the House of Lords, the battle for public opinion has been won by supporters of SSM".

With that consistency, there is really no need to consult. The position is quite clear.

In terms of holding a referendum anyway, as the noble Lord, Lord Pannick, pointed out, at the end of the previous Parliament the Constitution Committee produced a very thorough report on referendums, weighing the arguments for and against, and concluded that if they were going to be held, they should be not only on constitutional issues but fundamental constitutional issues. Not only is this not really a constitutional issue; it certainly does not qualify as a fundamental constitutional matter.

It is essentially a matter of social policy. Parliament has legislated on significant social policy before. This would be on a par with abortion and divorce, which, as I recall, were not manifesto commitments and not issues on which anybody was really suggesting that there should be referendums. So if we are going to start saying that we should have referendums on social issues, there are wider implications. We would need to consider it very thoroughly before we went down that route. There is absolutely no merit in the amendment before us and I hope that we do not pursue it.

**Baroness Thornton:** My Lords, you have to hand it to the people who do not like this Bill. They really do not like this Bill and they are fighting it right to the very end, and that is what this is about. They are perfectly within their rights to do that, and I particularly enjoyed the heartfelt plea of the noble Lord, Lord Waddington, in this debate.

I am not going to repeat all the arguments that have been made. I simply refer your Lordships to the noble Lords, Lord Fowler, Lord Pannick and Lord Norton, my noble friend Lord Alli and my other noble friends who have spoken in this debate. They are absolutely right.

I say to the noble Lord, Lord Martin, that actually the votes were free votes. This was not a question of the Government and the Labour Opposition. They were free votes. There were Members on all sides—

**Baroness O'Loan:** I would just like to ask the noble Baroness whether the Labour Party votes on Monday were all free votes. There was an understanding that some of them were whipped.

**Baroness Thornton:** The noble Baroness knows very well the answer to that question. All the votes about the principle of this Bill were free votes in both Houses. We in the Labour Party made it completely clear that we would whip on two issues only, which were issues of public policy to do with teachers and registrars, and that is what we did. We have been completely clear, open and honest about what we were going to do.

As the noble Lord, Lord Fowler, said, the fundamental issue here and particularly in the Commons—the democratic House—is that all those MPs have to go back and face their constituents about this issue. They

will have to face them every week about this issue. So they would not have voted on a free vote for this Bill had they not felt it was the right thing to do. That is exactly what they should do.

Frankly, the idea that noble Lords in this House are somehow pushovers or sheep to be led through the Division Lobbies is completely absurd, as this debate shows. If I might repeat what I said in Committee, this amendment is a nonsense and the House needs to reject it.

**The Advocate-General for Scotland (Lord Wallace of Tankerness):** My Lords, Amendments 96 and 134 seek to provide in the Bill for a referendum on marriage of same-sex couples, to be held on or after 24 October 2013. I recognise that the date has been brought forward somewhat from the amendment that we discussed in Committee; otherwise, it is very nearly identical to that amendment, tabled by the noble Lord, Lord Anderson of Swansea, supported by my noble friend Lord Cormack and the noble Lord, Lord Singh.

It will come as no surprise to the House that the Government are unable to accept these amendments. We do not believe it is a sensible course of action, nor is it required. I listened carefully to what the noble Lord, Lord Singh, said in moving his amendment, and I recognise his strength of feeling on this issue. As he knows, he and I do not agree on the principle of the Bill. Nevertheless, I profoundly respect not only his view but the depth of feeling with which he holds it.

There are one or two points that I wish to take up on this matter. There was one practical matter to start with. The noble Lord almost suggested that it was a conspiracy that the Government could put my noble friend Lady Stowell's letter into the Library, but somehow his could not be. That is just the way the House operates. However, what I can say is that the Government can place documents in the House Library and if the noble Lord would like me to, I am happy to place a copy of his reply to my noble friend Lady Stowell in the Library, and would be pleased to do so if he feels it would be helpful to the debate.

**Lord Singh of Wimbledon:** I was not saying that it was conspiracy. It was my ignorance about the proceedings and the way the House operates. I was happy that there was a way of debating something, and then I found a block. You cannot do that.

**Lord Wallace of Tankerness:** I know that the noble Lord did not say it was a conspiracy. I think that he used the phrase that it was blocking off debate and almost suggested that it was done deliberately. It was not. As he indicated just now, these are the rules of the place, but if he wishes a copy of his reply to be put into the Library, we will certainly arrange for the Government to do that. The noble Lord is nodding assent to that proposition.

The letter which my noble friend Lady Stowell sent to the noble Lord relates to issues about consultation. She noted, for example, that the British Sikh Consultative Forum issued a formal submission to the consultation on equal marriage and that government officials met representatives from the Sikh Council UK as recently as 4 April this year. They held pre-consultation meetings with the Sikh forum in December 2011 and held another meeting during the consultation period with the interfaith community in May 2012, which involved representatives from the Sikh faith.

**Lord Singh of Wimbledon:** What is the meaning of consultation when you talk about a course previously decided on? That, in my view, is not consultation. My other point is that I have spoken to all those groups that have been mentioned. They were totally opposed to the legislation, but that is not reflected.

**Lord Wallace of Tankerness:** My Lords, there will always be situations where there are disagreements. Nevertheless, it has been the case that efforts were made to engage with not just the Sikh community but with other communities. It is a fundamental part of the Bill that the Government readily recognise—indeed the official Opposition readily recognise too—that there are religious organisations and faith communities which do not believe in same-sex marriage. That is why an important part of the architecture of this Bill is to give protection to these faiths. That is an important part that has come out of the discussions and the process that have brought us to where we are today with this Bill.

It was also suggested that the Government had somehow been impervious to argument. It is worth reminding the House that, as part of the whole process, the Government listened to what the Church in Wales said and produced an opt-in procedure. There has been additional protection for chaplains employed as members of staff. We added ecclesiastical law to the measures not affected by the Bill. We have clarified that marriages of same-sex couples are void when the couple are aware that their religion has not opted in. We have ensured that the consent of a governing authority to opt in to same-sex marriage does not automatically fall if the governing authority changes.

Significantly, on Report on Monday—and the noble Baroness, Lady O'Loan, commended the Government for this—we introduced an amendment which gave extended meaning to the word "compelled". We also brought forward an amendment to change the Public Order Act to clarify that criticism of same-sex marriage is not a hate crime. On other issues, for example on humanist weddings, the Government have been prepared to listen. There were amendments earlier today on fast-track procedure for gender recognition, and a technical, though important, amendment to reflect the absence of a legislative consent Motion from Northern Ireland for overseas marriages in consulates or Armed Forces bases. On a number of these issues the Government have listened and made appropriate amendments to the Bill.

It has also been said that the use of referendums in the United Kingdom remains very much the exception in our constitution. The noble Lord, Lord Pannick, my noble friend Lord Norton of Louth, and indeed myself, were members of your Lordships' House's Constitution Committee when we looked at the issue of referendums. I do not think that I am betraying any secrets—it comes through in the report—that we thought

[Lord Wallace of Tankerness]
referendums should be the exception. However, the genie was out of the bottle and therefore if referendums was going to be used the report clearly stated that they should be on matters of substantial constitutional significance. It gave some examples: to abolish the Monarchy; to leave the European Union—the subject of the debate in the House of Commons last Friday; for any of the nations of the United Kingdom to secede from the UK; to change the electoral system for the House of Commons; and to change the UK's system of currency. While I recognise that what we have been debating in your Lordships' House on this Bill is a matter of profound social policy, I do not think that by any stretch of the imagination it could be described as a matter of substantial constitutional significance. We acknowledge that what we are doing is a significant change to marriage law, and I recognise that many are uneasy about the proposals, but I say again that this is not a significant constitutional matter.

*11 pm*

I do not want to intrude on Conservative Party discussions between my two very distinguished noble friends with distinguished Cabinet careers—my noble friends Lord Fowler and Lord Waddington. However, the Conservative Party indicated in *A Contract for Equalities*, published alongside its election manifesto, that it would consider the case for same-sex marriage. Again, the point made by my noble friend Lord Fowler that this matter has been debated in the elected Chamber. Quite apart from being passed by a substantial majority in this Chamber, it was significantly passed by a very substantial majority in a free vote in the elected Chamber.

I listened to the noble Lord, Lord Martin, who was, of course, a very distinguished Speaker of the other House. He reminded us of the poll tax in Scotland. The noble Lord and I live in Scotland. I tread very carefully and sensitively with Conservative noble friends here, but the Conservative Party did not exactly reap electoral dividends from what it did with the poll tax in Scotland. I think the Conservative Party would be the first to accept that its electoral performance since the poll tax has not exactly been an example of how you can ignore what the people say and get away with it.

**Lord Martin of Springburn:** I make the point that, at the time, both the noble and learned Lord and I would have said to Conservative Ministers, "Please consult with the people". They would have found that the people clearly said, "No way do we want this". They would then not have got into the difficulties they did when it got to the rest of the United Kingdom.

**Lord Wallace of Tankerness:** The point is that under our constitutional, democratic architecture, Members of Parliament make their judgments, cast their votes and then answer to the electorate. That is the appropriate way in which we go about these matters.

The Prime Minister was mentioned. Anyone who has heard the Prime Minister talk on this issue knows that he does so from real conviction. It is a great credit to the Prime Minister that he has had the courage to give leadership on this issue and that this Bill has got to where it is today.

Support has also been reflected in recent opinion polls. My noble friend Lord Norton of Louth referred to that. I remind your Lordships of a House of Commons Library research paper on this Bill. Here is a summary of polls on same-sex marriages offering a two-way choice: October 2011, ComRes—51% support; 7 March 2012, ICM—admittedly not a majority but 45%; May 2012, YouGov in the *Sunday Times*—51%; December 2012, YouGov—55%; December 2012, Survation—60%; December 2012, ICM—62%; February 2013, YouGov in the *Sunday Times*—55%; 5 February 2013, YouGov in the *Sun*—54%; 19 May 2013, YouGov; 55%.

However, I make the point that numbers are not everything. This Bill is about putting right a wrong. We believe in the importance of the institution of marriage. We wish to ensure that gay and lesbian couples can be part of it in the same way as opposite-sex couples. We want to get on with that, and therefore I ask the House to reject this amendment.

**Lord Singh of Wimbledon:** My Lords, I thank the noble and learned Lord, Lord Wallace, for the graciousness of his response. I also thank noble Lords who spoke in favour of this amendment: the noble Lords, Lord Anderson and Lord Waddington, and my noble friends Lord Martin and Lord Listowel. They put the position perfectly, although I was a little concerned to be called a "conservative". I also thank the noble Lord, Lord Fowler. He did not respond to any of the specific concerns raised, but in many ways the manner of his response exemplified the concerns that I raised earlier; my thanks again to him. It is late, I sense the mood of the House, and I beg leave to withdraw the amendment.

*Amendment 96 withdrawn.*

***Schedule 7: Transitional and consequential provision etc***

*Amendments 97 to 105 not moved.*

*Amendment 106*

*Moved by* ***Baroness Stowell of Beeston***

**106:** Schedule 7, page 55, line 32, at end insert—

"(ab) after the definition of "ecclesiastical district" insert—

""England and Wales legislation" has the same meaning as in the Marriage (Same Sex Couples) Act 2013;"."

*Amendment 106 agreed.*

*Amendments 107 and 107A not moved.*

***Clause 16: Orders and regulations***

*Amendments 108 to 111*

*Moved by* ***Baroness Stowell of Beeston***

**108:** Clause 16, page 13, line 32, leave out "or Registrar General"

**109:** Clause 16, page 14, line 1, after "made" insert "by the Secretary of State or Lord Chancellor"

**110:** Clause 16, page 14, line 4, at end insert—

"(aa) the first regulations under section 9(1);

(ab) the first regulations under section 9(2);"

**111:** Clause 16, page 14, line 4, at end insert—

"( ) an order under section (*Marriage according to the usages of belief organisations*);"

*Amendments 108 to 111 agreed.*

*Amendment 112 had been withdrawn from the Marshalled List.*

*Amendments 113 to 118*

*Moved by* ***Baroness Stowell of Beeston***

**113:** Clause 16, page 14, line 6, leave out from "2" to end of line 7

**114:** Clause 16, page 14, line 7, at end insert—

"(d) an order under paragraph 2 of Schedule 2;

(e) an order under paragraph 27 of Schedule 4."

**115:** Clause 16, page 14, line 7, at end insert—

"(f) an order under paragraph 9(4) of Schedule 6."

**116:** Clause 16, page 14, line 8, after "legislation" insert "made by the Secretary of State or Lord Chancellor"

**117:** Clause 16, page 14, line 9, at end insert—

"(za) regulations under section 9(1) (except for the first such regulations);

(zb) regulations under section 9(2) (except for the first such regulations);"

**118:** Clause 16, page 14, line 12, leave out paragraphs (b) to (d)

*Amendments 113 to 118 agreed.*

*Amendments 119 to 123 had been withdrawn from the Marshalled List.*

*Amendment 123A*

*Moved by* ***Baroness Northover***

**123A:** Clause 16, page 14, line 19, at end insert—

"(4A) The provision that the Secretary of State may make in any relevant instrument includes provision enabling the Registrar General to make regulations by statutory instrument (with or without the consent of a minister of the Crown).

(4B) But the Secretary of State—

(a) may not make enabling provision which gives the Registrar General power to require a fee to be paid or power to set the amount of a fee; and

(b) may not make other enabling provision unless the Secretary of State is satisfied that the provision is necessary in connection with administrative matters relating to functions of the Registrar General or functions of superintendent registrars or registrars.

(4C) Regulations made by the Registrar General under any enabling provision are subject to annulment in pursuance of a resolution of either House of Parliament.

(4D) But that is subject to any provision in a relevant instrument about the kind of Parliamentary scrutiny, if any, to which the regulations are to be subject.

(4E) In subsections (4A) to (4D)—

"enabling provision" means provision made under subsection (4A) enabling the Registrar General to make regulations;

"relevant instrument" means—

(a) regulations under section 9(1) or (2), or

(b) an order under section (Marriage according to the usages of belief organisations)(4)."

**Baroness Northover:** My Lords, Amendment 123A replaces government Amendment 123, which, as I explained to the House on Monday, the Government were considering withdrawing and have just done so.

To give a little background, the Delegated Powers and Regulatory Reform Committee reported on this Bill in its fourth report of the Session. We are most grateful to the committee for its comments and recommendations, to which we responded in a series of amendments that the House debated on Monday. One of the recommendations of the committee was that regulations made under Clause 9, which deals with the conversion of civil partnerships, should be made by the Secretary of State rather than the Registrar-General and should be subject to the affirmative procedure on first use because it was not clear that all such provisions would be purely administrative in nature.

We were happy to accede to this recommendation but were also conscious that, in the future, the Registrar-General may need to update her administrative procedures. To require regulations to be made by the Secretary of State regarding such matters would be overly bureaucratic and break with the convention that the Registrar-General makes regulations relating to her functions that are purely administrative. For example, the Registrar-General already makes regulations, without any parliamentary procedure, prescribing the detail of marriage and civil partnership registration, the duties of those responsible for registration and the forms to be used.

We therefore proposed through Amendment 123, which has now been withdrawn, that the Secretary of State or the Lord Chancellor could make enabling provision for the Registrar-General to make regulations relating to administrative matters. We continue to believe that such sub-delegation is the appropriate way of dealing with these administrative details. However, as the chairman of the committee, my noble friend Lady Thomas of Winchester, helpfully highlighted to us before Monday's debate, the amendment had been drafted in a way that would allow the Secretary of State or the Lord Chancellor to sub-delegate in respect of any of their order-making or regulation-making powers in the Bill.

While it was never the Government's intention to use the proposed power in such a far-reaching way, and the use of the power was limited in any event only to where it was in connection with administrative matters relating to functions of the Registrar-General, superintendent registrars or registrars, we accept that it would not have been appropriate to move the amendment with such concerns outstanding. That is why we have tabled Amendment 123A, which is more restrictive as to the circumstances in which the Secretary of State may sub-delegate regulation-making powers to the Registrar-General. Its effect is that there are just two provisions where the Secretary of State can now exercise such a power.

The amendment states explicitly that sub-delegation may occur only where the Secretary of State considers that it is necessary in connection with the administrative functions of the Registrar-General, superintendent registrars and registrars under Clause 9, concerning conversion of civil partnerships to marriages, and Amendment 90, concerning marriage by belief

[Baroness Northover]
organisations—if the Government in future decide to allow such marriage. We consider that the sub-delegation of regulation-making powers to the Registrar-General is necessary and appropriate in these two contexts, but it must be subject to clear restrictions. In particular, there is no power for the Secretary of State to sub-delegate provision as to fees.

Amendment 123A also makes it clear that the default position is that any delegated regulations made by the Registrar-General would attract the negative procedure, unless varied by the Secretary of State in the event that she felt that this was justified because of the nature of the particular regulations. I can assure noble Lords that any regulations of the Secretary of State's sub-delegating powers to the Registrar-General will be put before Parliament for scrutiny.

The chairman of the committee has written today to confirm that the committee is content with the revised amendment; I am pleased about that. I hope that noble Lords will agree that this amendment is a measured and appropriate response to the committee's concerns, which delivers our policy intention while ensuring that there can be no inappropriate use of the powers. It is extremely nice to end Report on what I hope is a constructive and consensual basis; I note that many noble Lords left the Chamber as I started. I commend Amendment 123A to the House.

**Baroness Thornton:** My Lords, I thank the noble Baroness for that very clear exposition of this very sensible amendment. I am pleased to say that we will, of course, support it.

*Amendment 123A agreed.*

*Amendment 124 had been withdrawn from the Marshalled List.*

### *Clause 17: Interpretation*

*Amendment 125*

*Moved by* ***Baroness Stowell of Beeston***

**125:** Clause 17, page 15, line 27, at end insert—

""superintendent registrar" means a superintendent registrar of births, deaths and marriages."

*Amendment 125 agreed.*

### *Clause 18: Extent*

*Amendments 126 to 133*

*Moved by* ***Baroness Stowell of Beeston***

**126:** Clause 18, page 15, line 34, leave out "section" and insert "sections (Marriage according to the usages of belief organisations) and"

**127:** Clause 18, page 15, line 38, leave out "section" and insert "sections (Marriage according to the usages of belief organisations) and"

**128:** Clause 18, page 15, line 38, at end insert "and paragraphs 4, 5, 10 and 11 of Schedule 6"

**129:** Clause 18, page 15, line 40, leave out from "(3)" to end and insert "do not apply to an amendment or repeal or revocation made by this Act"

**130:** Clause 18, page 15, line 42, at end insert—

"(5A) Subsection (5) is subject to subsections (6) to (8)."

**131:** Clause 18, page 16, line 1, leave out "But"

**132:** Clause 18, page 16, line 5, at end insert—

"(7) The repeal of the Foreign Marriage Act 1892 made by section 13(2) does not extend to Northern Ireland."

**133:** Clause 18, page 16, line 5, at end insert—

"(8) Any amendment made by Part 2 of Schedule 5 does not extend to Northern Ireland."

*Amendments 126 to 133 agreed.*

### *Clause 19: Short title and commencement*

*Amendment 134 not moved.*

### *In the Title*

*Amendment 135*

*Moved by* ***Baroness Stowell of Beeston***

**135:** In the Title, line 4, leave out first "and" and insert "for permitting marriages according to the usages of belief organisations to be solemnized on the authority of certificates of a superintendent registrar,"

*Amendment 135 agreed.*

*Amendment 136 not moved.*

*House adjourned at 11.13 pm.*

# Grand Committee

*Wednesday, 10 July 2013.*

*3.45 pm*

**The Deputy Chairman of Committees (Baroness Fookes):** My Lords, before we begin, may I remind the Grand Committee of the usual arrangement? If there is a Division in the Chamber, we will adjourn this Committee for 10 minutes.

## Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013

*Considered in Grand Committee*

*3.45 pm*

*Moved by* ***Earl Attlee***

That the Grand Committee do report to the House that it has considered the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013.

*Relevant documents: 4th Report from the Joint Committee on Statutory Instruments.*

**Earl Attlee:** My Lords, on 5 June we announced an increase to the financial levels of fixed-penalty notices for most motoring and road transport offences, including making careless driving a fixed-penalty notice offence, following consultation last year. These changes are being made under the negative resolution procedure, and both the Fixed Penalty (Amendment) Order and the Fixed Penalty Offences Order were laid before Parliament on 28 June. Today is about a parallel scheme—fixed penalty deposits—which are for those alleged offenders without a satisfactory UK address. The draft Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order before us today will enable the levels of fixed-penalty deposits to be increased by the same amount as fixed penalties for motoring and other road transport offences, and will include careless driving as a fixed-penalty deposit.

Fixed-penalty notices are issued by police and Vehicle and Operator Services Agency—VOSA—officers. Regardless of whether an alleged offender has a valid UK address, they are issued with a fixed-penalty notice. Those alleged offenders without a satisfactory UK address are then required to pay a fixed-penalty deposit. The Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 prescribes the amount of financial penalty deposit that may be requested by an officer. To mirror the increases that are being made to most motoring and road transport fixed penalties, deposit levels will be increased as follows: £30 will rise to £50, £60 will rise to £100, £120 will rise to £200 and £200 will rise to £300.

If the nature of the offences or the manner in which they are committed are considered too severe or too numerous for the offer of a fixed penalty, the offender will be summonsed to appear before a court but will be required to pay a financial penalty deposit against any court-imposed fine. The order before us today increases the minimum court penalty deposit amount from £300 to £500. It also increases the maximum appropriate amount in respect of any single occasion on which more than one financial penalty deposit requirement has been imposed from £900 to £1,500. VOSA statistics show that in 2012-13 more than 10,500 deposit notices were issued, with a payment rate of almost 100%.

The intention of the policy behind the order was that parking offences would not be covered, as these are not road safety-related. The Committee will be aware that legislation is often complex. It has become apparent today that the order before us may capture some parking-related offences for those alleged offenders without a satisfactory UK address only, and therefore increase the deposits payable for parking offences. Departmental lawyers are currently rechecking the draft order to determine whether there is anything else that may be outside the policy's scope.

The Committee will be aware that the graduated deposit scheme is aimed mainly at foreign HGVs, which were more difficult to deal with before the previous Administration introduced a deposit scheme. The vast majority of HGVs are maximum-weight articulated vehicles moving between large depots. Parking offences are not often a problem. In the main, offences relate to road-worthiness, driver hours and overloading. Therefore, it is unlikely that any serious adverse effects will arise from this problem. If necessary, we will lay an amending order to correct the issue.

I would also point out that, for foreign cars that make an alleged parking offence, normal procedure is to attach a fixed-penalty notice to the vehicle, irrespective of where it comes from. I will write to update the noble Lord, Lord Rosser, the opposition Front-Bench spokesman, and all noble Lords who speak in this debate before moving any approval Motion in the Chamber.

The changes to fixed penalties follow up key commitments in the Government's *Strategic Framework for Road Safety*—referred to hereafter as the framework—which was published in May 2011. The framework sets out a package of measures that would continue to reduce deaths and injuries on our roads. It also recognises the importance of targeted enforcement to tackle behaviour that represent a risk to road safety. The measures announced focus on making the enforcement process more efficient, ensuring that penalties are set at the right levels to avoid offences being perceived as trivial and inconsequential, and making educational training more widely available for low-level offending.

Today's order supports the framework's objectives by introducing careless or inconsiderate driving as a fixed-penalty deposit and increasing the amount an alleged road traffic offender must pay as a result. We know that careless drivers put lives at risk and are a major source of concern and irritation for law-abiding motorists. The police will now have the power to issue fixed-penalty notices for careless driving. This will allow them greater flexibility when dealing with less serious careless driving offences, such as driving too close or lane discipline—for example, staying in the

[Earl Attlee]
wrong lane—as well as freeing them from resource-intensive court processes. Drivers will still be able to appeal any decision in court.

Fixed penalty levels have not increased since 2000. Therefore, their real value has fallen substantially, by about 25%. For example, if the £60 fixed-penalty notice level set in 2000 had increased in line with inflation, it would now be £80. Penalty levels are now lower than other penalty notice offences of a similar severity. For example, lower and higher-tier penalty notices for disorder offences, which were recently increased, are now £60 for leaving litter and £90 for being drunk and disorderly. Increasing fixed-penalty deposit levels will not only ensure broader consistency with other, similar penalty notices, it will also reflect the seriousness of these offences. In addition, setting the penalty at these levels will remove the need to review penalties in the longer term. I therefore commend the order to the Committee. I beg to move.

**Lord Rosser:** I thank the Minister for his explanation of the purpose and thinking behind the order we are considering. I understand from what he says that a hiccup may have been found that needs to be addressed, and I thank the Minister for pointing that out. I am not sure that I have entirely understood the order. No doubt my contribution will make it clear whether I have or not, and the Minister will put me right if I have incorrectly understood what it says and what it provides.

We know that the order provides for fixed-penalty deposits to be increased in line with the recent increase in fixed-penalty notices, to which the Minister referred. It also provides for a fixed-penalty deposit to be extended to less serious cases of careless and inconsiderate driving in the light of the decision that fixed-penalty notices can be issued for careless driving offences.

The Explanatory Memorandum states that the fixed-penalty deposit may be imposed by a police officer or a Vehicle and Operator Services Agency officer at the roadside on an alleged road traffic offender who does not have a satisfactory address in the UK. The purpose of this is to provide a guarantee of payment of a fixed-penalty notice or conditional offer in respect of an alleged offence.

The Minister has said that Vehicle and Operator Services Agency statistics show that more than 10,500 deposit notices were issued in 2012-13, with a payment rate of almost 100%. That suggests that if the individual who cannot give an acceptable address says that he or she cannot pay immediately, the vehicle is immediately impounded pending payment. However, perhaps the Minister could confirm that that is the case.

One would have assumed that most of the fixed-penalty deposits are, or will be, imposed by police officers rather than an officer of the Vehicle and Operator Services Agency. I say that in the context of the statement by the Minister in the Commons when this order was discussed there on 2 July, who said that the more than 10,500 deposit notices issued in 2012-13 were issued by VOSA officers with apparently none by police officers, which suggests that these notices related to commercial vehicles.

If that is the case, what happens in respect of private motorists who cannot pay—perhaps a private motorist stopped in the future in relation to a careless driving offence—when presumably it will be a police officer who will have stopped that motorist? If the motorist is unable to pay in circumstances where he or she cannot give a satisfactory address, does it mean that their vehicle will be impounded and they will be unable to drive it away, thus presumably maximising the prospects of 100% payment of the fixed-penalty deposit?

Who is in receipt of most fixed-penalty deposits? Presumably it is most likely to be foreign drivers or drivers with foreign addresses, but how many are issued to British nationals? In what circumstances, other than having no fixed abode, could a British national be deemed not to have given an acceptable address unless they are no longer resident in this country?

In the debate in the Commons, the Minister said that he would inform the Committee by letter of the absolute number of fines unpaid. I am not sure whether the Minister in the Commons was referring to fixed-penalty deposits, fixed-penalty notices or both but, whatever the case, does the noble Earl have those figures to give today and, if not, may I be advised of the answer in addition to the Commons Committee?

Finally, perhaps I may make a point about the extension of fixed penalties to careless driving cases. The Explanatory Memorandum shows the really quite dramatic fall that there has been in the number of careless driving proceedings in court over the past 10 years or so. I am not sure to what the decline can be attributed, although the Explanatory Memorandum suggests some possible explanations. However, I just hope that, with fixed penalties being introduced in relation to careless driving, a check will be kept to ensure that they are being used in only the least serious of such offences. There must be a temptation to use them in more serious cases in the light of the time savings involved and the paperwork that does not need to be completed and prepared, as it would have to be for a case going to court. I hope—indeed, I am sure—that the Minister will confirm that the necessary effective checks are in place. After all, the difference between careless driving causing a collision and injury and it not doing so can often be a matter of luck rather than the degree of carelessness in the driving. Certainly, from the Opposition, we have no objection to this order.

**Lord Bradshaw:** I have no objections to the order at all.

**Earl Attlee:** My Lords, I am grateful for the positive response from noble Lords. As regards the hiccup, I will write to the noble Lord and the noble Lord, Lord Bradshaw, with full details of the impact and how we will cover it.

The noble Lord, Lord Rosser, talked about careless driving. Of course, careless driving is not necessarily a less serious offence. Some of the offences that we are already capturing under the graduated fixed penalty are less serious than careless driving. The issue is that

we have brought careless driving into the fixed-penalty regime. I understand the noble Lord's point about dealing with a more serious careless driving offence by means of a fixed penalty when it would be appropriate to take it to court. It is a matter for the police which way they go and I am sure that they will make the judgment correctly. However, I have details here about which would come out as less serious offences, able to be dealt with by means of a fixed penalty. I have no doubt that the more serious offences will continue to be taken to court. For instance, if a driver emerges from a junction incorrectly, he may pick up a fixed penalty but if he causes another motorist to take emergency avoiding action, his chances are that he will find himself in court.

*4 pm*

The noble Lord, Lord Rosser, drew attention to the fact that the successful payment rate for these graduated fixed penalties is about 100%. He is quite right. Most of them are issued by VOSA because the target is the foreign heavy goods vehicle, which is going nowhere until the driver has paid the graduated fixed-penalty deposit against either the fixed-penalty notice or the possible court action. The noble Lord also asked what happens where this scheme is used for private motorists. The answer is basically the same. The vehicle is not going anywhere until the penalty has been paid. It can be immobilised with the so-called Denver boot. Payment is usually made by a credit card but there are provisions in the legislation to deal with the problem of someone mucking about by coming out with a very complicated payment system, such as asking several times for £5 to be taken off several cards. There are limits on how you can pay but the system is fair and I am confident that it works.

The noble Lord asked whether he can be copied in on any correspondence to his colleague in the House of Commons. Whatever we write in terms of the details to the opposition spokesman in the House of Commons will of course be copied to the noble Lord.

**Lord Rosser:** I think the Minister said that the figure given for the almost 100% payment rate related to commercial vehicles, because it was VOSA people dealing with it. Presumably, from what he has said, fixed-penalty deposits already apply to private motorists, where they relate to a fixed-penalty offence and where they have not been able to give a satisfactory address. Has there also been nearly 100% payment in relation to private motorists where it is a police officer dealing with the matter, rather than a VOSA officer?

**Earl Attlee:** My Lords, I think the noble Lord's analysis is correct. It is mainly foreign heavy goods vehicles but no doubt private vehicles will be dealt with. When we drive on the continent as private motorists, we try as hard as we can to comply with the rules in, say, Germany and German drivers would try to comply as hard as they can with our rules. I suspect that the police apply the rules pragmatically.

**Lord Rosser:** What I am getting at is that, as I understand it, at the moment, if somebody is stopped for a speeding offence they may be given a fixed-penalty notice. I had asked whether there are any circumstances in which a British national might be deemed to be giving an unsatisfactory address, other than their having no fixed abode. However, let us suppose that it is a foreign driver. In a situation where that foreign driver is unable to give a satisfactory address, presumably at the moment they are given the fixed-penalty deposit because of that. Is there, equally, a successful payment rate of or near to 100%, as there is in relation to commercial vehicles?

**Earl Attlee:** I will check with the Home Office to find out more details for the noble Lord but I suspect that the answer is yes. That is because if the police determine that a motorist does not have a satisfactory UK address—in other words, if they come from overseas or are from the UK but cannot give a decent address, which for various reasons some people cannot—there is a vulnerability that they may not pay. So they would come into scope and that vehicle will be immobilised until the graduated fixed-penalty deposit is paid. I understand why the noble Lord is concerned and if I can give him any details about the success rate of private vehicles, I will provide them.

*Motion agreed.*

## Highway and Railway (Nationally Significant Infrastructure Project) Order 2013

*Considered in Grand Committee*

*4.05 pm*

*Moved by* ***Earl Attlee***

That the Grand Committee do report to the House that it has considered the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013.

*Relevant documents: 2nd Report from the Joint Committee on Statutory Instruments.*

**Earl Attlee:** My Lords, this order will substitute a new Section 22 to, and amend Section 25 of, the Planning Act 2008 to amend the criteria for highway and rail schemes to be considered nationally significant infrastructure projects. In addition, it introduces thresholds for the construction or alteration of highways on the strategic road network and rail schemes in England only.

The new Section 22, which deals with highway schemes, sets out thresholds based on the area taken up by the scheme, which are as follows. For schemes on motorways, the threshold will be 15 hectares. For schemes on highways other than motorways that have a speed limit of 50 miles per hour or above, the threshold will be 12.5 hectares. For schemes on all other highways, the threshold will be 7.5 hectares. These thresholds will include land on which the construction or alteration will take place and any adjoining land to be used in connection with the scheme.

[Earl Attlee]

The new Section 22 will also remove any alteration or construction of a highway from the development consent order regime where the Secretary of State for Transport is not the highway authority. In addition, certain highway schemes on the strategic road network that consist of the alteration of a highway are also removed, first, where the alteration is necessary as a result of a scheme that has already received planning permission; and secondly, where an alteration is necessary because of works by the local highway authority and for which an order has already been made. In both cases, the Secretary of State has to be requested to carry out the works. The new section also removes highway schemes where an earlier order has been made and which require a further order within seven years of the first order.

This order will also amend Section 25 to introduce a threshold so that any construction or alteration of a railway will come within the ambit of the Planning Act 2008 only where the construction or alteration of the railway track is not on operational land or on land acquired for the purpose of constructing or altering a railway and exceeds a continuous length of two kilometres. The order also includes transitional arrangements for existing development consent orders, and for applications for DCOs that have been submitted for determination prior to the coming into force of the order.

These amendments to the Planning Act 2008 are being proposed to ensure that only genuinely nationally significant infrastructure projects fall within the DCO regime. Currently, the Planning Act does not set any thresholds for nationally significant infrastructure highway or rail schemes, which means that any scheme, regardless of whether it is genuinely nationally significant, must comply with the DCO regime laid out in the 2008 Act.

The DCO regime is designed to speed up and improve the planning process for large or complex schemes that are of national significance. The process has already been used to good effect in delivering schemes that, due to their scale or complexity, may have become bogged down in the alternative planning systems. In these cases, the DCO is the most appropriate regime to use. However, some schemes—for example, a 500-metre sidings extension, the widening of a slip road or a small safety improvement scheme—are of only local importance and could not be considered to be nationally significant, yet are required to use the DCO regime. The necessary level of pre-application work and the requirement for an examination under the DCO regime, which is right for genuinely nationally significant schemes, would be disproportionate, and in some cases unnecessary, for smaller, less complex or more discrete schemes.

We have also identified that small schemes which would not have been nationally significant are being delayed or not taken forward. This is because the cost and time it takes to promote a DCO—in the order of 18 months—acts as a disincentive when looking to deliver schemes as part of an in-year based programme. Consequently, we sometimes have little choice but to adopt solutions which do not yield maximum benefit to road users, but which are far more readily deliverable.

During the recent national and local pinch point fund rounds, several schemes which would have benefited from using this funding to support growth were not considered because they would have been required to follow the DCO regime and the time taken to gain the order would have put them out of time for the fund. The proposed thresholds would allow the most proportionate regime to be used, and this would increase certainty that the most optimal schemes are being delivered, which would have a greater benefit for growth. The Planning Act, as currently worded, has also led to confusion about whether certain local schemes, because they have a purpose connected to the strategic road network, should be within the DCO regime. This has led to serious delays and added costs to developers while the wording in the Act is clarified. In a few cases the planning process had to be restarted leading to abortive work and cost.

By setting out in very clear terms that only those highway schemes for which the Secretary of State for Transport is or will be the highway authority, this confusion and potential avenues for delays to much needed growth are removed. Currently, in schemes that provide a development with access to the strategic road network, to mitigate the impacts of the development they are also required to use the DCO regime, even when those works already benefit from planning permission as part of the overall development consent. Under the DCO regime, promoters must submit full consultation and assessment documentation and undergo an examination even when they are uncontested. This can take up to 18 months for the whole process and can be undertaken only after the full development site application has been granted. Under the Highways Act, uncontested schemes that are part of the planning permission for a site and the required side road orders can be made without a hearing and without a charge, therefore making this regime quicker and less expensive. These mitigation works are needed to deliver new developments and, as such, any delay or cost increase affects delivery of new growth.

Local major schemes and schemes that are developer-funded would usually have already gone through public scrutiny via the examination in public of the local plan or through a full planning application process. Under the DCO regime, they would be required to undertake them again, adding further costs and delays to the scheme delivery. The proposed amendment would remove all local major schemes from the DCO regime and allow developers certainty to proceed through one regime under the Highways Act. There is still the option of using the DCO regime for a scheme that will now fall outside the development consent regime but which is none the less considered to be of national significance by the Secretary of State on application making a direction that the scheme is of national significance. This will then bring the scheme within the development consent regime. The position for railway developments under Section 25 of the 2008 Act has similarly resulted in schemes that would not ordinarily be considered nationally significant being required to obtain a DCO pursuant to the 2008 Act, and with similar consequences. As there is currently no threshold, any scheme for the construction or alteration of a railway that cannot progress using

permitted development rights under the Town and Country Planning Act 1990 regime becomes a nationally significant infrastructure project and requires a development consent order, regardless of the size and scale of the scheme involved.

The proposed amendments to Section 25 of the Act will mean that railway construction or alteration schemes will require a DCO only if they include the laying of a stretch of railway track, whether single or multiple track, of more than two continuous kilometres on land that is not existing railway operational land. For these purposes, non-operational land would include any land acquired for the purposes of the scheme itself.

Because railways are by their nature generally long and linear, a distance-based threshold, as already applied to gas pipelines, for example, seems appropriate. Bearing in mind the scale and likely impacts of development, and mindful of the types of schemes that typically come forward, a two-kilometre threshold appears appropriate to ensure that only those schemes that have wider impact require authorisation by DCO. Smaller railway schemes and those on existing railway operational land will be able to proceed using the alternative planning procedures, reducing costs and enabling schemes to be delivered more quickly and with greater certainty.

The proposed amendment to the Section 25 of the Act will ensure that only development that is justifiably regarded as nationally significant will be required to proceed under the 2008 Act regime. These amendments have been subject to a public consultation and were strongly supported by the respondents. I beg to move.

*4.15 pm*

**Lord Rosser:** My Lords, this is another of those fairly formidable orders, certainly as far as volume is concerned. It is not always easy to understand fully, not what the point is, because I understand that, but what the argument is in favour of the order. Before I go any further, I will say that we are not opposing it, just in case the Minister gets the impression from some of my comments that we might be.

The purpose of the order, as the noble Earl said, is to make sure that only developments that can be considered to be nationally significant infrastructure projects have to be dealt with under the planning process set out in the Planning Act 2008. It does that by amending the circumstances in which projects are considered to be nationally significant, resulting in more projects proceeding instead under the planning regime set out in other legislation. The Explanatory Memorandum states that the amendments are being made with the intention of restricting the ambit of the Planning Act 2008. It states that the current provisions in respect of highway and railway developments mean,

"that developers have been faced with excessive burdens in order to deliver small, less complex or discrete but still important transport infrastructure improvements".

I have read the Explanatory Memorandum, perhaps not as thoroughly as I might have done, but it appears rather stronger on statements about problems than on specific cases to help identify the problem that is currently arisen. The noble Earl's comments about the problems of the present arrangements, which he just made, sounded quite dramatic. It would be helpful if he could provide more specific information about actual problems that have arisen to fill the gap that I believe is there so that that is on the record.

For example, how many schemes that have had to be dealt with under the Planning Act 2008 regime would not have had to be dealt with in that way if the terms of this order had been in force? What percentage of the total number of schemes dealt with under the Planning Act 2008 does that figure represent? I may not have read the Explanatory Memorandum as carefully as I should have done, and maybe the Minister will say to me that the information is in there, but at the moment I am not clear what the answer to that question is.

What additional costs have been incurred as a result of dealing with schemes under the Planning Act 2008 regime that it is now proposed are dealt with in future under the planning regime set out in the Highways Act 1980, the Transport and Works Act 1992 and the Town and Country Planning Act 1990 as appropriate? Once again, I have no feel for what these additional costs are.

The Minister made some reference to this in his speech, but how long does it take to deal with schemes under the Planning Act 2008 regime, which it is now proposed should be dealt with in future under the Acts to which I referred a moment ago, and how long will it take if they are dealt with under those Acts? What kind of saving are we talking about as far as time is concerned?

As I say, I hope that the Minister will be able to provide at least some of the information that I am seeking in order to give a better feel for what is involved regarding costs and delays, and what percentage of cases that currently come under the Planning Act 2008 would no longer do so if we made the change in the order so that they were dealt with under the one or more of the three other Acts referred to. We need to have on record the information that has led to these changes being proposed, and to be satisfied that the case really stands up and is rather stronger than simply the desires of a few interested parties for whom the less troublesome the planning process is, the better. However, I reiterate that we are not opposed to the order, despite the impression that I might have given the Minister in my comments.

**Earl Attlee:** My Lords, the argument in favour is to allow projects to go forward in accordance with the appropriate planning process. The noble Lord quite rightly asks me about actual problems. During my discussions with officials, I was clear with them that there are problems, and they privately admitted to me that they have adopted less than ideal solutions in order to avoid the DCO process. This is because when the 2008 Act was going through Parliament, to be honest, it was not fully appreciated what the adverse effects of the legislation would be. If Parliament had realised that it would not have quite the desired effect, we would not have done it but would have done precisely what these amending orders do.

The best that I can do is to write to the noble Lord with some good, specific examples of schemes that have gone ahead, unless inspiration arrives. Part of

[Earl Attlee]
the problem is that some schemes simply never see the light of day because the DCO regime is just too difficult.

The noble Lord asked about the time length under the Planning Act versus the Highways Act. It is about nine months for the Highways Act process, including consultation, and about 18 months for the DCO process. As the noble Lord will appreciate, that can cause pretty serious problems. I beg to move.

*Motion agreed.*

## Public Bodies (Abolition of BRB (Residuary) Limited) Order 2013

*Considered in Grand Committee*

*4.22 pm*

*Moved by* ***Earl Attlee***

That the Grand Committee do report to the House that it has considered the Public Bodies (Abolition of BRB (Residuary) Limited) Order 2013.

*Relevant documents: 3rd Report from the Secondary Legislation Scrutiny Committee, 2nd Report from the Joint Committee on Statutory Instruments.*

**Earl Attlee:** My Lords, this order transfers the function of BRB (Residuary) Ltd and then abolishes it. A transfer scheme will also be created that will transfer property rights and liabilities to the Secretary State for Transport, Network Rail, London and Continental Railways and the Rail Safety and Standards Board, and will come into effect at the same time as this order. I commend BRBR on the sterling job that it has done since it was created in 2001 to manage the rump of property and ill health claims left after rail privatisation. It has disposed of 90% of those properties, generating in excess of £400 million.

BRBR was incorporated as a wholly owned subsidiary of the British Railways Board to hold and manage the residual property rights and liabilities of the board following privatisation. It was always intended that BRBR would be wound up at the appropriate time and its ongoing functions, properties, rights and liabilities transferred to successor bodies. The Public Bodies Act 2011 is the only efficient and cost-effective means of divesting BRBR of its statutory functions, including the statutory liabilities that arose in the original 19th-century Acts authorising the construction of the railways. The draft order proposes to transfer the majority of BRBR's statutory functions to the Secretary of State for Transport, with a small number to be transferred to Network Rail (Assets) Ltd.

As I said, a transfer scheme will also be made under Section 23 of the Public Bodies Act—the draft is attached to the explanatory document. This will transfer the property, rights and liabilities of BRBR to London and Continental Railways Ltd, Network Rail Infrastructure Ltd, the Rail Safety and Standards Board Ltd and the Secretary of State.

The abolition of BRBR is further evidence of this Government's determination to increase efficiency, reduce unnecessary overheads and remove management layers wherever possible.

The Government carried out a targeted six-week consultation between May and July 2012. This sought the views of interested stakeholders on the abolition and consequential transfer of BRBR's functions, properties, rights and liabilities to the various successor bodies. The majority of the respondents were supportive of the abolition. Where concerns were raised, they tended to be about specific aspects of the plans, rather than questioning the underlying rationale. In addition, the Department for Transport liaised closely with BRBR and the proposed successor bodies in relation to the consultation.

London and Continental Railways Ltd is a company with specific expertise in managing and developing property assets within a railways context, as can be seen from the HS1-led regeneration at Kings Cross and Stratford. LCR is wholly owned by the Secretary of State for Transport. The properties transferring to LCR include sites with development potential, or where there is a policy of promoting or maintaining rail use.

Network Rail Infrastructure Ltd is the company that carries on the business of acquiring, owning, managing and developing the rail network in Great Britain. The properties which will transfer are assets which are of significance to the railway industry; for example, the 13.5-mile high-speed test track at Old Dalby in the Midlands, which is used for testing rolling stock. The other assets transferring are those one would expect the rail infrastructure owner to own or manage, such as memorials to railway staff killed in the wars or in railway accidents, as well as properties and structures that correct anomalies that occurred during rail privatisation in the 1990s.

BRBR currently owns and holds the intellectual property rights in 300,000 drawings and 30,000 maintenance documents relating to traction and rolling stock built before 1996. These drawings and documents have no quantifiable value but are of importance to the rail industry. I notice the noble Lord, Lord Faulkner of Worcester, ready to pounce on that issue. The ownership of the intellectual property rights in these drawings and documents will transfer to the Rail Safety and Standards Board Ltd, which is a not-for-profit company owned and funded by major stakeholders in the rail industry.

Any property, rights and liabilities which do not specifically transfer to a successor body will transfer to the Secretary of State. This includes 3,400 structures, such as bridges, abutments, viaducts, tunnels, cuttings and retaining walls associated with disused railway lines. The responsibility to maintain these for ever stems from the original Acts of Parliament which authorised the construction of the railways in the 19th century. This is known as the burdensome estate.

The burdensome estate will be managed by the Highways Agency on behalf of the Secretary of State. It has the engineering expertise, so there will be no diminution in the maintenance of these structures.

In addition, most of BRBR's employees who currently manage the burdensome estate will transfer to the Highways Agency, maintaining continuity.

A senior representative of the Highways Agency will sit on the board of Railway Paths Ltd, which is a charitable company which purchased some 220 miles of disused track and structures in 1999 as part of the national cycle network. The Highways Agency representative on Railway Paths Ltd's board will help replicate the existing close working relationship between BRBR and Railway Paths Ltd.

Waterloo International terminal, North Pole depot in west London and Temple Mills bus depot near Stratford will transfer to the Secretary of State. These properties are, or may become, of strategic importance to the rail network and have some development potential over the longer term. They will be managed on his behalf by London and Continental Railways.

The Secretary of State will manage the continuing settlement of ill health claims made by former British Rail staff. These primarily stem from medical conditions that do not arise until some time, often many years, after an individual's employment has ceased, such as asbestosis and mesothelioma. Noble Lords will recall that the board did not just operate rail services, but also hotels and ferries. The claims experts currently handling the workload at BRBR will transfer to the Department for Transport.

*4.30 pm*

The remainder of the residual estate, which includes such disparate matters as shipwrecks belonging to former rail companies that were absorbed by the board and its responsibility as head lessee for 698 freight wagons leased to Freightliner Ltd, will transfer to the Secretary of State.

There are currently 44 employees working for BRBR, including four board directors. All employees have been consulted over the plans to abolish BRBR, in accordance with TUPE regulations. Compromise agreements offered to staff at risk of redundancy have resulted in 12 members of staff entering into such an agreement, with 23 members of staff remaining eligible to transfer to successor bodies, in accordance with TUPE legislation. Of these employees, seven will transfer to the Highways Agency, two to the general counsel's office at the Department for Transport and 14 to LCR. The transfer of these employees will ensure knowledge transfer and business continuity. A further five employees will be made redundant and the employment of the four board directors will not be renewed when their current contracts come to an end on 30 September 2013.

The abolition of BRBR and the absorption of its functions into the various successor bodies, as I have described, represents a better deal for taxpayers. Total savings upon abolition will be in the order of £2.4 million per annum. Abolishing BRBR under the Public Bodies Act 2011 is extremely efficient. For example, it allows properties to be transferred to successor bodies without incurring huge costs for conveyancing, which could be up to £1.5 million for the several thousand properties involved.

In conclusion, the Government are confident that the abolition of BRBR and the transfer of its functions, properties, rights and liabilities to successor bodies will not only ensure business as usual but reduce overheads and management layers, as well as representing a good deal for the taxpayer. I beg to move.

**Lord Faulkner of Worcester:** My Lords, I intend to speak very briefly about this order. I agree completely with the Minister in his tribute to the work of the board of BRBR and its staff over the 12 years or so of its existence. The Minister may remember that I spoke about the inclusion of BRBR in the Committee stage of the Public Bodies Bill on 14 December 2010. The Minister has referred to how the British Railways Board (Residuary) has gone about fulfilling its responsibilities since 2001, and I agree with him that its record has been excellent in many respects. I have been particularly impressed by how it has dealt with the 6,400 or so industrial injury and other health claims from former BR employees, to which the Minister referred in his speech. I hope that these will continue to be dealt with as expeditiously in future as they have been by BRBR until now.

BRBR has also done really well in discharging its railway heritage responsibilities, and I thank the Minister for his reference to this issue in his speech. I speak as a former chairman of the Railway Heritage Committee and the current chair of its successor body, the Railway Heritage Designation Advisory Board, which as part of the Science Museum Group has taken on the RHC's statutory powers of designation. This is partly thanks to the efforts of the Minister, who supported us in resisting its abolition under the Public Bodies Act 2011.

Very many significant railway artefacts have found their way to BRBR stores. The Minister referred to the drawings, which are literally priceless, but there are also some wonderful paintings from the railways' art collection. Many of those are now on public display in museums and galleries all over the country as a result of, first, the statutory designation, and then the disposal procedures of the RHC and the co-operation of BRBR.

The other great contribution that BRBR has made in this area is in supporting the Railway Heritage Trust which, under the chairmanship of Sir William McAlpine, plays a huge part in restoring and preserving historic railway buildings. BRBR has been instrumental in securing third-party funding for the Railway Heritage Trust, particularly from Network Rail. In this context —I hope that the Minister will allow me to do this—I should like to put on record my own tribute to one of the unsung heroes of Britain's railways, Peter Trewin, who is the legal and secretariat director of BRBR. He was also the secretary of the British Railways Board. He is a lifetime career railwayman, whom I knew first when he worked with Sir Peter Parker more than 30 years ago. He has played a crucial role in ensuring that the railway takes its heritage responsibilities seriously. I should like to thank him on the record for that work.

There is one further matter that I wish to raise with the Minister. He talked about burdensome estate— the structures that were once part of the operational

[Lord Faulkner of Worcester]
railway—and that in the main these will be transferred to the Highways Agency. Can he give an assurance that this will not lead to roads being built on these remaining railway track beds? He will know from reading my recently published book that once the infrastructure has been built on, the opportunity to reopen railways on it is lost for ever. There are a number of heritage railways—I declare an interest as president of the HRA—that are looking at long-disused lines as future potential routes. We may also wish one day to restore some lines to the national network, as the demand for rail travel grows. That will not be possible if the infrastructure is converted into a road and we must not close down those options. I hope that the Minister will agree.

**Lord Rosser:** My Lords, I add my appreciation to that expressed by the Minister and my noble friend Lord Faulkner of Worcester for the work done by BRBR, and for the staff of that organisation. I thank the Minister for explaining the background to the order and the reasons for abolishing BRB (Residuary) Ltd, and transferring its functions to the Secretary of State for Transport and Network Rail (Assets) Ltd. The property rights and liabilities of BRBR will then be transferred to successor bodies in the transfer scheme, so I understand that it will be laid before Parliament after being made.

BRB (Residuary) Ltd is wholly owned by the British Railways Board. Perhaps the Minister can say what will happen to the BRB following the abolition of BRB (Residuary) Ltd, what functions and responsibilities it will continue to have, and for how long. The Explanatory Memorandum says that liability for handling claims in respect of industrial injuries, employment and environment-related claims, resulting from BRB activities as an operator of trains, ships and hotels, will transfer to the Secretary of State. Can the Minister give an undertaking that this will not result in a harder or a more long-drawn-out approach being adopted to such claims as a result of this transfer? How many claims are still in the pipeline and how many individuals do they cover?

I also support the request of my noble friend Lord Faulkner of Worcester that the assurance given in the Explanatory Memorandum that the abolition of BRB (Residuary) Ltd will not result in any change in the current process for releasing land designated for rail use, disposal, or for alternative non-transport use should be repeated by the Minister and thus placed on the record, including in the very specific terms that the noble Lord, Lord Falkner, was seeking.

The order deals with the abolition of one body. How many other bodies for which the Department for Transport has overall responsibility are still awaiting the outcome of a review of whether they should remain in existence or be abolished? A few weeks after we questioned whether taxpayers were getting value for money with four separate publicly funded motoring bodies, the Government announced that they were reducing the number of agencies from four to three. Is the department now looking at other issues concerning the number of bodies for which it is responsible, including whether we need even three separate government agencies delivering services to motorists, and whether we need a separate company to deliver HS2 when we already have Network Rail, which is responsible for rail infrastructure? In view of the fact that some rights and liabilities of BRB (Residuary) are being transferred to LCR, do the Government see a long-term future for London and Continental Railways Ltd and, if so, is that in its current role or a changed role?

We are certainly not opposed to the order and I hope that the noble Earl will be able to provide the answers and assurances that have been sought by my noble friend Lord Faulkner of Worcester and me.

**Earl Attlee:** My Lords, I am grateful to the noble Lords, Lord Faulkner of Worcester and Lord Rosser, for their comments. It is right to pay tribute to the work of the BRBR. I did not take the Public Bodies Bill through the House; my noble friend Lord Taylor of Holbeach did. As the noble Lord, Lord Faulkner, said, I was acting behind the scenes in respect of the RHC and I am proud of what we achieved.

Both noble Lords talked about former employees of the railway industry with long-latency illnesses such as mesothelioma and asbestosis. I assure noble Lords that they will be properly looked after. The staff, including some of the legal staff, will transfer. I do not know the numbers but I suspect that, by and large, they arise when someone is, for example, diagnosed with mesothelioma and the case is handled. Those employees have the advantage that their former employer was BR or a railway company and they are backed up by the Government. Sadly, a lot of other people are not properly covered, and that is why we are taking the Mesothelioma Bill through your Lordships' House.

The noble Lord, Lord Faulkner of Worcester, paid tribute to Peter Trewin, and I join him in that respect.

The noble Lord, Lord Rosser, talked about the transfer of some structures to the Highways Agency and the burdensome estate. There is no intention to build on those structures. The abolition of BRBR will not result in any change to the current process for releasing land designated for rail use for disposal or for alternative transport use. The current process requires BRBR to seek the approval of the Department for Transport before land retained for transport use can be sold.

To put things into perspective, BRBR has only 33 miles of former track bed, the breakdown of which is as follows: 8.5 miles is retained for access to structures within the burdensome estate; 22.5 miles is retained for possible transport use; and 2 miles is in the course of sale across the number of sites. Of those, 28.5 miles will transfer to the Secretary of State, 1.5 miles will transfer to LCR and 3 miles, mostly relating to Glazebrook to Partington, will transfer to Network Rail.

I was also asked about BRB and what happens to the board when BRBR is abolished, given that the current directors of the board will cease to be directors once BRBR is abolished. It may be helpful if I say a few words about this. The British Railways Board is a statutory corporation set up originally under the Transport Act 1962. It will continue to exist after BRBR is abolished, as it is one of the signatories to the rail usage contract. That contract is expressed

to be made under French law and cannot be novated without the agreement of the other signatories to the contract, Eurotunnel and SNCF.

Since 2001, the board has had only two members. Previously, there had to be a chairman and between nine and 15 members. Its chairman, Terence Jenner, and its remaining director, Peter Trewin, are also directors of BRBR and they will both cease to be its chairman and director when BRBR is abolished.

The Secretary of State has the power under Section 241(3) of the Transport Act 2000 to remove a member of the board from office or to vary his terms of appointment. Replacement members of the board, including a replacement chairman, will be appointed by the Secretary of State under Section 1 of the Transport Act 1962.

The noble Lord, Lord Rosser, asked about the future of LCR. The best way of dealing with that would be if I write to him.

*Motion agreed.*

## Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2013

*Considered in Grand Committee*

*4.45 pm*

*Moved by* ***Baroness Verma***

That the Grand Committee do report to the House that it has considered the Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2013.

*Relevant documents: 4th Report from the Joint Committee on Statutory Instruments.*

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** My Lords, I am pleased to open the debate on the Renewable Heat Incentive Scheme (Amendment) (No. 2) Regulations 2013. Before focusing on the detail of these amendments, I will take the time to provide some background on the renewable heat incentive scheme, or RHI.

The scheme was introduced to improve our approach to using energy in the UK. Since the scheme launch in November 2011, more than 2,200 applications have been received to date, with around £27 million-worth of RHI payments expected to be paid out in 2012-13. By this time next year, we expect to have paid out more than £53.8 million through the non-domestic RHI, and 280 gigawatt hours of reported renewable heat have been produced through the RHI to date.

The recent spending review has reinforced our commitment to long-term support for renewable heat. The agreed budget for 2015-16 of £430 million enables us to continue to work to stimulate and achieve ambitious growth of renewable heat and, in turn, to create new jobs in the green sector.

The UK is legally bound to achieve a set 2020 renewables target of 15%, with interim targets between now and 2020. Our most recent interim target is to reach 4.04% of total energy from renewables as an average across 2011-12. Today's statistics show that we achieved 3.94% across those years, short by just 0.1%, but within the margin of error for a statistical estimate. This means that we are currently on track for our 2020 target, but we must continue our work to ensure that this remains the case.

Heat is the single biggest use of energy. We use more energy for heating than for either transport or the generation of electricity. Therefore, it plays an important role in the UK being able to achieve this target. At the point of opening the RHI scheme, renewables produced less than 2% of our total demand. We are aiming for this to increase to 12%. In addition to achieving the renewables targets, the RHI will help to reduce greenhouse gas emissions, providing a platform on which to build towards eliminating greenhouse gas emissions from our buildings by 2050.

Ofgem administers the scheme and provides financial, tariff-based support for commercial, public sector, industrial and community renewable heating installations for the 20-year life of their tariff. The scheme has already provided financial support to a range of technologies, including biomass, solar thermal, heat pumps and biogas combustion. Applicants to the scheme are also spread across various sections of the non-domestic sector—small businesses, and public sector and community projects. The uptake of renewables is increasing but needs to be increased further for us to achieve our 2020 targets.

As with all taxpayer-funded schemes, all expenditure must be justified and provide good value for money. I should like to take a moment to reflect on the last time that I spoke to your Lordships about the RHI, which was back in March.

We discussed the introduction of a budget management system for the RHI. Following the March debates, in April, the degression-based approach to managing the RHI was introduced. This mechanism ensures that the RHI does not overspend while providing clarity and assurance to the industry about how the budget will be managed. Since those debates, we have seen the first degression take place, against medium biomass.

Medium biomass has deployed to the level that a trigger point has been met, which resulted in a 5% tariff reduction. Gradual deployment-led managed decreases like this will allow us to direct deployment so that we achieve an affordable, good mix of technologies in the scheme and ensure value for money in tariffs paid. It is important that we continue to evaluate the RHI scheme so that we ensure that it is incentivising uptake while ensuring value for money.

Before moving on to the main topic of today's session, I will update the Committee on wider change and additions to the RHI. These regulations form part of an ambitious and busy schedule for renewable heating policy. The importance of low carbon and renewable heat in the long-term energy mix for the UK, and the "world first" nature of RHI, necessitates an ongoing programme of improvements, expansions and enhancements. For instance, the Government expect to be announcing the details of a domestic RHI very soon. We have also just concluded, on 28 June, an early tariff review consultation for the non-domestic scheme, proposing revised tariff levels for technologies

[Baroness Verma]
where we have not yet seen the levels of deployment that we need. Initial feedback from industry is positive, and we are really pleased with the level of response to the consultation. We will analyse the consultation responses and further develop the policy before announcing our decisions in the autumn.

We are not only focusing on improving the existing scheme; we are also working on introducing support for other exciting renewable heating technologies through RHI. Our consultation last September made proposals for the introduction of support for air source heat pumps, large-scale biogas combustion, biomass direct air and expansions in the forms of waste that are eligible for the scheme. We also consulted on introducing new specific support for deep geothermal heat and for biomass and bioliquid combined heat and power. We are now considering whether we need to adjust any of our plans as a result of the spending review announcement on 26 June, and will publish an update on progress on the extensions to the non-domestic scheme and tariff review alongside our announcement of the domestic policy.

The regulations before us bring in a number of amendments delivering several distinct and wide-ranging changes, protecting the quality of the air that we breathe through the introduction of emissions limits for new biomass installations supported through the scheme; increasing the uptake of renewable heat by reducing the burden associated with metering; extending the scheme to commercial drying and cleaning, which takes place outdoors; and allowing the relocation of accredited installations. We are also using this opportunity to provide greater clarity to some areas of the regulations. It is our intention that these regulations will be made on 23 September, coming into force on 24 September.

The amendments in these regulations are predominantly based on the outcomes of the RHI *Providing Certainty, Improving Performance* consultation published in July last year. This consultation attracted 100 responses, and the final policy outcome was published in the Government's response on 27 February this year. We proposed a method of demonstrating compliance with the air quality emissions limits announced in March 2011. More than 70% of respondents supported the proposals, and therefore the compliance regime detailed in these regulations remains very similar to the consultation proposals.

The simplification of metering requirements involved a number of proposals. These were aimed at reducing the number of heat meters required and driving down the cost of participating in the RHI, while protecting the public purse by ensuring that only eligible heat is paid for. More than 90% of respondents were in support of our proposed changes. Following this high level of support, we have moved to revise the RHI metering requirements, with the resulting requirements being very similar to our original proposals.

In addition to these headline changes, four smaller scheme improvements are included in these regulations and have been made with the intention of increasing uptake to the scheme. Two improvements were included in the July consultation: relocation of an installation and allowing certain processes to occur outside. Both were supported by those respondents who commented on them. These regulations will make it possible for an RHI accredited installation to be relocated and to continue to receive tariff payments for the remainder of the 20 years, provided that, on relocation, the system meets the necessary requirements. It will also be possible to receive RHI payments for commercial cleaning and drying processes that occur outside. Both these changes were supported by those respondents who commented on the proposed amendments.

Finally, two further amendments to the scheme were included to provide clarity to the regulations. The first is the addition of ground water as an eligible heat source for ground source heat pumps. The second is a minor word change to allow renewable installations that are used as the assessment installation—for an installer to join the microgeneration certification scheme—to be eligible for the RHI.

As these amendments show, the performance of the RHI is constantly under review. The need to increase uptake of renewables through this scheme is paramount to achieving our 2020 renewables target. Improvements to the scheme are focused on increasing uptake while still ensuring best value for money.

As I am sure the Committee will agree, good air quality is vital to our health, and it is essential that the RHI scheme does not have a negative impact on our environment. Since the announcement of the scheme in March 2011, we have made it clear that we are committed to introducing air-quality emissions limits for solid biomass boilers. The main pollutants which can be increased through increased combustion of biomass are particulate matter and oxides of nitrogen.

Currently, combustion of biomass contributes only a very small proportion of these harmful emissions. However, to date, biomass has made up a significant proportion of RHI accredited installations, and we expect this to continue. Where biomass replaces either heating oil or coal, there is no increase in the emissions levels of key air-quality pollutants. However, when replacing gas or electricity, the emissions are higher, meaning that it is important to limit the air-quality implications of burning biomass. The emissions levels to be introduced for biomass boilers producing heat from solid biomass are set at 30 grams per gigajoule of thermal heat input for particulate matter and at 150 grams per gigajoule for oxides of nitrogen.

New participants will be required to demonstrate that they meet the emissions limits by providing emissions certificates to Ofgem. These certificates will be provided to participants by the manufacturers of biomass boilers. When producing the certificates, manufacturers will be required to test their boilers and to show clearly through the certificate what types of biomass fuel their boiler can combust without exceeding the emissions limits. Participants will not be permitted to use types of biomass fuel that are not listed as being compatible with their boiler on their emissions certificate, and they will be required to demonstrate to Ofgem that they are meeting this requirement.

We are keen that that does not prove to be overly burdensome for manufacturers of boilers and we are therefore introducing flexibility through type-testing. This will mean that, when there is a "family" of boiler

models which are identical apart from their capacity, only a limited number of them will need to be tested. Also, plants which have had to obtain an environmental permit will not be expected to provide an additional emissions certificate.

*5 pm*

I will now cover the other major change to the regulations, the revised metering requirements of the RHI. This is another technically complex area covered by these regulations. Since the launch of the scheme in November 2011, the metering requirements have been highlighted as overly burdensome and considered a disincentive to joining the scheme. We place great importance on feedback from industry and from the scheme operator, Ofgem. This feedback led to our proposal to revise the metering requirements of the scheme. As all payments made on the non-domestic RHI scheme are on the basis of metered heat, it is essential that this is done absolutely right, by ensuring that only generated heat being used for an eligible purpose is paid for. Fundamentally, we remain committed to the principle that the non-domestic RHI payment is based upon metered heat. At least one meter will always be required to measure the heat used for eligible purposes.

The proposed changes to metering are to allow more flexibility and to reduce the number of unnecessary meters being installed. Under the revised regulations, there will be an increased use of heat loss calculations when participants have taken appropriate energy efficiency measures and insulated external piping to industry standards. We also recognise alternative ways of determining heat generated. When a back-up gas or electric fossil fuel heat source is still in place, we will allow its fuel consumption to be measured rather than the heat output. We will assume that 100% of the fuel consumed is converted into heat, ensuring the taxpayer never loses out to inefficient heat conversion, while still providing additional flexibility to the participant.

In moving on to the smaller scheme improvements included in these regulations, I will focus first on the two that are aimed at increasing uptake to the scheme. Allowing the relocation of an accredited RHI installation will increase the uptake of companies providing heat to third parties. The ability to relocate while continuing to claim RHI will remove the barrier of needing to obtain a long-term lease to make a renewable heat source a viable option. On relocation, the installation will need to be reassessed by our delivery partner Ofgem to ensure that it still meets the accreditation requirements before payments recommence. We recognise the need to provide greater reassurance for investors that renewable heat is a good investment. This change will help provide confidence that their asset will retain value, by enabling a renewable heat installation to be moved.

The final amendment expands the number of "eligible purposes" under the scheme. Currently, to be eligible for the RHI, any heat produced must be used within a building. However, this has restricted the suitability of the scheme for some industrial processes. In order to incentivise additional renewable heat, these regulations open up the scheme to commercial cleaning and drying, which can take place outside. This would allow woodchip and wood pellet drying to take place without the need to construct a shell of a building around the process. Allowing cleaning that takes place outside will encourage the use of renewables for heating water for commercial cleaning processes, such as washing a fleet of commercial vehicles.

The emissions limits being introduced were agreed on by both DECC and our colleagues in the Department for Environment, Food and Rural Affairs. Defra is the lead department on issues relating to air quality. The limits set were at a level intended to significantly reduce the air quality impacts of the RHI, but where we could also expect significant growth in the biomass boiler market and the rollout of renewable heat. The aim of introducing these limits is not to exclude any particular biomass fuel from the scheme but rather to ensure a good level of air quality. We accept that it will be harder for some fuels than others to meet the requirements of the scheme. However, we should not be supporting fuels which cannot meet the stated emissions limits.

The changes I have set out will apply to England and Wales, and Scotland. RHI policy in Northern Ireland is devolved. Colleagues in Scotland have confirmed that they are content with the changes I have set out today, and Scottish Ministers have given their consent to the regulations as required by the Energy Act 2008. Northern Irish Ministers administer a separate but equivalent scheme and have been notified of the intended changes, as have Welsh Ministers.

In conclusion, the RHI must drive up the uptake of renewables for us to meet our 2020 renewables targets. These amendments go some way to making that scheme more accessible. The renewables market is still relatively young and the improvements and extensions planned for the RHI will result in our seeing a significant increase in the uptake of renewable heat. The scheme is a key driver in helping to develop that market. I therefore commend the regulations to the Committee.

**Lord Teverson:** My Lords, I always find on these occasions that it is a great motivation to speak to a crowded House. I congratulate the Minister on her mastery of the subject. I did not even see her grasp for her water once, which is a tremendous start to the debate. I now understand the context of drying and cleaning. I could not quite work that out; I was thinking of washing machines, but it was clearly nothing to do with that.

This is a serious subject. As my noble friend said and as the Explanatory Memorandum sets out so well, heat is an important part of our energy usage in this country. It is an important part of decarbonising our energy requirements and meeting our 15% target by 2020. Starkly, as the Explanatory Memorandum says, we are now at something like 2% and we need to get that up to 12%. That is a big ask over the next few years and therefore I very much welcome this instrument.

There are bits of the regulations that I particularly like. One is the emphasis on air quality, which is really important in terms of solid biomass, and another is the flexibility that it gives to ensure that the scheme will be much more user-friendly than it is at the moment. The consultation showed that some of the

[Lord Teverson]
metering requirements were difficult, and I congratulate the Government on taking that on board and trying to fix it in a very practical way. I shall come back to a couple of issues on that but, as I say, the air quality side is important as well. In my modest house I have two wood burners, and if the wind is in the wrong direction the air quality in my house is pretty bad with the solid biomass of the logs. However, that is not quite what this statutory instrument is about.

I wanted to ask the Minister about the domestic RHI but she has more or less answered that. I hope that the urgency on that continues because, apart from anything else, there has been a stalling of that industry in terms of waiting for the scheme to come along. It is very important to make sure that it starts now.

Coming back to the regulations and the Minister's speech, she said that certain of these technologies have not met their potential with the RHI so far. What are those technologies? I particularly welcome deep geothermal technology as one of the things that the Government are starting to look at in terms of future moves on these schemes. That is excellent.

I should like to ask a question about Regulation 23. It refers to new Regulation 42A(3)(a), which states that,

"each length of piping which is 10 metres or less and situated outside a building is properly insulated".

Although this document has technical depth, it says that the piping must be "properly insulated", and we see that that is key when reading the document all the way through. I am surprised that there is not more of a specification there. I presume that there is an industrial definition of "properly insulated" but, to monitor and control the process, it would seem to be important to have a specification relating to the insulation. It is a term that I would like to understand.

When equipment is moved—again, I welcome this as part of the flexibility—does it have to be recertified or does it have so-called grandfather rights in its new situation?

My last question is on the impact. Paragraph 10.2 of the Explanatory Memorandum talks about air quality limits and states clearly that they will affect only people who are investing in the scheme. Does that mean that the air quality standards for an RHI installation are different from those for boilers otherwise—or are there air quality standards for these boilers otherwise? I should be very interested to understand whether there is a differentiation here and, if so, why, and how we move forward on that—or perhaps I have misread or misinterpreted that.

I am delighted to say that I have just completed a solar thermal installation on my house—at my own expense, obviously, as there is not a domestic RHI. I got it there just in time for the wonderful sunshine that we are having at the moment, and I am really enjoying free hot water. The more that British industry can do this, the better.

**Lord Grantchester:** I thank the Minister for her extensive introduction to the regulations. The RHI, launched in November 2011, is a key financial scheme focused on encouraging climate change mitigation and is especially relevant to off-grid businesses in rural areas which are dependent on heating oils.

On all sides of the House, renewable heat is recognised as an essential component of the UK's long-term energy mix. In a debate on the order in the other place yesterday, the Minister there gave details regarding uptake of the scheme, which is very encouraging—indeed, the Minister here has mentioned some of those figures today.

However, I am concerned about the application of the degression system, whereby tariffs are reduced if one or other or both of two thresholds of expenditure are reached—namely, a technology-specific trigger where an imbalance in take-up between technologies occurs and a total trigger that puts an overall cap on spending. While I am not critical of there being an overall total trigger, I am nevertheless concerned that the total may be set rather low, and therefore I am concerned about its effect on applications. If, as of 1 June this year, a scheme payout to date of £13 million has resulted—as the Minister in the other place said yesterday and the noble Baroness has repeated here today—the degression system is already in action.

I am concerned that a tariff reduction of 5% at this early stage will discourage schemes coming forward. The Minister in the other place went on to say that £53.8 million is expected to be spent by this time next year. Will this result in further tariff reductions and does this total include the effect of degression? When an application is made under the scheme, when is it known at what level the tariff will be paid? While it is not specifically relevant to the regulations, it is nevertheless important to understand how the scheme has worked to date and how details of the degression payments are published in real time to applicants. Will the payment level be set at the time of an application and thereby not be affected by later uptake by further applicants?

The developments in the RHI that the Minister has outlined today are entirely to be welcomed. Meeting renewable energy targets should not come at the price of increased risks to public health or the environment. Several key outputs will be achieved. First, air quality will be protected through the introduction of emission limits for new biomass installations supported through the scheme. Secondly, the number of excessive, burdensome compliance requirements will be reduced, thereby increasing take-up; for example, by reducing the burdens associated with metering.

Thirdly, the relocation of accredited installations will be permitted, thereby allowing asset values to be maintained and the economic life of assets to be extended. The Explanatory Memorandum is commendable in its assessments, judging that the total resource cost increase will amount to about 8% over the lifetime of the policy, that additional testing and certification costs are likely to be largely immaterial and that Ofgem's administrative costs be limited to 0.5% of total costs. Against this, the benefits are estimated to outweigh costs by the commendable margin of eight to one.

*5.15 pm*

I have one or two further questions for clarification. The regulations are set to come into force in September 2014, allowing manufacturers to have new biomass boilers fully compliant by that time. The memorandum identifies that, where a biomass installation replaces a non-net-bound fuel-based installation such as heating oil or coal, its introduction can improve emissions and therefore there should be no delay to any scheme. In contrast, where biomass displaces electricity or gas-fired heat, the air quality impacts are negative. Will the Minister clarify that, in the run-up to September 2014, biomass installation applications that displace electricity or gas-fired heat may well be rejected?

There is already confusion; I have heard that environmental health officers are recommending the rejection of installations even for oil-fired boilers because of the air quality requirements. Will the Minister provide assurances that in any assessment of an installation the environmental health officer will be able to provide advice on all the necessary compliances, whether under the Clean Air Act or under the requirements of these regulations? Will the limit set by the regulations supersede the limits beyond the Clean Air Act 1993? The Explanatory Memorandum is otherwise excellent in clarifying that the regulations will now be extended to small installations with a thermal capacity of under 50 megawatts.

The Minister has spoken regarding clarity on the types of fuel that the department expects will not comply in future, such as damp logs and soft woods. Will she clarify what checks and inspections will be able to identify whether any have been used and what penalty would then follow?

The regulations are necessary to allow the RHI scheme to evolve and achieve the take-up for renewable heat that is needed for the UK to achieve its 2020 renewable target. From this side of the Committee, I am content to agree to the regulations today as another step forward. I anticipate a further statement extending the RHI to the domestic market before the recess.

**Baroness Verma:** My Lords, I am grateful to my noble friend Lord Teverson and the noble Lord, Lord Grantchester, for their warm welcome to the regulations. I am also grateful for the quality, rather than the quantity, of the debate. In this House, the one thing that we do well is contribute with quality. A number of questions have been asked and I will try to go through them as much as I can. If there are any questions that I fail to answer today, I will undertake to write after reading *Hansard*.

My noble friend Lord Teverson asked what "properly insulated" means. I am advised that it means that it is a section of external piping that does not exceed the maximum permissible heat loss outlined in British Standard 5422. I am sure that means a lot more to the noble Lord, Lord Teverson, than it does to me. "Properly insulated" is defined in Regulation 3 of these regulations.

My noble friend also asked about relocation. I think that I referred to that in my opening remarks. However, I am quite happy to repeat myself if the noble Lord wishes me to. Basically, if any plant is relocated the participant will be entitled to the remainder of the existing tariff for the remainder of the tariff lifetime. The plant does not have to meet air quality requirements, for example, as it is not a new accreditation, provided that the original accreditation is provided.

My noble friend also asked whether air quality emissions limits will apply only to future installations. The RHI emissions limits in these regulations are more stringent than those that apply to the highest-emitting boilers currently in the market. As a result, we will be encouraging the use of lower-emitting boilers.

On the question of which technologies have not met their potential, the currently supported technologies that have been subject to the tariff review are large biomass—that is, with a capacity of over 1 megawatt—ground source heat pumps and solar thermal.

The noble Lord, Lord Grantchester, asked why we were using degression so early in the process. The deployment of medium biomass has exceeded the rate that we had expected when the tariff was originally set, which suggests that the tariff is higher than is necessary to incentivise installers. Therefore, we may be overcompensating further installations if we do not adjust our tariffs downwards. Although we encourage biomass through its size, we do not want to support one type of technology in particular when there are other technologies out there that may do as well and provide equal value for money—and it is value for money that we are really keen to get. I hope that that has answered the noble Lord's question.

**Lord Grantchester:** I am listening very carefully to the noble Baroness. Following the wise words of the noble Lord, Lord Teverson, my concern is that it is quite a big ask to reach our limits by 2020. I am concerned that, if the degression totals are set too soon and too early, we may choke off from coming forward those who could potentially help to meet these quite stringent targets.

**Baroness Verma:** The difficulty is achieving a balance between value for money and ensuring that we meet our targets. However, as I said, I think that we are managing to provide some encouragement and there is a great deal of interest. What we do not want is for one energy source to have an unnecessary advantage over another.

My noble friend Lord Teverson asked about the limits on boilers outside the RHI scheme. There are no emission limits for boilers outside the scheme but other measures may apply—for example, where environmental permits are required or where a boiler is within a smoke-controlled area under the Clean Air Act.

The noble Lord, Lord Grantchester, asked some other questions but I may have to respond to him in writing because I am finding it slightly difficult to read the responses. However, I shall finish with a response that I can read concerning a question from the noble Lords, Lord Teverson and Lord Grantchester, on the urgency of the domestic scheme. Details of the domestic scheme will be announced before the Recess—that is, in a matter of a few days rather than months.

[Baroness Verma]

I hope that, on that note, noble Lords will support these regulations and I commend them to the Committee.

*Motion agreed.*

## Alternative Investment Fund Managers Regulations 2013

*Considered in Grand Committee*

*5.24 pm*

*Moved by* ***Lord Newby***

That the Grand Committee do report to the House that it has considered the Alternative Investment Fund Managers Regulations 2013.

*Relevant documents: 4th Report from the Joint Committee on Statutory Instruments.*

**Lord Newby:** My Lords, these regulations implement the alternative investment fund managers directive, taking into account the European venture capital fund regulation and the European social entrepreneurship regulation. Member states are required to transpose the directive by 22 July this year.

The directive creates a new regulatory framework and a passport to market funds across the EEA for managers of investment funds that are not already authorised under the undertakings for collective investment in transferable securities, or UCITS, directive. The regulations also create an optional lighter framework for smaller managers of venture capital and social investment funds, including a marketing passport.

The investment management industry is one of the UK's success stories. It serves millions of customers all around the globe and forms a key part of the UK's financial sector, managing £4.9 trillion of funds and earning an estimated £12 billion a year for the UK economy. Around one-third of European assets under management are managed out of the UK and the industry is a significant provider of high value-added jobs and skills, with clusters of expertise in London and Scotland and across many UK regions.

Because of the importance of this sector to the country, sensible and proportionate application of the requirements of the directive is vital to safeguarding its future. Therefore, we have consulted extensively with industry and other stakeholders while developing these regulations. As well as setting up face-to-face meetings with a range of trade associations and individual firms, we published a discussion paper and two consultation papers. We received 27 responses to the main consultation paper. Jointly with the Financial Conduct Authority we also set up an open forum event, which was attended by more than 300 stakeholders. The regulations have been developed in line with the feedback that we received, and the asset management sector has been very supportive of our overall approach to their introduction.

We have made full use of the flexibility provided by the directive to ensure that our industry has as reasonable a timetable of transition to the new regime as possible. UK firms must therefore be authorised or registered in accordance with the directive before 22 July next year. A firm will need to comply with the relevant directive requirements by the time that its authorisation or registration is approved. The full scope of the directive applies to firms managing cumulative assets with a value in excess of the threshold of €500 million, or €100 million if they are leveraged—that is, if they have used debt to supplement investment. Other firms may also opt in to the full scope of the directive if they choose.

The directive prescribes uniform regulatory standards for fully AIFMD-authorised firms, in particular a requirement to appoint a depositary, new rules on delegation, disclosure of leverage to investors, liquidity management standards, common standards on valuing fund assets and restrictions on asset-stripping for private equity firms. In exchange, fully authorised firms will be able to benefit from a marketing passport. This will allow them to market the funds that they manage across the EEA, based on a single authorisation with the Financial Conduct Authority.

There is little discretion for individual member states on exactly how they implement these requirements. However, we are working closely with the FCA to ensure that these new rules are applied in a pragmatic and proportionate manner. We will not add any new regulatory requirements to firms below the threshold, with the exception of a few minor obligations imposed by the directive.

Implementation of the directive will represent a significant shift in the way that the European alternative investment fund management sector operates, and it is likely to increase operational costs for many firms. We have therefore explored every opportunity to minimise the negative impacts on UK firms. In addition to the 12-month transitional period to which I have already referred, we have made a number of policy decisions, including the use of available derogations to keep these impacts down. Also, we have not applied any gold-plating in our implementation of the directive. No directive requirements above the minimum required for implementation will be applied to UK firms and no other new requirements are being introduced.

Our regulations are also designed to ensure that UK investors continue to have access to funds in other jurisdictions, so that EEA and third-country managers seeking to market here will benefit from a similar transitional period to UK firms. EEA managers who cannot make use of the marketing passport will be able to market to UK retail investors on the same terms as a UK firm would, provided that the fund has been recognised as providing sufficient investor protection.

Third-country managers will be able to market to UK investors once they have completed a simple notification process with the Financial Conduct Authority. They will also cease to have to comply with the reporting requirements imposed by the directive as soon as there are no longer any UK investors invested in their fund. Again, this overall approach to non-UK firms follows the strategy of replicating the status quo of marketing arrangements as closely as possible within the framework of AIFMD.

Although the directive has not been without controversy in the industry, I hope that I have been able to reassure the Committee that the Government have worked closely with the sector to ensure that we have taken the most sensible approach possible to the implementation of the regulations. I am confident that the regulations will help to ensure an appropriate balance between protecting the interests of investors and promoting and safeguarding an important and successful UK industry.

*5.30 pm*

**Lord Burnett:** The Floor is the noble Lord's.

**Lord Davies of Oldham:** My Lords, I am delighted to have the Floor. I cannot think of anything more exciting than to discuss this SI with the Minister. It looks as though only the two of us will participate in this absolutely fascinating debate.

Of course, we agree with the broad terms of the SI. After all, the origins of the directive were derived several years ago from a position that we largely endorsed in government. The Minister will appreciate that we very much agree that supervision and control should be robust and effective, and we expect the Financial Conduct Authority to fulfil that function. The SI indicates the need of this important part of our investment and service economy to have the opportunity to seek custom right across the European Community.

The Minister may nod his head enthusiastically, because I know his views on the European position, but I notice a dearth of Conservative support in the Committee on this issue. On issues such as this, in the absence of some of those noble Lords who, like their colleagues on the Conservative Benches in the Commons, always smell a rat in anything to do with the European Community, one always worries whether any such indication exists as far as this SI is concerned. Certainly, our side supports it.

The Minister identified the issue of costs, which, it is clear from the documentation, are not negligible. However, I ask the Minister to come clean on something that I do not think occurred in the other place. When this SI was being considered and the consultation had taken place with the industry, how is it that the Government, with extraordinarily adroit timing, also included in the Finance Bill £150 million of tax cuts to the industry? In this a case once again of the Government, with their well-known friends in the City and conscious that some costs are involved—I am not underestimating the costs—thinking that some softening of the impact must be made by other aspects of government policy?

All I can say is that I do not agree with that. I am not at all convinced about the necessity for that. After all, as the Minister was at pains to point out, and as was also made clear in the other place, there are considerable benefits from what the noble Lord referred to quite clearly as a passport for effective operation in Europe. That is not a negligible thing. Ordinary citizens pay for a passport when they have the right to go abroad, so I am not clear why the costs appear to have been partially defrayed by the Government acting in another legislative capacity to moderate costs for the industry with the tax concessions that they have made. After all, it is not as if the industry has not for some time been quite adroit at lobbying on this issue—with considerable effect, I might add.

I apologise if I am a little slow in understanding the position but perhaps the Minister can spell it out. I understand entirely the €500 million threshold on activity and the €100 million base, but I take it that those who fall below that threshold yet are in this category of activity are subject to some regulation from the Financial Conduct Authority. I was not quite sure whether the Minister had spelt that point out. I apologise to him in advance if he did and I merely missed it.

We endorse this SI and hope that it will bring to the industry the opportunities of using the passport for effective operation in Europe. I have one last question. The Minister referred to the date by which we were obliged to comply. What are the prospects of the other 27 states complying with that timetable? He says, "Well, we haven't gold-plated this particular SI". No, but fair is fair and a level playing field must exist across Europe. We therefore want some assurance that other actors on the European scene will meet the same obligations with the same degree of scrutiny and control as is to be applied in the United Kingdom.

**Lord Newby:** My Lords, I am most grateful to the noble Lord for his intervention. Since he referred to the timing of this debate, I must apologise that we have chosen to have it on a particularly exciting afternoon in the first test. Australia were 19 for two when I last heard.

**Lord Davies of Oldham:** That is almost the best news that the Minister has ever presented to me in any Committee, or in the House.

**Lord Newby:** I do not want to dampen the mood but the noble Lord will know the score at which England were all out, so I am pleased to have been able to assist him marginally.

Regarding the noble Lord's questions, he raised the point about whether the decision in the Budget to abolish Schedule 19 stamp duty reserve tax was a sop to the industry that was being hit by this directive, to which the answer is no. It is not, if for no other reason than that the firms covered by this directive were not bearing the stamp duty. This directive covers hedge funds and private equity, which were not paying the stamp duty reserve tax in the first place, so that is not the case. The reason for abolishing that relatively modest bit of stamp duty was that we were undertaking a package of reforms designed to enhance the competitiveness of the funds industry, and to help secure our status as the global asset management centre. The scope within the EU to expand that kind of activity of fund management is considerable, in our view, and we do not want to constrain it by unnecessary burdens of any sort.

The noble Lord asked about the state of play in terms of the implementation of the directive elsewhere. We are aware that Austria, Bulgaria, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands,

[Lord Newby]
Romania, Slovakia and Sweden have stated that they will implement the directive by the deadline. The majority of those member states now have relevant legislation being considered by their parliaments. I am afraid that I cannot give the noble Lord any information on the state of implementation in Belgium, Estonia, Greece, Hungary, Lithuania, Poland, Portugal, Slovenia or Spain. However, as far as we are aware, there is no reason to believe that any of those jurisdictions will miss the deadline.

The noble Lord asked whether sub-threshold managers are authorised by the FCA. Yes, they are. All sub-threshold managers will be subject to at least the same regulatory standards and oversight by the FCA as they are now, so they are not unregulated. I hope that I have answered the questions posed by noble Lords and, on that basis, commend the regulations to the Committee.

*Motion agreed.*

## Coroners and Justice Act 2009 (Consequential Provisions) Order 2013

*Considered in Grand Committee*

*5.41 pm*

*Moved by* ***Lord McNally***

That the Grand Committee do report to the House that it has considered the Coroners and Justice Act 2009 (Consequential Provisions) Order 2013.

*Relevant documents: 2nd Report from the Joint Committee on Statutory Instruments.*

**The Minister of State, Ministry of Justice (Lord McNally):** My Lords, the order amends two key provisions in the Coroners Act 1988. The first is Section 4A(8), which governs the jurisdiction of coroners in Wales. The second is Section 13, which allows applications to be made to the High Court by, or under the authority of, the Attorney-General, for an inquest, or fresh inquest, to be ordered. These provisions of the Coroners Act 1988 will not be repealed when the bulk of Part 1 of the Coroners and Justice Act 2009 is implemented later this month. The purpose of the draft order is simply to amend the terminology of these provisions to make them consistent with the Coroners and Justice Act 2009.

Part 1 of the 2009 Act contains a number of important reforms to the coroner system. It creates the new post of chief coroner, the new judicial head of the system, and makes a number of changes that will help to speed up the inquest process, improve consistency between coroner areas and drive up standards.

Part 1 of the 2009 Act also introduces new terminology, including new titles for coroners and the areas they are appointed to. It also introduces the new concept of an "investigation" into a death, of which the inquest will form part. Under the 2009 Act, the coroner or jury will make "determinations and findings" at the end of an inquest rather than reaching a "verdict" and making an "inquisition".

Following a consultation exercise earlier this year, we intend to commence the majority of the 2009 Act provisions, and new coroners' rules and regulations, on 25 July. When we implement the 2009 Act, we will repeal the 1988 Act but with two important exceptions. The first exception relates to the deployment of coroners in Wales. Section 4A(8) of the Coroners Act 1988 provides that a coroner appointed to a district in Wales is to be considered a coroner for the whole of Wales. This gives additional flexibility in the deployment of resources in Wales. It means that a coroner with specialist skills can temporarily act outside his or her own district without having to be appointed as a coroner in the other district. This is particularly useful for urgent matters which may arise, such as the need to request a post-mortem examination or to facilitate organ donation. The draft order, therefore, updates the language of Section 4A(8) to make it consistent with the 2009 Act. It does this by changing the word "coroner" to "senior coroner" and "coroner's district" to "coroner area". We will repeal the rest of Section 4A.

*5.45 pm*

The other 1988 Act provision that we need to save is Section 13. This important provision allows an application to be made by, or under the authority of, the Attorney-General to the High Court for an inquest or a fresh inquest to be ordered. Noble Lords will no doubt remember the important debate that we had about implementation of the post of chief coroner when the Public Bodies Bill was before this House. The Government listened to concerns expressed about the importance of the role of the chief coroner and agreed to take the post out of scope of the Public Bodies Bill. This was on the proviso that Section 40 of the 2009 Act, which created a new system of appeals to the chief coroner, would be repealed. In doing so, we were clear that we would instead retain Section 13 of the 1988 Act.

The order therefore amends the terminology of Section 13 to match the language of the 2009 Act. For example it allows the High Court to order an investigation, rather than an inquest, into a death where the coroner has refused or neglected to hold one, or a fresh investigation where a coroner has already held one. The order also allows the High Court to order a different coroner within the coroner area to conduct the investigation or fresh investigation. Alternatively, the chief coroner will be able to direct a coroner in a different area to conduct the investigation, using the power in Section 3 of the 2009 Act. Retaining Section 13 of the 1988 Act preserves an important means for bereaved people to challenge the outcome or conduct of a coroner's investigation.

A concern was raised in the other House about the effectiveness of Section 13 for those bereaved people who are dissatisfied with a coroner's investigation. The recent example regarding the tragic deaths at Hillsborough should be sufficient to demonstrate the merits of Section 13. Last December, my right honourable friend the Attorney-General lodged such an application with the High Court on behalf of the families of those who died at Hillsborough. The High Court subsequently quashed the original inquests and ordered new ones to be held. We expect the inquests to begin early next year. Without Section 13, the only available means for

challenging a coroner's decisions would be by means of judicial review, which was not an option for the Hillsborough families, given the time limits for bringing such proceedings.

In summary, I can reassure noble Lords that the Government remain committed to reforming the coroner system, to make it more responsive to the needs of bereaved families. Retaining those two provisions from the 1988 Act will help us to achieve those aims. I therefore commend this draft order to the Committee. I beg to move.

**Baroness Finlay of Llandaff:** I am very grateful to the Government for this order, and I am glad to speak to it today. I thank the Government for the way in which this is happening because there has been a gentle transition that aims to enhance the experience of the public. When they are bereaved, people are incredibly vulnerable but there will now be a process that is kinder to them. If an investigation is required it can be conducted. If the investigation shows that it was a natural death, the coroner can simply register the death and the family will be spared the court process if it is not necessary. If, however, a hearing is required, the family will get an inquest and they will have the hearing that they may seek. That means that it meets the needs and expectations of the bereaved. I hope that having a process that is much clearer in its stages will also help with that group of deaths that are deaths by suicide. It has been particularly difficult even to ascertain the data on how many such deaths occur because of how they are often recorded. The term "verdict" is used, which is often seen as suggesting that there was some kind of criminal intent behind the suicide, when death by suicide is a very tragic event for everyone left behind.

This transition should also raise the overall standard of the experience of families from lower standards to the standards of the better and best. I have discussed the order with coroners, and there is an expectation that it will achieve what we have all wanted, which is to drive up the overall standard. I hope that the Government will encourage the chief coroner to have the courage to put pressure on those coroners that people have been concerned about.

My final point is to welcome the flexibility for Wales. We will have new transplant legislation before us in Wales fairly soon, and it will be particularly important that at all times of the day or night the coroner can be contacted in relation to organ retrieval. Having the ability to provide cross-cover should mean that we will have the service that is needed and that the coroners themselves will have a working life and home life that are compatible with enjoying living in Wales, rather than being exhausted. I am grateful to the Government.

**Lord Beecham:** My Lords, I have some second-hand acquaintance with the coroner system because I was articled to a coroner and subsequently became his partner. He was a part-time coroner in the north-east of England. I cannot resist the temptation—I rarely do—to recount a couple of incidents from that time. The first was the remarkable theory constructed by the coroner's officer, who is a police officer attached to the coroner's office, about a chap who was found drowned in the bath. The officer came up with the wonderful theory that this man had committed suicide by deliberately banging himself on the back of the head so that he would become unconscious and drown in the bath. My principal was not entirely convinced by this theory, and accidental death was recorded instead. On another occasion he had to show a bereaved widow the body of her husband for identification purposes. The body was produced from the cabinet and uncovered, and she acknowledged that this was indeed her husband. She turned to go away and my partner, as he then was, began to put the drawer back into the cupboard, but then she said, "Do you mind, Mr Henderson, if I have another look?". "Oh yes, my dear", he said, and pulled the thing out again and uncovered it. She looked down at her husband and said, "Well, there you are"—I will not repeat the expletives—"may you rot in hell". So a coroner's life can be quite an interesting one.

With regard to the order, my honourable friend Robert Flello raised a couple of points in the other place. The first was to regret the fact that it did indeed take something of a struggle to persuade the Government to retain the office of chief coroner. However, they did that, and I join the noble Baroness in commending that and, up to a point, the changes before us today. She and the Minister are right to refer to the continued availability of Section 13 of the 1988 Act and the possible process of obtaining an order from the Attorney-General. However, that is by no means a simple procedure; rather, it is convoluted and, given that the noble Baroness has reminded us of the state of mind of bereaved families, it is one that is difficult to pursue.

The point is that in the 2009 Act there was provision for an appeals procedure. My honourable friend asserted, and I agree with him, that it would have been better to have retained or implemented that provision, particularly as the alternative to the Attorney-General procedure, cumbersome and protracted as it is, will now be only to rely upon judicial review. Judicial review, of course, poses a question of cost and of course will largely be out of scope of legal aid. It will be yet another difficult process for someone, particularly in the circumstances of bereavement, to negotiate, both practically and emotionally. It is unsatisfactory that the Government have not retained—or, rather, implemented—that provision for an appeals process, and are leaving the potential applicant with an unsatisfactory choice between the Attorney-General process and JR, the access to which is highly questionable .

In replying to my noble friend, the Minister, Mrs Grant, said simply:

"The right answer is to raise standards".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 26/6/13; col. 7.]

As my noble friend pointed out, the two things are not incompatible. Of course it may well be, as both the Minister and the noble Baroness have said, that standards should indeed be raised, but that does not necessarily mean that there will not on occasion be the perceived necessity on the part of bereaved members of the family or others to challenge a decision. There ought to be a proper scope to facilitate that, and the concern is that that is not easily available under the order as it will stand.

[LORD BEECHAM]

The other aspect that the Minister might perhaps touch on is what is left to be done. Just last week we had a response to the consultation on other aspects of implementing the reform, and I assume that there will be further orders to come. I do not know if he is in a position to indicate when that might happen—I hope it will not be for a while so that some of us, the Minister included, can take a breath in the mean time from the tide of regulations and orders that we will be discussing over the next couple of weeks. One might have thought that it made sense for the whole thing to be brought together, but we have to deal with the order today. In the circumstances, we cannot object to it but we have regrets about the limited way in which the 2009 Act is being implemented. We look forward to seeing our how the other aspects of it that remain to be dealt with emerge in due course.

**Lord McNally:** My Lords, I am grateful to both the noble Baroness, Lady Finlay, and the noble Lord, Lord Beecham, for their contributions. I pay tribute to the noble Baroness. Whenever a Government listen to wise advice and make an adjustment of policy, the Opposition immediately and churlishly brand that a U-turn rather than what good government should be, which is to listen to wise advice. I think that everyone now believes in the campaign that the noble Baroness very successfully worked on to restore the office of chief coroner; I do not think that anyone would now go back on that decision. Indeed, one of the more welcome things about what has happened is that His Honour Judge Peter Thornton has hit the ground running in his job. He has been visiting coroners across England and Wales, meeting stakeholders, issuing guidance to coroners on issues such as the location of inquest hearings and less invasive post mortem examinations, and drawing up proposals for specialist cadres of coroners to conduct certain types of investigation. He has been working very closely with my own office, the MoJ, on the rules and regulations under the Act, and has set up a new coroners' training group and is working with the Judicial College to deliver training for coroners. Therefore, the hopes and expectations that the noble Baroness, Lady Finlay, has for the office are justified by the new chief coroner's "hit the ground running" attitude to his appointment, as I described it. He certainly has my support in that.

*6 pm*

I am pleased to note, and welcome, the noble Baroness's point about the way that the new chief coroner is approaching his appointment and the way that the Act is being implemented. He is taking a kinder approach at a point of vulnerability. These cases are always very heart-wrenching, particularly those involving suicide. A case came across my desk recently in which the parents simply did not want to believe that their son had committed suicide. Reading the case, I thought that one should always give the widest margin of interpretation where there is a scintilla of doubt, because it is the people who are left behind who are left with the questions and doubts. It is a point of real vulnerability.

The collection of data is key to lifting standards, and I think that the chief coroner will bear that in mind as part of his exercise in lifting standards. As the noble Baroness rightly said, the flexibility now given to the coroner system in Wales is another plus as far as this legislation is concerned.

The noble Lord, Lord Beecham, tempted me to tell a couple of stories of my own but I had better not do so. We can do it in the margins. I can tell the Committee that they are good ones but I know that the noble Baroness in the Chair would give me one of her looks.

I understand the point that the noble Lord, Lord Beecham, made about Sections 13 and 40. For cost and other reasons, we did not want to implement Section 40. If we are to help bereaved families to achieve closure, the addition of a further layer of appeal rights is not the answer. This can simply encourage distraught relatives to pursue lengthy legal challenges and to exhaust all avenues of redress. The Government consider that it is better to focus on raising the standards of coroner investigations to ensure that bereaved families are satisfied with the process rather than to have new appeal rights and expensive litigation. Retaining Section 13 in addition to judicial review will provide a mechanism for challenges to coroners' decisions where things go wrong. Bereaved families wishing to pursue claims of judicial review will be able to apply for legal aid, subject to the usual tests of means and merits.

There are no further SIs in the pipeline at the moment. Our new rules and regulations will come into force on 25 July, and no further changes are planned.

There is one other point not raised by either the noble Baroness or the noble Lord that I should put on the record. One of my noble colleagues raised the particular problem experienced by Jewish and Muslim families over the speed of their burial services. I looked into this matter following my noble colleague's representation and found that there is a lack of consistency across coroner services in England and Wales over what is available in the way of out-of-hours cover, which allows for quick decisions in this kind of area. It depends in large part on local authority and police authority funding of the coroner or his or her officers. However, the chief coroner plans to work with local authorities and police authorities to produce guidance for coroners on providing out-of-hours cover, which we hope will meet these communities' concerns.

**Lord Beecham:** I am very grateful to the Minister for raising this matter, which I confess I have also been approached about and had intended to raise, but immersed as I have been in several regulations and debates and preparation for them, I am afraid I had overlooked that. I am particularly grateful to the Minister for making that clear. I suppose that I ought also to declare an interest as a member of the Jewish community in that regard.

**Lord McNally:** I sincerely hope it is a facility that the noble Lord does not need to use personally for a very long time. As he says, both the Muslim and Jewish communities have raised this issue, which again proves the value of having a chief coroner. It means that when communities raise an issue it can go to the

chief coroner, who will now take responsibility for issuing guidance and getting the right responses. I thank the contributors and again hope that this SI will be accepted by the Committee.

*Motion agreed.*

## National Health Service (Licensing and Pricing) Regulations 2013

*Considered in Grand Committee*

*6.08 pm*

*Moved by* ***Earl Howe***

That the Grand Committee do report to the House that it has considered the National Health Service (Licensing and Pricing) Regulations 2013.

*Relevant document: 4th Report from the Joint Committee on Statutory Instruments.*

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The Health and Social Care Act 2012 gave Monitor a new role in regulating provision of NHS services and an overarching duty to protect and promote the interests of patients by promoting NHS provision that is economic, efficient and effective. These regulations provide key details that enable Monitor to carry out its new functions of licensing providers of NHS services and regulating the prices payable by commissioners for NHS services, in order to protect and promote patients' interests.

The licence is a key tool by which Monitor will regulate providers of healthcare services for the NHS. Monitor has now taken on its new licensing powers in relation to foundation trusts and we expect this to extend to other providers of NHS services from April 2014.

A provider's licence is made up of licence conditions that set out the requirements providers must meet if they wish to provide NHS services. In future, all providers of NHS services must hold a licence unless they are exempt under separate regulations, which were laid before the House on 4 July.

Monitor published its first set of standard licence conditions in February this year, after approval by the Secretary of State for Health. They include standard conditions such as requiring licensees to provide information to Monitor, which will apply to all licence holders, or to particular types of licence holder, such as conditions applying to providers whose services are designated as a commissioner-requested service. There are also special conditions that will apply to an individual provider, such as conditions for NHS foundation trusts. The Act sets out a process that Monitor must follow in order to either modify a standard licence condition or include a new standard licence condition that applies to all licences, or licences of a particular description.

These regulations allow the Secretary of State to determine the extent to which licence holders should be able to influence Monitor on any changes to the standard licence conditions, to ensure a balance between allowing real concerns to be addressed and not imposing unnecessary delays to the licence modification process. Monitor intends to engage potentially affected licence holders on the scope and scale of any changes to the standard licence conditions before reaching the statutory process, much as it did when engaging on the first set of standard licence conditions.

The statutory process then ensures that there will be proper engagement with affected licence holders and other relevant bodies about any change to the standard licence conditions, and includes a statutory check on Monitor's ability to change the standard licence conditions. This check comes in the form of an ability for licence holders who would be affected to object to the change.

The regulations set the two objection thresholds at 20% of licence holders or 20% of market share of NHS provision. If either threshold is met, Monitor will be unable to make the change. However, Monitor may refer the issue to the Competition Commission. Monitor could make the changes only if the Competition Commission judged that the changes were in the public interest.

I turn to the second aspect of these regulations. Monitor has powers to take action where a person—which may be a licence holder, an exempt provider, NHS England or a clinical commissioning group—has not complied with a request for information documents, records or other documents that it considers necessary for Monitor to carry out its regulatory functions. Monitor also has powers to take action where a provider is in breach of the requirement to hold a licence or a condition of the licence.

The Act sets out Monitor's powers to impose three different types of discretionary requirements, and I remind the Committee of them as a refresher. The first is a variable monetary penalty of such amount as Monitor may determine, up to 10% of the organisation's turnover in England. The second is a compliance requirement, or, in other words, action to stop the breach in question or to ensure that it does not happen again—for example, a requirement that a provider ceases plans to dispose of an asset needed for the provision of a specified service. The third is a restoration requirement, an action to revert to the position before the breach occurred. For example, Monitor could require that a provider reopen a service that it had closed in breach of a licence condition.

Monitor's guidance sets out how it will determine the use of its enforcement powers, including fines, and these regulations set the definition of turnover that Monitor will use when determining the level of fines. Simply put, providers' turnover is defined as their turnover from NHS income. The turnover of clinical commissioning groups and NHS England is defined in terms of administrative spend; total spend would be vastly disproportionate.

I turn to the final aspect of the regulations. The Government want to ensure that the health system delivers better health, better care and better value for money. Better value for money and more accurate pricing will be a key part in delivering enhanced services to patients and in equipping the NHS to improve standards. The new system will drive improvement through providing mechanisms to ensure that prices better reflect costs of supply, incentivise better data

[Earl Howe]
recording and collection and make available better incentives and stronger compliance mechanisms. Monitor will have the specific duty of promoting healthcare services that represent value for money and maintain or improve quality. Monitor will achieve this by working with NHS England to regulate prices and set rules for determining prices for local pricing and flexibilities.

*6.15 pm*

NHS England will set the scope of the tariff and define "units of service" for which prices or rules will be specified. NHS England will also set rules for determining local variations. At all stages, Monitor and NHS England will have to agree elements of the tariff with each other.

The Act includes a new statutory basis for providers and commissioners to raise formal objections to the methodology that Monitor proposes for calculating national prices. It is very like the process that I have described for objecting to modifications to licence conditions. Following comprehensive engagement, Monitor will be required to publish a final draft of the national tariff and allow 28 days for commissioners and providers to object formally to the proposed methodology for calculating national tariff prices for specified services.

Following the consultation, Monitor will calculate the percentage of commissioners objecting, the percentage of providers objecting and the percentage share of supply held by the objecting providers, which allows providers' objections to be weighted proportionate to the nationally priced services that they deliver. If the threshold for any of these three types of objections is met, Monitor has three options. Monitor may drop the proposed methodology in light of the objections received; it may put forward alternative proposals in the light of the objections received, and publish these for consultation; or, it may refer the proposed methodology to the Competition Commission, which would then be required to investigate and report on whether the proposal was appropriate.

These regulations set the three objection thresholds, each one at 51%. The thresholds are higher than for licensing. This is because the threshold for licensing was based on precedents for objections to licence changes in other sectors, but there are no precedents for price-setting. The department proposed a higher threshold for pricing because the group of potential objectors is wider there. Following consultation, the department has concluded that setting the thresholds at this level will effectively balance the interests of patients, while protecting commissioners and providers from a pricing methodology that could be unfair.

These regulations will help to enable Monitor to undertake fair and proportionate regulatory action, and will support a fair and transparent system for setting tariff prices. I commend the regulations to the Committee.

**Baroness Finlay of Llandaff:** I have a short query, which I hope that the Minister can clarify for me. It relates to the cross-border flow between England and Wales, either of providers or patients as users of services where NHS Wales is paying for services provided by NHS England or a provider in England. I would like reassurance that there will be no way that the experience of patients going from Wales into England, or the ability for providers from Wales to provide services to patients along the border, are in any way jeopardised within these arrangements and that they have equality within the provision.

**Lord Hunt of Kings Heath:** My Lords, I declare an interest as chair of an NHS foundation trust, president elect of GS1 UK and a consultant and trainer with Cumberlege Connections. I am grateful to the Minister for his explanation of these regulations. I want to put a few points to him.

I start with Part 2 on licensing, specifically paragraph 3 concerning monetary penalties. Can I ask the Minister about the logic of fining providers, when all that happens is that worse care will be provided for patients as the organisation will have less money? I think that the figure of up to 10% of turnover would virtually bankrupt most providers. While I certainly accept the need for penalties and consequences for failure, I wonder whether they would be better being not financial, as the reality is that they will not happen in many cases because the people who suffer will be those who get services. I just wonder about the logic of that.

It took NHS England months to wake up to the fact that the A&E problems were to do with the failure of systems, but for months it was pressing CCGs in some parts of the country to fine hospitals for poor A&E performance. I think that NHS England has completely lost the plot when it comes to understanding what is happening in the health service. I cannot think of a more hopeless response to the crisis than to come along and say, "We should fine hospitals". I worry about this whole approach to fining. I say to the Minister that there are very limited signs that systems understand the winter problems and there is a real reluctance to get to grips with what needs to happen. This is a worry for the future which may not have much to do with the regulations, but my seeing the Minister here represents a good opportunity to raise them with him.

Does the Minister think that fines and targets can lead to some perverse incentives? Of course, it is right to issue targets, but I wonder whether the Minister might comment on a very interesting section of the *Chief Medical Officer's Report* for 2013, published earlier this year, where she refers to the low number of instances of MRSA and C. diff. I do not think that there is any doubt that the targets that were set for the health service have been responsible for the focus that has led to this very welcome improvement. My understanding is that part of the response to this by the NHS has been to use antibiotics which should have been reserved for hard-to-treat infections. There is now real concern that the antibiotics that go with those hard-to-treat infections have been used rather widely, which is causing great problems in more general infection control. According to the CMO, while the typical, large, 1,000-bed acute NHS hospital has two to three MRSA bacteraemias per year and 50 to 60 C. diff cases, 400 to 500 bacteraemias involving Gram-negative bacteria can occur in a 1,000-bed-type hospital,

10% to 15% of them being due to strains resistance to those antibiotics for hard-to-treat infections. You can reach a point where individual targets become counterproductive because the focus of the NHS is simply on C. diff and MRSA and not on the wider infections which clearly need to be tackled as well.

Will the regulations lead to more specific targeting which can in turn lead to perverse incentives, or is a more sophisticated approach likely to be taken? It is clear that the Chief Medical Officer is concerned about the way in which some MRSA and C. diff targets are leading to perverse behaviours.

On Part 3, the rationale for each of the thresholds described for penalties, prices and licence changes has not been explained in relation to an evidence base. In other words, why are the thresholds where they are? What work has been done to suggest that those are the right thresholds? Of course, now they will only be tested post-implementation, but it would have been good to have seen a clearer review mechanism that enabled a sensible approach.

In respect of the mechanisms to lodge an objection to the pricing methodology, my understanding is that the Foundation Trust Network has stated throughout the development of the policy that the 51% threshold for an objection, together with the denominator comprising all tariff services, is too high a threshold to be met. Is the noble Earl prepared to look at this? That might be a reasonable approach for general objections to the general approach, but it is insufficiently sensitive to address sections of the tariff that may be inadequately compensated—cancer services, for example. The noble Earl will be aware that there were issues around the tariff for children's services and women's services. My reading of that is that if you were a specialist adviser your chances of reaching the 51% threshold would be very limited. Could this be looked at?

If my noble friend Lord Warner were here I am sure he would raise this. It is the question of what happens to non-foundation trusts. I know that Monitor is working closely with the NHS Trust Development Authority, but I would welcome clarity about what will happen to trusts outside Monitor's remit to ensure that there is an even-handed approach across all providers in the sector. No one is more admiring of the work of Sir Peter Carr as chair of the NHS Trust Development Authority. The noble Earl knows that Sir Peter has held chairmanships under both Governments for many years. While he is a marvellous person, there is a fear that he will hold the chairmanship of the NHS Trust Development Authority for many years to come because of the issue about what on earth will happen to those non-foundation trusts that are clearly not going to reach FT status any time soon.

The noble Earl mentioned the Competition Commission.

*6.27 pm*

*Sitting suspended for a Division in the House.*

*6.36 pm*

**Lord Hunt of Kings Heath:** My Lords, I was just going to refer the Minister to his remarks about the Competition Commission, because it is relevant to the regulation. There is great confusion in the health service about the commission's role. The Minister will know that there have been interventions in Dorset and Bristol on what seem to be entirely sensible proposals. In Dorset it was the merger of two small acute trusts, while in Bristol it was the "divvying up", I suppose the phrase is, of services between two trusts in order to allow for more patients to be treated and all the benefits that you get from that, with one trust focusing on some services and the other focusing on others. In anyone's terms, those are both examples of the kind of configuration of services that is entirely sensible and that the Government in other guises are supporting.

It is quite clear that the OFT has been trying to get into the health service for some years. I will not get into Section 75 now but the OFT now feels that it can get into the health service, although it is very difficult to see what the point of that would be. The OFT is independent, I understand that, but Ministers have been silent about this. There is utter confusion in the health service and, I believe, among the regulators about how to run these two issues—on the one hand, the Competition Commission and OFT approach, and on the other the need for us to be aggressive in terms of the reconfiguration, and in many cases the centralisation, of services. This matter needs to be teased out.

The regulations ought to be considered in relation to more general policy on pricing as part of the national tariff. The Minister will know that in October last year, when the House of Commons Health Committee had its annual accountability hearing with Monitor, David Bennett, the leader of Monitor, talked about perverse incentives with regard to the tariff. He said that he was not sure that they were fundamental to the pricing system but he agreed that the way it is working can create perverse incentives. One example he used was that if we want to move activity out of hospitals and into a community setting, one thing we have to think about is that there some real transition costs which will have to be paid one way or another. The question is: is the tariff being adjusted to allow for that?

The Health Select Committee published its subsequent report in March of this year and concluded:

> "The setting of the tariff is of great significance to the NHS because of its implications … for short term cash flows in the system, and for longer term incentives for",

service changes. It recommended that,

> "Monitor and the NHS Commissioning Board … attach a high priority to this process … because NHS parties need to know the likely tariff in 2014–15 as soon as possible, but also because the long term framework of the tariff will have an immediate effect on service design and the integration of service provision".

I would be interested to know whether it is the noble Earl's view that progress is in fact being made, so that the regulations and the tariff to which they relate are much more sensitive to the need for change and reconfiguration in the health service. We must reorganise our services to get higher quality, and the work that Bruce Keogh is doing is surely driving us towards this. However, it sometimes seems as though some of our regulatory apparatus is now at risk of

[Lord Hunt of Kings Heath]
getting in the way of what, on anyone's evidence base, would be a sensible move. I would be interested if the noble Earl is able to respond to any of those points.

**Earl Howe:** My Lords, I am grateful to both noble Lords who have spoken. First, I hope that I can reassure the noble Baroness, Lady Finlay, on the question she posed about the cross-border aspects of patient flows and the tariffs that apply. The tariff will apply only to services commissioned by commissioners in England: that is to say, CCGs and NHS England. Any provider who provides healthcare services for the purposes of the NHS which are covered by the proposed tariff will be able to object to Monitor's proposed methodology, so I do not see that patients in Wales or on the border need to be anxious about this.

The noble Lord, Lord Hunt, asked a series of questions. First, he questioned the wisdom of allowing Monitor to fine providers. It is worth saying that the discretionary requirements which Monitor can impose, as laid down in these regulations, are based on those used for other regulatory offences. In fact, they are based on Part 3 of the Regulatory Enforcement and Sanctions Act 2008. That menu of options has been picked up and put into the 2012 Act.

As regards fines, we need to be clear—and it is certainly my understanding—that Monitor regards fines as a last resort. It will need to consider each case carefully and has a responsibility to ensure that its regulatory actions are reasonable, while deterring poor conduct in the future. It must also consider whether its other powers would be more appropriate. I understand the point that the noble Lord has raised but it is unlikely that we will see Monitor exercising this power with any frequency. We must bear in mind that 10% of turnover is of course a maximum figure.

The noble Lord asked about the thresholds as laid down in the regulations. The 20% threshold relating to licensing is based on a similar process which was in place for modifying licences in the energy sector. We considered that the situation here in the health service was comparable, and it is a threshold that commanded general acceptance.

*6.45 pm*

On pricing, the thresholds are higher than for licensing because the threshold for licensing was based on precedents for objections to licensing changes in the energy sector, as I mentioned. However, there are no precedents for price-setting in any other sector. We have proposed a higher threshold for pricing because the group of potential objectors is wider. We consulted on this and, following that, we concluded that setting the thresholds at this level would achieve the balance that I referred to earlier between the interests of patients, the interests of commissioners and the interests of providers.

We have taken on board the concerns raised by stakeholders during the consultation and we will of course keep the thresholds under review as the system beds down. We will carry out a review of the licensing regime as a totality in 2016-17.

Turning next to the noble Lord's question about the foundation trust pipeline, the 2014 deadline for reaching foundation status has, I think, done quite a lot to galvanise the NHS trust sector and drive improvement. However, in the light of the Francis report, we have allowed the NHS Trust Development Authority to agree trajectories for NHS trusts to reach foundation trust status but to go beyond 2014 on a case-by-case basis. In doing so, we will ensure that the primary focus of the NHS Trust Development Authority and of NHS trusts themselves is on improving the quality and sustainability of services for patients.

The noble Lord asked whether I felt that the regulations might lead to a target culture, which could have perverse effects. I do not see the regulations in that light. There are in fact no targets for healthcare standards in these regulations. The regulations set the thresholds for objecting to Monitor's proposals on licensing and pricing, as I have described, so in that sense they are very narrow in their focus.

Next, the noble Lord asked me about the role of the Competition Commission. The commission clearly has wide experience of determining similar questions in a number of other sectors. It is the body best placed to consider these questions for the purpose of the new licensing and pricing regimes. It will not apply a competition-based approach but, rather, a test of public interest in the case of licence modifications and a test of appropriateness in the case of the pricing methodology. However, I am sure that I do not need to remind the noble Lord that the issue of competition in the health service is not by any means new, and it was for that reason that the Co-operation and Competition Panel was set up under the previous Administration. As he knows, that panel has now been absorbed into Monitor.

**Lord Hunt of Kings Heath:** I am of course aware of that but the reality is that the Competition Commission and the OFT did not really start intervening in the NHS. Clearly, they have been interested in areas such as dentistry for some time but they have not intervened in the wider NHS. I think that the problem is that it is now very unclear what is to be done when a reconfiguration of services takes place and, although I do not want to anticipate tomorrow's debate on funding, it must be in the interest of greater centralisation of services, which, in a Competition Commission/OFT view, might be said to lead to reduced competition.

The problem is that it takes long enough to get change through in the NHS. The costs of delay to the health service if there is a Competition Commission referral and an investigation are very high. I wonder whether we can really afford it, given the imperative to get on with service changes. I know that guidance has been issued by Monitor which has reflected on the various roles, but at the end there is a lot of confusion. The Competition Commission and the OFT have not exactly made themselves available to debate either in Westminster or in the NHS about those issues. All we can read are the slightly acerbic comments by the staff of the Competition Commission and the OFT. I am not aware that they have ever made themselves available for a general discussion about their policy approach, which might be helpful in these circumstances.

**Earl Howe:** I take the noble Lord's point about uncertainty and confusion that I know exists in certain parts of the health service as to what all this means. I can tell him that officials in the department have had some very productive discussions with both the OFT and the Competition Commission to ensure that their approach need not set unnecessary hares running as regards apprehensions that a purist competition-based approach will be taken by these bodies. I am satisfied that that will not happen. My advice is that the Competition Commission, in particular, has welcomed the input of departmental officials in terms of the factors that need to be brought into play when making a judgment on what is in the best interests of the health service and patients.

At the same time I am aware that a number of useful events and conversations took place within the health service itself when we clarified with providers the considerations that the OFT and the Competition Commission will look at in proposed mergers. We are ensuring that when proposals are made the benefits of mergers are clearly defined in terms that will resonate with the competition authorities. The noble Lord is right that we are in new territory in many senses, but I am optimistic that the system will work in the way that it should. It is certainly about looking at competition aspects but, more pertinently, looking at the criteria that I mentioned earlier, such as the public interest in the case of licence modifications, the test of appropriateness in pricing methodology, and in the case of mergers, the interests of patients in the health service. The OFT and the Competition Commission must take into account the benefits of a proposed reconfiguration if they consider it under the Enterprise Act 2002. I remind noble Lords that that is the governing Act, so in theory at least, we have been in this situation for more than 10 years. In doing so the competition authorities must consider whether those benefits would outweigh any substantial lessening of competition that they find.

The noble Lord asked about the tariff, and in particular, primary care. We agree that payment mechanisms need to be aligned to drive better outcomes and better value for patients. They also need to be responsive and flexible, for example to enable services to be provided in an integrated way. Monitor and NHS England will work together to move the tariff in this direction. They are best placed to do that given their different roles.

The noble Lord asked me what would happen if the tariff proved to be inadequate. We expect the tariff in future more closely to relate to the costs of providing particular services. If the price payable for a service would make it uneconomic for a provider to provide a service, Sections 124 and 125 of the 2012 Act provide for a process for local modifications of the price payable.

My advice is that NHS England and Monitor are working very well together in this regard. Guiding principles have been defined and six shared principles for pricing have been agreed: that the pricing mechanism should enable and promote improvements in care for patients and taxpayers; that it should enable efficient providers to earn appropriate reimbursement for their services; that it should have regard to sustain the NHS offer in the long run; that it should not preclude the delivery of the Secretary of State's mandate for NHS England; that it should have regard to the principles of better regulation; and that it should support movement towards a fairer playing field for providers.

I hope that I have answered most if not all the questions, but I undertake to write to noble Lords if I have failed to do that.

**Baroness Finlay of Llandaff:** I seek a small point of clarification. I take the example of a Welsh provider that is providing services for Welsh patients and that is also licensed to provide for patients coming across from England. In the event of them being deemed not to meet the conditions and therefore a fine potentially being levied at 10%, would that be only 10% of the contract issued on behalf of the English patients? Two very different healthcare systems will be operating.

I realise that this is complex, but the two healthcare systems are becoming more divergent yet the population on the border has to access both sides, I am concerned that these are some of the things that need to be clarified. It is a detail, I know.

**Earl Howe:** My Lords, it would only be the turnover relating to English patients that would govern that particular equation.

*Motion agreed.*

*Committee adjourned at 6.58 pm.*

# Written Statements

*Wednesday 10 July 2013*

## Afghanistan: Roulement

*Statement*

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever):** My right hon. Friend the Secretary of State for Defence (Mr Philip Hammond) has made the following Written Ministerial Statement.

The next roulement of UK forces in Afghanistan is due to take place in October 2013. Around half of these units will form Task Force Helmand under command of 7th Armoured Brigade. The remainder will deploy within Helmand and also to other locations in Afghanistan —particularly Kandahar and Kabul—as part of the UK's overall contribution. The forces deploying include[1]:

7th Armoured Brigade Headquarters and Signal Squadron (207)

Headquarters 101 Logistics Brigade

857 Naval Air Squadron

3rd Regiment Royal Horse Artillery

The Royal Scots Dragoon Guards (Carabiniers and Greys)

9th/12th Royal Lancers (Prince of Wales's)

Elements of The Queen's Own Yeomanry

Elements of 5th Regiment Royal Artillery

Elements of 14th Regiment Royal Artillery

Elements of 16th Regiment Royal Artillery

Elements of 32nd Regiment Royal Artillery

Elements of 39th Regiment Royal Artillery

Elements of 47th Regiment Royal Artillery

32 Engineer Regiment

63 Works Group Royal Engineers

Elements of 36 Engineer Regiment (Search)

Elements of 42 Engineer Regiment (Geographical)

Elements of 101 (City of London) Engineer Regiment (Explosive Ordnance Disposal)

Elements of 10th Signal Regiment

Elements of 14th Signal Regiment (Electronic Warfare)

Elements of 15th Signal Regiment (Information Support)

Elements of 21st Signal Regiment (Air Support)

Elements of 30th Signal Regiment

Elements of 39th (Skinners) Signal Regiment

1st Battalion Coldstream Guards

The Highlanders, 4th Battalion The Royal Regiment of Scotland

2nd Battalion The Royal Anglian Regiment

3rd Battalion The Mercian Regiment (Staffords)

Elements of 3rd Battalion The Royal Anglian Regiment

Elements of 3rd Battalion The Royal Welsh

Elements of 4 Regiment Army Air Corps

Elements of 9 Regiment Army Air Corps

2 Logistic Support Regiment The Royal Logistic Corps

27 Theatre Logistic Regiment The Royal Logistic Corps

Elements of 7 Theatre Logistic Regiment The Royal Logistic Corps

Elements of 11 Explosive Ordnance Disposal Regiment The Royal Logistic Corps

Elements of 29 Regiment The Royal Logistic Corps

Elements of 151 (London) Transport Regiment The Royal Logistic Corps

Elements of 158 (Royal Anglian) Transport Regiment The Royal Logistic Corps

Elements of 162 Movement Control Regiment The Royal Logistic Corps

Elements of 159 Supply Regiment The Royal Logistic Corps

Elements of 148 (Expeditionary Forces Institute) Squadron The Royal Logistic Corps

2 Medical Regiment

202 (Midlands) Field Hospital

203 (Welsh) Field Hospital

2 Close Support Battalion Royal Electrical and Mechanical Engineers

Elements of 7 Air Assault Battalion Royal Electrical and Mechanical Engineers

Elements of 101 Force Support Battalion Royal Electrical and Mechanical Engineers

Elements of 103 (Hybrid) Battalion Royal Electrical and Mechanical Engineers

111 Provost Company Royal Military Police

Elements of 114 Provost Company Royal Military Police

Elements of Special Investigation Branch Regiment Royal Military Police

Elements of The Military Provost Staff Corps

Elements of 1st Military Working Dog Regiment

Elements of 1 Military Intelligence Battalion

Elements of 2 Military Intelligence (Exploitation) Battalion

2 (Army Cooperation) Squadron, Royal Air Force

617 Squadron, Royal Air Force

51 Squadron Royal Air Force Regiment

58 Squadron Royal Air Force Regiment

Number 5 Royal Air Force Force Protection Wing Headquarters

Number 2 Tactical Police Squadron, Royal Air Force

Elements of 24 Squadron, Royal Air Force

Elements of 30 Squadron, Royal Air Force

Elements of 32 (The Royal) Squadron, Royal Air Force

Elements of 216 Squadron, Royal Air Force

Elements of 39 Squadron, Royal Air Force

Elements of 13 Squadron, Royal Air Force

Elements of 27 Squadron, Royal Air Force

Elements of 51 Squadron, Royal Air Force

Elements of 99 Squadron, Royal Air Force

Elements of 33 (Engineering) Squadron, Royal Air Force

Elements of 90 Signals Unit, Royal Air Force

Elements of 1 Air Control Centre, Royal Air Force

Elements of Tactical Supply Wing, Royal Air Force

Elements of 1 Air Mobility Wing, Royal Air Force

Elements of Tactical Medical Wing, Royal Air Force

Elements of Number 1 Royal Air Force Police Wing

Elements of Number 2 Royal Air Force Police Wing

Elements of 2 (Mechanical Transport) Squadron, Royal Air Force

Elements of 93 (Expeditionary Armaments) Squadron, Royal Air Force

Elements of Engineering and Logistics Wing, Royal Air Force Odiham

In addition to the list of formed units, individual augmentees from each of the Services will continue to deploy as part of this integrated force package. In total we expect around 1119 individual augmentees to deploy on operations. This will be comprised of 246 Royal Navy personnel, 370 Army personnel and 503 Royal Air Force personnel[2]. The Royal Air Force currently provides the command element of Headquarters Joint Force Support (Afghanistan), with the wider headquarters manned by Individual Augmentees from all three Services. 101 Logistic Brigade will deploy in November to take on this role.

Volunteer and ex-Regular members of the Reserve Forces will continue to deploy to Afghanistan as part of this integrated force package, and we expect to issue around 400 call-out notices. On completion of their mobilisation procedures, the reservists will undertake a period of training and, where applicable, integration with their respective receiving units. The majority will serve on operations for around six months although a small proportion of any force which is stood down due to force level reductions is likely to be reservist.

As the Prime Minister announced in December 2012, the UK's conventional force levels in Afghanistan will drawdown to around 5,200 by the end of 2013, from the current level of around 7,900. As part of this drawdown, there will be around 6,000 personnel in Afghanistan from Autumn 2013. However, this figure may fluctuate and occasionally exceed this total due to Relief in Place and additional surges into theatre.

As announced by the Defence Secretary on 14 May 2013, some elements of 7th Armoured Brigade will deploy on Op HERRICK 19 for up to eight months. This will remove the requirement to train and deploy an extra Brigade, at greatly reduced scale, to cover the final months of 2014. It will also align tours to key milestones in the transition process, such as the Afghan presidential elections in Spring 2014. A small number of reservists may voluntarily serve eight months.

I shall make a further statement on 7th Armoured Brigade's planned replacement formation, 20th Armoured Brigade, nearer the time of their deployment.

[1] Where the contribution is 10 personnel or more.

[2] In some cases there will be up to 3 rotations of Royal Navy and Royal Air Force Individual Augmentees during HERRICK 19, due to differing deployment durations often occurring outside of the numbered HERRICK iterations.

## Businesses: Regulation

*Statement*

**The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie):** My Rt.Hon Friend, the Minister of State for Business and Enterprise (Michael Fallon), has today made the following statement.

The Government is today publishing the Sixth Statement of New Regulation. This Statement reports on regulations within the scope of the *One-in, Two-out* rule which are expected to come into force between 1 July and 31 December 2013. The Statement shows that the sum total of government deregulation since January 2011 and December 2013 will be to reduce the net annual cost to business by around £931 million.

The Statement also reports on the Red Tape Challenge measures expected to come into force and progress on the targets; and EU measures which are implemented by UK regulations.

In parallel, Departments are each publishing a summary of the regulations they intend to introduce.

I am placing a copy of the Statement in both libraries of the House.

## Civil Service: Reform

*Statement*

**Lord Wallace of Saltaire:** My Right Honourable friend the Minister for the Cabinet Office (The Rt Hon Francis Maude) has made the following Written Ministerial Statement:

In June 2012 Sir Bob Kerslake and I published the Civil Service Reform Plan. Today we are publishing a report on Civil Service Reform One Year On.

The Plan set out a series of actions which, fully implemented, would deliver a Civil Service that is smaller, flatter, and faster; more digital, more unified, focused on outcomes not process; more capable, with better performance management; with modern terms and conditions, and more accountable for delivery. Progress in implementing these actions has been mixed.

The Civil Service today is 15% smaller than in 2010, and productivity is correspondingly higher. Some of the actions in the Plan could not have been expected to be complete in twelve months. On others, substantial progress has been achieved. But on too many actions too little of what was set out to be delivered by this point has been fully executed. We are determined that the pace of implementation will now accelerate.

I said in June 2012 that the Plan was not the last word in reform. I set out today some further reform actions. We will introduce five year fixed term tenure for Permanent Secretaries. We will enable Ministers in charge of Departments to appoint personally an Extended

Ministerial Office (EMO) including career civil servants, civil servants recruited externally on fixed term appointment (according to Civil Service Commission guidance and subject to the Civil Service Code), and Special Advisers. IPPR concluded in their report which I published last month that Ministers in Britain received much less direct support than Ministers in countries with systems similar to ours. We will strengthen the corporate leadership of cross-government functional services, including HR, procurement and commercial, IT and digital, legal and finance. We will make changes to improve further the delivery of major projects.

Fuller details are set out in the One Year On report, which I am placing in the Library.

## Energy: Coal Mining

*Statement*

**The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma):** My right honourable friend the Minister of State for Energy (Michael Fallen) has made the following Written Ministerial Statement.

I want to update the House following UK Coal Operations Ltd (UKCOL)'s announcement on Tuesday 9th July 2013, that it had secured Court approval to place the company into Administration, with PWC appointed as administrators, with a view to saving as many of its mining operations as possible, including its two remaining deep mines at Kellingley and Thoresby and six surface mining operations, and securing jobs for around 2,000 employees.

I understand that the company's Directors concluded that it was impossible for UKCOL to continue trading in its current form following the impact on its finances after the serious fire which broke out on 22 February 2013 and the subsequent decision to close Daw Mill colliery in Warwickshire on 7 March 2013.

The process of entering administration is continuing and we should await the outcome. I understand that PWC have already communicated with the workforce, their union representatives and the company's creditors to explain the implications for them.

Given the closure of Daw Mill, it will not form part of the new company. Our priority now is to support the mine's former employees through the Redundancy Payments Service. Government will of course meet the full statutory costs of any redundancies.

PWC are arranging a series of support sessions next week to help redundant employees to complete the necessary documentation for Statutory Redundancy payments and any other benefits as quickly as possible. PWC have set up a website which will provide individuals with up to date information.

In addition, the Job Centre Plus Rapid Response Service will be deployed to help mitigate the immediate impact of job losses, and where appropriate skills are no longer in demand arrange re-training. This builds on the work which has already been undertaken by Job Centre Plus and other partners since the Daw Mill fire in February.

The cross-Government response, coordinated by my officials, will continue during the administration process to ensure everything possible is done to support the workforce and the local communities.

## Financial Services Authority: Annual Report

*Statement*

**The Commercial Secretary to the Treasury (Lord Deighton):** My right honourable friend the Financial Secretary to the Treasury (Greg Clark) has today made the following Written Ministerial Statement.

The Annual Report 2012/13 of the Financial Services Authority (FSA) has today been laid before Parliament.

Copies are available in the Vote Office and Printed Paper Office. The Report forms a key part of the accountability mechanism for the Financial Services Authority under the Financial Services and Markets Act 2000 (FSMA), and assesses the performance of the Financial Services Authority over the past 12 months against its statutory objectives.

## Universal Credit

*Statement*

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** My right honourable friend the Secretary of State for Work and Pensions (Mr Iain Duncan Smith MP) has made the following Written Ministerial Statement.

Today we set out the next stage of the roll-out for Universal Credit following the successful launch of the Pathfinder in Greater Manchester, on time earlier this year.

Starting from October, the national roll-out will be comprised of three strands.

First, across all Jobcentres we will roll out components to drive the cultural shift under Universal Credit. Notably 20,000 Jobcentre Plus advisers will be retrained to deliver the claimant commitment and enhanced jobsearch support nationally. Ten in-work conditionality pilots will test how best to encourage claimants to progress in work.

Second, we will roll-out improved access to digital services across Jobcentre Plus. 6,000 new computers will be installed across the country, embedding digital technology and ensuring that jobseekers become used to online transactions.

Third, expanding on our early approach, Universal Credit will roll-out to the regions, with six hub Jobcentres – Hammersmith, Rugby, Inverness, Harrogate, Bath, Shotton – taking new claims to the benefit. This plan continues the safe approach to delivering this extensive reform, meaning Universal Credit will be rolling out in areas of England, Wales and Scotland.

The Pathfinder exercise has shown that the IT system works. In parallel, the DWP is working with the new Government Digital Service to explore the possibility of enhancing the IT, using recent advances in technology to ensure the system is as secure, flexible and responsive as possible. This approach builds on the rapid development and roll-out of services such as

GOV.UK and Universal Jobmatch, which was developed in one year and since launching in December 2012 is now achieving over 5 million average daily job searches.

The Government has made clear that the priority is to deliver Universal Credit safely and securely over a four year period to 2017. We remain committed to that objective, to these timescales, and to the budget agreed for delivering this important reform.

The Government will set out more details of its development plan in the Autumn.

# Written Answers

*Wednesday 10 July 2013*

## Agriculture: Genetically and Non-genetically Modified Food

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government what is the breakdown of spending by (1) the Department for Environment, Food and Rural Affairs, and (2) the Biotechnology and Biological Sciences Research Council, in each of (a) genetically modified (GM) crops; (b) non-GM agricultural biotechnology; (c) marker-assisted selection; (d) home-grown protein sources for livestock; (e) agroecology; and (f) organic farming, in the past five years. [HL1247]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley):** Over the last five years Defra has spent an average of £29m per annum on food and farming research out of a total of £400m spent by government, including research councils. However, it is not possible to provide a breakdown as requested. Agricultural biotechnology, marker-assisted selection and agroecology may all play a part in a variety of the research projects we undertake relating to farming systems.

The breakdown of the spending by the Biotechnology and Biological Sciences Research Council is as follows:

a) genetically modified (GM) crops

| | *Annual Spend £M* | | | | |
|---|---|---|---|---|---|
| | *2007/08* | *2008/09* | *2009/10* | *2010/11* | *2011/12* |
| GM Crops (specific)[1] | 5.7 | 3.8 | 4.8 | 4.4 | 3.3 |
| GM Crops (direct)[2] | 4.7 | 8.3 | 11.1 | 10.2 | 9.3 |
| GM Crops (total) | 10.4 | 12.1 | 15.9 | 14.6 | 12.5 |
| Total Crop Science | 40.5 | 45.5 | 50.5 | 49.8 | 49.3 |

[1] research involving the use or the production of a GM crop, usually to enable enhanced agricultural traits (e.g. stress-tolerance or disease resistance in wheat).

[2] crop research involving the use or the production of a GM crop to further biological understanding of the plant (e.g. genetically modifying a protein to understand its function in the plant).

b) non-GM agricultural biotechnology

No breakdown figure available for non-GM agricultural biotechnology.

Overall spend in agri-technology sector, based on spend on crop science, farmed animal health and welfare, and agricultural systems.

| | *Annual Spend (£M)* | | | |
|---|---|---|---|---|
| | *2008/09* | *2009/10* | *2010/11* | *2011/12* |
| Total for Agri-technology | 79.6 | 82.1 | 80.8 | 83.3 |

c) marker-assisted selection

Estimated figure for crops only.

| | *Annual Spend £M* | | | | |
|---|---|---|---|---|---|
| | *2007/08* | *2008/09* | *2009/10* | *2010/11* | *2011/12* |
| Marker assisted breeding, in crops[1] | 8.9 | 10.0 | 11.1 | 11.0 | 10.8 |
| Total Crop Science | 40.5 | 45.5 | 50.5 | 49.8 | 49.3 |

[1] An estimated figure calculated as 22% of the total crop science spend and based on analysis figures from 2007/08 and 2008/09. Note there is significant effort in marker assisted breeding in crops and livestock undertaken at BBSRC strategically funded institutes so estimated figures above are likely to be underestimated.

d) home-grown protein sources for livestock

No figures available. However, please note the BBSRC has provided funding to the Institute of Biological, Environmental and Rural Sciences, Aberystwyth University in support of research on ryegrass and clover as feedstocks.

e) agroecology

Figure for agricultural systems[1] which includes agroecology but no further breakdown available.

| | *Annual Spend (EM)* | | | |
|---|---|---|---|---|
| | *2008/09* | *2009/10* | *2010/11* | *2011/12* |
| Agricultural Systems[1] | 9.2 | 8.0 | 8.0 | 9.5 |

1 Studies of agricultural landscapes and systems (including mathematical modelling) and effects of agriculture on ecosystems and the environment; soil science; interactions of crop farming practices with the environment (e.g. pollution of water supplies, effects on biodiversity); impacts of climatic and other environmental factors on agricultural systems (e.g. effects on productivity and pest and disease management; impact on biodiversity, soils and the aquatic environment, when set in an agricultural context; breeding of crops and livestock to circumvent negative effects of climate change; relevant factors include temperature, gases, water (drought and flooding), wind, sunlight and salinity.

f) organic farming

Estimated as approximately 1% of agri-technology spend (see response to part b), based on analysis data from 2006/07.

Please note that spend figures for 2012/13 are currently being processed and therefore unavailable.

## Asylum Seekers

*Question*

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

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 13 June (WA 255), what is their rationale for allowing asylum seekers to apply only for jobs which appear on the shortage occupation list. [HL1405]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** Allowing asylum seekers to apply only for jobs which appear on the shortage occupation list ensures that asylum seekers do not have any enhanced employment access over legitimate economic migrants applying to enter the UK under Tier 2 (skilled workers). As such, it avoids any incentive for economic migrants to make

unmeritorious asylum claims to gain better access to employment. On 7 June 2013 the Government's policy on permission to work for asylum seekers was upheld in the High Court.

## Banking

*Question*

*Asked by* ***Lord Myners***

To ask Her Majesty's Government whether they intend to take steps to transfer responsibility for decisions on leverage ratios for banks from ministers to regulators. [HL1205]

**The Commercial Secretary to the Treasury (Lord Deighton):** The question asked refers to one of the recommendations included in the final report of the Parliamentary Commission on Banking Standards published on 19 June 2013. The Government publicly replied to the report on 8 July 2013[1].

On the specific recommendation on the leverage ratio, the Government has reiterated its earlier commitment that the Financial Policy Committee will be given the power of direction to vary through time the baseline leverage requirement for deposit takers and investment firms, subject to it never being below the requirement determined by Basel III. That power should be granted once the baseline requirement is implemented.

[1] https://www.gov.uk/government/publications/the-governments-response-to-the-parliamentary-commission-on-banking-standards

## BBC: Licence Fee

*Question*

*Asked by* ***Lord Laird***

To ask Her Majesty's Government how much and what percentage of the television licence fee is not allocated to the BBC; and how much of the fee goes towards (1) S4/C, and (2) the BBC World Service. [HL1151]

**Lord Gardiner of Kimble:** The BBC is funded by the licence fee and a dividend from BBC Worldwide. The amount of licence fee funding which goes towards S4C (as of April this year) is detailed in the following table.

| *Year* | *From BBC (£)* |
|---|---|
| 2013/14 | 76.3m |
| 2014/15 | 76m |

BBC World Service's broadcasting costs are met by a separate Parliamentary grant-in-aid from the Foreign and Commonwealth Office.

## Benefits

*Questions*

*Asked by* ***Lord Touhig***

To ask Her Majesty's Government what assessment they have made of the impact on (1) rent arrears, (2) child poverty, and (3) personal debt, of the proposed extension to seven days of the period before people who lose their jobs can obtain benefits. [HL1289]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** No such assessments have been made. The increase of waiting days to seven will have a single effect at the start of a person's entitlement when final wages will often be available.

*Asked by* ***Baroness King of Bow***

To ask Her Majesty's Government how many households, broken down by local authority, are currently in receipt of benefits totalling more than £500 per week, but are exempt from the Household Benefit Cap on the basis of their entitlement to Disability Living Allowance. [HL1371]

**Lord Freud:** A Local Authority breakdown of the number of households currently in receipt of benefits totalling more than £500 per week, but are exempt from the Household Benefit cap on the basis of their entitlement to Disability Living Allowance (DLA), will be placed in the library.

Please note DLA claimants are exempt from the benefit cap. From the data available in May 2013, we estimate an additional 47,000 households would potentially be brought into scope of the benefit cap if this exemption did not apply and by virtue of other benefits being claimed. This estimate references those whose only reason for exemption from the cap is that either the HB claimant, their partner or a dependent child in their household receives DLA. Please note that it includes those in the scope of both the £500 and £350 benefit cap limits.

Please note that household numbers are rounded to the nearest 100. Areas with fewer than 100 households affected are denoted by "..", as additional disclosure control has been applied to these areas.

The benefit cap is being applied through a phased implementation which commenced on 15 April 2013 in Bromley, Croydon, Enfield and Haringey. National implementation of the benefit cap commences 15th July and by the end of September 2013 all appropriate households will have been capped.

Estimates assume that the situation of these households will go unchanged, and they will not take any steps to either work enough hours to qualify for Working Tax Credit, renegotiate their rent in situ, or find alternative accommodation.

The Department has made extensive contacts with households who are likely to be affected by the cap and we are offering advice and support through Jobcentre Plus, including, where appropriate, early access to the Work Programme before the cap is introduced.

## Broadcasting: Religion

*Question*

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

To ask Her Majesty's Government what assessment they have made of Channel 4's decision to broadcast the Muslim call to prayer every day during the month of Ramadan, and of the effect this may have on community relations in the United Kingdom. [HL1312]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** Programming decisions are ultimately a matter for Channel 4 and its regulator. I would observe that Channel 4 has a long history of alternative programming.

Freedom of worship is an important British liberty, and we should show respect to all faiths, especially during their festivals. Religious practices of many faiths are featured in the media from time to time, and there is a long tradition of religious tolerance in this country.

## Child Poverty

*Question*

*Asked by* ***The Lord Bishop of Derby***

To ask Her Majesty's Government how many children are defined under the Child Poverty Act 2010 as living in poverty in (1) Derby, and (2) the East Midlands. [HL1313]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** This information is not available for all the areas requested.

The Child Poverty Act 2010 sets four income-based UK-wide targets to be met by 2020. The targets are based on the proportion of children living in households with relative low income, combined low income and material deprivation, absolute low income and persistent poverty (all before housing costs have been taken into account). Estimates of these are published in the National Statistics Households Below Average Income (HBAI) series. HBAI uses household income adjusted (or 'equivalised') for household size and composition, to provide a proxy for standard of living.

Information for Derby is not available as the sample size of this survey is not sufficient to provide robust estimates for each of the four measures. Persistent poverty figures for the East Midlands are also not available.

Three-year averages are used to report statistics by region and country, as single-year estimates are subject to volatility. The latest figures for relative and absolute low income for East Midlands covering the last three years (2009/10-2011/12) can be found in the latest 2011/12 HBAI publication, available at the link below:

https://www.gov.uk/government/publications/households-below-average-income-hbai-199495-to-201112

Relevant figures can be found in Table 4.17ts (on page 136) for the latest relative low income estimates for the East Midlands, and similar figures for absolute low income estimates can be found in Table 4.23ts (on page 142).

The items used to measure material deprivation have changed since 2010/11, this has meant that the current combined low income and material deprivation time series is limited to two years' worth of data. As such three year averages by region and country for this measure are not available for 2009/10-2011/12. The latest combined low income and material deprivation figures available are for 2008/09-2010/11 found in the earlier 2010/11 HBAI publication, available at the link below:

https://www.gov.uk/government/publications/households-below-average-income-hbai-199495-to-201011

Relevant figures for the East Midlands under the combined low income and material deprivation measure covering 2008/09-2010/11 can be found in table 4.6db (on page 115).

We want to develop better measures of child poverty which include, but go beyond income to provide a more accurate picture of the reality of child poverty. Our consultation on how best to measure child poverty closed on 15 February. A large volume of responses was received and all of these are being read and we will publish a response as soon as we can.

## Debt

*Question*

*Asked by* ***The Earl of Caithness***

To ask Her Majesty's Government, further to the remarks by Lord Wallace of Tankerness on 26 June (HL Deb, col 797), what are the "general principles of international law" relating to the allocation of national debt to which the minister referred. [HL1224]

**The Advocate-General for Scotland (Lord Wallace of Tankerness):** There are a number of key legal issues that would underpin the formation of any independent Scottish state. The most important of these is the principle of continuity: that is, that the remainder of the UK would be the continuing state and an independent Scotland would be a new state. The first paper in the Government's 'Scotland Analysis' programme deals with this issue in detail.

The question of the allocation of national debt would be informed by the principle of equity and international practice. On that basis, a new state would be expected to take its 'equitable share' of any national debt as accepted by the Scottish Government Finance Secretary in his evidence to the Lords Economic Affairs Committee.

## Economy

*Question*

*Asked by* ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of research by Friedrich Sneider and Colin Williams of the Institute of Economic Affairs on the value of the United Kingdom's shadow economy; and what measures they are taking to address that issue and improve public finances. [HL1181]

**The Commercial Secretary to the Treasury (Lord Deighton):** The Office for National Statistics (ONS) works with HM Revenue & Customs (HMRC) to estimate the amount of hidden activity in the UK economy.

The ONS adjust their estimate of the size of the economy to account for unrecorded transactions involving small businesses and sole traders, based on HMRC's assessment of lost revenue.

HMRC also publish an annual estimation of the tax gap, which, in 2010-11, was estimated to be £32 billion, equivalent to 6.7 per cent of tax liabilities.

The Government is investing in HMRC to tackle tax avoidance and evasion and to reduce losses from fraud, error and debt — this includes almost £1 billion over this Spending Review period, to bring in an additional £9 billion a year in tax revenue by 2014-15. The June 2013 Spending Round announced that HMRC's compliance yield target will be increased from £23.5 billion in 2014-15 to £24.5 billion in 2015-16.

## Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013

*Question*

*Asked by* ***Baroness Whitaker***

To ask Her Majesty's Government what assessment they have made of the environmental cost of implementing the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013/1403), including their impact on amenity and tourism. [HL1231]

**Lord Gardiner of Kimble:** As reflected in the impact assessment, the Government estimated that the installation of more overhead lines could affect the visual amenity of people living close by or visitors to the affected area.

The extent of this effect will depend on the extra use that is made of the measure by operators. Based on the data that operators have made available, we have estimated that over 5 years there could be a 10% increase in overhead lines; an increase of 325 km per annum.

The impact assessment made clear that an economic estimate of any adverse effects on tourism had not been made. Some respondents to the public consultation expressed concern about the potential loss of tourism revenue. However, this possibility should be offset against the likely direct benefits to tourism. VisitEngland, for example, supported the proposal, highlighting the economic importance of access to broadband in developing and sustaining tourism-related businesses, particularly in remote areas.

## Energy: Electricity Supplies

*Question*

*Asked by* ***Lord Harrison***

To ask Her Majesty's Government what estimate they have made of the costs currently incurred by registered electricians wishing to isolate the electricity supplies of individual dwellings; and how that impacts on the predicted cost savings associated with the Building Regulations review. [HL1279]

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):** The Department for Communities and Local Government has made no estimate of the costs currently incurred by registered electricians wishing to isolate the electricity supplies of individual dwellings; nor how that impacts on the predicted cost savings associated with the Building Regulations review. Building Regulations do not restrict access to electrical isolators.

## Food: Labelling

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government whether they will introduce a non-genetically-modified-fed labelling scheme for meat and dairy products in the United Kingdom, as was supported by Food Standards Agency research on United Kingdom consumers. [HL1250]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The Government has no plans to introduce such a scheme. The European Commission has been reviewing the need for a harmonised European Union wide framework for labelling claims that foods have been produced without genetically modified (GM) technology and without GM animal feed. We await their report.

## Government Departments: Correspondence

*Question*

*Asked by* ***Lord Sharkey***

To ask Her Majesty's Government what targets the Department of Health has set itself for the time taken to answer correspondence; whether there are different targets, formal or informal, for answering correspondence from members of the House of Commons and the House of Lords; and how it has performed against any such targets in the last 12 months for which data is available. [HL1361]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The Department's formal target for answering correspondence from members of the House of Commons and the House of Lords is to reply to 90% of correspondence within 18 working days. No informal target exists.

Between 1 July 2012 and 30 June 2013, the Department responded to 96% of hon. Members' and Noble Lords' correspondence within 18 working days.

## Health: Cardiology

*Question*

*Asked by* ***Lord Colwyn***

To ask Her Majesty's Government whether the National Institute for Health and Clinical Excellence plans to develop a quality standard on sudden cardiac arrest. [HL1283]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The National Institute for Health and Care Excellence (NICE) has not currently been asked to develop a quality standard on sudden cardiac arrest. NHS England is now responsible for commissioning quality standards relating to NHS services from NICE. We understand from NHS England that it currently has no plans to commission a quality standard on sudden cardiac arrest but that it is carrying out a prioritisation process for further quality standards to be referred in early 2014.

## Health: Doctors

*Question*

*Asked by* ***Baroness Masham of Ilton***

To ask Her Majesty's Government what plans they have to increase the supply of suitably qualified doctors for appointment to posts in emergency medicine across the country. [HL1309]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** Health Education England (HEE) has been created to ensure the National Health Service has the right staff with the right skills, values and behaviours in the right place at the right time in the right numbers. This includes working to deliver new generations of skilled staff to areas where there is established need, as well as working to support employers in encouraging existing staff to work in these areas. This includes our accident and emergency (A&E) departments. The taskforce looking into the issue of A&E staffing is due to report in the summer 2013 and HEE will work with colleagues across the NHS and in education to deliver the actions it recommends.

## Health: Drugs Pricing

*Questions*

*Asked by* ***Lord Clement-Jones***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), how they intend to select which cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence will be assessed under value-based pricing. [HL1365]

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), how many cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence will be assessed under value-based pricing. [HL1366]

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), whether cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence which were selected to undergo a value-based pricing assessment will be subject to a different process to new medicines. [HL1367]

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), what arrangements they intend to put in place to secure patients' ongoing access during value-based pricing assessments for drugs previously considered but not recommended by the National Institute for Health and Care Excellence. [HL1368]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** As set out in my previous Answer of 24 June 2013, Official Report column WA93, value-based pricing will focus primarily on new medicines. Negotiations with the pharmaceutical industry are ongoing and the scope of the new arrangements, including the medicines to be covered, are matters for these negotiations.

We expect that the National Institute for Health and Care Excellence will apply a single value assessment process to all medicines assessed under value-based pricing.

In the context of developing the new pricing arrangements, we are exploring ways in which patients can continue to benefit from innovative cancer drugs at a cost that represents value to the National Health Service.

*Asked by* ***Lord Clement-Jones***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), what assessment they have made of the length of time an evaluation under value-based pricing will take for cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence. [HL1369]

**Earl Howe:** We expect that the timescale for the value assessment process that the National Institute for Health and Care Excellence (NICE) will apply to drugs under value-based pricing will be broadly similar to that for NICE's existing single technology appraisal process. Details of the existing process are available on NICE's website at:

www.nice.org.uk/media/913/06/Guide_to_the_STA-proof_6-26-10-09.pdf

*Asked by* ***Lord Clement-Jones***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 June (WA 93), why they do not envisage that all cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence will be assessed under value-based pricing. [HL1370]

**Earl Howe:** The vast majority of branded medicines already on the market before 2014 will be covered by the successor arrangements to the current Pharmaceutical Price Regulation Scheme. This is in line with the proposals set out in the consultation, *A new value-based approach to the pricing of branded medicines*, which ran from December 2010 to March 2011, and the Government's response, published in July 2011. We are, however, still considering the possibility of a small number of existing drugs being assessed under value-based pricing on a case-by-case basis.

The National Institute for Health and Care Excellence will continue to keep its published guidance under review in order to take account of the latest available evidence.

## Health: Human Papilloma Virus

*Question*

*Asked by* ***The Countess of Mar***

To ask Her Majesty's Government how many doses of Gardasil human papilloma virus vaccine have been administered since it was introduced to the United Kingdom. [HL1332]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** It is estimated that 730,000 doses of Gardasil vaccine have been administered in England, Wales and Northern Ireland as part of the national Human papillomavirus (HPV) immunisation programme since September 2012.

The requested information for Scotland is not currently available. Statistics on the HPV Immunisation programme in Scotland for the 2012-13 academic year are planned for publication on 24 September 2013.

Published statistics for 2011-12 academic year show that around 75,000 doses of Cervarix vaccine had been administered in Scotland. Gardasil replaced Cervarix in September 2012 as the vaccine used in the national immunisation programme. Uptake rates in Scotland have been relatively consistent since the introduction of the HPV immunisation programme in September 2008.

Therefore, based on the assumption that uptake in 2012-13 remains at a similar level to 2011-12, it can be estimated a similar number of Gardasil vaccines have been administered in Scotland since September 2012.

## Health: Palliative Care

*Question*

*Asked by* ***Lord MacKenzie of Culkein***

To ask Her Majesty's Government what discussions they have had with the Sutton and Merton Clinical Commissioning Groups as to the viability of the continuing provision of palliative care by St Raphael's Hospice to the population of both those London Boroughs in the event of the sale of St Anthony's Hospital, which currently provides services to the Hospice free of charge, to a commercial concern. [HL1347]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** This is a local commissioning issue and a matter for Sutton & Merton Clinical Commissioning Groups (CCGs). The Government has not had any discussions with the CCGs about this issue.

## Homeless People

*Question*

*Asked by* ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government, in the light of the Evidence review of the costs of homelessness published in August 2012 by the Department for Communities and Local Government which stated that there were significant gaps in the evidence of the costs to government of providing support and services to homeless people, what progress they have made in collecting evidence of the number of homeless people interacting with government services. [HL1322]

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):** My Department is supporting the Mayor of London to deliver a Social Impact Bond delivering targeted support to a specific group of rough sleepers. The project evaluation will use data from different sources, including administrative data, to improve our understanding of what costs are associated with service use for this group and the extent to which the additional support provided by this intervention reduces these costs. Additionally, Homeless Link recently published "What's it worth" —new guidance to help the homelessness sector demonstrate value for money and understand the costs associated with the use of public services by homeless people.

## Housing Benefit

*Question*

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

To ask Her Majesty's Government whether they will issue new guidance to local authorities on the use of housing benefit to support homeless people in emergency overnight shelter accommodation. [HL844]

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):** Guidance to local authorities on the administration of the Housing Benefit regulations is already available. There are no plans to amend it in this respect.

A recent court judgement (*OR -v- Secretary of State for Work and Pensions and Isle of Anglesey CC [2013] UKUT 065*) has prompted questions about the eligibility of people using night shelters for housing benefit. I would like to assure the noble Lord that there has been no change in the law. Housing Benefit rules have not been changed over the basic principle of entitlement.

The court case was about the facts of one individual case, on whether the claimant was occupying a night shelter as his dwelling in accordance with the legislation. The Government believes that housing benefit can continue to be paid to users of shelters so long as the person's circumstances meet the housing benefit rules. It is for local authorities to make decisions after considering all the relevant facts.

Information to clarify this point has been made available to local authorities and voluntary sector providers and a copy of the note has been placed in the Library of the House.

The Government recognises the important contribution that night shelters can make to reducing rough sleeping and the associated costs to society. We have invested £470 million over four years (2011/12-2014/15) to help local authorities and the voluntary sector prevent and tackle homelessness, including rough sleeping in England and a £5 million boost to the Homelessness Change Programme (bringing the total investment to £42.5 million).

## Housing: Private Rented Sector

*Questions*

*Asked by* ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government when the public consultation on redress schemes for letting and management agency work will take place. [HL1264]

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):** Requiring all letting and managing agents to belong to an approved redress scheme will give tenants an effective way to address complaints and drive up standards in the private rented sector. We are keen to make rapid progress in putting schemes in place, and will be engaging widely with landlord bodies, tenant groups and the lettings industry over the summer. There is no need for consultation on the principle of such redress schemes, as the Enterprise and Regulatory Reform Act 2013 has already set out the statutory basis.

*Asked by* ***Lord Greaves***

To ask Her Majesty's Government what assessment they have made of the practice of some landlords and tenants in letting or subletting part of a privately owned domestic property by means of a licence in circumstances where they do not also live on the premises; and whether they are considering proposals to control such activity. [HL1301]

**Baroness Hanham:** No such assessment has been made and we are not considering proposals to control the practice of letting or sub-letting by licence by a landlord or tenant who does not live in the privately owned property.

A tenancy gives the person to whom it is granted an estate in land whereas a licence confers only a personal permission on the person to whom it is granted. The key factor for identifying whether someone has been granted a tenancy or a licence is whether he/she has been granted exclusive possession of the property (although there are other factors). Common examples of where an occupier is likely to have a licence rather than a tenancy are holiday lets/hotels and cases where the occupier lodges in the landlords own home.

## Internet: Broadband

*Questions*

*Asked by* ***Lord Inglewood***

To ask Her Majesty's Government how they will fulfil the Broadband Delivery UK (BDUK) State Aid requirement to publish information for suppliers wishing to access the new subsidised broadband infrastructure, including information on the location of the new infrastructure, the supplier footprint and the wholesale access products offered over it; and how they will ensure that the last ten per cent of premises not expected to be reached by the BDUK procurements are able to make plans for their own provision by having information in a consistent, accessible format and at a high level of detail. [HL1029]

**Lord Gardiner of Kimble:** The text of the UK's State aid approval has been published on the DCMS website together with information which provides guidance to local authorities and the devolved administrations and other stakeholders on the general and specific wholesale network access requirements that will apply to suppliers in direct and indirect receipt of State aid. BT Openreach has also recently published details of changes to its Physical Infrastructure Access (PIA) portfolio as a result of the State aid decision and this is available to all communications providers. Information relating to the location of new infrastructure will be made available at various stages throughout the implementation period following initial survey, detailed planning and installation works. Broadband Delivery UK has further provided guidance to local authorities on how to provide information for communities on coverage of superfast broadband provided by the local broadband projects with the aim of assisting communities to determine whether to take forward their own local community broadband projects.

*Asked by* ***Baroness Whitaker***

To ask Her Majesty's Government what evidence further to that outlined in the impact assessment they can provide to show overall economic benefit from the provisions in the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013/1403); and what is calculated to be the impact of those Regulations on the deployment of broadband infrastructure. [HL1230]

**Lord Gardiner of Kimble:** The impact assessment identified the direct and specific monetised benefits for operators by reducing their costs. The overall economic benefit will only become clear as operators begin to deploy fixed broadband infrastructure, taking advantage of these measures. Their purpose is to enable economic growth by removing regulatory barriers. As well as reducing costs to operators it is expected that they will provide certainty about planning decisions, thus speeding up investment in superfast broadband infrastructure. This, in turn, should support greater rural connectivity for households and businesses which is an essential part of the foundation in building a dynamic and diverse range of economic benefits.

## Israel

*Question*

*Asked by* ***Baroness Tonge***

To ask Her Majesty's Government whether they have assessed the economic impact on the United Kingdom of the implications of sanctions on Israel; and, if so, with what result. [HL1000]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** We have not made an assessment of the economic impact on the UK, as the UK does not believe that imposing sanctions on Israel would be a constructive step.

We do not agree with many of Israel's actions with respect to the Occupied Palestinian Territories and do not hesitate to express strong views whenever we feel it necessary. At the same time, we enjoy a close and productive relationship with Israel which enables us to express our views at senior levels very frankly. It is our assessment that imposing sanctions on Israel would lessen this influence, not increase it, and would not promote the urgent progress towards a two-state solution of the Israeli-Palestinian conflict which we want to see.

## Kazakhstan

*Question*

*Asked by* ***Viscount Waverley***

To ask Her Majesty's Government what were the expectations and outcomes of the recent visit by the Prime Minister to Kazakhstan. [HL1256]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** I refer the noble Lord to the Statement of 2 July, given by the Prime Minister, my right Hon. Friend the Member for Witney (Mr Cameron), and repeated by my noble Friend, the right Hon. the Lord Hill of Oareford, Official Report, column 1080, which included details of the Prime Minister's recent visit to Kazakhstan.

The overall aim of this first ever visit by a serving British Prime Minister to Kazakhstan was to secure a step-change in our bilateral relationship and make the UK a partner of choice for the Kazakhs. The Prime Minister held wide ranging talks on global, regional and bilateral issues, and witnessed the signature of business deals totalling more than £700 million. He signed a Strategic Partnership, covering a range of issues from education and cultural links to human rights and co-operation on judicial reform which will help guide the relationship in the future.

## Mobile Phones: Licences

*Question*

*Asked by* ***Lord Wills***

To ask Her Majesty's Government what consideration they have given to varying the terms and conditions of third generation mobile phone licences. [HL1109]

**Lord Gardiner of Kimble:** Ofcom is responsible for the variation of the terms and conditions of third generation mobile phone licences. Next week they will be publishing a statement setting out their decision on the liberalisation of these licences.

## NHS PropCo

*Question*

*Asked by* ***Lord Greaves***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 5 March (WA 398-9), which NHS properties in Lancashire have been transferred to NHS PropCo. [HL1388]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** A table, detailing properties transferred to NHS Property Services Ltd (NHS PS) on 1 April 2013 has been placed in the Library.

The properties are those which are contained within the NHS PS local area team, which mirrors the local area team boundaries used by NHS England, although these may not match the exact geographical boundaries of the county.

## NHS: Migrant Access and Charges

*Question*

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

To ask Her Majesty's Government, further to the Written Statement by Lord Taylor of Holbeach on 3 July (WS 78), what is the evidence of "public concern that the current rules regulating non-European Economic Area migrant access to publicly funded healthcare services are both overly generous, particularly when compared with wider international practice". [HL1404]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** The concern is evident in many quarters, including the support received by my Hon Friend the Member for Crawley (Henry Smith MP) in the Other Place in tabling the NHS Audit Requirements (Foreign Nationals) Bill in September 2012, the results of the survey of GPs published in Pulse Magazine in January this year which showed that 52 per cent of respondents felt that provision of free NHS care for migrants was too generous, the articles published by the NHS consultant Professor Meirion Thomas in the Spectator earlier this year criticising the current rules, and the BBC Panorama programme broadcast in October which highlighted the significant difficulties the NHS has in interpreting and applying the rules. The majority of those who responded to the Home Office's previous consultation which preceded the October 2011 Immigration Rules change on refusing immigration applications made by persons with significant unpaid debts to the NHS supported the measure.

In England, entitlement to free NHS hospital treatment is based on being lawfully and properly settled in the UK for the time being, meaning that a temporary

resident can qualify straight away, whilst primary care is free to all. A Department of Health review of the overseas visitors charging policy in 2012 reported that in many other countries temporary migrants buy into the state healthcare system, whilst students and short-term visitors may be required to pay for healthcare. The Department of Health and the Home Office are now consulting on proposals to change the rules and procedures for charging visitors and migrants for NHS care. The Department of Health has commissioned independent research to understand the scale of the issue, which will inform decisions taken after the consultation responses have been considered.

## Northern Ireland Executive

*Question*

*Asked by* ***Lord Empey***

To ask Her Majesty's Government, further to the Written Answer by Baroness Randerson on 1 July (WA 192-3), whether they will now answer the question as to whether they have received any request from the Northern Ireland Executive for the devolution of any fiscal powers, and, if so, which powers.

[HL1345]

**The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson):** The Northern Ireland Executive has sought the devolution of powers relating to rates of Corporation Tax. The Government has not received any requests from the Executive for devolution of any other fiscal powers since Air Passenger Duty for certain categories of flight was devolved at their request. However, the package agreed on 14 June, *Building a Prosperous and United Community*, sets out a process whereby the devolution of further fiscal powers can be considered and recommendations put to UK Government and Northern Ireland Executive Ministers by Autumn 2014.

## Pakistan

*Question*

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

To ask Her Majesty's Government (1) what information they have, and (2) what representations they will make to the government of Pakistan, about a reported attack on 3 June in a village near Pattoki in which three Christian women were publicly beaten and humiliated. [HL1397]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** The British Government strongly condemns all instances of violence, particularly when based on a person's faith, ethnicity or gender. Ministers and officials regularly urge the Government of Pakistan to ensure the fundamental rights of all its citizens are respected. We closely monitor the human rights situation in Pakistan and are aware of media reports of this latest attack. We issue quarterly report updates to the human rights situation in Pakistan. The next is due to be issued in mid-July.

## Pensions

*Questions*

*Asked by* ***Lord Jones of Cheltenham***

To ask Her Majesty's Government whether they will assess the impact on the public finances of encouraging more citizens entitled to claim the basic state pension to emigrate (1) to countries where the pension is uprated annually, and (2) to countries where the pension is frozen at the time of emigration. [HL1180]

**The Commercial Secretary to the Treasury (Lord Deighton):** The decision to retire abroad is a personal one and the Government does not actively encourage people to do this. The Government has no plans to make an assessment of the impact on the public finances of individuals retiring abroad.

*Asked by* ***Lord Laird***

To ask Her Majesty's Government how many current and future pensioners respectively are involved in the transfer of the Polestar Pension Scheme to the Pension Protection Fund (PPF); what annual extra expenditure its transfer to the PPF will involve; and what reductions have been made in pensions to Polestar members. [HL1395]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** At the time the scheme went into a Pension Protection Fund (PPF) assessment period there were 7,776 members in the scheme, of whom 4,206 were pensioners and 3,570 were deferred members.

The scheme valuation conducted for entry to the PPF showed the scheme had £362 million in assets and £672 million worth of liabilities. The shortfall between assets and liabilities will have to be made up by the PPF itself.

The PPF does not offer the same level of benefit as would have been provided under the scheme pension promise. The PPF is a compensation scheme, whose aim is to pay a meaningful level of compensation to members.

In general, the PPF pays the 100 per cent level of pension compensation to those who have reached their scheme's normal pension age at the start of a PPF assessment period, and the 90 per cent level of pension compensation for those below their scheme's normal pension age, subject to the compensation cap. The precise amount of compensation expenditure the PPF will incur will depend on the individual pension rights accrued by members of the Polestar scheme and unknowable factors such as individual longevity.

*Asked by* ***Lord Laird***

To ask Her Majesty's Government how many pension schemes have paid the Pension Protection Fund administration levy in each of the last five years. [HL1396]

**Lord Freud:** The number of schemes that have paid the Pension Protection Fund administration levy over the past 5 years (2008 to 2012) are:

| *Levy Charge Year* | *2008* | *2009* | *2010* | *2011* | *2012* |
|---|---|---|---|---|---|
| Number of schemes paid the Admin Levy | 8016 | 7642 | 7327 | 6976 | 6739 |

## Personal Independence Payment

*Questions*

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

To ask Her Majesty's Government what requirement they have placed on Atos Healthcare to ensure that assessment centres for Personal Independence Payment have wheelchair access; and what inspections they intend to make to ensure that arrangements do not breach the Equality Act 2010. [HL1257]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** Personal Independence Payment (PIP) assessments undertaken by Atos will take place in existing healthcare centres and at claimants' homes. All assessment sites must comply with the Equality Act 2010 and have suitable ground floor accommodation available. Atos is contractually obliged to deliver this requirement. DWP is visiting a sample of these centres and in addition, we are seeking feedback from claimants and the companions they are encouraged to bring to their assessment.

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

To ask Her Majesty's Government how many centres owned by the Department for Work and Pensions will be used to assess applicants for Personal Independence Payment; how many have wheelchair access; how many are without on-site parking; how many are either not served by a bus service or close to a train station; what assessment they have made of the walking times and distances from public transport to centre locations; and what advice they will give to applicants unable to gain entrance or arrive easily at such premises. [HL1258]

**Lord Freud:** DWP-owned premises will not be used to assess PIP claimants. As part of the specification for the PIP assessment service, the two providers – Atos and Capita – must provide sufficient suitable accommodation for face-to-face consultations. All sites must be compliant with the Equality Act 2010 with suitable ground floor accommodation available. The providers are required to ensure the needs of PIP claimants are met, including proximity to public transport routes and access to suitable parking. Claimants' appointment letters will clearly identify where their consultation will take place, including directions from their home, and they will be given the opportunity to change their appointment if necessary.

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

To ask Her Majesty's Government, further to the remarks by Lord Freud on 24 June (HL Deb, col 598), how many providers of Personal Independence Payment assessments will operate under the contract won by Atos for London and the south of England; and how that figure compares to the number originally indicated in the tender document. [HL1259]

**Lord Freud:** In their tender for the PIP assessment service in Lot 3 (London and Southern England) Atos indicated they would deliver face-to-face consultations in partnership with up to 17 organisations from the NHS, private hospitals and national physiotherapy networks. On 18 February 2013 Atos published its full list of supply chain partners. In the Lot 3 area there are 8 - Bedford Hospital, Croydon Health Services, King's College Hospital and University College London Hospitals NHS Trusts along with the private sector physiotherapy organisations IPRS Limited, Physioworld, The Injury Care Clinics and The Treatment Network.

## Romania

*Question*

*Asked by* ***Baroness Whitaker***

To ask Her Majesty's Government, further to the Written Answer by Baroness Warsi on 1 July (WA 172), whether the United Kingdom Embassy in Bucharest has undertaken any further involvement in the twinning arrangement between the authorities in Rotherham and Craiova in South West Romania; and, if so, what information has been shared on Roma (1) social inclusion, (2) early years education, (3) health, (4) social housing and (5) employment. [HL1317]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** Our Embassy in Bucharest facilitated an exchange between Dolj county, of which Craiova is the capital city, and Rotherham Council. This was to allow them to share ideas on how to improve the conditions for the Roma populations in both communities. The Embassy funded two-way field visits in January and March this year for local councillors and experts from each area to meet and share best practice.

On social inclusion, the idea of community champions to act as a conduit for information and advice for the Roma community was discussed.

On education and health, representatives from Rotherham explained how Rotherham schools had introduced free breakfast and lunch for children of the poorest families. Information was also exchanged on the key role schools play in i) encouraging employment opportunities by holding classes on vocational training for parents and ii) facilitating workshops for community workers to provide advice on issues such as family health and housing opportunities. These initiatives, and others, were important in supporting the Roma communities in both countries.

The Government supports this initiative and looks forward to seeing further cooperation between the authorities of both countries to help support Roma communities.

## Syria

*Questions*

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

To ask Her Majesty's Government what reports they have received about the death of Fr Fran?ois Mourad following a raid on a Franciscan monastery in Ghassanieh in Syria. [HL1260]

**The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi):** We are saddened by reports that Father Francois Mourad was murdered at a convent in Al Ghassaniyeh in Syria. The UK utterly condemns such a callous and brutal act. There are millions of Syrians who want a peaceful and democratic future. Such a barbaric act does not represent the principle and actions of the Syrian opposition. That is why we continue to support the Syrian National Coalition who are fully committed to a political solution and guarantee the rights of all Syria's communities.

*Asked by* ***Lord Hylton***

To ask Her Majesty's Government whether they will take steps to secure a ceasefire in Syria, in advance of a second Geneva conference. [HL1334]

**Baroness Warsi:** The UK remains supportive of any action that seeks to end the violence and achieve a political solution in Syria, however our priority remains advancing a political transition that ends the conflict, allows refugees to return to their homes, and prevents further radicalisation in Syria. We will do all we can to ensure the Geneva II conference delivers that outcome.

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

To ask Her Majesty's Government which members or associates of the ruling Syrian al-Assad family and regime are currently in the United Kingdom. [HL1378]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** President Al-Assad's wife and her parents are British Citizens. We are aware of two other members of the Al-Assad family in this country, however we have a legal obligation not to disclose their identities in line with Data Protection legislation.

The Government is committed to ensuring the UK does not become a refuge for suspected perpetrators of international crimes. To this end immigration action will be considered where there is sufficient evidence that an individual's character, conduct or associations would justify doing so. This includes action against those suspected of involvement in international crimes or who represent a threat to national security.

## Terrorism

*Question*

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

To ask Her Majesty's Government what estimate they have made of the breakdown since 2001 of the sponsorship of terrorist incidents in the United Kingdom excluding Northern Ireland, by (1) Islamists, and (2) others. [HL1311]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** We do not publish a breakdown of terrorist incidents in Great Britain. The Home Office Statistical Bulletin, published annually and every quarter, sets out the number of arrests, charges and convictions for terrorism related offences.

## Unemployment: English Lessons

*Questions*

*Asked by* ***Lord Touhig***

To ask Her Majesty's Government how many people claiming Jobseeker's Allowance (1) were offered free English lessons in 2012 and the first six months of 2013, and (2) refused free English lessons in 2012 and the first six months of 2103. [HL1290]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** Information on the numbers of people claiming Jobseekers' Allowance that were (1) offered and (2) refused free English lessons is not available. This is because the recorded data on training for claimants does not distinguish between individual qualifications by subject.

*Asked by* ***Lord Touhig***

To ask Her Majesty's Government what provisions they intend to make for people with special educational needs under their proposed requirements for people claiming Jobseeker's Allowance to learn English. [HL1291]

**Lord Freud:** The Department for Work and Pensions will ensure this policy includes safeguards to ensure those with special educational needs, a group covered by protected characteristic status in legislation, are not disadvantaged.

## Universal Credit

*Questions*

*Asked by* ***Lord German***

To ask Her Majesty's Government, following the recent announcement on the Spending Round 2013, which elements of Universal Credit will be subject to the seven-day wait before a claimant becomes eligible for financial support. [HL1320]

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud):** The waiting period will be applied to the whole Universal Credit award but will only be introduced for claimants who we expect to work and who have full work-related requirements.

*Asked by* ***Lord German***

To ask Her Majesty's Government, following the recent announcement on the Spending Round 2013, whether the seven-day wait for benefit entitlement will be included in, or additional to, the one-month wait for Universal Credit claimants between making a claim and receiving their first payment. [HL1321]

**Lord Freud:** The details of how the waiting period will interact with a claimant's date of claim and assessment periods will be announced in due course.

## Visas

*Question*

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

To ask Her Majesty's Government what assessment they have made of the impact of visa bonds on (1) relations between the United Kingdom and the affected "high risk" countries, and (2) the travel costs of United Kingdom citizens visiting those countries. [HL1403]

**The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach):** We plan to introduce a small scale pilot scheme later this year to test the impact of requiring financial bonds from selected visit visa applicants as a means of deterring non-compliance by those who overstay their visa.

The details of the scheme are still being finalised, including the locations for the pilot and nationalities in scope, and will be announced in due course.

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