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(HANSARD)

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House of Lords

Monday, 24 June 2013.

2.30 pm

Prayers—read by the Lord Bishop of Ripon and Leeds.

Death of a Member: Lord Fraser of Carmyllie

Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death of the noble and learned Lord, Lord Fraser of Carmyllie, on 22 June. On behalf of the House, I extend our condolences to the noble and learned Lord's family and friends.

Central Asia

Question

2.37 pm

Asked by ***Viscount Waverley***

To ask Her Majesty's Government what assessment they have made of the potential for instability in Central Asia.

Viscount Waverley: My Lords, in drawing attention to my non-conflicting interests as listed in the register, I beg leave to ask the Question standing in my name on the Order Paper.

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Lords, the UK is keen to work with the Governments of central Asia to promote a stable region. We do, however, assess that there are a number of challenges to stability in central Asia, in particular transnational threats, including those from Afghanistan, inter-regional issues such as ethnic tensions, and bilateral disputes. We are working with central Asian Governments on a number of initiatives funded by the tri-departmental Conflict Pool to help them meet these challenges, and we continue to monitor progress.

Viscount Waverley: My Lords, I thank the Minister. She appears to agree that security and stability in the strategic geopolitical priority region of central Asia, including Afghanistan, are paramount. However, trans-boundary upstream/downstream water issues and disputes, industrial pollution, population demographics, drawing on limited resources, the aftermath of the withdrawal from Afghanistan, an underlying trend of extremism, and hard drug transit along the northern routes supplying the northern and western markets, all compounded by areas of poverty and human rights concerns, are challenges and troubling indicators in this region of high potential—

Baroness Warsi: I know that the noble Viscount comes to these matters with great expertise and knows the region incredibly well. The Government believe that to help the central Asian states, the best thing we can do is help to strengthen their political institutions to improve governance, increase accountability and support the rule of law. The noble Lord has asked a wide-ranging question and I shall probably have to write to him in some detail in order to answer it fully. However, I can assure him that in opening our embassy in Bishkek in 2012, for example, we are now one of only three EU member states with embassies in all five of the central Asian states, and therefore we have the reach that will enable us to deal with some of these incredibly difficult issues.

Lord Avebury: My Lords, was not the message sent out by my noble friend during her tour of the region that we want to do business with them, and if that is what they are offering, we will not give them a hard time on human rights? Considering that both Turkmenistan and Uzbekistan are countries of concern to the FCO and that human rights abuses in all the central Asian republics are a prime cause of instability, could we address this imbalance? Will the Prime Minister take up human rights during his forthcoming visit to Kazakhstan?

Baroness Warsi: The noble Lord raises an important point. As the Minister with responsibility for central Asia and human rights, I do not think it is a question of either/or. It is important that the economic foundations of these countries are strengthened. It is important that issues around poverty are dealt with and that civil society too is empowered to raise these challenges. In every country that I visited in central Asia, of course we discussed the potential opportunities for them and for us, but in every country human rights was right at the top of the agenda. As the noble Lord said, both Turkmenistan and Uzbekistan are countries of concern in our annual human rights report.

Lord Davies of Coity: My Lords, to what extent does the Minister feel that the people of central Asia have benefited from our involvement there?

Baroness Warsi: Central Asia is a wide region and I would have to take it country by country. A lot of the work that we have been doing in Kyrgyzstan on support for civil society means that there is an incredibly vibrant NGO sector there, and many in Turkmenistan are feeling the benefits of the work that we are doing on Turkmenistan's economy. I have no doubt that the work we are doing in central Asia has a positive impact.

Lord Hannay of Chiswick: My Lords, the Minister obviously recognises that these countries of central Asia have great potential to do each other harm, but also potential to do each other good. Should the Government not encourage some form of sub-regional co-operation of the countries around Afghanistan, in which undertakings against interference were given and economic co-operation was given a boost?

Baroness Warsi: The noble Lord may be aware that the Istanbul process, which involves the regions as well as other countries, deals with a number of confidence-building measures that are all about securing regional

[Baroness Warsi]
stability and involving central Asian states. The latest meeting took place in Almaty. We are involved in both the counternarcotics and counterterrorism parts of those confidence-building measures. I absolutely agree with the noble Lord that it is important that countries in the region work together on regional stability, but it is important that they work on other issues as well.

Baroness Berridge: My Lords, probably the main country of concern in this region to the general public is Afghanistan and the withdrawal. Could my noble friend the Minister please outline how Her Majesty's Government's strategy across the whole region is going to assist stability in Afghanistan?

Baroness Warsi: My noble friend asks a very important question. These countries are going to be the first to suffer any consequences of what might happen in Afghanistan in the coming years. They are already feeling the effects, for example, of extremism. We are working with a number of countries, both on cross-border support so that they can secure their borders and in wider work on extremism. A number of these countries have also played a vital role in our securing a northern line of communication and a drawdown route when our combat troops return at the end of 2014.

Lord St John of Bletso: My Lords, can the Minister elaborate on what is being done and what assistance is required to curb the transit of drugs from Afghanistan through central Asian corridors into overseas markets?

Baroness Warsi: As well as being the northern line of communication, it is also the northern route, tragically, for drug trafficking and crime. A large amount of those drugs end up in Russia, but we feel the consequences of these drugs on our own streets. We are working with a number of the central Asian countries to improve border security through training, and there are Conflict Pool-funded projects, for example to train Uzbek customs officers to secure borders in Uzbekistan and Tajikistan. As I said earlier, we are specifically involved in the counternarcotics element of the Istanbul process. We also have representatives from SOCA, who are in the region supporting our work.

Lord West of Spithead: My Lords, as a sailor, I see their greatest deprivation of course as not being adjacent to a lovely ocean. Clearly there are a huge number of weapons now in that region, particularly because of what has happened in Afghanistan. Are the Government content that we, as well as NATO, have taken the requisite actions to ensure that we do not add to the huge amount of weaponry within that region?

Baroness Warsi: We are incredibly cautious. The noble Lord will be aware that we have to overcome a number of hurdles before we are comfortable with supplying any sort of arms to any country. I am confident, from the work that I have been involved in with specific countries, that the items that have been given, gifted or sold absolutely will not add to the instability and security situation in those countries.

Taxation: Income Tax

Question

2.45 pm

Asked by ***Lord Risby***

To ask Her Majesty's Government what assessment they have made of the impact of the reduction in the top rate of income tax from 50 per cent to 45 per cent.

Lord Newby: My Lords, the cost of reducing the additional rate of income tax is estimated at around £100 million per year. This takes account of the significant behavioural response associated with changes in personal tax rates. Details were set out in an HMRC report published alongside Budget 2012. The Government believe that it is not efficient to maintain a tax rate that is ineffective at raising revenue from high earners and risks damaging growth.

Lord Risby: Does my noble friend agree that, in a difficult economic environment, maximising tax revenues while avoiding the counterproductive in pursuing it is a huge task which is currently facing all European economies? Does he agree that, following the reduction of the highest rate of tax from 50% to 45%, the number of people in the highest tax category is increasing, and that the revenue generated from the highest-rate taxpayers will increase this year by 57% to over £49 billion? What conclusion does he draw from this?

Lord Newby: My Lords, I think that the conclusion I draw is that the Government always have a tricky task in maximising tax revenues, particularly at a time of austerity and when people are looking for tax changes to be fair. In that context, at the same time as the Government reduced this tax rate they introduced changes to stamp duty land tax and anti-avoidance measures on residential property which will raise several times the amount of tax lost from reducing the 50p band.

Lord Eatwell: My Lords, the noble Lord has introduced the issue of avoidance. What is the Treasury's estimate of the loss of revenue due to bonuses and other payments being held back after the Chancellor provided his friends with such an easy means of tax avoidance by pre-announcing their top-rate tax cut?

Lord Newby: My Lords, there is an awful lot of hype about what may or may not be achieved by reducing or retaining the higher rate of tax. HMRC produced its report on the matter last year and estimated that, in the short term, the cost to the Exchequer was £100 million. It said that the "direct yield" from the higher rate,
"might fall over time toward or beyond zero".

Baroness Kramer: My Lords, since this Question looks at the impact of tax policy, can the Minister give me his assessment of the impact of raising the tax threshold in this Parliament?

Lord Newby: My Lords, the effect of raising the tax threshold is that some 2.7 million low-income earners will be taken out of tax by April 2014 and that 23.6 million individuals will benefit by paying less tax.

Lord Grocott: Can the Minister explain how it was that he was able to give a very positive answer to his noble friend about, as he described it, the benefits to the Exchequer of reducing the top rate of tax, but that when my noble friend Lord Eatwell asked him a very valid question about people who had deferred taking their bonuses from the high-tax period to the lower-tax period, he said that it was impossible to speculate about it? He understands the benefits but he cannot acknowledge the simple statistic that my noble friend put to him.

Lord Newby: The absolutely bald point that lay behind the question of the noble Lord, Lord Eatwell, is that when you do this kind of thing at the top end of tax rates, very well-off people take evasive action. That is why it is an ineffective way of raising additional amounts of money. People do not just sit there and pay the tax: they forestall it, postpone it and avoid it. This is why it was a very ineffective way of trying to raise additional funding.

Lord Forsyth of Drumlean: My Lords, can my noble friend tell us what the effect was on revenue of increasing the rate of capital gains tax?

Lord Newby: My Lords, I do not have that figure immediately to hand, but it was very significant. It was more than the potential loss of revenue from reducing the top rate of tax.

Lord Howarth of Newport: My Lords, Colbert famously said that the art of taxation is to raise the maximum of revenue with the minimum of squawking. This Government are raising their revenue with a maximum of purring. Should that not make us suspicious?

Lord Newby: No, my Lords.

Lord Christopher: My Lords, perhaps I may help. According to the Office for Budget Responsibility, two or three years ago the loss to the Revenue due to anticipation was £1 billion. That was the figure that the OBR gave and it has not been contradicted. When will we know what the degree of postponement is this year? If I may say so, in my opinion both of these losses could have been stopped with a two or three-line clause in the Finance Bill, which both he and I could have written.

Lord Newby: My Lords, I think that the noble Lord overestimates my drafting skills.

Lord Peston: My Lords, according to this bit of paper the original Question asked "what assessment" the Government have made. As far as I can see, they have made no assessment. Does the noble Lord remember, from whenever he learnt some economics, that economic theory does not tell us anything at all about the optimum rate of tax? This is because people with a greater preference for leisure will work less and pay less tax, if you cut the tax. That is why economics and economists are such a pain in the neck.

Lord Newby: My Lords, I could not possibly comment on that last point. I refer the noble Lord, and indeed all other noble Lords, to the extremely comprehensive assessment made by HMRC last year, entitled *The Exchequer effect of the 50 per cent additional rate of income tax*.

Baroness Farrington of Ribbleton: My Lords, the Minister acceded to the point that announcing in advance that tax rates will change leads to a change in people's habits. Why did the Government give people so long to avoid paying this tax? The proposed spending on facilities for troops returning from Afghanistan, for example, will have to be paid for over a long time. Does the Minister accept that this could be paid for much more quickly if that decision had not been taken?

Lord Newby: My Lords, the noble Baroness will remember that the 50p tax rate was introduced by her colleague Gordon Brown during his premiership and that a long period of notice was given. The rate was not introduced by this Government. As far as paying for troops who are coming back from Afghanistan is concerned, that will be paid for out of general revenue, which is the right way of doing it.

NHS: Mid-Staffordshire NHS Trust

Question

2.53 pm

Asked by ***Lord Monks***

To ask Her Majesty's Government what steps they are taking to issue guidelines about public statements by NHS executives following the announcement of reviews of hospital care launched following the Francis review into Mid-Staffordshire NHS Trust.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, in the context of Mid Staffordshire, it is right that prompt action is taken whenever there are concerns about patient safety. We agree that there is need for an authoritative voice on the quality of hospital care in the NHS. In future, the CQC, through its new Chief Inspector of Hospitals, Professor Sir Mike Richards, will play this role and provide expert judgment.

Lord Monks: I thank the noble Earl for that reply. I can well understand and share the nervousness, as does the whole House, about some NHS managements after the disasters of Mid Staffs and now Morecambe Bay. Does the noble Earl agree that it is important to avoid a lurch to the other extreme with a sort of shoot first and ask questions later culture? Does he further agree that there have recently been some instances of such a trigger-happy approach at Bolton and Leeds hospitals? In those cases the falsely accused were later completely exonerated. What steps can be taken to avoid panicky reactions which cause destabilisation and demoralisation in important parts of the NHS?

Earl Howe: I agree with the noble Lord's general point that it is important to avoid oversensationalising or exaggerating a situation. I am not aware that official NHS spokesmen have been guilty of that in either of the two cases that he refers to. If there is cause for concern about any aspect of the NHS, it is surely right

[Earl Howe]
that that concern is made public. The important thing is for those public statements to be balanced and authoritative. That will be one major advantage of having as Chief Inspector of Hospitals a professional who is as widely respected as Professor Sir Mike Richards.

Lord Walton of Detchant: My Lords, is the Minister aware that, many years ago, the General Medical Council imposed on registered medical practitioners an obligation to report any serious deficiencies in practice or other serious failings which they observed on the part of medical colleagues? It was a kind of medical whistleblowers' charter. Bearing in mind what happened not only in Staffs but in Furness hospital in Cumbria, is it not time for a similar formal obligation to be imposed on executives and managers in the NHS and in relevant bodies such as the Care Quality Commission?

Earl Howe: My Lords, the noble Lord raises a very current issue. As he will remember, we have introduced a contractual duty to raise concerns. We have issued guidance to NHS organisations on that subject. We have also strengthened the NHS constitution to support staff in the NHS and in social care on how to raise concerns. There is a free helpline to enable them to do that. We are considering in the context of the Care Bill the whole issue of the duty of candour. I feel sure that the noble Lord will make a valid contribution to that debate.

Baroness Jolly: My Lords, communication of complex issues is a vital part of any press department's role. Will my noble friend the Minister tell the House how large the press teams within the Department of Health and NHS England are, how much they cost the taxpayer and how their effectiveness is managed?

Earl Howe: My Lords, the latest figure that I have for the cost of the Department of Health's media centre is for 2011-12 and is £2.57 million. I will write to my noble friend as soon as I have more recent figures. She may be interested to know that the names and contact details of each of the department's press officers are published on the GOV.UK website. Currently, 28 Department of Health press officers are listed there. I do not have to hand the details of the number of press officers employed by NHS England, but, again, I shall write to my noble friend with that information. In the department and in NHS England, internal line management arrangements are in place to measure performance.

Lord Hunt of Kings Heath: My Lords, I refer noble Lords to my health interests in the register. I was very interested in the Minister's first response in which he agreed that oversensational statements about the NHS are doing great damage. Has he shared that view with his right honourable friend the Secretary of State? Hardly a day goes by without the Secretary of State taking an opportunity to attack various aspects of the National Health Service. Will he take it from me that this is having a very bad effect on morale in the NHS? His right honourable friend should desist, and a period of silence from him would be very welcome.

Earl Howe: The question surely is whether my right honourable friend is saying things that are true. My judgment is that he is very near the truth if not spot on. Most people will ask themselves whether it is the Department of Health or the press which oversensationalises things. I think I know the answer to that.

Lord Mackay of Clashfern: My Lords, in considering the way forward in inspections, might not prominence be given to local inspection systems? After all, a national system cannot be in all the places at once, whereas local people can see what is going on in their local area. There might be something to be said for strengthening that aspect of the inspection system.

Earl Howe: My noble and learned friend makes an important point. Of course, that will be the virtue of local Healthwatch, which will be the eyes and ears of the local community in a particular area. We have also strengthened the role of governors of foundation trusts, whose job it will be to have an equally up-to-the-minute view of their organisation's performance.

Baroness Wall of New Barnet: My Lords, I want to reinforce the message put to the Minister this afternoon and tell him what it feels like at the sharp end of the health service. Both my noble friends who have spoken echoed the comments—misquoted or otherwise—made by the Secretary of State. Those comments have caused absolute fear and I am not exaggerating. We had the CQC at our trust on Friday. Our regional person for the CQC is fantastic, the CQC's reporting is really good and, as noble Lords know, I am supportive of it. However, will the noble Earl please ensure that the messages stop? These people carry out a really important job and if we stop believing that what they do matters, then I do not know where we go. Can we please make sure that the reinforcement of the CQC, with new people involved, will make a difference?

Earl Howe: Ministers have been highly supportive of the current CQC leadership and in no way do we wish to undermine its work. Having said that, if concerns arise about how the CQC has done its job in the past, Ministers have to be candid about that.

Bank of England: National Debt

Question

3.01 pm

Asked by ***Lord Williams of Elvel***

To ask Her Majesty's Government what proportion of the national debt is currently held by the Bank of England.

Lord Newby: My Lords, Bank of England data state that the Bank of England's asset purchase facility currently holds £326.3 billion of gilts by nominal value. This was equivalent to 24.1% of the total stock of gilts and Treasury bills at the end of March 2013.

Lord Williams of Elvel: My Lords, if the Minister were to consult Wikipedia, he would see that the figure is rather higher. Something like a third of the national

debt is now owned by the Bank of England. Given this, does the Minister agree that in time this position must be unwound, and how will this be achieved?

Lord Newby: My Lords, this measure was taken to deal with the heart attack suffered by the British economy and over a period it will be unwound. This is a matter for the Monetary Policy Committee of the Bank of England to manage. At the point at which it feels it right to start unwinding, no doubt it will explain how it plans to do it.

Lord Sharkey: My Lords, the Prudential Regulation Authority has said that the banks must raise an additional £27 billion in capital. Will the Minister tell the House how the Government intend to make sure that this increase in capital requirements will not lead to further reductions in lending to SMEs?

Lord Newby: My Lords, the Government are not responsible for the way in which banks may or may not raise capital. We are very keen for the banks to continue to lend money to SMEs and, indeed, to increase the extent to which they do it. One way in which we hope that this will happen is through increased competition in the banking sector. We hope that current trends in some aspects of that, with some of the new smaller banks lending to SMEs, will continue.

Lord Barnett: My Lords, does the Minister recall that in 2010 the Chancellor forecast that the total national debt as a percentage of GDP would start to fall in 2015? He later changed that to 2018. Now that forecast might need to be altered, given the review that he will announce on Wednesday, and further cuts. When does the Minister expect the national debt itself to start falling?

Lord Newby: My Lords, the noble Lord is right to say that the point at which the national debt will fall as a proportion of GDP has been pushed out by a couple of years. The statements made at the Budget showed that we still believe that it will happen in 2017-18, and the spending round being announced later this week is designed to ensure that we meet that target.

Lord Higgins: My Lords, can my noble friend explain how this process of unwinding is to take place? Does he mean that the Bank of England will sell back the same gilt-edged securities to the market and, in that case, are they likely to have the right degree of duration and so on?

Lord Newby: My Lords, at Question Time with less than three minutes to go, I cannot give a very detailed description. The key point is that the Monetary Policy Committee is committed to working with the Debt Management Office to make sure that, as and when the present situation is unwound, that takes place in an orderly manner so that we do not have undue volatility in the market.

Lord Eatwell: My Lords, what contingency has the Treasury made for repaying to the Bank of England the revenues it currently receives should the Bank incur a loss on its bond holdings?

Lord Newby: My Lords, the Treasury has always accepted that it might find itself paying back money to the Bank of England. The noble Lord will be aware that the original situation was that the Bank was buying Treasury bills and collecting interest on them. The Treasury was paying the interest to the Bank, which was then sitting on the interest. What we have done, in line with America and Japan, which have broadly the same scheme, is ensure that that money, which amounts to some £19 billion to date, has been transferred back to the Treasury. We have always accepted that there could be a reverse flow as bills are sold back into the market or expire, but that will take place over a significant period. We believe that it is sensible to operate in that way.

Lord Lawson of Blaby: My Lords, following the supplementary question from my noble friend from the Liberal Democrat Benches, can my noble friend the Minister confirm that the requirement on banks to raise more capital will in no way reduce the amount of lending to SMEs? That is just special pleading by the banks. In fact, more capital will be enabled to be lent to SMEs. While he is on his feet, can he also confirm that a good bank/bad bank split of the Royal Bank of Scotland Group as soon as possible would also greatly assist more lending to SMEs?

Lord Newby: My Lords, the noble Lord's views on the good bank/bad bank split are well known. As he knows, the Treasury is now looking at that. We are hopeful that as economic conditions improve, lending to SMEs will increase in any event, but I have been surprised over the past three years by the extent to which the views of the banks about the demand from SMEs for lending have not been matched by the self-professed requirements of SMEs. I think that at every stage the banks could and should have done more.

National Security Strategy

Membership Motion

3.07 pm

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

That Lord Levene of Portsoken be appointed a member of the Joint Committee in place of Baroness Manningham-Buller, resigned.

Motion agreed.

Energy Bill

Order of Consideration Motion

3.08 pm

Moved by ***Baroness Verma***

That it be an instruction to the Grand Committee to which the Energy Bill has been committed that they consider the Bill in the following order:

Clauses 1 to 4, Clauses 56 to 63, Schedule 6, Clauses 64 to 66, Schedule 7, Clauses 67 to 71, Schedule 8, Clauses 72 to 88, Schedule 9, Clauses 89 to 94, Schedule 10, Clauses 95 to 103, Schedule 11, Clause 104, Schedule 12, Clauses 105 to 117, Schedule 13, Clauses 118 to 132, Schedule 14,

[Baroness Verma]

Clauses 133 to 136, Clause 47, Schedule 4, Clauses 48 and 49, Schedule 5, Clauses 50 and 51, Clause 5, Clauses 21 to 37, Clauses 6 and 7, Schedule 1, Clauses 8 to 20, Clauses 43 to 46, Clause 38, Schedule 2, Clauses 39 to 41, Schedule 3, Clause 42, Clauses 52 to 55, Clauses 137 to 142.

Motion agreed.

Marriage (Same Sex Couples) Bill

Committee (3rd Day)

Relevant document: 4th Report from the Delegated Powers Committee.

3.08 pm

Schedule 4: Effect of extension of marriage: further provision

Amendment 45

Moved by ***Lord Alli***

45: Schedule 4, page 35, line 13, leave out sub-paragraphs (2) and (3) and insert—

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

Lord Alli: My Lords, the amendment is boring to most because it deals with pensions issues, but important to some because it deals with what happens to their loved ones once they have gone.

Baroness Anelay of St Johns: My Lords, the noble Lord, Lord Alli, is being very courteous in hesitating a while. If I intervene for long enough, that may have the effect of clearing the Chamber almost altogether, and then we will have a little peace and quiet for him to present his amendment.

Lord Alli: My Lords, this amendment is about addressing an inequality in pensions in relation to survivor benefits that will affect a small number of people in a very unfair way.

Let me try to explain. The Equality Act allows occupational pension providers to ignore the service and contributions of gay employees prior to 2005 when it comes to paying out survivor benefits to civil partners. This stemmed from an original exemption in the Civil Partnership Act that I argued against at that time. This Bill would see the same thing happen to same-sex spouses.

I will say from the outset that the majority of occupational pension schemes have ignored this provision and pay out fully to survivors. They do this because they believe it to be fair and I recognise that and thank them for it. However, there are those that do not. Their reason is mostly cost. This is odd, as the Office for National Statistics calculates that it would cost only £18 million to the private sector.

In a past career, I was the publisher of a magazine with the snappy title of *Pensions*. In case your Lordships are interested, I also published *Planned Savings*, *Insurance Age*, *The Savings Market* and a statistical compendium called *Rateguide*. So I am pretty confident that no pension provider can accurately predict how many individuals within a pension scheme will be gay, how many will marry under this Bill when it becomes law or become civil partners and how many will outlive their partners, husbands or wives by a significant period. I am also pretty confident that for the one-third of schemes that do not pay out, the actuaries who run the numbers probably have already built in the additional costs associated with this amendment. Pensions actuaries—and I have met many of them—deal constantly in uncertainties around the length of life, the possibility of illness, the number of scheme members who are likely to marry and many more issues. Given that two-thirds of schemes already do, I do not understand why we cannot insist that the rest treat same-sex couples who marry in exactly the same way as heterosexual couples who marry. They have all paid in the same pension contributions.

I know from the other place that the Government think that this is a matter for the schemes themselves. However, in debating amendment after amendment we have discussed the rights of those who disagree with same-sex marriages to be able to do so, and we have resisted giving public servants the right to pick and choose what services they will give to whom based upon their deeply held beliefs. That is effectively what we would be doing here with employers and pension scheme trustees—we would be allowing pension fund trustees who genuinely believe same-sex marriage to be wrong to have the right to create two classes of spouses in their schemes. This legislation would permit it.

If we were not dealing with pensions, which are boring and complicated, but some other form of service, we would not allow this to happen. The cost to the Government is nothing. These changes were made for the public sector in 2004. I ask the Minister not to let the subject matter perpetuate an injustice into this Bill that is completely unnecessary. It is not a huge issue—£18 million does not set the world alight, but it is a kindness that we can give to a few people at the most difficult time in their life. I cannot demand that the noble Baroness do something about it; I can only ask, with the sincerity of those who have asked me to take up this issue, to take it away and see if we can do something about it. We should have solved this issue in 2004. The party opposite probably should have done so in 2010. People have waited far too long for the compassion that they deserve. I hope that we might find that in this Bill. I beg to move.

The Lord Bishop of Guildford: My Lords, I speak with some sympathy for the amendment of the noble Lord, Lord Alli. For once, these Benches are able to say that we put our money where our mouth is. With civil partnership arrangements, the Church of England pension scheme has done exactly as the noble Lord, Lord Alli, has suggested. I think that that is the right way forward and I hope that the Government might give this amendment consideration.

3.15 pm

Baroness Howe of Idlicote: My Lords, treating a gay employee less favourably than a straight colleague under an occupational pension scheme purely because of the gender of his or her partner, is direct discrimination

on the grounds of sexual orientation. This was the conclusion of the employment tribunal when giving judgment in the case of Walker v Innospec. Rather than heeding these conclusions and reflecting on the inherent injustice that this case addressed, the Government have applied to be joined to John Walker's case in support of his employer and pension provider. They also seek to legislate in this Bill to extend the discrimination so that it applies not just to civil partners but to same-sex spouses, too.

As we know, this issue is not new. During the parliamentary passage of the Civil Partnership Bill, we considered the position of public service schemes. Initially, the then Labour Government claimed that benefits under such schemes should accrue only in relation to future service, arguing against imposing retrospective burdens. Thankfully, on that occasion the Government had a change of heart and recognised the need to secure equal treatment. The situation was similarly equalised for contracted-out schemes, while the law in relation to the state pension was also changed to allow civil partners to draw on the contribution record of their civil partners. These were welcome concessions but, sadly, the discrimination ultimately banished from other schemes remained in the case of contracted-in occupational pension schemes.

That this inequality remains on the statute book will surprise and sadden many who believed that the Civil Partnership Act gave civil partners all the same legal entitlements as spouses. The reason that the Government have given for extending rather than remedying this discrimination is a reluctance to impose retrospective costs on pension schemes. The fact that this discrimination has already been rectified in relation to public schemes rather undermines the Government's objection to retrospection. It is far from unprecedented to take such a step but perhaps it is the Government's position that in relation to public schemes, for which they have more direct responsibility, the basic demands of equality prevail over concerns about retrospection. I would argue, however, that the Government should not only refrain from discrimination but refuse to sanction direct discrimination by the private sector. This is the principle which underlines much of the substance of all our equality legislation.

A society in which the state refrains from discrimination but in which you can be turned away from a restaurant or hotel because you are gay is not a fair society. For decades, the love and commitment shared by gay couples was not afforded any form of recognition by the state. Prior to the Civil Partnership Act gay couples did not have access to the legal benefits available to straight couples in so many areas of life, from property rights to pensions. If this Bill is, as I believe it to be, about correcting these injustices, why are we relying on historic discrimination to justify real, ongoing inequality?

The argument goes like this. Before 2005 we did not formally recognise gay relationships, therefore gay couples cannot expect to receive the benefits they would have received had we awarded their relationships the respect they deserved at an earlier juncture. Discrimination should not beget discrimination in this way. It is surely wrong, and against the whole spirit of the Bill. I warmly support the amendment of the noble Lord, Lord Alli, and very much hope that the Government will do what he proposes.

Lord Elton: My Lords, I support the noble Lord, Lord Ali. The best thing I can do is to endorse everything that the right reverend Prelate has said. If this is a Bill about equality, we have to treat people equally. As that is what we are told it is, that it is what I expect will happen.

Baroness Lister of Burtersett: My Lords, a very powerful case has been made. I simply want to draw attention to what the Joint Committee on Human Rights has said on this and to the oral evidence that the Minister gave to the committee, where he talked about wanting to find the fairest place to put same-sex married couples within the pensions framework. What we have heard this afternoon shows that this is not the fairest place. I would be very interested to hear how the Minister can justify this discrimination as being the fairest place.

When he gave evidence to us, the Minister gave some large sums and made it all sound incredibly complicated. He talked about £3 billion to £4 billion. It is not at all clear to me where those sums come from. It would be helpful if the Minister could clarify why such large sums are being bandied around. The committee called for a full review of pension provision 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. What we have heard sounds like unjustifiable discrimination. We call on the Government to provide precise information about the potential costs of equalising pension rights.

Baroness Barker: My Lords, I rise briefly to support this amendment. When the Civil Partnership Act went through, it was interesting to note that employers were already ahead of the law and that a number of private schemes already recognised partners. When the civil partnership law was enacted, many more then did so. It is fair to say that in this House there are people who may have forgotten more about pensions than I will ever know. However, in the greater scheme of things, this is not very much money in terms of the overall pension contributions, yet it means an immense amount to individuals; those people who are doing all the things that we would encourage others to do, like being judicious in provision for their later life. It seems to me wholly wrong that they are not rewarded in the way that every other person would be if they did the same thing.

Baroness Royall of Blaisdon: My Lords, as my noble friend said, pensions might sound boring but, as the noble Baroness, Lady Barker, said, pensions are extremely important to individuals. They do affect quality of life, so this is a very important amendment.

Liberty, to which I am grateful for its excellent briefing on this issue, is surely right in saying:

> "This is an unnecessary and counterproductive anomaly in a Bill which otherwise makes landmark progress in equally respecting the rights of gay people".

The same has been said from all Benches today.

[Baroness Royall of Blaisdon]

Naturally, I recognise the anomaly that exists between the treatment of pension rights for married and same-sex civil partners. However, this Bill not only continues that discrimination but it takes forward the same distinction to same-sex married couples: in terms of these pension rights, they would be treated differently from opposite-sex married couples. This uneven treatment would, therefore, be continued. As my noble friend cogently argued, this should be an opportunity to get rid of the current anomaly rather than to extend the discrimination.

I was struck by what I thought was an extraordinary answer from the Secretary of State to the Joint Committee on Human Rights in relation to compatibility with Article 14 of the European Convention on Human Rights on this issue. She said that the reason for treating same-sex-marriage couples as civil partners is that they could have the option either of getting married or of forming a civil partnership—and that the legislation therefore treats them equally.

This is sort of true but it goes against the whole ethos of this Bill. As my noble friend said, arguments which are made against this on the principle of retrospection are misplaced. It is clear that actuaries base forecasts on a wide range of assumptions which are not necessarily proved to be correct. In its report on the Bill, the JCHR also noted: that,

"Depending on the provisions of the scheme, pension rights of same sex spouses may not be the same as pension rights of opposite sex spouses, which may give rise to an issue as to whether this is compatible with Article 14 of the ECHR in conjunction with Article 1 Protocol 1".

It has already been noted that the Government are currently fighting an appeal against the decision to uphold this view in the case of John Walker. However, if legislation is not amended to take account of the Walker judgment and the reliance on the European Court findings, it is likely that further action will be taken by same-sex married partners. One cannot blame them. They will seek similar redress in the courts to ensure that they, too, can access pension rights in an equal way. That would be regrettable.

Of course, I recognise that resolving this anomaly is not without cost but the real frustration is that we do not have the requisite information to debate the issue with knowledge of its full consequences. When responding to a similar amendment moved in the other place, the Minister, Helen Grant, said that,

"we do not believe that it would be right to put on schemes the significant additional and retrospective financial burdens that would arise from removing the Equality Act exception".—[*Official Report*, Commons, 21/5/13; col. 1144.]

However, how significant those burdens are is unclear. The House of Commons Library estimated that the potential additional cost to private contracted-in schemes would be £18 million. That is a significant figure by anyone's estimates, but when compared with the total value of assets under management in the pensions industry it amounts to just 0.006%—as was pointed out by Mr Mike Freer on Report in the Commons. I accept that for a handful of small employers or charitable schemes this may have a disproportionate impact. However, the Government have accepted that around two-thirds of schemes already treat opposite-sex marriages and civil partnerships equally. I pay tribute to all those organisations, including the Church of England, which do the right thing.

In evidence submitted to the JCHR, the Minister for Sport and Tourism, Hugh Robertson, stated that,

"We estimate that in total the impact on both contracted-in and contracted-out private sector schemes could amount to as much as £90 million. There would be very substantial costs for public service schemes".

Will the Minister confirm to the House the costs, additional to the £18 million identified and widely accepted, on which £90 million figure is based, and the costs for public service schemes to which the Secretary of State was referring given the 2005 regulations identified by the Commons Library? On these Benches, we believe that the financial impact of the amendment would be relatively insignificant. However, the Secretary of State is quite clear that there would be a cost. Therefore, I echo the calls from around the Chamber and from the JCHR for the Minister to publish the full evidence on which the Government based their assessment as soon as possible so that we might approach Report armed with the fullest possible view of the consequences of this amendment—an amendment which I fully support.

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Lord, Lord Alli, and all others who contributed to this debate. I understand the strength of feeling behind this amendment and the speeches that have been made. Anticipating this debate, I decided to speak directly to the Pensions Ministers today and so was able to come properly armed with full information.

First, and as I have said in other contexts and in our other debates on the Bill, in making it possible for same-sex couples to marry we have sought to build on existing legislation and not amend the structure of marriage law. The point is that we focused on allowing same-sex couples to marry. In the context of pensions, we are following what already exists for civil partnerships, as has been referred to by several noble Lords in the debate. The introduction of civil partnerships was, as we have acknowledged several times over the last few weeks, a fundamental change in our society. It was a huge step forward. The Act was complex and covered a wide range of different issues. The Labour Government at the time decided to provide this exception for defined benefit pension schemes which are not contracted-out of the state second pension. They clearly did so for a principled reason: Governments do not generally make changes to pension schemes retrospectively. That is the general approach that is taken. That decision was made in 2005 during the passage of that Bill. The noble Lord, Lord Alli, referred to the Equality Act 2010 and suggested that it had then been open to this Government to remove the exception. It is worth reminding the noble Lord and the House that the Equality Act was passed under the previous Government. It was not a Bill that we were still debating and deciding after the election—it predated this Government.

3.30 pm

Let me get to the specifics of the point in hand. I would like to remind noble Lords listening to this debate who may not have been following it in detail

that we are discussing defined benefit schemes and survivor benefits—quite a specific aspect of pensions. As has been acknowledged, defined benefit schemes are struggling to survive. They are decreasing in numbers in terms of how many are still open to new members. The current economic climate has put companies sponsoring such schemes under great financial pressure. Clearly, we have to be mindful of that when we consider adding anything extra to their costs. As regards survivor benefits and this particular point, it is worth saying that while the impact of the change that the noble Lord, Lord Alli, is putting forward might be small for some large pension funds, it could be quite significant on a small pension fund. We would need to be very clear about who is being affected by such change.

As the noble Lord, Lord Alli, and the right reverend Prelate have acknowledged, some of the defined benefit schemes in existence are very generous and go beyond the statutory minimum in terms of what they provide for survivor benefits. That is a matter for those individual schemes, and the benefits provided by pension schemes are very much decided by the schemes themselves. Some schemes do not provide survivor benefits for any members—they are not always offered to opposite-sex couples. The noble Lord, Lord Alli, said that trustees may be able to decide which rules to apply to survivors based on their own personal belief. It is important to say that the decision about which rules to apply to survivors is based on various financial assumptions and not on their beliefs.

It is difficult to make a detailed estimate of the cost to pension schemes if this change in different treatment were made, because we do not have all the relevant data and information. However, using the 2009 ONS survey and other information, we have estimated that removing this exception could increase scheme liabilities by around £18 million in present-day values. The noble Baroness, Lady Lister, referred to remarks that were made by the Pensions Minister when he was giving evidence to the Joint Committee on Human Rights and the additional costs that may be effected by changes to pension schemes. The point he was making was that while there is a specific cost associated with the amendment that we are discussing today, a range of different measures fall under the heading of equalisation that could potentially extend the right to civil partnerships to opposite-sex couples. That is how you could eventually get to an estimated cost of £4 billion; it happens as you move from one thing to the next.

The noble Baroness, Lady Royall, asked about contracted-out schemes and the estimated cost of making changes to them. The statutory survivor requirements do not apply to all the benefits provided by the scheme. Therefore, our conservative estimate is that the direct costs for those schemes would be in the order of £70 million. If you add what we estimate for the contracted-in schemes, you get to £90 million.

It has been suggested that the Government should undertake a survey to obtain more exact information on the potential costs. Although we might be able to reconfirm which schemes go back before 2005 in terms of their accruals, obtaining the detailed data for those that do not to enable us to calculate the costs of removing the exception would be complex. Although I referred to the 2009 ONS survey, the kind of survey necessary to be able to identify the different schemes that might be affected in different ways has not previously been carried out. A survey has not been done that could be repeated; it would have to be done from scratch.

To be fair, however, regardless of the scale of the cost, the Government believe that we should not impose the additional unforeseen obligations on schemes on the principle that we are not introducing retrospective changes. As we have said, these private schemes are funded by businesses, and we do not believe that it is for the Government to say what discretionary benefits they should offer.

The noble Baroness, Lady Howe, talked about public sector schemes that provide surviving civil partners with the same survivor benefits as those given to widowers. As she knows, the public sector schemes are funded by the Government, and it was the previous Government's decision, as funder of the public sector schemes, to take that decision with the financial consequences. It was not for the Government to impose that on other schemes for employers. When all of this was considered in great detail some years ago, the Government accepted the costs and liabilities for the public sector schemes but did not feel that it was right to impose that same level of financial burden on the private sector.

As we all know, the pensions system as a whole is full of differences in treatment as a result of changes in society and social attitudes. The principle of the exception is to introduce those changes going forward, not retrospectively, as in this case. As time goes on, that difference in treatment will be diminished.

Of course, I realise that I am not providing the kind of response that noble Lords had hoped for. However, I hope that I have at least provided an explanation as to why the Government have taken this decision. It may also be helpful for me to inform the House that the exception, as in this difference of treatment, will be considered by the Employment Appeal Tribunal in the case of Walker—somebody who sought to appeal against their own pension scheme provider—and the Government have been added as an interested party in that appeal. We need to wait and see the outcome of that case. However, I hope that the noble Lord, Lord Alli, feels able to withdraw his amendment at this time.

Lord Alli: My Lords, I thank all noble Lords who spoke in support of this amendment, in particular the noble Baroness, Lady Howe of Idlicote, who I know stayed late the other night in the hope that this amendment would come up. I also thank the Minister, in particular for taking the time to speak to the Pensions Minister and for taking a personal interest in this.

To lose your husband, wife or long-term partner is by any account a terrible experience. It is a time when you are least prepared to be able to deal with the complexities of pension scheme trustees. You just want to be left alone with your grief. Putting people through the court system to try to equalise this does not feel particularly humane. We all want our loved ones to be provided for once we go. To rely on the good will of the two-thirds of occupational pension

[Lord Alli]
schemes that are doing the right thing, or, if one is unlucky enough to be in the third, having to fight a battle to receive the benefit paid for by their partner, again seems wrong.

I am only asking the Government to show a bit of compassion for what is a tiny amount of money. They have already conceded the principle in the public sector. I ask the Minister to reflect carefully on what all noble Lords have said in this debate and to see whether it might be the Government's position to resolve the anomaly in this Bill. I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Schedule 4, as amended, agreed.

Amendment 46 not moved.

Clause 12 agreed.

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

Amendment 46ZA

Moved by ***Baroness Barker***

46ZA: Schedule 5, page 40, line 6, after "full" insert "or interim"

Baroness Barker: My Lords, in moving Amendment 46ZA I will also speak to the other amendments that are grouped with it. These are a bunch of somewhat technical amendments that deal with a very difficult situation. Until now, if a person was to change their gender, there was no way in which they could remain in the marriage in which they had lived until that point. For some people in that situation, that was extremely difficult because they continued to love the person to whom they had been married. Some couples, in particular those to whom their faith was very important, found that the inevitable move to divorce was wrong. There is a widespread welcoming of the fact that in this legislation it is now possible for two people in that situation to remain in a marriage, albeit one that is now same-sex.

However, in the process of doing that the Government have, in this Bill, set up another problem. Previously, under the Gender Recognition Act 2004 and the Civil Partnership Act 2004, when a person was going through the process of changing their gender, they could apply for what was known as an interim gender recognition certificate. A panel would recognise that they were going through the process of transition, and as I understand it it was almost like the equivalent of a heterosexual couple receiving something like a decree nisi because it was one step towards what would inevitably be a divorce. If a spouse indicated that they were in agreement with that, the matter could simply go ahead.

The problem arises when a non-co-operative spouse wishes to put a block on that process. For understandable reasons, spouses may be deeply unhappy with the situation in which they find themselves, and they can in effect block the process. I should say that I am deeply indebted to the people who have explained this to me at considerable length, and I apologise to them if I am not putting their case as well as I might.

An important piece of information for me was that a spouse cannot prevent a person from having gender reassignment surgery. They can only stop or hold up the process of recognition of somebody in their new gender, but they cannot prevent them from having the surgery. Therefore, sometimes when spouses are upset and angry they block the process of gender recognition. A common way to do that is by initiating divorce proceedings and then taking no further action so that the whole process is stopped. That can lead to a lot of difficulty, not least with the legal recognition of a person in transition, their ability to work and some aspects of their finances, although not child maintenance payments.

3.45 pm

These amendments would allow a spouse to maintain a veto—they do not seek to get rid of the veto—but limit the amount of time over which it could have effect to approximately six months. This would mean that a spouse could stop the process going ahead but not indefinitely. If a person is going through gender reassignment, they can apply for a gender recognition certificate. If they get an interim certificate, their spouse is notified and that in effect starts a clock ticking for six months. If at the end of the six months there has been no action, the person going through the transition can apply for an annulment.

The amendments would do two things. First, they would give a spouse the right to be notified. I understand that at the moment the first time a spouse may receive any notification that a partner is going through gender reassignment is when court papers are delivered seeking an annulment. These amendments would provide that the person going through the transition is obliged to notify their spouse of that. Secondly, after six months both parties would have an equal right to initiate divorce proceedings.

What does all this mean in non-technical language, and why should we do it? It would mean that a very difficult and painful situation could be brought to an earlier conclusion after six months, although in practice I think it would take about two and a half years, rather than be left to get worse indefinitely or for a very long period. This measure is the equivalent of what the Government have tried to do for heterosexual people in encouraging them to seek mediation and reach agreement between themselves as far as possible rather than their having to rely on the law and prolonging a situation that is wholly unwanted in many cases. I beg to move.

Baroness Gould of Potternewton: My Lords, I put my name to these amendments, having initiated this debate at Second Reading, because I believe that the Bill is morally wrong. I appreciate that these are complex issues—the issue that we are discussing is particularly complex, as the noble Baroness, Lady Barker, illustrated—which are difficult to resolve, but the difference they can make to a transperson's life cannot be underestimated. I illustrate this by referring to an e-mail I received after my speech at Second

Reading. It was from a transperson who said that she cried tears of joy. I am sure that she was not crying tears of joy at my speech but at the fact that somebody had addressed an issue about which she felt so strongly and which was affecting her life. That is terribly important.

As the noble Baroness, Lady Barker, also said, the Bill identifies two anomalies which govern transpeople's lives. The legislation provides for the removal of the requirement for married transpeople who wish to apply for gender recognition to be single at the point of gender recognition. Further, a concession has been made as regards spouses' survivor pensions, which removes a further major concern for many transpeople.

The passing of this amendment would get rid of a third anomaly for transpeople in existing marriages. As it stands, the Bill removes the obligation on a transperson being in an existing marriage, although it does require a civil partnership to be converted to a marriage before application, as otherwise an opposite-sex civil partnership would be created. However, the Bill has now introduced the concept that the non-transitioning spouse must give formal consent. It adds the requirement that spouses now have to consent to the change of their partner. No other area in law—this is a change to the structure of law—requires spousal consent to any change within a marriage. There is no need for spousal consent to end a marriage, move abroad, financially destabilise the family, apply for distant jobs, or for medical treatment. Formal spousal consent that can veto a partner's gender recognition is a new concept in law.

The assumption in marriage law is that spousal consent is assumed. If the spouse does not consent to the partner's actions, the spouse has the opportunity to initiate divorce proceedings. What we have now certainly goes against the view of most spouses. It may have been objected to by some but until 2003-04 it was routine for gender identity clinics to require spousal consent for the treatment of married transpeople, until it was pointed out that this was potentially a breach of the transperson's human rights. We have the same problem again here.

The amendment has been carefully crafted. Its value is that the determination of someone's gender will be a matter for the individual concerned and the state. No other individual is involved. A spouse may choose to expedite the applicant's full gender recognition by including a statutory declaration of consent. However, a spouse cannot prevent an applicant's full gender recognition by more than a year by withholding that consent. That is important. They still have rights but they are limited. In respect of interim gender recognition certificates, the Gender Recognition Act currently allows the gender recognition panel to issue interim gender recognition certificates to those transpeople who were married or in civil partnerships at the point of application.

The amendment allows an applicant in an existing marriage or civil partnership to apply for an interim gender recognition certificate, which would allow annulment or divorce proceedings to commence if required. Further, it would allow an individual who has been granted an interim gender recognition certificate to change their gender under the Act, after a predetermined period has elapsed. The Bill makes no distinction between marriages where both spouses wish it to continue and marriages where divorce proceedings have commenced. Therefore, we seem to have created the ludicrous situation that in the absence of a decree absolute, the divorcing spouse will still be required to give consent to the transperson's gender recognition, no matter how long it has taken to get to that point in the divorce. Marriages can break down when a transperson reveals themselves to be trans. There are many points at which either spouse may decide that the marriage can no longer continue, such as the point of revelation, when treatment commences, when the transperson goes public, the point of name change or when transformation surgery occurs. All these can result in acrimonious proceedings that can drift on for many years. Known cases have gone from 17 months to six years. The amendment would avoid that situation.

The requirement for spousal consent creates one further flashpoint for couples in what is already a difficult situation. The amendment overcomes that problem as spouses can no longer obstruct but only delay by a known timescale someone's gender recognition. That is the crux of the amendment. All the objections raised in the Commons seem to have been satisfied. It is fair to both partners and does not disadvantage the spouse. Again, it is utterly wrong in principle to hand someone's right of identity to someone else who may be hostile to that person. It is irrelevant whether it is a widespread problem or not. That argument should not be used when talking about justice and fairness for any individual. I trust that it will not be used as an explanation for opposing the amendment. I approached this amendment with some hope, and I have enormous respect for the way in which the Minister has responded to opposition to the Bill. She has listened and responded to many of the points raised. But, on this occasion, I feel that that listening has stopped. Many people, not only transpeople, will feel betrayed and discriminated against, and there will certainly be no tears of joy if this amendment is not accepted. It is discrimination in a Bill that is designed to do just the reverse.

When the Gender Recognition Act was passed in 2004, there was no mention of spousal consent. I would be grateful if the Minister could tell the House why this has suddenly emerged. Can she give evidence of spouses having requested a veto? I understand that some spouses have said that they want to be informed, but being informed is substantially different from consent. It would also be helpful to know the view of the gender recognition panel, because now there will be additional documentation for the panel to process, and that will certainly have financial implications.

The transperson potentially gains significantly by gender recognition and therefore may lose significantly by not being able to achieve it. The spouse loses nothing by their partner gaining gender recognition and gains nothing by withholding consent. Does the Minister not see that this is really to do with equity of rights? Leaving the Bill as it stands and without this amendment will mean that the Government are saying to the trans community, "Somehow or other, you seem to be second-class citizens". It will establish a precedent which may be used elsewhere. I appeal to the Minister to rethink her opposition to this amendment because I

[Baroness Gould of Potternewton]
am sure that the issue will not go away. It is a matter of principle, and if her opposition has anything to do with the wording of the amendment, we would be very happy to bring it back on Report with new wording.

Baroness Butler-Sloss: I, too, support these amendments. When I was a family judge, I tried a number of what for me were the saddest of all cases: where one spouse had entered into a transgender situation, particularly before the Gender Recognition Act brought justice to those people. However, that left the other spouse confused and distressed. I remember a particular case in which the wife sat at the back of the court in floods of tears when what was being discussed was how the father could become an auntie because he was in the process of changing his gender.

These are incredibly sad cases for both parties, but particularly for those who are left behind under the Gender Recognition Act. I agree totally with the noble Baroness, Lady Gould, that those who change their gender require fairness, proper human rights and recognition, but this House also needs to remember those who are left behind. However, in doing that, there is no point in retaining a marriage that cannot exist unless it exists in a new dimension.

The two points made to me by the noble Baroness, Lady Barker, shortly before the House sat today are extremely important. The first is that there should be a notification of the fact that the gender recognition spouse is making this application. I understand that the spouse who is left behind does not necessarily know that the application is being made. That is an injustice to that person, and it is one of the important elements in this group of amendments. The second point is this: if people cannot bring themselves to be married as a same-sex couple, as they will be able to in the future when this Bill becomes law, because the left-behind spouse cannot tolerate that, they really should not allow the marriage to continue indefinitely. It does not help either party that it should run on. The suggestion in this group of amendments—that there should be a cut-off point at six months, as there is in every other part of this—seems only just. People can then get on with bringing the marriage, which would by definition have failed, to an end. For these reasons, again, I support these amendments.

4 pm

Baroness Thornton: My Lords, I congratulate the Government on meeting two out of the three issues that the Bill has raised for transgender people, and doing so in a sensible and calm fashion. The only outstanding issue left is the proposal being tested here—that same-sex marriage legislation gives spouses the power of veto over whether a transgender partner can have legal recognition of a change of gender. The noble Baroness, Lady Barker, my noble friend Lady Gould and the noble and learned Baroness, Lady Butler-Sloss, have explained the issues perfectly well. I do not think they are complex; they are very straightforward. This is an unfairness and injustice that needs to be balanced out and dealt with in the Bill.

It is an irony and a great shame that, when enacted, the Bill will affect the human rights of transgender people and take them backwards in the UK. I do not think that is the Government's intention, and I am sure that it is not the intention of the Minister. From these Benches, we think it is important to resolve this issue, which affects a minority of people but, as the noble and learned Baroness, Lady Butler-Sloss, said, can have a very painful and lifelong effect. The Government need to address it. I hope that between now and Report, we will be able to resolve the issue.

Baroness Stowell of Beeston: My Lords, I am grateful to my noble friend Lady Barker for introducing this group of amendments and also to all who have spoken in the debate today. It is an incredibly sensitive issue, and I am mindful of that in responding. The noble Baroness, Lady Gould, made a powerful speech and I want her to know that I was listening carefully to her arguments. The Gender Recognition Panel has been consulted throughout as we have been drafting the Bill and it has not raised any concerns or matter that we have not been able to address.

Before I get to the detail of the amendments, let me be clear from the start—in a way it is a response to a point made by the noble Baroness, Lady Thornton—that our concern in the Bill has been to ensure that as many couples as possible are able to stay married if they wish to do so following one or both spouses obtaining gender recognition. We are proud to make that possible in the Bill and it is something that we very much support.

The provisions in the Bill allow the spouse of a transperson to agree and consent to their marriage continuing as a same-sex marriage after gender recognition. It is not a block or a veto; they cannot prevent their spouse obtaining gender recognition. It is important that I make that point. I will explain in a little bit more detail, but nobody is able to stop anybody getting their gender recognition certificate—of that I can be very clear.

The Bill seeks to strike a fair balance between the Article 8 rights to respect for the private and family life of both spouses. The trans spouse has a right to be granted their gender recognition without unnecessary delay, but the non-trans spouse also has a right to have a say in the future of their marriage following their spouse gaining gender recognition. We have, during the passage of the Bill, listened carefully to interested stakeholders from the trans community. I have been glad to meet some representatives with my honourable friend Helen Grant, the Minister from another place. I am grateful to those who have been involved in the preparation of these amendments, and for the time and effort that have gone into them because I know that has been considerable.

I will turn specifically to what the amendments seek to do. The first aspect is the limit of six months in proposed new subsection (3A), relating to both spouses' power to initiate annulment proceedings following the issue of an interim gender recognition certificate. The point is that there should be a limit of six months for annulment proceedings to start. In response to a point made by my noble friend Lady Barker and the noble and learned Baroness, Lady Butler-Sloss, I want to make it clear that if a spouse refused to commence

annulment proceedings, the trans spouse would be able to do so. In the Bill as it stands, either spouse in the marriage is able to start annulment proceedings. It is not just in the hands of one spouse.

In terms of the second time limit of 12 months in proposed new subsection (3A), once annulment proceedings have been commenced, it is for the court to bring the marriage to an end and, upon that occurring, to issue a full gender recognition certificate to the applicant. To require the Gender Recognition Panel to issue a gender recognition certificate while court proceedings are ongoing would be to require the panel to usurp the functions of a superior court. Where one spouse is deliberately delaying the annulment process, the courts already have the power to deal with this. I will be absolutely clear: either spouse is able to bring forward annulment proceedings and once they start, they are in the hands of the court. Most annulment proceedings take three months—or, from the very outset, six months I think—but it is the court that will ensure that they continue in line with the proper process.

There is another element to the amendments, which I am not sure my noble friend covered in her introductory remarks, but to which I will respond. Proposed new subsection (3B) relates to civil partnerships. The Government do not believe that removing the right of spouses to have a say in the future of their marriage following conversion and gender recognition strikes the proper balance between the rights of both spouses. The agreement of a non-trans civil partner to the conversion of their civil partnership to a same-sex marriage is one thing—it is not the same as their agreement to the resulting marriage continuing as an opposite-sex marriage following their spouse's gender recognition.

That covers the situation where a couple are already in a civil partnership and one of them has gender reassignment. If the non-trans spouse agrees to transfer the civil partnership to a marriage, to allow their certificate to continue, that is not the same as the non-trans spouse agreeing at the same time that they want to continue to be married to somebody who would then be of the opposite sex but who was of the same sex when they first entered into a civil partnership.

The Government and I are always prepared to listen and to take great care in responding to points raised in debate. It is probably worth mentioning that we have already made an amendment to the Bill to protect the pension rights of transpeople who receive a gender recognition certificate and are then in a same-sex marriage, so that they retain the same rights as if they were married to somebody of the opposite sex. Following the debate in the other place on the fast-track procedure, we have been considering this carefully, and I hope very much to bring forward something positive in that area on Report.

The noble and learned Baroness, Lady Butler-Sloss, and other noble Lords asked whether a spouse is currently notified at the point of application. Under current rules, a spouse is not notified of her trans partner's gender recognition application. This is because the marriage must be annulled before a full gender recognition certificate can be issued. The process, as it stands, requires somebody to have annulled their marriage before it is possible to get a full gender recognition certificate. However, I have only just been made aware of that issue and would like to follow up with a letter to the noble and learned Baroness, to my noble friend and to other noble Lords to explain the point in more detail.

I regret that I am not able to accept the amendment, but I hope I was able to give noble Lords the assurance they quite rightly seek. This is not about anybody having more control than the other person over the future of their marriage; it is about ensuring that there is an equal share and balance of rights between the two parties, and that it certainly is not just one spouse who has the right to annul the marriage.

Baroness Thornton: I do not think the noble Baroness has actually addressed the issue of one spouse having the right of veto. I think that is very important. Spousal vetoes are spousal consents, which we got rid of in this country many years ago. A husband actually had to consent to his wife divorcing him, for example. I ask the noble Baroness to look at this most carefully. At the moment the Bill is in danger of reintroducing into British law a new matter—the right of one spouse to veto the actions of another—which we got rid of many years ago.

Baroness Stowell of Beeston: I hoped that I had responded to that, because we are clear that one spouse is not vetoing somebody else's rights. If the transperson in the marriage wants to go for full gender recognition and receive the certificate, they are absolutely entitled to do that. However, if the person to whom they are married does not want to remain married to them, then they have to make a decision about the future of their marriage. We argue that for the non-transperson, whether they wish to remain married to somebody who has gone through gender reassignment is quite a fundamental thing to have to consider. This is not saying that somebody who wants to reassign their gender is not able to do so. The issue is whether they are able to remain in the same marriage. The person to whom they are married also has some right to decide whether they want to remain married to somebody after that person has changed their gender.

Baroness Thornton: The point here is whether the effect of this is that the transperson cannot complete their transition. That is the point the Minister is not answering.

Baroness Stowell of Beeston: Forgive me, but I think I am. I am saying that if someone wants to go ahead with gender reassignment and their spouse does not agree to remain married to them, then it is open to them to start annulment proceedings, as indeed it is to the spouse who no longer wishes to remain married to them. Both of them have the right to start an annulment proceeding, and the person who wishes to change their gender and receive a full certificate can do that. It is not about them being unable to change their gender. They have the right to do that, and nobody is stopping them doing that. However, if the person to whom they are married does not wish to remain married, sadly

[Baroness Stowell of Beeston]
they have to make a choice. They have to decide, and it must be their choice. It is not a choice that the state can make for them.

This is an incredibly difficult situation, as has been made clear in the course of this debate. Fundamentally, it concerns the decision of two people about their future. Each person has equal rights in the future of their marriage, but they must decide for themselves. These amendments seek to institute a time limit after which the state decides for them. It is not for the state to decide who people should be married to.

Baroness Butler-Sloss: I would like to ask the Minister about notification. Clearly, nothing can happen until the interim certificate is provided. I understand that at the moment it is possible for the spouse not to know anything about the gender reassignment application. The sooner the other spouse knows about it the better, because mediation may be required. One does not want the parties to be in dispute, if possible. The shock to the person who finds that, for instance, her husband is no longer going to be her husband is enormous. The quicker she knows about it the better, in order to help finish the marriage decently and quietly. I understood the Minister to say that this could not be done because other proceedings had to come first. I am asking only for notification at the earliest possible stage that an application is being made. There can be nothing wrong with that, because it will do nothing other than make it certain that both spouses know what is going on.

4.15 pm

Baroness Thornton: We are talking here about a balance of rights. I think that I would like guidance, which I would be happy to take in writing or in a meeting. The objections of either spouse might be based on religious conviction, for example, although other objections are possible, too. Equalities cases such as those of Ladele have shown that Article 9 rights need to be balanced with other rights. In this scenario, are the Government explicitly placing someone's Article 9 rights above their partner's Article 8 rights? I am not asking the Minister to respond to that question now, but I would like that to be part of this discussion.

Baroness Stowell of Beeston: I certainly accept the noble Baroness's invitation to respond to her on that point either in a meeting or in writing. However, I can say quite clearly that the rights at issue here are only Article 8 rights; that is, each party's right to a private family life. I shall of course respond in detail to that.

On the point raised by the noble and learned Baroness, Lady Butler-Sloss, under current rules a spouse is not notified of her trans spouse's gender recognition application because the marriage must be annulled before a full gender recognition certificate can be issued. In order for somebody to obtain the certificate, they would already have had to deal with the issue of their own marriage, because it is not possible in current law for two people of the same sex to be married.

I take the point that the noble and learned Baroness made about there being a need for spouses to be notified of changes sooner rather than later. Clearly, if the relationship still exists, there will in most cases be a physical awareness of the change. However, since the noble and learned Baroness has raised a serious point, as has my noble friend, I should like to consult my colleagues on it and follow it up in writing.

Baroness Barker: My Lords, I thank everybody who has taken part in what has appeared at times to be a very technical debate. There are veterans in this Chamber of the Gender Recognition Act and they will understand that, although this is a technical subject, it is also a very human one. I thank the Minister for the way in which she answered the questions which were put to her, for she deserves enormous credit.

I did not take part in debates on the Gender Recognition Act, but I know that the rights of the person making the transition were very much to the fore at the time. Therefore, matters such as notification of their spouse were perhaps not as problematic as they seem now. I absolutely take the point made by the noble Baroness, Lady Stowell, that this not about preventing anybody making a transition but about trying to add to the tools that a couple has at its disposal to sort out their relationship. It is about enabling people to address issues at an earlier stage than they have done in the past. It is also about not allowing proceedings to drag on.

We are now several years on from the passage of the Gender Recognition Act, so we are now beginning to see people coming to us with experience of it, including some who have found themselves in this position. At the end of the day, these are families, quite often with children involved, and it is important that when there is a bitter and difficult situation it can be addressed as swiftly as possible. Perhaps these are situations in which it is never possible for everybody to be happy, but enabling matters to be resolved more quickly is beneficial for all in the end. I beg leave to withdraw the amendment.

Amendment 46ZA withdrawn.

Amendments 46ZB to 46ZG not moved.

Schedule 5 agreed.

Clause 13 agreed.

Schedule 6 agreed.

Clause 14 : Review of civil partnership

Amendment 46A

Moved by ***Baroness Deech***

46A: Clause 14, page 12, line 6, 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 the case for extending such eligibility to—

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

(b) family members who share a house, who have cohabited for 5 years or more and are over the age of eighteen."

Baroness Deech: My Lords, the co-signatory to this amendment, the noble Baroness, Lady O'Cathain, has asked me to give her apologies. She is chairing the House's EU Sub-Committee B at this moment. However, she asked me to make clear her total support for this amendment. It is nine years to the very day since the House agreed to her amendment extending civil partnerships to family members, especially in view of the financial disadvantage they suffer under, for example, inheritance tax. At that time, the Government acknowledged the importance of this issue, yet the amendment was overturned in the other place and still nothing has been done. Because there is to be an urgent and wholesale review of civil partnerships, we firmly believe that family members and carers should be first in the queue to benefit.

I have tried to persuade the House more than once to take heed of the unfair way in which carers and siblings are treated in our law, compared with those in a sexual relationship. Clause 14 provides for a review of civil partnerships and a chance at last for fairness. When the Civil Partnership Bill was passing through Parliament, an amendment to it was adopted in this House by 148 votes to 130, which would have had the effect of extending the availability of civil partnership and the associated inheritance tax concession to family members within the so-called "prohibited degrees of relationship". The amendment was reversed when the Bill returned to the other place.

During the course of the debate in this House, the noble Lord, Lord Alli, said:

"I have great sympathy with the noble Baroness, Lady O'Cathain, when she talks about siblings who share a home or a carer who looks after a disabled relative. Indeed, she will readily acknowledge that I have put the case several times—at Second Reading and in Grand Committee—and I have pushed the Government very hard to look at this issue. There is an injustice here and it needs to be dealt with, but this is not the Bill in which to do it. This Bill is about same-sex couples whose relationships are completely different from those of siblings".—[Official Report, 24/6/04; col. 1369.]

In the same debate, the noble Lord, Lord Goodhart, said:

"There is a strongly arguable case for some kind of relief from inheritance tax for family members who have been carers to enable them to continue living in the house where they have carried out their caring duties. But that is a different argument and this is not the place or the time for that argument. This Bill is inappropriate for dealing with that issue".—[*Official Report*, 24/6/04; col. 1374.]

During the course of the debate in the Standing Committee of the House of Commons, Jacqui Smith, the then Deputy Minister for Women and Equality, said:

"We heard a widespread agreement from Members across almost all parties that the Civil Partnership Bill is not the place to deal with the concerns of relatives"—

although she agreed with them—

"not because those concerns are not important, but because the Bill is not the appropriate legislative base on which to deal with them".—[*Official Report*, Commons, Standing Committee D, 19/10/04; col. 8.]

There is no dissent from the desirability of extending a legally recognised partnership of some sort to related and carer couples. However, we are repeatedly told—whatever Bill is before Parliament—that it is not the right one in which to address the issue. That is not a good argument when their human rights are concerned. The situation is now even more pertinent and pressing, because the unfairness has increased. Civil partners and married couples, gay or straight, will be treated in law far better than, for example, two elderly sisters who share a house or an elderly father and the daughter who cares for him.

I first became interested in this topic because two of my most brilliant former students at Oxford were counsel for two sisters in a case that I am about to describe. One of those students now sits on the Cross-Benches, my noble friend Lord Pannick. The case to which I refer and which is the best known in this field, is that of Miss Joyce and Miss Sybil Burden, sisters, one of whom is now well over 90 and the other approaching 90. They are still alive, to the best of my knowledge, and have lived together for about 85 years. They remain single. They cared for their parents and two aunts to the end and did not allow them to go into a home.

On the death of the first sister, inheritance tax was estimated in 2008 to be about £120,000 and may be more now if the value of their house has risen. The sisters lost their case of discrimination before the Grand Chamber of the European Court of Human Rights. The court held that marriage was different. With respect, the judgment was unsatisfactory not only because of the narrow defeat in court but for the lack of logic. The Government took down the barriers between marriage and other forms of association by enacting advantages for same-sex couples entering a civil partnership and now, shortly, gay marriage.

The European Court of Human Rights held that there was discriminatory treatment of the sisters, but that the UK had a wide margin of appreciation afforded to it and could treat benefits differently according to status in pursuit of the aim of promoting stable relationships by providing the survivor with, inter alia, financial security on the death of a spouse or partner. The lines drawn by the court in that case will no longer exist. All will be redrawn by the passage of the Bill. The unions or marriages that the Government seek to bolster will no longer have to be heterosexual, will not have to involve sex or procreation, but need only to be stable, loving and committed. Those are to be the only criteria in future.

Many siblings are connected perhaps coolly and only by common parentage, but where there are two, such as the Burden sisters, who have lived together for decades in a loving, committed and stable relationship and sharing a home to the exclusion of all other partners, they are indistinguishable in terms of deserving recognition and support from gay marriages or civil partnerships. Any two family members or carers who stay together for decades as an act of self-determination and personal development are a recognisable and welcome unit. Treating them like married people will in fact save the state costs that might otherwise be involved in taking care of them and giving them benefits because, on the death of one of the two elderly sisters whom I mentioned, the survivor will end up paying a large amount of inheritance tax which will mean selling the home, possibly pushing the survivor into state care.

[Baroness Deech]

Article 14 of the European Convention on Human Rights forbids discrimination in rights that are granted on the grounds, inter alia, of birth or other status. There is a clear case here which must urgently be addressed in the review of civil partnerships, ideally by an amendment to the Bill. Why should consanguinity be any less important than the relationship between married and civil partners? The state should not prefer sexual relationships, which may be short-lived and serial, over blood relationships that have proved to have endured decades. The Government should show—they cannot logically—that it is reasonable or necessary to exclude carers and related couples from the new marriage. I cannot resist quoting from Irving Berlin's "White Christmas"—some of your Lordships may remember it:

"Sisters, sisters. There were never such devoted sisters".

How true in many cases.

4.30 pm

Marriage has lost its special status and equality has been established by this Bill. If it is right to promote stable, long-term family partnerships, one cannot object to the proposal that I am putting forward—that is, to investigate giving formality to a bond which might in some respects be deeper and longer lasting than a marriage and which has co-dependence and supportiveness. The Government should right a wrong for a small number of people and give them the joy and benefits of a union as described by the supporters of this Bill. Perhaps I may quote the Burden sisters, who write to me quite a lot. They say:

"We have spent our lives looking after people and never once done anything wrong. And now we are punished for doing the right thing. This government is always going out of its way to give rights to people who have done nothing to deserve them. If we were lesbians we would have all the rights in the world. But we are sisters and it seems we have no rights at all".

Once marital rights, such as pension rights and rights to take key medical decisions and so on, are extended beyond marriage, there is no good reason not to extend them still further to others in long-term caring and stable relationships who happen to be related by blood. If my suggestion is not adopted, I and possibly many noble Lords will be very puzzled. We will wonder if it is necessary to have a royal commission on the financial recognition that should be given to a whole variety of relationships that exist today and will exist in the future. To quote again from Irving Berlin: "Lord help the" Minister,

"who comes between me and my sister".

I can see no case for giving generous treatment to civil partners and married people when it is not available to those who have not the choice or the freedom to enter a formal relationship, whose contracts may not be recognised by the courts and who, as the sisters say, have tried every way to avoid the burden of the inheritance tax that is likely to fall on one of them with such devastating consequences. That inheritance tax is a small matter. It is paid by fewer than 3% of the population and raises less than £3 billion per annum for the Government.

The genie is out of the bottle. Currently, all the varieties of unions that support us in life are inconsistently treated. There are those who would force marriage law onto cohabitants who would like to avoid it. I am not talking about that. However, we must give succour and benefits to those who want a legally recognised status but are denied it. I beg to move.

Lord Lloyd of Berwick: In the absence of the noble Baroness, Lady O'Cathain, I will speak very briefly in support of this humane amendment.

I imagine that we all can think of couples who fall into one or other of these two paragraphs. As regards family members, I remember a much loved bishop, a Bishop of Lewes. It was many years ago. I believed him to be a happily married man. It was only after he died that I discovered that the woman who I had believed to be his wife was his sister. I can conceive of no reason, as the noble Baroness, Lady Deech, has said, why those two should not have enjoyed the benefits of a civil partnership. The same applies to the unpaid carer. In our village there is a man who suffered a severe riding accident many years ago, as a result of which he is paralysed. He has been looked after with the utmost loyalty by the young man who previously looked after his horse. Once again, I can think of no reason why those two should not enjoy the benefits of being parties to a civil partnership.

It is clear to me that the amendment passed by this House nine years ago should have been accepted by the Government and by the Commons. We cannot do much about it in this Bill but we can at least open the door. I hope that we shall.

Baroness Butler-Sloss: My Lords, perhaps I may make two extremely short points. First, as the previous two speakers have said, the door is now open. It is very interesting that on previous Bills the suggestion was made that this was not the right place. However, of all places, a review of civil partnership actually opens the door for what this House very properly voted in favour of before I joined it. Secondly, the effect on the Government of the day—I appreciate that there have been two Governments of opposite views, who have gone the same way on this—would be to defer the inheritance tax and not necessarily to lose it. It would not necessarily cost the Government very much money in the end. I hope that this will be looked at with more sympathy than it has been in the past.

Lord Cormack: My Lords, I strongly support the amendment moved by the noble Baroness, Lady Deech. Indeed, it was the rejection of the sisters amendment that led me to vote against the Third Reading of the Civil Partnership Bill in another place. I thought it was discriminating and unfair to concentrate entirely on sexual relationships and not to recognise the sort of close relationship and affinity to which the noble Baroness has referred.

Nine years ago, we were told that it was inappropriate to put it in that Bill—and somebody interjects, sotto voce, that it was. Well, nine years have gone by and the commonly recognised discrimination, which has been recognised by the noble Lord, Lord Alli, and others, has not been put right. We have an opportunity in this Bill to put it right. Although I hope that we do not come to a Division in Committee on this, if we do not have a satisfactory answer from my noble and learned

friend Lord Wallace, I hope that the noble Baroness, Lady Deech, and my noble friend Lady O'Cathain will consider retabling this or a similar amendment on Report—one on which we can vote.

Lord Alli: I wonder whether the noble Lord and the noble Baroness would accept this point. I stand by those words in relation to carers. I was deeply passionate about the issue and I offered the noble Baroness any assistance that I could, not only at the time but after the debate. I believe that carers are an undervalued group of people in our society and I have no quarrel with that proposal. However, to prosecute the case for carers by devaluing the nature of a civil partner relationship is where our paths divert. Considering the countless civil partnerships that have gone on, with the types of celebration and the nature of the relationships, does the noble Lord not accept that there is now a significant difference between civil partnership as we understand it and what the noble Baroness and the noble Lord are proposing?

Lord Cormack: Clearly, that was meant to be an intervention so obviously I will respond to the noble Lord. I said at Second Reading that I accepted that civil partnerships were now a permanent part of our social fabric. Indeed, I went much further. I will not repeat what I said then as the noble Lord was in his place and heard it. I made similar comments during the debates in Committee last week. However, that does not in any way invalidate the basic justice of the case enunciated by the noble Baroness, Lady Deech, and supported by the noble and learned Lord, Lord Lloyd of Berwick. I support it too and I say to the noble Lord, Lord Alli, that surely he and I are concerned with justice and equity for everybody. Although I have my reservations about the word "marriage" being applied right across the board, I have tried to make it plain in my brief interventions in Committee that I accept that he and those who share his beliefs thoroughly deserve a better recognition than they have had in the past—better even than in civil partnerships. In saying that, however, I can also say, and I do, in supporting the noble Baroness, Lady Deech, that there are others in our society—siblings and carers have been named, but there are others—who deserve, if they have made a life-long commitment to each other, as have those sisters and as has the young man with the gentleman who was so severely injured in a hunting accident, a recognition of the personal sacrifice and commitment that they have made which is at least equal to the recognition that we have given to civil partnerships. I hope very much that my noble and learned friend Lord Wallace will be able to encourage us today when he comes to respond to this debate. I repeat my strong support for the amendment so eloquently moved by the noble Baroness, Lady Deech.

Lord Pannick: My Lords, my understanding is that this amendment does not require the House to come to any view whatever on the merits or otherwise of the proposal. What it does is to recognise that there is to be a review of civil partnerships and it proposes that during the course of that review this topic should be included in the matters to be discussed, to be addressed and possibly to be the subject of future legislation.

The noble Baroness, Lady Deech, mentioned the case of Miss Burden and Miss Burden against the United Kingdom in 2008. I regret as much as the noble Baroness that I was unable to persuade the European Court of Human Rights to find that the less favourable treatment of these two ladies—it was severely less favourable treatment—was arbitrary discrimination contrary to the convention. It does seem to me as to many other noble Lords that since there is to be a review this topic should be covered.

My only quarrel with the speech of the noble Baroness, Lady Deech, is in her recitation of Irving Berlin's song as support. She may recall that the lyric ends:

"And Lord help the sister, who comes between me and my man",

which is perhaps not wholly appropriate in this context.

The Lord Bishop of Ripon and Leeds: My Lords, I too want to support the noble Baroness, Lady Deech, on this amendment and to thank her and the noble Baroness, Lady O'Cathain, for their persistence in pressing the unfairness of the present law with regard to both carers and also family members.

The noble Lord, Lord Pannick, made the point that the amendment does not require any particular answer to the questions but simply tries to ensure that they will get raised. The point of having a review of the Civil Partnership Act 2004 is that, following the passage of this Bill, the circumstances of civil partnerships will be different. We do not yet know in what way they will be different, but they will be different because many people who would otherwise have entered into civil partnerships will enter into marriages. That seems to me to be an ideal point at which to consider whether civil partnerships should be extended to carers and other family members. If that is not the point at which we ought to do it, perhaps the noble and learned Lord, Lord Wallace, can say what is the point at which we can tackle the unfairness which everyone seems to admit. We have had example after example of the unfairness of the present law. When are we going to be allowed to tackle that?

4.45 pm

Lord Anderson of Swansea: My Lords, it is surely not difficult to construe the meaning of Clause 14. As the noble Lord, Lord Pannick, said, we know that the Secretary of State has agreed to arrange for the "operation and future" of the Act to be reviewed and for a report following that review to be produced. We know also, in subsection (2), that such a review is not prevented from dealing with other matters. What is absolutely clear from the debate thus far is that everyone who has spoken—those in another place, too—recognises that there is a particular injustice and anomaly in the case of siblings and carers. I congratulate the noble Baroness, Lady Deech, on raising this question yet again. She has been a consistent campaigner in this regard. She spoke eloquently and elegantly, as the noble Lord, Lord Cormack, said.

I would find it anomalous if the Government were to say that they cannot take this further because of the European Court of Human Rights judgment. That

[Lord Anderson of Swansea]
would be a little puzzling because obviously they have not adhered slavishly to the judgments of the European Court in respect of prisoners' rights, for example. They have shown that they can be quite selective about that. Perhaps the Minister will, as in the past, draw on the manual available to all Ministers. I am sure there must be a little book of various forms of objection. One of them is: "This is not the appropriate vehicle". That may well be relied upon in this case. It may not be appropriate but at least the review can include matters that Members of this noble House deem important because we feel that sense of injustice.

The genesis of the review provision is of interest. Perhaps in their desperation to get the Bill through speedily and strike a deal with the dissidents, the Government came up with the idea of accelerating the review. Historians will no doubt find of interest the bargaining that lay behind those deals. Clearly, there was an initial contradiction in the Government's position. They placed everything on the altar of equality. Equality was worshipped and all other considerations were pushed aside. It is hardly equal if homosexual couples have the choice of either a civil partnership or marriage whereas heterosexual couples do not have that choice and must be content with traditional marriage. There is a basic contradiction there.

To end, my own judgment is as follows: one thing I have learnt over very many years is that the British people have a fundamental sense of justice. Of all those who have spoken, I commend particularly the noble and learned Lord, Lord Lloyd of Berwick. He gave some telling examples from his village and his own experience. His questions need an answer and should be addressed at some stage by this House and Parliament generally. It is surely anomalous that, following the passage of this Bill, homosexual couples with perhaps a deathbed marriage will be in a far more advantageous and favourable position relating to inheritance tax provisions and tenancy than people who have looked after sisters or brothers or cared for others, as the Burden case has shown. People who have perhaps been together for decades will continue to be disadvantaged. It may well be that nothing substantial will emerge from the review but I commend and congratulate the noble Baroness on raising this question and relying, again, on that sense of fairness in the House.

Lord Alli: At the heart of this debate is the basic premise that, given that gay marriage will occur, we should open up civil partnerships to a range of other people. We will see that in a number of amendments as we proceed through Committee. My problem with that is that I do not believe that gay marriage is being opened up as part of this Bill. This Bill creates civil same-sex marriage but it does not create equal marriage in the case of religious organisations. It is an enabling Bill and removes the prohibition for same-sex marriages in England and Wales, with the notable exception of the Church of England, which retains so many locks. The Bill preserves an inequality in religious marriages for the very good reasons we have debated throughout Committee. This is an important point in why I think civil partnerships have a very important role to play going forward.

I have listened very carefully to almost every word of the debate and I detect a real mood on the Benches Spiritual and in other religious organisations to recognise, respect and show good will to same-sex couples. When listening to the debates, there is no doubt that that movement is happening. I pay special tribute to the most reverend Primate the Archbishop of Canterbury for the way in which he has sought to shine a new light on these relationships. I believe that before we see same-sex marriage in our churches, temples and mosques, we will see civil partnerships celebrated. We will see liturgies and special services created to bless gay couples without the churches having to change their views that marriage is between a man and a woman.

That movement forward in some religious organisations can happen only if civil partnerships stay in place for a little while longer and do not apply to these other categories of people. For example, while I support those who want civil partnerships to be extended to opposite-sex couples, civil partnerships for same-sex couples will have a unique role to play that justifies their position in a way that is not the same for opposite-sex couples. For me, that is a fundamental part of why I want to resist the extension of civil partnerships in this Bill. Religious organisations have made it clear that very soon a number of them will want to bless civil partnerships, and these amendments would remove the ability for them to do so.

In direct relation to Amendment 46A, there has been a huge amount of discussion about the fairness of these relationships but I cannot imagine that many carers or family members who share a house would wish their relationship to be solemnised before God and in the presence of their friends and family. That, for me, is the fundamental difference. The noble Baroness, Lady Deech, was quite right to quote me, and the noble Baroness, Lady O'Cathain, will recall that we had significant and detailed discussions of this issue during the passage of the Civil Partnership Act 2004. The other place was not sympathetic to what was being proposed because of the different aspects for same-sex couples. I really applaud the work of the noble Baroness and that of the noble Baroness, Lady O'Cathain, in trying to advance the plight of carers but I implore your Lordships to look at the role that civil partnerships will have in the context of religious organisations and allow them the ability to bless these stunning relationships in a way they see fit. It is the other side of the coin to not having gay marriage in religious organisations.

Baroness Knight of Collingtree: I, too, strongly support what the noble Baroness, Lady Deech, has said, and I supported the noble Baroness, Lady O'Cathain, in her earlier efforts. It is extremely disappointing to be told, "Not now, another time" or, "Not tomorrow" or, "In a little while". How do we know that it is going to be a little while? We have no idea. Reviews do not normally take a little while and even then they may not be successful.

I do not doubt the sincerity of the noble Lord, Lord Alli, and his genuine support for the idea behind this, but we are told every time, "Yes, we agree with what you say but this is not the vehicle in which to do it". What we need to be told is, if this is not, what is?

We need some idea of that because the injustices mount as the years go by. Many people, who would have been helped if the original amendment had gone through, are now gone. They are dead, finished; they faced burdens which they need not have faced. I, for one, am not prepared to sit here year after year and hear, "Tomorrow, tomorrow, tomorrow". Tomorrow never comes.

Baroness Hollis of Heigham: My Lords, nine years ago I took part in this debate, as did many others in your Lordships' House. I was deeply moved then, as was the noble Lord, Lord Alli, by the cases and arguments put by the noble Baroness, Lady O'Cathain, which were repeated so eloquently today by the noble Baroness, Lady Deech.

I agreed absolutely that we need to address the problem of inheritance for people—they may be sisters or may not even be blood relatives—who none the less share a home for a long time and then face the problem of an inheritance tax which could push them into the shadows of residential care. I absolutely accept that that must be addressed. I hoped at the time we argued this, and still hope, that this should be addressed by the Treasury agreeing, very simply—it does not need legislation—that you can roll up inheritance tax on the first death to the death of the second person. As I understand it, that is all one needs to do. The state is not denied any money, but the sibling or carer who is left does not have the threat of losing their home held over them. That is the way to go. When it comes to extending or even considering this as part of an extension of civil partnerships, I obviously have no problem with this being part of a review, but I had two fundamental objections nine years ago and they remain for me today to consider this as possibly an extension of the civil partnership.

First, a civil partnership has a legal entry and a legal exit, which is equivalent to divorce. Take, for example, a mother and daughter who enter into a civil partnership, in good faith, partly to protect the home. The daughter may be in her forties or fifties; her mother dies, she inherits and is protected. If she is in a civil partnership and five years down the line meets a man whom she chooses to marry, she has to divorce her mother—her civil partner—to enter into a new marriage with a man. She may alternatively decide that when her mother has died and that civil partnership has ended she will form another civil partnership with her own grown-up son. Therefore the property cascades down the generations without ever touching the Treasury at any point.

This can be done through a revision of inheritance tax. It cannot in my view be done through a civil partnership which has to be divorced before you can enter another one or, indeed, before you enter a marriage. The notion that a daughter can divorce a mother in order to marry somebody else, or that a sister and brother can divorce each other because they each wish to marry someone else brings the notion of civil partnership, its ceremonies of entering and its divorce, into disrepute.

The second problem, which is why I was engaged fairly heavily the last time round, is that you cannot separate inheritance advantages from social security liability. If two people, whether they are a carer and the person cared for, a mother and a daughter, or a brother and a sister, enter a civil partnership in the hope of avoiding or postponing inheritance tax, they take on mutual responsibility for each other in social security. That means, for example, that if a frail elderly mother and a son enter a civil partnership to spare the son a big inheritance tax bill, he becomes wholly financially responsible for his mother, if he can afford it. For the first time ever, he will be means-tested for his mother's support; his mother will have no independent rights to social security benefits because she will be his dependent. If he can afford to pay for her, the state does not need to. She loses her independence of social security income because the son, by virtue of the civil partnership, has taken on that responsibility.

I could enlarge on that, but noble Lords can see the consequences. If a sister and a brother enter into a civil partnership, then they become mutually financially responsible for each other in social security terms, including children and the like. The problem is that one cannot separate out the upside, in terms of inheritance law, for carers, or for a mother and a daughter or for sisters, without taking on, in all fairness, the downside of responsibility for social security.

I suggest to your Lordships that for every couple who gain through inheritance, there will be three or five poorer people, with no wealth to enjoy at inheritance and who have fairly modest incomes now, who will be losers. I do not think your Lordships would want that to happen. All I suggest is that noble Lords review and press to review the situation of inheritance tax and the ability to roll it up. In that way I think that we address the problem.

5 pm

Lord Cormack: Does the noble Baroness not accept that we are not suggesting that where these other relationships exist a civil partnership is compulsory? Her whole argument is based on the assumption that it is compulsory.

Baroness Hollis of Heigham: My Lords, if there is to be a relationship recognised as an extension of the concept of civil partnerships for inheritance tax, it also produces a responsibility for mutual financial support called social security. The one goes with the other. The way around it is something that I think my Government should have explored, and that I hope the current coalition Government will explore it; the noble Baroness, Lady Knight of Collingtree, was absolutely right about this. We should see a way of avoiding a survivor, particularly in the case of the two elderly sisters who went to the courts, having the inheritance abated on the first person and being rolled over to the second death. That seems to me to protect the position of the two sisters, which I think we were all deeply moved by, but would avoid the long-term problem of social security which would otherwise follow.

Baroness Deech: I think that the noble Lord and the noble Baroness, Lady Hollis, have misunderstood my point. Of course there would be no question of making

[Baroness Deech]
anybody enter any sort of contract of union. I am sure they would sit down and work out whether it was worth doing because of inheritance tax, and then of course they would—and should—happily take on the duty of supporting each other. However, if they do not want to, and they want their benefits, then that is it; there is no question of dropping this on them without their consent. There would have to be some sort of formality.

Lord Anderson of Swansea: On that issue, the situation is surely this: there is no compulsion, and if any couple, be they carers or siblings, were minded to consider that new relationship, they would surely sit down and work out what could be a major downside. They would no doubt take professional advice to see what the advantages and the disadvantages were, and if the disadvantages of that relationship far outweighed the advantages, they would not proceed. It is as simple as that: there is no compulsion.

Lord Marks of Henley-on-Thames: My Lords, around the Committee there is clear recognition of an injustice in inheritance tax terms to carers and siblings. However, while I do so with diffidence, I will to try to answer the question posed by the noble and learned Lord, Lord Lloyd. He effectively asked what the difference was between siblings living together and couples presently in civil partnerships living together. The answer, I suggest, is that the noble Baroness's amendment threatens to undermine the whole notion of civil partnerships, which are about loving relationships between people living together as couples—and yes, in a sexual relationship—rather than about carers or adult brothers and sisters.

The questions are not questions about inheritance tax. I suggest that the point made by the noble Lord, Lord Alli, that people may wish to continue in civil partnerships even after this Bill goes through and even where they are same-sex couples is completely valid. To broaden the notion of civil partnerships, as this amendment suggests, undermines that possibility. Even in the words of the amendment which calls only for a review, as emolliently pointed out by the noble Lord, Lord Pannick, the suggestion has that tendency to undermine what civil partnerships are. It is for that reason that nine years ago noble Lords called the notion embodied in this amendment inappropriate and why, although it was passed here, it was rejected by the other place. I suggest that the amendment should be rejected today for the same reason and that Parliament needs to find a way, whether as described by the noble Baroness, Lady Hollis, in her erudite explanation of the technical difficulties, or some other way, to solve the quite separate injustice to carers and siblings without interfering with or undermining the notion of civil partnerships.

Lord Elystan-Morgan: My Lords, I have always felt discomfort if not, indeed, some element of contempt for what is called the vehicular defence. Too often, it has been said in a case where there is every merit in a proposed amendment, "Ah, yes, but that is not the correct vehicle to use at this stage". More often than not, in the years that I have spent in this House and in another place, I have felt that it was a path of craven retreat used by many Governments in many situations but in a wholly unworthy cause. Indeed, that is my reaction in the first instance when it is pleaded that this measure may not be the proper vehicle. However, I suggest that for once that argument may well be true—not only that it is not the appropriate vehicle but that it may not be the lawful vehicle.

I have total respect and regard for all the arguments that have been advanced in favour of changing the law in this area. The arguments advanced are noble, honourable and just and there is no way, it seems to me, that they can properly be countered. However, if one looks at the preamble to the Bill, it seems to me that there may be some dubiety. I put it no higher than that, certainly not in the presence of persons far better able than me to judge this matter. It could be argued that this issue does not fall within the Bill's Long Title, which refers to,

"the review of civil partnership, and for connected purposes".

It may well be argued that civil partnership deals with a sexual relationship. If that is so, the relationships that we have been talking about this afternoon go beyond that. They elongate civil partnership but are not of the essence of civil partnership.

Indeed, even if I am wrong, we should remember that what is asked for is inclusion in a review. There will be immense discretion as to what the conclusion should ultimately be. Whatever the rights and wrongs of this debate may be, and they are all one way, in my respectful submission one dilutes the possibilities by including the issue in a review where there may be dubiety as to whether that is the correct vehicle. Therefore, in the circumstances, I respectfully suggest that the amendment is aimed at the wrong Act. It is not the 2004 Act that causes injustice in this regard, but the 19th century Partnership Act, as amended. In other words, if the relationships that one speaks about could by statute be deemed to be a certain type of partnership with a certain type of fiscal consequence leading therefrom that would be just, equitable and proper, then the proposal would be aimed at a correct target. If that could be done quickly not by way of review but by direct legislation, I would, indeed, consider that we had done something very worth while in a very simple, understandable way without cluttering up the argument with all manner of other considerations that may be less than relevant in the two circumstances of the case.

Lord Lester of Herne Hill: My Lords, I shall not detain the Committee by repeating what I said nine years ago when we debated this issue, and the controversy between those who focused on sexual relations and those who focused on tax and inheritance tax.

I have two points to make. Clause 14 seems to me not to require any amendment because it states:

"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 to be produced and published".

The clause goes on to say that that,

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

One of the other matters relating to civil partnership that has been mentioned by my noble friend Lord Marks, in particular, was referred to by the Joint Committee on Human Rights in paragraph 95 of our report. We said:

"We are not convinced by the Government's reasons not to extend civil partnerships to opposite sex couples, and we welcome the Government's announcement that it will review this matter. In doing so, the Government should take into account the potential discrimination that may arise between cohabiting opposite sex couples and civil partners".

I very much welcome the fact that the Government have made it clear that there will be a review of the operation of the Civil Partnership Act to look at that aspect of the existing discrimination. That point has already been made by several noble Lords and it is important to deal with it. I have always disagreed with the noble Baroness, Lady Deech, as she knows, because I am strongly in favour of cohabitation rights for unmarried opposite-sex couples, and she is firmly opposed to that. That will clearly be a matter that the review will need to take into account to see whether the Government decide to give some protection to so-called common law marriages or not.

I continue to believe in that, as I did nine years ago. I am delighted by the speech of the noble Baroness, Lady Hollis, because she has taught me aspects of social security and welfare that I was not aware of. For all the reasons given, I do not think that one should now fetter Clause 14 by requiring that the review should deal with matters that are truly beyond the scope of the Bill and ought not to be part of the review.

Lord Mackay of Clashfern: My Lords, I think that I should indicate that some aspects of this discussion will arise under my Amendment 55. It is important to remember that this Bill is not about gay marriage but same-sex marriage. As I pointed out, and I invited correction—so far I have not been corrected—it includes platonic relations between people of the same sex. Therefore, the idea that sexual relationships are fundamental to it is a mistake. That may or may not matter to this issue, but it matters considerably to the issue that I shall raise under Amendment 55.

Lord Pearson of Rannoch: My Lords, I, too, support the amendment. I found the introduction given by the noble Baroness so powerful that I hope—depending on whether the Minister can answer three questions that I want to ask—that I will not have to move my Amendment 46D, which will save the Committee quite a lot of time. It has the same essential aim as the amendment moved by the noble Baroness.

I would have been handicapped in moving my amendment in any case, because I do not have Answers to three Written Questions, which I tabled on 5 June and which should have been answered by last Wednesday, 19 June, at the latest. I hope that the Minister can answer them now. Those Written Questions seek to update the information on the scale and cost of the injustice being done to blood-relative, sibling or family partnerships, sometimes known as "the sisters". I think that, after this debate, we all know who we are talking about.

5.15 pm

The first question is: how many civil partnerships have so far been registered and what is the Government's estimate of their impact on tax revenue? I have in mind inheritance tax and some elements of private pension arrangements which other noble Lords have mentioned. The second question is: what estimates have the Government made of any additional effect of same-sex marriages in these areas; that is, tax, income and so on? I would think that it is rather little. But the third question is the really important one: how many blood-relative, sibling or family partnerships exist? How much do the Government estimate those partnerships save the taxpayer in care costs, and how much would it cost to give them the same advantages that are currently enjoyed by civil partnerships and soon will be by same-sex marriages? It is important that we have the answers to those questions so that we can understand the scale of what we are dealing with. I have heard it estimated that blood-relative partnerships save the taxpayer some £3.4 billion per annum in care costs. Can the noble and learned Lord confirm what the latest figure is and can he also now answer my other Written Questions?

Noble Lords who oppose this amendment seem to think that the problem can be solved only by the extension of civil partnership rights. Surely this injustice is so great that, if necessary, another form of legislation can be dreamt up as a result of the review—the amendment asks only for a review—which would put right something that has gone on in the wrong way for far too long. I am really saying that there does not have to be sex in it, does there? Why cannot these really good people in these really long relationships be recognised? I would remind noble Lords that sex is not all that reliable.

Baroness Farrington of Ribbleton: My Lords, I had not intended to speak and I am still absorbing the last comment of the noble Lord, Lord Pearson of Rannoch. Like all those who have spoken, I believe that, through the taxation system and regulations on caring, we discriminate against people who devote their lives to caring for others. Personally, I would not want to wait for a review of this nature, unrelated as I see it to be to the issue. We have much to do about reviewing the needs of people who are carers. Legislation is desperately needed; the Government assure us that they are looking at the issue, and to me that is the vehicle.

I cannot see how, in a same-sex marriage Bill or in a civil partnership as it stands now, something that the churches have opposed since time immemorial—incest—can be validated. As noble Lords have said, this issue concerns many relationships that would be ruled out of marriage by law, let alone by the churches, because they would be deemed too close and thus to be incestuous. In saying that, I do not in any way disparage the importance of the issue that needs to be raised. Like other people in this Chamber, I have relied in my lifetime on other siblings helping me to care for elderly parents, and I think that the time is right to deal with the issue.

Saving the presence of the noble Lord, Lord Pearson of Rannoch, we are talking about chalk and cheese in relation to the relationships that would have been

[Baroness Farrington of Ribbleton]
supported in the case of the debate that I remember so well having been present for, and what we are doing in this Bill. I ask those who care so strongly about this issue to ensure that it is dealt with expeditiously as part of a review of the circumstances of carers. I hope that when it comes to Report, people will take that very seriously on board because I know carers who cannot wait any longer because their own future is uncertain. As has been said, some changes could be brought in without any loss of benefit to the Treasury; it is merely a question of delay.

Baroness Thornton: My Lords, we have had a very interesting and passionate debate about extending civil partnerships to unpaid carers and family members who share a house. I, too, was present at the debate we had during the passage of the Civil Partnership Bill. I said then that I thought my noble friend Lord Alli was right; that was not the Bill. He is right now that this is not the Bill. That is not to say that this is not an important issue. Of course it is a most important issue.

I just wonder why—or maybe I have missed this and a noble Lord can tell me—this issue has not been raised in the passage of the many Bills that we have had before us in which it could have been raised in the intervening period. We have had Bills about carers. I put down an unsuccessful Bill about free support for people at home. There have been many times when this House could have taken on board these issues and made its views clear in appropriate Bills to do with income support and carers. Yet, again we find ourselves discussing this important issue during the passage of a Bill to do with, in this case, equal marriage. That does not do service to both the importance of the issue of carers and the fate of people who care for their relatives, or the issue before us, which is the same-sex marriage Bill. That is a shame.

On these Benches we do not think this is the right Bill. We think this a good issue and an important issue but we suggest that this is not an appropriate amendment. Will the Minister clarify the Government's review of civil partnerships—which we understand because we helped the Government to put forward the amendment from these Benches in the other place? How far does he believe that review will go and where will it end up? Our understanding is that it is a review looking at whether one would have opposite-sex civil partnerships and, if so, how that would work.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, this has been a very good debate and the issues have been thoroughly explored. I congratulate the noble Baroness, Lady Deech, on introducing it in the way that she did. I do not think any of your Lordships who have spoken in the debate in any way question the validity—or the value, rather—of the relationships that exist between siblings or other family members where they have mutual duties or care obligations. Indeed, the noble and learned Lord, Lord Lloyd of Berwick, mentioned a particular case of a young man who helped someone who was injured in a riding accident. Certainly, our society, country and communities benefit enormously from the caring relationships that exist the length and breadth of the country. I imagine that many noble Lords can think within their own families of relationships of mutual support between a brother and sister, sisters, brothers, or intergenerational support.

The amendment moved by the noble Baroness would amend the duty in Clause 14 requiring the Secretary of State to arrange for the review of the operation and future of the Civil Partnership Act so that the scope of the matters to be reviewed includes consideration of the possibility of extending civil partnerships to,

"carers and those they care for",

and to,

"family members … who have cohabited for 5 years or more and are over the age of eighteen".

The terms of reference for the review of civil partnerships required by Clause 14 were published on 13 June and a copy has been placed in the House Library. The review will look at the operation and future of civil partnerships in England and Wales. It may help your Lordships if I note what the scope is, according to the published terms of reference. They say that the review,

"will cover England and Wales and will … Examine evidence about how well the current arrangements for civil partnerships are working, drawing on views from the public and organisations with an interest and international comparisons … Assess the need and demand for civil partnerships when marriage is available to all, and whether any changes to civil partnership arrangements are necessary … Identify all the implications of and issues raised by the identified options (including risks and devolution issues) … Assess the costs and benefits of the options … Make recommendations for any changes to the operation and future of the CPA".

In response to my noble friend Lord Lester, it is not the Government's understanding that that would extend to issues of cohabitation. In a Written Ministerial Statement on 6 September 2011, the Government said:

"The findings of the research into the Scottish legislation do not provide us with a sufficient basis for a change in the law. Furthermore, the family justice system is in a transitional period, with major reforms already on the horizon. We do not therefore intend to take forward the Law Commission's recommendations for reform of cohabitation law in this parliamentary term".—[*Official Report*, Commons, 6/9/11; col. 16WS.]

Lord Lester of Herne Hill: I think that my noble and learned friend may have misunderstood me. I quite realise that the Government have set their face against doing for England and Wales what has happened in Scotland. However, I was asking whether the Government are rejecting the recommendation of the Joint Committee on Human Rights, which welcomed the idea of consultation to take account of the potential discrimination that may arise between cohabiting opposite-sex couples and civil partners. I thought that was the forceful point that really led to the public consultation.

Lord Wallace of Tankerness: I apologise if I misunderstood the point being made by my noble friend. As I indicated last week, clearly we are giving consideration to all the recommendations of that report. No one has told me anything to the contrary since then and I think it is still our ambition to have that report available for your Lordships before consideration of this Bill on Report. The matter will obviously be dealt with there.

Lord Lester of Herne Hill: I am sorry but what I am really asking the Minister is whether the Government are saying that this review will—or will not—cover the point that I have just made. It is important to know.

Lord Wallace of Tankerness: Given how specific the question is, I hope that there will be an answer for my noble friend before I sit down. I am sure those listening will have understood how specific the question is.

The point that I was going on to make is that the amendment simply appears to extend the review. However, our concern is that the extension proposed would undermine a core principle of civil partnerships. As the noble Lord, Lord Alli, said, this is about civil partnerships as they are currently understood, have developed and have been used in the years since they were established. It is important that we are talking about the nature and relationship of civil partnerships as understood, because this is a very different type of relationship.

The noble Baroness, Lady Deech, and the noble Lord, Lord Anderson, were quite candid. The noble Baroness, Lady Deech, quite properly said there would be no compulsion. Of course there would be no compulsion. She went on to say that couples would sit down and work it out. The noble Lord, Lord Anderson, said that they would take professional advice on whether the tax or social security arrangements were in their interests. We are talking about marriages which, in a religious context, would involve the engagement of a priest. I now hear that people wanting to take them on would probably have to engage the services of an accountant. These are very materially different kinds of arrangements. One is meant to be an expression of commitment and a desire to live together to the exclusion of others for life, and one is really tantamount to a tax arrangement. I do not think I am doing an injustice to the way it was actually phrased. That in no way diminishes the quality of care that exists. That was indeed the basis of the argument. My noble friend Lord Marks said that it could very well undermine the current civil partnerships as understood.

5.30 pm

The noble Lord, Lord Pearson of Rannoch, inquired about the questions he submitted. I apologise if he has not had responses. The most recent information available from the Office for National Statistics gives the total number of civil partnerships formed in the United Kingdom to be 53,417. These partnerships were formed between the Civil Partnership Act 2004 coming into force in December 2005 and the end of 2011. It is not possible to estimate the impact of civil partnerships on tax revenues, as Her Majesty's Revenue and Customs does not require individuals to distinguish whether they are married or in a civil partnership.

I suspect that might answer the second question, which concerned the difference between same-sex marriage and civil partnerships. The noble Lord's third question concerned how many blood relative, sibling or family partnerships exist, and what the cost would be. I think that is probably an impossible question to answer, not least because that knowledge is not collected by any government department in that way. It is also because, for reasons which have been well rehearsed during this debate, where these kinds of relationships exist one does not know in how many cases the couple concerned would want to make the relationship into a civil partnership. I understand why the noble Lord asked the question, but I think it is almost impossible to answer in any meaningful way. I am happy to give way.

Lord Pearson of Rannoch: My Lords, that was not quite the question. The question was how much these family partnerships save the taxpayer in care costs and how much it would cost to give them the same advantages as civil partnerships, not necessarily using the same legal framework. I suggest that if the Government do not want to face this, it is purely because there are too many of these partnerships. There are very many more: a multiple of 53,000. That is why the Government will not face up to this duty, which has been owing to these people for a very long time.

Lord Wallace of Tankerness: My Lords, I apologise if I misunderstood the question asked by the noble Lord. If information assessing the benefit to the state is available, that question may be capable of an answer. I will certainly ensure that that information is made available. I imagine there will be plenty of opportunities to discuss these kinds of issues when the Care Bill, which is already before your Lordships' House, is debated at greater length. I will certainly ensure that the noble Lord gets the estimates that have been made, and I apologise if I misunderstood his question.

The review will look at whether civil partnerships are still needed, or whether there is a case for extending them to opposite-sex couples. Much of this debate proceeded on the basis that they would continue, whereas in fact that is only one of the options. I note the comments of the noble Lord, Lord Alli, about how he saw civil partnerships perhaps developing, and how there might be a liturgy associated with them in times to come. No doubt that is a point he and others will make to the body conducting the review. Questions do arise from the change to marriage law which we are making in this Bill. It will result in the apparent anomaly of same-sex couples having the choice between marriage and civil partnership, while opposite-sex couples will only be able to marry. It was for that reason that we sought this review.

Regarding parents, children and siblings, as the noble Baroness, Lady Deech, said, the positions of siblings are indistinguishable. However, it is the case that parents, children and siblings already have a legally recognised relationship, one to the other. These relationships already afford certain rights. For example, children and siblings are recognised in intestacy rules. The extent of those rights is clearly a separate issue from the question of future civil partnerships. That is why we believe that it would be inappropriate for them to be considered as part of this review. It could lead to legitimating relationships within the prohibited degrees of relationship.

We will come later to the amendment of my noble and learned friend, Lord Mackay of Clashfern. However, even if the reasons for the prohibited degrees of affinity perhaps stem back to what one might call a biological concern, there are still issues of power relationships

[Lord Wallace of Tankerness]
within very close families. These may not necessarily be obvious, but there is also protection there against any undue pressure. As was also said in one of the contributions, what if life circumstances change? Suppose that two sisters enter into a civil partnership, and one later wants to marry someone else or to enter into a civil partnership with some else.

The noble Baroness, Lady Hollis, made the point that there is a legal entry but there is also a legal exit. In these circumstances, the idea of a judicially determined divorce—let us not beat about the bush, it would be a divorce—could very well be much more damaging to a previously existing relationship than would otherwise be the case. I think it was the noble Lord, Lord Pannick, who reminded us of Irving Berlin—yes, there was a reason why I hesitated over his name—and his theory of "Lord help the sister who comes between me and my man". That is probably a very pertinent point. I know the point, but the reason I hesitated was because I was told that the late Irving Berlin once sat next to a very prominent politician who could not understand his answer, "White Christmas", so I wanted to make sure that I had actually got the name right.

Lord Pearson of Rannoch: My Lords, the noble and learned Lord has just amused your Lordships about Irving Berlin, but what he said shortly before that is not right either, is it? One cannot generalise too widely on these things, but surely the bitterness that comes with the breakdown of a sexual relationship is likely to be greater than a breakdown in a sibling or family relationship.

Baroness Farrington of Ribbleton: Having sisters of my own, I intervene to suggest that the noble Lord, Lord Pearson, has not seen sisters at war with each other.

Lord Wallace of Tankerness: My Lords, I should perhaps just leave this on the reply of the noble Baroness, Lady Farrington. Turning to the rights and responsibilities of carers, of course they play an invaluable role in our society, caring for people. No one disputes that. The Government strongly value the role and commitment of carers. Indeed, we set out our priorities in November 2010 in a cross-government strategy: *Recognised, valued and supported: next steps for the Carers Strategy*. The mandate to the NHS Commissioning Board also contains a clear objective on enhancing the quality of life of people with long-term conditions and their carers. Achieving this objective will mean that by 2015, the 5 million carers looking after friends and family members will routinely have access to information and advice about the available support. When it comes to financial support for carers, the Government have announced that carer's allowance will continue to exist as a separate benefit outside of universal credit, so that carers will continue to enjoy the support of a dedicated benefit.

Baroness Cumberlege: My Lords, I thank the Minister for giving way. I was very intrigued by what he said about the Care Bill, which is now before the House in Committee. I appreciate my noble friend Lady Knight's comment about how we get really fed up when we are told that it is not the appropriate Bill to propose a certain amendment. My noble friend the Minister has said that the Government really appreciate the work of carers and we are grateful for it. However, if the Government are so committed to the work of carers, would it not be possible for the Government to bring forward their own amendment to the Care Bill?

Lord Wallace of Tankerness: That is the responsibility of a different department. I would be very brave to make that kind of commitment here without consulting, but I am sure that my noble friend's words will be noted. The noble Lord, Lord Elystan-Morgan, made the point that he never liked the arguments about vehicles. I am not really trying to make that argument, because I have argued that there are in fact some very serious differences. The noble Baroness, Lady Hollis, also made the point that the issues being raised are really not appropriate for this Bill. They are relevant perhaps to a finance Bill rather than a partnership Bill, as they relate to the rules of inheritance tax or the terms of benefits.

As the noble Baroness knows, those arguments have been well rehearsed. I was not in your Lordships' House nine years ago, but my noble friend Lady Northover has said in response to one or two of the comments that have been made, "Oh, I remember that point being made then". The Government then sought to oppose proposals of this kind, and this Government share the view that civil partnership, as it then was and as it has evolved and developed over time, is not the appropriate place to open up these new, significant policy questions. The review is about civil partnerships. It would be inappropriate to open it up to look at unrelated issues of carers and family law, and particularly the question of tax and benefits. We have also indicated that we do not wish to delay or add to the cost and complexity of a review which the Government have committed to undertake as soon as possible in response to calls that were made in the other place. The other issues that are opened up are vast, as the noble Baroness, Lady Hollis, made clear. I therefore ask the noble Baroness, Lady Deech, to withdraw her amendment.

Baroness Deech: My Lords, before I forget, perhaps I may correct the Minister on the following point: it was Irving Berlin who was invited to the White House to discuss politics and the conduct of a war. It was only much later that it was discovered that the President had called for Isaiah Berlin.

I am grateful to all those who have spoken. Our discussion has caused me to focus on three themes. The first is obvious: there is no time to waste. There are lots of old folk who need help. Every time I have inquired at the Whips' Office or the clerks' office when Bills have come forward, I have been told, "Oh, it's not relevant. This won't do for siblings". It is not that the issue has been forgotten, as some have said.

I am focusing also on freedom of choice. Once this Bill has passed, everybody in the country who is over 16 will be able to choose to enter a legal bond with somebody else, except those who are related. That is why I do not support the noble Lord, Lord Lester—as he knows—in relation to cohabitants. They can choose; they could get married. Maybe in future they could

have a civil partnership and make a contract if they have not done so; I would not dump our very unsatisfactory matrimonial law on them without their choice. However, siblings have no choice at all. They are faintly recognised as relatives in some other laws, but there is really very little help for adult siblings.

There has been some talk of my amendment somehow devaluing equal marriage. I say to those who have made that point that this Bill is about equality. Those who are gaining equality should not rest on their laurels. On the contrary, having reached their target, they should hold out their hand to others to give them the same help, despite perhaps the same objections, as is being given in this Bill for same-sex marriages. It is not a religious question. I cannot imagine for a minute that any review would ever expect any religious authority to bless the union of related people. Religion has nothing to do with it—so I did not quite follow the argument of the noble Lord, Lord Alli. What I am thinking of is some union—it need not necessarily be a civil partnership—some formal contract or some recognition that could be extended to siblings, and, believe me, there has been no opportunity to do this in any of the Bills that I have followed during the past few years.

I support the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Hollis, in saying that this need not cost anything in relation to inheritance tax. It could be rolled over; it could be deferred at nil cost to the Government.

I do not agree with those who say that civil partnerships are different. Sex has got nothing to do with it—some chaps here may not agree with that—now that we have changed the definition of marriage. Even at the moment, if two people get married, no one inquires as to whether it is a sexual relationship. As we all know, neither adultery nor consummation will play any part in remedies or definition of marriage in the future. This really has nothing to do with sex. We are not talking about sisters committing incest—that is a crime anyway. We all realise that that is beyond the bounds of possibility; it is nothing to do with that. It is to do with the fact that the whole definition of marriage has changed. My bet is that a new case before the European Court would probably succeed because the law of Europe prohibits discrimination on the grounds of birth, status and sex inter alia. I cannot see a ground for not extending some advantages, as appropriate, to those who are related and therefore unable to take advantage of all the variety of unions that are open to others.

5.45 pm

A strong plank of the new law is equality. We have to cling to that: it is about equality. I do not agree, as the noble Baroness, Lady Hollis, realised, with any notion of forcing people into something like this. Nor am I suggesting that it is all about tax advantage—or maybe it is, because, after all, people of both sexes now get married or can enter a civil partnership in order to gain tax advantage; I vaguely remember, decades ago, that there was a particular date in April that was much favoured for getting married because one got tax relief for the whole of the previous year as a married couple. For all we know, people are entering into marriages or civil partnerships for all sorts of financial reasons. It is not for us to inquire. People make their decision based on the range before them; sisters have no range in front of them. If it were to mean that people who entered some new sort of union had to support each other, that is all well and good—that would be altogether excellent. Too often, one reads about people who are abandoned, die on their own or are in hospital on their own and, much later, relatives come out of the woodwork to ask why no one was taking care of them. One thinks, "Well, where were you then?". Anything that were to reinforce family solidarity seems to me to be a good thing.

It would not have to be a civil partnership. I am worried that the terms of reference, as were cited by the noble and learned Lord, Lord Wallace, will be too narrow.

Lord Alli: I have been reflecting on what the noble Baroness has said about not understanding the civil partnership aspect in terms of religious organisations. We passed a provision in this House allowing civil partnerships to happen in religious buildings. One reason for our doing so was the need for same-sex couples to be able to have their unions blessed with the congregations with whom they had prayed. We saw this as being progress towards marriage being celebrated in churches. It was recognised that there would be two speeds, where we would see religious organisations wanting to bless civil partnerships in their churches and some already doing so. Does the noble Baroness accept that if her plan went through as envisaged, it would drive a coach and horses through the church's ability to bless civil partnerships, because the nature of those relationships will have been changed from the wish of two people to have a solemn union to a set of arrangements that fall outside that?

Baroness Deech: I am sorry, I say to the noble Lord, Lord Alli, but I really do not get it, because what I envisage is that the review would come up with some sort of partnership, union or contract suitable for siblings. I cannot imagine for a moment that they would want to celebrate that in a church—although anyone, I suppose, can go and get a blessing. The proposal does not impinge in any way on the aims of the noble Lord, Lord Alli.

I am concerned that the terms of reference cited by the noble and learned Lord, Lord Wallace, are too narrow. I would like him to remember that everybody in the country will have a choice, except siblings. They will be the only people who will not have available to them a civil partnership or a marriage of some sort. They will be unable to take advantage of this legislation because there will be no vehicle for them. Men and women can get married; two people of the same sex can get married; there may still be civil partnerships; there may even be civil partnerships for heterosexual couples. The excluded category is those who are related. There is probably little point in keeping the prohibited degrees any longer, save for the point about abuse within the family—but, sadly, we know that abuse within the family goes on anyway, regardless of what the arrangements relating to bonding may be.

Baroness Farrington of Ribbleton: My Lords, I regret intervening again, but I have seen cases in my life as a domestic abuse counsellor. The noble Baroness talks about two sisters. What about a father and daughter? That has not been raised. There can be abuse within family relationships involving coercion and violence. I am not arguing against what the noble Baroness wants to do in terms of the rights of people who have given up their lives to care, but bonding can bring a whole set of different problems. It could be a brother and sister or a father and daughter, and this worries me.

Baroness Deech: My suggestion was, of course, a free choice and under the definition I have given, they would have been living together for several years anyway. I should remind the noble Baroness and the Committee that our law already provides for contracts to be vitiated if there is duress. Our law already provides that if someone is dragged to the altar in some fashion, that marriage is not valid. It may be hard to enforce and I wish there was more of it, but we already have those provisions.

Because these people are getting old, I therefore ask the Government most urgently to please bring forward their own amendment, or somehow ensure that the terms of reference in reviewing civil partnership are wide enough to look at bonds—or whatever name you wish to give them—of other people who may wish to enter such a bond but are unable to do so at the moment. That way they may enjoy the fiscal and maybe emotional benefits that result from it. Otherwise I will bring forward this issue again on Report. In the mean time, I beg leave to withdraw the amendment.

Amendment 46A withdrawn.

Clause 14 agreed .

Amendment 46B

Moved by ***The Lord Bishop of Ripon and Leeds***

46B: 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 (1C) insert—

"(1CA) Guidance under subsection (1A) must provide for education about the nature of marriage and its importance for family life and the bringing up of children to be given to registered pupils at schools which have a religious character in accordance with the tenets of the relevant religion or religious denomination."

(3) After subsection (2) insert—

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

(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(3) 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.

(4) Subsection (5) applies where—

(a) Academy arrangements have been entered into between the Secretary of State and another person;

(b) the terms of the Academy arrangements have the effect of requiring that other person to have regard to guidance issued under subsection (1A) above; and

(c) the Academy is designated as having a religious character by an order made by the Secretary of State under section 69, as applied by section 124B, of the 1998 Act or is treated as having been so designated by virtue of section 6(8) of the Academies Act 2010.

(5) Where this subsection applies, subsection (1CA), and guidance issued under subsection (1A), are to be construed as if references to schools which have a religious character were references to the Academy.""

The Lord Bishop of Ripon and Leeds: My Lords, this amendment is about education in church schools, mostly owned by the Church of England or the Roman Catholic Church, but also by some other denominations and in schools of faiths other than Christian. Before I describe what the amendment is intended to achieve, I need to explain why it is needed.

Clause 11(2) of this Bill makes wide-ranging changes to the law of England and Wales and its effect is explained in paragraph 55 of the Explanatory Notes. It states that Clause 11(2),

"ensures that the law of England and Wales, including all existing and new England and Wales legislation, is to be interpreted as applying, where marriage is concerned, equally to same sex and opposite sex couples".

Together with Schedule 3, this sets out the equivalence of all marriages in law. That seems perfectly clear. For legal purposes, the meaning of marriage is changed, so that where an Act of Parliament refers to marriage, it will mean marriage of same-sex couples and of opposite-sex couples.

Section 403 of the Education Act 1996 places a duty on the Secretary of State to issue guidance designed to secure that when sex education is given, pupils,

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

Governing bodies and head teachers of maintained schools, including all church schools and academies, are required to have regard to the guidance when formulating their policies for sex education. After the Bill passes, that reference to marriage in Section 403 will, rightly, be read as a reference to marriage as redefined by the Bill. In other words, the nature of marriage to which Section 403 refers will mean the union of any two persons regardless of gender.

This Bill also recognises—indeed declares—in Clause 1(3) that the doctrine of the Church of England remains that marriage is,

"the union of one man with one woman".

That is also the doctrine of the Roman Catholic Church, most other churches and most other major religions in this country. The trusts of Church of England schools require education to be given in accordance with the tenets of the Church of England. Schools that belong to other denominations are in an equivalent position. As a result of this, church schools are recognised for their distinctive Christian ethos and the impact this has on standards and all-round education.

So far as teaching about the legal nature of marriage is concerned, there is no problem. Church schools, like any other schools, can and must teach their pupils that Parliament has legislated so that, as Clause 1(1) of the Bill states:

"Marriage of same sex couples is lawful".

As at present, homophobic bullying must have no place in church or any other schools. Discrimination on grounds of sexual orientation is usually expressly forbidden within a school's code of conduct and that must remain the case. The Church of England's established policy is that pupils should have the opportunity to examine the full range of views on same-sex relationships—including different Christian views—and develop their own considered position. Within that atmosphere of open discussion, church schools must nevertheless be in a position to teach the nature of marriage in a way that is in accordance with the tenets of the Church of England.

The distinctive Christian ethos of church schools will be undermined unless that position is accommodated. Exactly the same goes for schools that belong to other religious traditions. The purpose of this amendment is simply to achieve that accommodation. It does not seek an exemption. No one is asking for a provision that would enable schools to operate outside the framework that the Secretary of State's guidance provides. What I seek is a provision which ensures that the guidance itself expressly recognises the need for schools that have a religious character to teach the nature of marriage in a way that is in accordance with that character.

The meat of the amendment is the new subsection (1CA). The meaning of the provision is quite straightforward. It would require the guidance itself to address this particular issue. It would require it to do so by accommodating the need for schools that have a religious character to teach in a way that is consistent with their religious ethos, while continuing to operate within the statutory framework. Unfortunately the amendment needs to be quite a bit longer than that, to provide definitions that link it to other existing statutory provisions. It also needs to deal with the position of academies in a slightly different way, because of the legal basis on which they are established. In substance, it would put academies that have a religious character in the same position in this regard as other church schools.

When introducing the Bill, the Minister said that she wished to make clear from the outset that this Bill was,

"not just about allowing same-sex couples to marry; it is also about protecting and promoting religious freedom".—[*Official Report*, 3/6/13; col. 938.]

The Government have very largely delivered on this commitment. Teaching about marriage in schools that have a religious character is one of the few issues of that nature that remain outstanding. I therefore hope that the noble Baroness will respond positively to this amendment, which is concerned with the same principles of religious freedom that she outlined at Second Reading.

Baroness Cumberlege: My Lords, I have also put my name to this amendment. My interests are in the Lords' register. I am also the chairman of trustees of Chailey Heritage Foundation and a governor of Lancing College, though both are non-maintained schools. I start by thanking the right reverend Prelate for his clear introduction. Noble Lords who are now well-versed in this Bill will know that the House has already debated concerns about its possible effects on teachers. I am very grateful to the noble Lord, Lord Dear, and my noble friends Lord Eden of Winton, Lord Elton and Lord Waddington, and others, for addressing those concerns, which are well argued and strongly felt.

6 pm

Our amendment is equally strongly felt, but it is much narrower in its remit. It is more specific and relates to Section 403 of the Education Act 1996. We hope that, because of the narrowness of its focus, it will be acceptable to the Government. I can assure them that they have nothing to lose by accepting it. On the contrary, it strengthens the position of the Secretary of State for Education. Our amendment is intended to provide protection for schools and academies with a designated religious character. The protection is needed because the Bill causes two potential problems for designated schools: first in relation to guidance about marriage that has already been issued; and, secondly, in relation to future guidance yet to be seen.

The Bill presents those problems because Clause 11(1) and (2) change the definition of marriage. Clause 11(1) provides:

"In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples".

Clause 11(2) provides:

"The law of England and Wales (including all England and Wales legislation whenever passed or made) has effect in accordance with subsection (1)".

In all circumstances, therefore, marriage will mean both same-sex and opposite-sex marriage.

As the noble Lord, Lord Dear, rightly pointed out during Committee last Wednesday,

"Section 403 of the Education Act 1996 requires … teaching pupils about the importance of marriage in family life".—[*Official Report*, 19/06/2013; col. 335.]

It also places a statutory obligation on the Secretary of State to issue guidance that ensures that children learn,

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

As the right reverend Prelate said, there is no doubt that the meaning of marriage will be altered by virtue of Clause 11. It will mean that children will have to be taught about the nature of opposite-sex and same-sex marriage and its importance for family life and the bringing up of children. In summing up our debate last Wednesday, my noble friend stated:

"My noble friend Lady Barker asked me a direct question about whether the Bill changes anything in respect of the guidance that currently exists for teachers on how to teach sensitive issues under the heading of 'sex and relationship education'. No, it does not".—[*Official Report*, 19/6/13; col. 350.]

I hate to differ with my noble friend, especially as I want her to accept our modest amendment, but our view is that Clause 11 will change the meaning of marriage. Therefore, Section 403 will also change.

The Explanatory Notes published with the Bill made that abundantly clear. They state that, except where contrary provision is made, a reference to a married couple will include a reference to a same-sex married couple. The reason that that change to the definition of marriage will cause problems for some schools is that Section 403(1A)(a) is divided into two parts. The first states that pupils will,

"learn the nature of marriage",

[Baroness Cumberlege]
and the second is that they learn,

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

It is the second part of Section 403(1A) that means that our amendment to the Education Act needs to be made. The phrase requiring children to learn,

"its importance for family life and the bringing up of children",

puts an obligation on schools to teach children more than the fact that the institution of marriage exists; it requires schools to teach that marriage has a value and is beneficial for family life in the bringing up of children. Teaching about the value and benefit of marriage necessarily entails advocating and commending it. That is, the current guidance is altered by Clause 11.

That will be a problem for schools with a designated religious character if promoting or endorsing same-sex marriage runs contrary to the religious belief of that school. That is no small matter; it is not a minority sport. There are more than 7,000 Catholic and Anglican schools in England and Wales, and that number does not account for other faith schools. Those religious schools constitute approximately 30% of all schools in England and Wales and more than 1.8 million pupils attend them. Those schools are very popular. Christian parents and, indeed, parents of other faiths and none, go to great lengths to get their children into those schools. If the Bill is not amended, huge numbers of schools and pupils will be affected. The Government need to be aware of that, because it is not a small or, as I said, unimportant issue.

Ministers have repeatedly stated that the Government do not intend religious schools to be forced to promote or endorse same-sex marriage. During the Second Reading debate in the Commons, the Secretary of State said,

"no teacher will be required to promote or endorse views that go against their beliefs",

and that the Government,

"never would expect a teacher to … promote something that ran contrary to their beliefs or their religious beliefs".—[*Official Report*, Commons, 5/2/13; col. 132-33.]

During Committee in the other place, the Minister stated that,

"no teacher is under any duty to promote or endorse a particular view of marriage, and neither would they be as a result of any revised guidance in future".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill, 28/2/13; col. 311.]

This point was reiterated by my noble friend during Lords Committee last Wednesday.

Although the intention and assurances are very welcome, they are insufficient for three reasons. The first is that ministerial statements are vulnerable to challenge. It is perfectly possible that Section 403 and the Secretary of State's guidance might be interpreted in a way which obliges schools to promote and endorse same-sex marriage.

The second reason takes us back to the second potential problem that I highlighted earlier. Nothing in the Bill prevents a future Secretary of State from explicitly requiring schools in guidance to commend and advocate same-sex marriage. A future interpretation of Section 403 may require schools to advocate and commend

Thirdly, Ministers have frequently relied on the submission of the noble Lord, Lord Pannick, to the Commons Committee. However, the noble Lord, Lord Pannick, did not address that point about schools. He addressed the concern about teachers debated during Committee last Wednesday, not the discrete point about guidance issued under Section 403. His assurances should not have been referred to in response to the amendment to Section 403 put to the Committee.

Of course my noble friend and the Government may be confident that the current Secretary of State will not issue guidance requiring schools to promote same-sex marriage, but they cannot be certain that the next Secretary of State or a Secretary of State in a few years' time will not do so. A future Secretary of State will not be bound by the Minister's comments during Committee on the Floor of either House. Our modest amendment, on the other hand, would make it very difficult for a future Secretary of State to flout the Government's intentions, because he or she would have to amend the legislation before issuing guidance forcing religious schools to promote or endorse same-sex marriage.

Our amendment is clear. It is needed to ensure that schools with a designated religious character are not compelled to commend or advocate an understanding of marriage that runs contrary to their religious ethos under either current or future guidance. Our amendment does so by placing an obligation on the Secretary of State to issue guidance that specifically provides for education about the nature of marriage and its importance for family life and the bringing up children. Pupils will be aware that that is in accordance with the tenets of the religion of the school. It ensures that schools will be able to do that because of, not despite, the guidance. Any guidance requiring religious schools to advocate or commend same-sex marriage would therefore be in conflict with a positive obligation that our amendment would put on the Secretary of State.

I reassure noble Lords that our amendment will not affect any guidance that requires schools to teach children about the legal status of marriage—that it is legally open to both opposite and same-sex couples. All schools, religious or otherwise, will remain under an obligation accurately to teach the law of the land. Put another way, if the Secretary of State issues guidance that requires all schools to teach students that marriage has been extended to same-sex couples and requires the schools to advocate and commend the new meaning of marriage, all schools will be under a duty to teach pupils that marriage has been extended to same-sex couples. They will not, however, be under a duty to commend or advocate same-sex marriage if it is contrary to the designated religious character of the school. This tackles the concern expressed by the Minister at the Public Bill Committee when he asked the honourable Member for East Worthing and Shoreham:

"Does he think that it is reasonable to allow a teacher not to teach something that is the law of the land, if indeed this becomes the law of the land?".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 28/2/13; col. 302.]

The answer is no. It is not reasonable to require a teacher not to teach something that is the law of the land. Our amendment ensures that no teacher will be prevented from doing so.

To conclude, our amendment merely puts the Government's assurances in the Bill. It will protect schools with a designated religious character. It will provide explicitly for teaching in accordance with the tenets of the relevant religion in the guidance. It will protect schools from any compulsion, through either current or future guidance, to commend or advocate same-sex marriage.

Lord Lester of Herne Hill: Can I ask the noble Baroness why she is not sufficiently reassured by the fact that the Education Act, like all other past and future legislation, must be read and given effect in accordance with freedom of religion and freedom of speech, as guaranteed by Articles 9 and 10 of the human rights convention? Reading those, and the case law on them, it seems to me quite clear that the schools and their teachers will be completely protected.

Baroness Cumberlege: My Lords, the reason is that without this amendment, the Bill changes those particular elements in those Acts. That is the advice that I have been given. I am very anxious that we ensure that these schools that have a religious designation are protected. I am not convinced that that is the case in the Bill as it stands, for the reasons that I have put before your Lordships.

I do not think that a Minister's words in the House, however well meaning, stand the good test. They evaporate. We know that they are open to challenge, whereas amendments carried in the Bill, when it becomes an Act, are much less open to challenge. I urge my noble friend to have the welcomed assurances that she has given incorporated into the Bill.

Baroness O'Loan: My Lords, I support this amendment, to which I have put my name.

It has already been said that the purpose of this clause is very simple and narrow: to amend Section 403 of the Education Act in order to provide statutory protection for schools of religious character by creating an obligation that any guidance issued under the Act must provide for such schools to deliver education about marriage, its importance for family life and the bringing up of children, in accordance with the tenets of the relevant religion or religious denomination. The noble Lord, Lord Lester, asked why we could not just read the legislation in the context of the existing jurisprudence of the European court and be satisfied that everything was protected. The reality is that the jurisprudence of the European court in this context is quite complicated and there are a number of senior QCs who have provided advice to various organisations in connection with this legislation who do not share in totality the noble Lord's views.

The reason that this amendment is necessary is that Section 403 imposes on schools a twofold duty. Pupils must,

"learn the nature of marriage"

and they must learn,

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

That is the law as it stands at the present time. Teachers in all schools must do what the law says. They must ensure that the children for whom they are responsible learn about the nature of marriage. That includes both the legal and the relational definition of marriage; that it is the union of one man and one woman for life to the exclusion of all others. In this situation, teachers will be teaching classes composed of children who, by virtue of circumstances, will sometimes have no experience of marriage or not of marriage in its traditional sense, but of other stable relationships or sometimes of relationships that are totally unstable. All those children must be sensitively provided for.

6.15 pm

I endorse the words of the noble Baroness, Lady Cumberlege, in relation to the impact that the Bill will have. Unless change is made, it will ultimately require schools positively to advocate and commend same-sex marriage. The reason is very simple and has been articulated both by the right reverend Prelate and the noble Baroness. The current guidance is altered by Clause 11 as Clause 11 changes the definition of marriage and hence the content of what must be taught. It is the case, of course, that schools must still teach about the nature of marriage, but that nature has become something different, which is not consistent with the beliefs of a number of Christian denominations and other faiths and some people of no faith.

This amendment could provide the necessary structure within which to protect the right of freedom of religion, thought and conscience and to give effect to the rights of those parents who send their children to faith schools because they believe that their faith will provide their children with a set of values that may inform their lives and, more importantly, because in a faith school they grow up in a context of faith and belief.

This amendment will allow faith schools to teach the newly defined legal nature of marriage. That will of course be proper and in accordance with the school's obligation to prepare children for life, as required by any future guidance issued by the Secretary of State. However, it will protect schools from having to promote the importance of the newly defined marriage, where the definition is not consistent with the beliefs of the school.

In order to put the matter beyond discussion and to place its repeatedly stated intention on a statutory basis, not just by means of future guidance which can be changed at the discretion of any Minister, it is surely desirable to place this important protection for religious freedom in the legislation. It will not detract from the legal position that marriage will be able in future, if this Bill is passed, to be celebrated by man and woman, man and man or woman and woman. However, it will give some protection against legal uncertainty to those whose belief is that marriage is the union of a man and a woman, and who provide education through a relevant faith school, against any obligation to recommend or advocate same-sex marriage at any stage. It will not enable homophobia. Any such activity is wrong. Instead, it will simply remove any doubt about the ability of schools to teach, and in so doing to promote, a traditional understanding of marriage.

This is a proportionate and necessary amendment to the Bill.

Lord Phillips of Sudbury: My Lords—

Baroness O'Loan: It provides an accommodation of competing rights, no more, no less. I apologise to the noble Lord, Lord Phillips, but I was two words from the end.

Lord Phillips of Sudbury: I was anxious that the noble Baroness should not get to the end before I could ask this question. I am sorry if it is a bit technical, but it seems to be relevant. The wording of the amendment, with which I have sympathy, is that the guidance must be,

"in accordance with the tenets of the relevant religion or religious denomination".

It not abundantly clear to me how one would determine what the tenets of a religion are. If the relevant religion were Christianity, different denominations of Christianity take a different view on these matters. Does the amendment in fact cover all the circumstances that the noble Baroness and her co-movers are concerned about? To make it clear, one can imagine some debate over quite what the tenets of Christianity are as time progresses. An extreme Christian sect might take a very untypical view. A Quaker school, for example, might be well ahead of the Christian pack. Does the noble Baroness think that the amendment covers that potential tension?

Baroness O'Loan: My Lords, I thank the noble Lord for the question. Having read the previous guidance, most recently this morning, I would not anticipate that the guidance would actually specify the tenets of the individual religion. What I would anticipate is that it would have the provision that education must be provided in accordance with the tenets and that there would be, as the right reverend Prelate has provided, a structure of registration and designation of schools, so that there would be a quality assurance process underlying it. If the amendment is not sufficiently concise, I am sure that it will be possible—unless it is pressed to a Division at this stage—to encourage the Minister to respond with a government amendment, which would provide precisely for what is required.

Baroness Richardson of Calow: My Lords—

Lord Elton: I am so sorry, but I want to ask the noble Baroness a question relevant to the one she had been asked, because it does not seem to me that there is a problem. My noble friend Lord Phillips of Sudbury asked what happens if different denominations have different views but the amendment requires it to be,

"in accordance with the tenets of the relevant religion or religious denomination",

so it is merely relevant to the school in question.

Lord Phillips of Sudbury: If I might just elucidate, I said that it was not always clear what the tenets of the religion are, quite apart from the denomination.

Baroness O'Loan: The current guidance provides that schools are entitled to take their religious beliefs into account in providing sex and religious education, so there is a tradition for this and it may be taken forward from that perspective.

Baroness Richardson of Calow: My Lords, this amendment sounds eminently reasonable until you try to imagine yourself a child within a classroom in a school of a religious foundation. If you are talking about marriage and you know that your parents, who are legally married to each other, are both of the same sex, how would it make you feel if you were told that their union is legal but not moral and not in accordance with Christian teaching? Perhaps I might ask the right reverend Prelate whether there is to be any guidance on the criteria issued for entrance into a school of religious foundation to alert parents of same-sex unions and their children that this may be the case. I am trying to see how it will work out and what it will mean to them if they are told that their parents are legally married but that this is not within the Christian religion, and whether the criteria for selection might need to be changed—or at least for parents to be alerted.

Lord Alli: My Lords—

Baroness Knight of Collingtree: My Lords, I think it is probably the noble Lord's turn.

Lord Alli: I was just trying to be polite; I know that the noble Baroness likes that. If I recall correctly, it was the Conservative Government in 1996 who wrote the specific conditions into the Act. I suspect that the broader supporters of this amendment would have been the very people who wanted that provision written into the Act in the first place. If I recall the nature of the debate at the time, it was about family life and family values. The term was supposed to refer exclusively to heterosexuals, and the reason for it being in the Act was to allow those who did not approve of alternative family structures to be placated. We are now giving access to civil marriage to those who have been denied it. We therefore need to look at these provisions again in that light.

When I think about the majority of the contributions that we have listened to here in Committee and in the other place, there is general consensus that marriage has an important and very special place to play in family life, and in the bringing up of children. I think that we are all agreed on that. While I have heard no one in this place say that one-parent families or divorced, separated or same-sex parenting are somehow inadequate, we have all recognised that marriage can have a unique and special role to play in bringing up children.

The requirements of the guidance will be the same after this Bill is enacted as they were before. My problem with the amendment is not with what it seeks to do, because it is right and proper that faith schools should be allowed to teach the importance of marriage as they see it in relation to family life. That is the case now, as I am sure that the Minister will say. My opposition is to continually writing into the Bill something that is not necessary and should be a matter for the guidance, not the Bill. It would be equally unnecessary for me to amend the amendment, although the right reverend Prelate might allow me to do so, to add the words, "and in doing so, must pay due regard and respect to other forms of relationship, including but

not limited to same-sex marriages". We could keep adding language to the Bill until we are all happy with a whole range of words.

I plead with the right reverend Prelate and the noble Baroness not to reduce this clause to a series of well-meaning words that will not help teachers or children, but may make us all feel a little better that we managed to negotiate it into the Bill. I hope that the right reverend Prelate will reflect on adding any more to the Bill and will withdraw his amendment.

Baroness Knight of Collingtree: My Lords, I want to put another point to the Committee, particularly following what the noble Lord has just said. This *Hansard* of ours is a record for ever of what is said and considered during the course of Bills passed in both Houses. It is very important indeed to make sure that all the necessary points are brought up. The noble Lord, Lord Alli, mentioned teachers. I am quite sure that I am not alone in the volume of letters that I have received about this Bill. In fact, I can say that never before on any Bill while I have been in either House have Members ever received as many letters as we have. Quite a number have come from teachers who are very worried on this point. It ought to be brought out in the debate that teachers themselves, who know perfectly well what their duties are in accordance with the Bills passed in Parliament, have written to express their deep concern that they are going to be forced to teach something to which they have a basic and very important objection.

In an earlier debate on this Bill, I mentioned how concerned I am that the right of a person's conscience is being eroded, day after day and Bill by Bill. We have now had some 50 years of promises, made by different Governments at different times, stating very clearly that we all have a right to a conscience and to live by that conscience. That is why so many letters have come to us all, I am sure, from teachers on this very point. It is not a question of adding a few words to make people happy. It is about giving people the right to continue to live by the conscience which is in their heart and soul.

6.30 pm

Lord Lester of Herne Hill: My Lords, as I said before, the Human Rights Act 1998 expressly incorporates into our legal system freedom of conscience, religion and belief, and expression. It requires all legislation—old, new and future—to be read and given effect in accordance with those fundamental rights. When the Joint Committee on Human Rights, on which I serve, was presented with an opinion by Mr Aidan O'Neill QC, one of the scenarios that he suggested might occur in legislation of this kind involved teachers. He speculated that a primary schoolteacher is told to teach using a book about a prince who marries a man, and is asked to help the children to perform the story as a play; she says that it goes against her religious beliefs and disciplinary proceedings are taken against her. He said that this is an example of a problem.

The department in charge of the Bill gave an extremely helpful answer to that kind of speculative scenario. As the noble Baroness, Lady Knight, rightly said, our proceedings may be read in future so I will briefly explain what the department said, which in my view completely complies with the Human Rights Act and the European Convention on Human Rights. This is what the department told the committee:

"Teachers will continue to have the clear right to express their own beliefs, or that of their faith—such as that marriage should be between a man and a woman—as long as it is done in an appropriate way and a suitable context. No teacher will be required to promote or endorse views which go against their beliefs. Teachers will of course be expected to explain the world as it is, in a way which is appropriate to the age, stage and level of understanding of their pupils and within the context of the school's curriculum, policies and ethos. This may include the factual position that under the law marriage can be between opposite sex couples and same sex couples. There are many areas within teaching, particularly within faith schools, where teachers and schools already deal with areas relating to religious conscience, such as homosexuality and divorce, with professionalism and sensitivity. The guidance governing these issues is the same guidance that will govern how same sex marriage in the classroom will be approached. No teacher can be compelled to promote or endorse views which go against their conscience. We expect heads, governors and teachers will come to sensible arrangements about any teaching that includes discussion of same sex marriage as they currently do in all other areas of the curriculum".

To this I say, "Amen".

Baroness O'Loan: My Lords, I wish to address a point made by the noble Lord, Lord Lester. In the debate in the House of Commons on 20 May, the Government committed to consider this issue further in the Lords. As a consequence of that, and of all the evidence that was received, the Joint Committee stated:

"In particular, we encourage the Government to consider whether specific protections are required for faith schools and for individual teachers who hold a religious belief about same sex marriage".

I do not think the situation is quite as clear as might have been suggested.

Lord Pannick: My Lords, I, too, think that this amendment is unnecessary and inappropriate. The amendment is concerned with the guidance under Section 403 of the Education Act. That guidance is concerned solely with sex education. There are three consequences of this.

First, the reference to marriage and family life in Section 403, which has excited the concern in this amendment, is designed simply to ensure that when pupils learn about sexual relationships, they should learn about sex in the context of marriage, families and commitment; in other words, they should not learn about sex as a mere physical act. In my view, it would be most unfortunate that if and when pupils learn in sex education classes—as they do—about gay sex, such discussion is not also in the context of relationships, commitment and the developments that this Bill will introduce. That is the first point.

The second point is that Section 403, which deals with guidance, already states that when sex education is provided, children must be,

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

and rightly so. So there is already considerable protection.

The third point is the point made by the noble Lord, Lord Lester of Herne Hill, with which I entirely agree. It is a point that we have returned to over and

[LORD PANNICK]
again in the debates in Committee, but it is nevertheless true: there is nothing in this Bill that allows—far less requires—a teacher to promote same-sex marriage, and even less so in the context that we are now discussing, Section 403 of the Education Act, which is concerned only with sex education.

Lord Eden of Winton: My Lords, I want to follow up what the noble Lord, Lord Pannick, has just said and to add just one point, using the amendment so very ably moved and promoted by those who have their names to it as an opportunity to do so. I will be very brief.

The noble Lord, Lord Pannick, is obviously correct in what he says about the context in which the guidance would be given to the class; that is, health education in one form or another. Great emphasis has been given throughout our debates to the need to protect teachers. I accept that. That is correct and right for those teachers who feel strongly on these issues or have particular points of view which they find make it difficult for them to participate in a wider discussion or wider introduction of this subject.

My concern is not so much with teachers as with parents. So many parents—I am sure that the noble Baroness and others will have experienced this—are offended that sex education is taught to their children. I recognise that this has to happen, unfortunately. There was a time when this was left entirely to the parents, but that is no longer the case because so many parents do not in fact teach these matters to their children and do not bring up their children to understand the rights and wrongs on issues of this kind. So it has gone into the classroom and teachers are now required to teach this subject as part of the curriculum.

As I understand it, the position of parents is defended in this legislation in that if a parent is likely to be offended by anything of this kind being taught in a classroom, the parent can exercise the right to withdraw a child. I find that very difficult to accept. I acknowledge that it is done with the best of intentions, but I do not think it is very helpful to the child. Very often a child who is singled out from the rest of her peers in the classroom is made to feel different in some way or another. This is not very helpful to that child in the relationship with the rest of the children in the class. I hope, therefore, that when my noble friend comes to reply to this debate she will be able to take into account not just the position of teachers and those whose views will have been protected as a result of the amendments that are being proposed but the position of parents who might equally be offended by these matters.

Baroness Farrington of Ribbleton: The noble Lord, Lord Pannick, covered the fact that no one in your Lordships' Chamber would want sex education to be taught other than in the context of relationships, responsibility, caring and consideration for others. That alone makes this particular group of amendments collectively flawed.

I think that the noble Lord, Lord Eden, may have grown up in a different background to mine. On the sex education that parents rely on schools to provide, on occasion it was ever thus, particularly in a girls' school. We got a picture of two rabbits upside-down with no explanation as to what it meant. That was sex education in a girls' grammar school, together with, "You may, in writing, put in questions and the doctor will answer those that she has time for". We were told that we might wash our hair while menstruating but nothing about sex and childbirth. This is not new.

Of course, the guidance—I see the noble Lord, Lord Baker, in his place—already refers to responsiveness to religious, cultural and age backgrounds. We have to remember that the Bill deals with nursery, infant, primary and secondary pupils up to the age when those pupils can be married. It would be foolish for us to try to draft, in what would be deemed a large Committee, wording suitable for all those pupils. I hope we will not do that because the law of unintended consequences works very well when committees draft things.

On the previous day of Committee on this Bill I referred to the fact that my experience comes from being a parent and grandmother, and from chairing the education committees of county councils in England and Wales, and, more importantly, in the county of Lancashire for 10 years. In a county such as Lancashire, with a large number of church schools, not all children who go to church schools do so by choice but because of location. Not all parents who want church schools get them in the particular denomination that they want—again, not through choice but because of location. I am not in any way critical of the education given to children in church schools. I remind noble Lords that we are talking about church and religious schools in this amendment. We should not try to draft how those teachers respond in terms of both sex education and the importance of family life. I plead that people allow teachers to respond to the pupils in their classes and to their circumstances.

Same-sex marriage is not the only issue where religious beliefs affect the views and attitudes of parents of children in the class. Think about the schools in Lancashire, some of them church schools, where the majority of children are Muslim. Think about the fact that many churches—not all of them—have a view that divorce is wrong. You cannot avoid the fact that there will be children in the class who live with divorced parents. Think about the issues there are with abortion. Teachers have had to learn to live with their consciences and the guidance from the Department for Education.

I worry when the noble Baroness, Lady Knight, refers to the fact that future Secretaries of State might do this or that. It is no good framing legislation on the basis of who might do something in future. We have seen lots of Secretaries of State. Some have done some things, some have done others. To start trying to draft legislation against a particular view that might come up from a future, as yet unknown Secretary of State is foolish.

6.45 pm

Baroness Knight of Collingtree: I am sorry but I have no recollection of mentioning any Secretary of State whatever. All I am anxious about is that people who have a conscience—I might not agree with their opinions at all—have a right to believe what they

believe and to live by it. That is all I said. I have also said that history shows us, time and again, that promises made have to be underlined very carefully and carried out faithfully. So far, they have not been. I cited a number of examples of that but I did not mention any future Secretary of State at all.

Baroness Farrington of Ribbleton: I apologise if I gave that impression. I cannot think of any specific, written, recorded examples of the kind that the noble Baroness referred to but I do not doubt that she has them. There is a danger that some teachers in some schools are being frightened by talk of coercion, compulsion and the Government making people do things—I see no evidence of that in this legislation. If one creates fear by things one says, there is always a danger that the people most likely to be frightened will write to the person who expressed that fear.

Lord Cormack: Would the noble Baroness agree that those who moved this amendment are seeking not to instil fear but to provide clarity?

Baroness Farrington of Ribbleton: I accept that, but it is on the back of a general reference to teachers being afraid of coercion. The noble Baroness, Lady Knight, referred to teachers writing to her because they are afraid. I do not accuse the noble Lord, Lord Cormack, but I think I can rest my case on that.

Looking round, I see a whole lot of people who have gone through education systems of different sorts. I have no evidence and I cannot recall any evidence of anyone seeking to subvert the views of teachers. In my experience, the teaching profession will be professional in its interpretation of this. There may be the odd rumpus somewhere but, as the noble Lord, Lord Baker, knows, you occasionally get an odd situation, whether it is in the police service or whatever service. I believe the legislation is sound and will protect teachers. We should allow teachers to be professional.

Baroness O'Loan: My Lords, to take the point that the noble Baroness just raised, I do not know whether she suggested that Members of this House are causing fear and consternation but I very much hope not. The reality is that the correspondence that came into the House did so long before there was any debate on this, and certainly long before I made any comment in public about it. It is profoundly important that we understand that there is a body of people out there, spread right across the country, who write to Members of the House of Lords in letters that are not template letters. These people have sat down and thought this through. They are teachers, chaplains and all sorts of people, and they are afraid. They have had previous experience of how life has changed for them, and possibly they have had to come to terms with teaching abortion—which they may believe to be truly wrong—but they must do these things. I do not think that is a reason to suggest that Members of the House are causing fear and consternation.

Lord Elton: Can I raise a point which I think is relevant to my noble friend's reply and also to what the noble Lord, Lord Lester, in particular, and the noble Lord, Lord Pannick, have said? They find themselves—too often, perhaps, in their view—called upon to remind your Lordships that some ill from which we are trying to protect people is already covered by European law. Too often in our experience, that protection is available only when a case has gone before the European Court. In the mean time there have been many, many people who have not been able to go to the European Court, and they have not been protected.

Lord Lester of Herne Hill: My Lords it is not a question of European law but of UK law. The Human Rights Act requires our judges to read and give effect to all legislation, old and new, so that it is compatible with the European Convention on Human Rights that it embodies. So although one can ultimately go to the European Court, the prime responsibility is on Scottish, Welsh, Northern Irish and English courts.

Lord Elton: My Lords, in that case they still have to go to the Supreme Court. They have to go to the top of the Matterhorn instead of the top of Everest. In the mean time, while they are on the way up there, others suffer. I hope my noble friend will realise that what the right reverend Prelate and allies are seeking here is to introduce a security of protection at a lower level. If it is in the guidance that the Secretary of State under statute has to give, then it is available at county council level and not up at the top.

Lord Anderson of Swansea: My Lords, the purpose of the Committee stage, as I understand it, is to scrutinise draft Bills, to propose amendments and to seek, where possible, the concurrence of the Government with those amendments. It is sad that throughout this Bill the Government have taken the view that they were right from the start and that any amendments which have been proposed are either otiose, excessive or outwith the purpose of the Bill. Here is an occasion where the Government can perhaps show a little magnanimity and say that there is serious concern, as a number of noble colleagues have said. Although one might have some confidence in the guidance issued by the department, it is only guidance. It does not need wild speculation about what future Secretaries of State may or may not do. The wording in the Bill gives some assurance which I believe is proper.

Some of us in this House still consider ourselves to be politicians, even if lapsed ones. Surely one factor we should recognise from the start is that there is a clamour in this country to send children to religious and church schools. It is certainly my experience. Why is this so? The view of the great populace is to favour the discipline and ethos of those church schools for their children. I was interested a few years ago to have a friend who was a headmistress of a Church of England school in the East End and almost 100% of her pupils were Bangladeshi. Why did they choose the church school? Because that community recognised the value of church schools.

I am not a Roman Catholic—in fact I am a nonconformist—but I know from my experience as a constituency Member the quality of the Roman Catholic tradition. Perhaps I might say in passing to the right reverend Prelate, I endorsed all that he said. He spoke well, not only on behalf of the Church of England,

[Lord Anderson of Swansea]
but also on behalf of the Roman Catholic Church. I was musing to myself as he spoke; would it not be good, from the point of view of the quality of legislation in this House, if we had some senior members of the Roman Catholic faith who could put their own views forward directly and not rely on the good will of someone who is part of a separated brethren?

Be that as it may, we are where we are and have to accept that a vast number of people want to send their children to those schools. They approve of the ethos of those schools. The Government purport throughout that they have provided adequate protections—the quadruple lock in relation to the Church of England and the protections in respect of teachers and parents. If they are so keen to provide those protections, let it be absolutely clear that here on the face of the Bill is the opportunity to do just that. In my judgment it is not otiose. It will have widespread acceptance from those who really value the ethos and values of our church schools. It is a test of how serious the Government are when they talk so much not only about the core principles of this Bill but the counterpart—a readiness to provide adequate protection for those who wish to continue in their own ethos, who accept the new legal basis but wish to continue to put forward the traditional views of marriage.

Lord Baker of Dorking: My Lords, I did not intend to speak in this debate but I have been referred to a few times, due only to the fact that I think I am the only living person in the Chamber who has been Secretary of State for Education.

I feel that this amendment is unnecessary for a variety of reasons. I speak as an Anglican and was rather surprised that my church had taken the view that it has on same-sex marriage. The law of the land will be changed on same-sex marriage, and for the established church to say in effect that it is contracting out of it and not to allow its churches to be used for it is not, I would have thought, in the tradition of Anglicanism—not the Anglicanism that I favour. The history of the Church of England from 1533 onwards shows that it is not so much a question of the tenets or the 39 articles but of what happened with individual vicars in their parish churches. If you look at how English vicars interpreted Anglicanism in the 17th and 18th centuries, there is an infinite variety of activity. I should have thought the Anglican church would have done much better to have followed that practice than the one that it has followed.

That aside, on this particular matter, the position is in fact exceedingly clear. Where the state has provided birth control and various government agencies promote it, teachers in the Catholic Church will make it very clear that this is something which they object to and they think is fundamentally wrong. It is not a tenet of their faith but a practice, and the same is true of divorce. A great deal of discretion is already happening every day in our schools. I think it would happen in this case with the Anglican Church regarding sex education. I went to a primary church school in Lancashire and we did not have any sex education at all. I suppose that sex had not been discovered so much in those days. I even went to a secondary grammar school in Lancashire for two years and we did not have any sex education there either. I know we were very repressed sort of people—limited and all that—but it was alien to us.

Today it is clear that when sex education is taught in schools—I promoted it when I was Secretary of State—it is very much in the context of a loving relationship. It was the point that the noble Lord, Lord Pannick, made. It was not just the act of physical gratification—immediate and then finished with. It was to establish a loving relationship and that was a very essential part of all sex education. So when the matter of marriage comes up, it would be quite possible for any teacher, even a clergyman teacher at a Church of England school, to say they believed very strongly that marriage should be between a man and a wife and the purpose is to create a family. Even when he is talking to 12 and 13 year-olds, they will know a lot about other people who do not live like that. It has all changed today. It will not be a matter of teaching but of discussion—that is what it will be more like in actual practice. The teacher will be able to say, without fear of persecution and quite clearly, "This is the view that we believe in the Anglican Church at the moment, and we think that is the position". So I believe that this amendment is not necessary.

7 pm

Baroness Cumberlege: My Lords, a number of noble Lords have said that this amendment is not necessary. The noble Lord, Lord Pannick, very helpfully mentioned Section 403 of the Education Act 1996, which refers to sex education, and laid out for us subsection (1A)(a) and (b). He did not go on to subsection (1B), which says:

> "In discharging their functions under subsection (1) governing bodies and head teachers must have regard to the Secretary of State's guidance".

Therefore we already have Secretary of State's guidance in that Act.

The noble Baroness, Lady Farrington, said that she did not want us to go into great detail in this. However, if she refers again to proposed new subsection (2) in my Amendment 46B, she will see that it sets out very clearly what that guidance will be. That is very necessary. Of course, sex education has very much changed a lot of teaching in schools. However, we are talking about something that is now so fundamental: the nature of marriage and how it is such a foundation for society. If it is important to have the Secretary of State's guidance for sex education, it is much more important to have it for marriage.

Baroness Royall of Blaisdon: My Lords, I am here as somebody who celebrates marriage and values the ethos of church schools, but I am also a very strong supporter of same-sex marriage. I have listened carefully to noble Lords' concerns but I am not persuaded of the need for this amendment. Like the Secretary of State, I would not support a Bill that encroached on religious freedom or on freedom of speech, but this Bill does not do that.

I apologise for not having been here last Wednesday evening. However, of course I read *Hansard*, and many points similar to those made in the debate last

week were made today about teachers. As was said on Wednesday it is clear that teachers will be under a legal duty to teach the fact of the law of the land—that yes, gay couples will be able to get married. However, those selfsame teachers in faith schools will also be able to express their personal views or those of their faith about marriage. Noble Lords have cited the present guidance, which is extremely well balanced.

I was very struck by a speech given by the right reverend Prelate the Bishop of Norwich in the Public Bill Committee on 12 February. I will quote a section of what he said:

"Our own view is that the promotion of marriage is part of sex and relationship education. What Church of England schools are good at doing, because the vast majority of them are community schools, is integrating the convictions of the Church of England with a recognition that the Christian opinions held in that school are not totally recognised within the whole of wider society … There is a balance to be struck, and I think that the Secretary of State for Education was right to say that in teaching there will need to be a recognition that we have a society in which same-sex marriages—assuming the Bill goes through—are possible, and of course the teacher would also indicate why it is that within the majority of Christian traditions such marriages are not celebrated".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 12/2/13; col. 26.]

That right reverend Prelate had it about right.

I noted, as did the noble Baroness, Lady O'Loan, that in the other place the Minister, Mr Hugh Robertson, undertook to take this issue away and discuss it further with religious groups. I very much look forward to hearing what he will have to say.

Baroness Stowell of Beeston: My Lords, this has been a wide-ranging debate. I am very grateful to the right reverend Prelate the Bishop of Ripon and Leeds, for his introduction of his amendment and for quoting what I said on Second Reading about this Bill being as much about promoting religious freedom as it is about allowing same-sex couples to marry. He was absolutely right about that. I am pleased that he was clear that his amendment is about religious freedom of faith schools. He sought to explain that this particular issue is quite different from the earlier education matters we discussed last week, which focused on the general freedom of any teacher to express a personal view rather than on the teaching of sex and relationship education in religious schools specifically. In responding to this debate, I will repeat several points that I made last week, not least because as the debate has unfolded it has become clear that the way in which the House considers this issue is very much to do with education in a wider context than just about the very narrow issue of religious freedom.

Noble Lords and others have expressed a concern that schools' freedom to teach their beliefs about marriage according to their religious tenets will be threatened by the effect that Clause 11 will have on the meaning of "marriage" in Section 403 of the Education Act 1996 and guidance made under it by the Secretary of State, to which schools must have regard. As has already been noted, the Government have received representations from religious groups, in particular the Church of England and the Catholic Bishops' Conference of England and Wales, expressing concern that Clause 11 might affect the ability of faith schools to continue to teach about the importance of marriage for family life and the bringing up of children in line with their religious tenets. This concern was echoed by Muslim leaders in their public letter of 18 May.

The noble Lord, Lord Alli, was the first to raise a point about the origination of Section 403. It is worth saying that it was not in a piece of legislation originally in the 1996 Act. Section 403(1A) was inserted by the Learning and Skills Act 2000. I will begin by explaining 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. There is absolutely nothing in this legislation that affects schools' ability to continue to do this in future.

In schools of a religious character, teachers already deal admirably with teaching about marriages which may not be recognised as such according to the tenets of the relevant faith—for example, marriages of divorcees, or mixed-faith marriages. Last week the noble Baroness, Lady Farrington, gave us a great example of how teachers deal with sensitive matters. The noble Baroness, Lady Richardson of Calow, reminded us that it is important that teachers must be conscious of pupils whose parents are of the same sex and married when teaching about marriage in the context of sex and relationship education. My noble friend Lord Baker also made a similar point. However, my noble friend Lord Eden reminded us of the rights of parents who are concerned about sex education and its content. I responded to his concern last week in the debate about the policies that are in place to ensure that schools properly consult parents on the content of sex and relationship education.

Last week I forgot to make a point, which is worth making in the context of this debate, that sex and relationship education is compulsory in maintained secondary schools. Primary schools are not required to teach sex and relationship education, further than anything specific in the curriculum for science. It is important that I make that point, because it is sometimes forgotten.

In order for teachers to handle the very sensitive situations in which they often find themselves, they already interpret the Secretary of State's guidance according to their religious tenets. This will be no different when marriage is extended to same-sex couples by this Bill. If the tenets of a particular religion do not recognise same-sex marriage, they will be able to approach teaching about marriage in exactly the same professional way that they do now. Although teaching will of course need to cover the factual position that marriage under the law of England and Wales can be between both opposite-sex and same-sex couples, faith schools will also be able to explain the relevant tenets of their religion on this matter.

I think it was the exchange between the noble Baroness, Lady O'Loan, and my noble friends Lord Phillips of Sudbury and Lord Elton, about the Secretary of State ensuring that teaching about marriage is given in accordance with religious tenets. It is important for me to make the point that I fully understand the intentions of the right reverend Prelate in the amendment that he has put forward, but I am sure that he and other noble Lords will agree that it is not appropriate

[Baroness Stowell of Beeston]
for the Secretary of State to issue guidance to secure adherence to religious doctrine in teaching. This would amount to inappropriate interference by the state in matters properly for the relevant religious denomination. How faith schools approach such teaching is quite rightly a matter for the schools and faiths themselves.

While I think it is broadly acknowledged that the Secretary of State's current guidance does not impinge on faith schools' ability to teach in line with their doctrines, concern has also been expressed that the duty on the Secretary of State might allow future versions of the guidance to preclude religious schools from teaching in accordance with their beliefs. This was a point that my noble friend Lady Cumberlege raised—when the noble Baroness, Lady Farrington, referred to my noble friend Lady Knight, my noble friend Lady Cumberlege expressed this point. However, the noble Baroness, Lady Farrington, made my response for me by saying that it is clearly not the intention behind this legislation to envisage circumstances in which any Secretary of State might seek to interfere with matters of religious doctrine in the future. We are framing this legislation as things stand at the moment, and there is no way in which we are suggesting that a future Secretary of State might do anything different, but nor can I say from this Dispatch Box that things may not change in the future.

The noble Lord, Lord Pannick, noted that the second part of the duty in question, which is Section 403 (1A)(b) 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".

Therefore, the existing legislation already makes clear that it is absolutely inappropriate for material to be used that would not have regard for religious faiths. For the Secretary of State to issue guidance specifying that a particular version of marriage be endorsed counter to a school's ethos, and by extension the religious background of many of its pupils, would not meet this criterion that already exists in legislation. I emphasise that point in response to my noble friend, Lady Cumberlege, who expressed concern that the new legislation would somehow remove some protection from schools that are against promoting same-sex couples being able to marry. I want to emphasise that that is absolutely not the case.

This country has a strong tradition of schools with a religious character; they are a valued part of our education system. It would be pointless to maintain a system of designation if such schools were unable to teach in accordance with the tenets of their religion. For this designation to have significance, the school has to deliver what it was set up for. The inherent right of schools to deliver their curriculum and to interpret guidance according to their ethos is evident in their existence as such schools. As I have described previously, such schools do already teach about topics that may be considered sensitive, such as divorce, and they do so without issue.

While the Government are clear that this Bill will not impinge on faith schools' ability to continue to teach about marriage in line with their religious tenets, I do of course understand that the effect of Clause 11 on Section 403 of the Education Act has led to some concern about this. While we are not convinced that there is a need to change the legislation to clarify the position, we are continuing to discuss this with the churches. As the noble Baronesses, Lady O'Loan and Lady Royall, said, the Government undertook to consider this issue in another place. I can assure noble Lords that I and my colleagues are continuing to examine it in detail.

Lord Lester of Herne Hill: Will the Minister confirm whether the Government agree with my view about the Human Rights Act and the convention giving absolutely clear legal protection?

7.15 pm

Baroness Stowell of Beeston: I think that I have been clear in my response. I have just said that we are not convinced of a need to change the legislation to clarify the position because we believe that the protections exist. However, as I have just said, we committed to consider this further. We are discussing it with the churches, and we will honour that commitment to continue to consider it and to discuss it further. However, I was about to say that clearly, in the course of doing that, one of the things that we will want to do is to take account of all the contributions that have been made to today's debate. The process of scrutiny of legislation suggests that it is proper for us to make sure that we take account of debates in this House, and indeed in the other place, in framing legislation.

That leads me on nicely to conclude by addressing the noble Lord, Lord Anderson of Swansea, as he suggested that the Government have not been minded to listen to debate through the passage of this Bill and make amendments. To give him some comfort and to remind the House that that is not the case, I will point out that in the Bill so far the Government have agreed to an amendment which includes a review of civil partnership. We have included an amendment to the Public Order Act and we have some amendments which clarify things around ecclesiastical law which has been requested by the churches. We have made an amendment to protect the spouses of transpeople so that if they continue in those marriages they retain the pension rights from the terms when they were originally married. We have further protected employed chaplains, we have made some changes for the Church in Wales, and we have dealt with void marriages. We are listening to the debates that are taking place in your Lordships' House, as we did in the other House through the passage of this Bill. If we think that it is necessary to clarify the legislation in order to ensure that the proper outcomes that we are seeking, which is to allow same-sex couples to marry and for religious freedoms to be protected, that is what we will do.

That is the commitment that the Secretary of State has made and I am happy to repeat it from the Dispatch Box. However, it is important that we do so only where it is necessary and only where it clarifies and helps us in the passage of the Bill, and provides the outcomes that we are all seeking to achieve. I hope that the right reverend Prelate is able to withdraw his amendment.

The Lord Bishop of Ripon and Leeds: My Lords, I am grateful to all the noble Lords who have contributed to this debate, which was much wider ranging than I expected it to be, and particularly to the Minister for her careful response to the issues that were being raised. I am also fascinated to see how many of us were brought up in Lancashire and received our sex education, or lack of it, there. I suppose my school was technically in the county borough of Bolton, but it was more or less Lancashire.

This amendment is about the institutional religious character of schools. It is about ensuring that the statutory framework addresses and accommodates the school's need to provide teaching that is in accordance with its religious tenets when it formulates its policy on teaching about sex and relationships. There is, rightly, guidance from the Secretary of State about that policy, and the school needs to take account of it. It should not have to rely on the Human Rights Act, but should actually have it built into the guidance. Since we have guidance, it ought to address this particular issue, rather than the church schools being left in a position of having to act in a way that is not clear within the guidance. I would hope that that does something to respond to the direct question which I was asked by the noble Baroness, Lady Richardson. I believe that there needs to be guidance to avoid criticism of the family relationships to which she referred. As the Minister said, the current requirement for guidance was inserted in the 1996 Act in 2000. My belief remains that there needs to be guidance on this matter to take note of the changes brought about by the Bill. We need to acknowledge that those are real changes; otherwise, there would be no point having the Bill. We need to respond to the particular needs of schools of a religious character, not least in terms of the tenets of their trust deeds. It is not for the Secretary of State to say what those tenets are; they are declared by the relevant church and school in the trust deeds.

We may need to come back to this matter at a later stage. I still need to be convinced that there is no incompatibility between the Bill and the requirements of the 1996 Act. However, for the moment, I beg leave to withdraw the amendment.

Amendment 46B withdrawn.

House resumed. Committee to begin again not before 8.36 pm.

Undercover Policing

Statement

7.21 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My Lords, with the leave of the House, I will repeat a Statement made by my right honourable friend Mrs Theresa May in the House of Commons earlier today. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement about the latest allegations concerning the use of undercover officers to smear the reputations of Doreen and Neville Lawrence and Duwayne Brooks. These allegations follow several serious claims about the activities of police officers engaged in undercover operations, and I would like to update the House on the several investigations and inquiries into the conduct of these officers. But before I do so, I know the whole House will want to convey their support for the Lawrence family. They experienced an unspeakable tragedy; their pain was compounded by the many years in which justice was not done; and these latest allegations, still coming 20 years after Stephen's murder, only add to their suffering. I know, too, that the House will agree with me about the seriousness of allegations concerning police corruption and wrongdoing. We must be ruthless in purging such behaviour from their ranks.

As Members of this House will remember, in February I announced that the Commissioner of the Metropolitan Police had agreed that Mick Creedon, the Chief Constable of Derbyshire Constabulary, would investigate allegations of improper practice and misconduct by the Metropolitan Police's special demonstration squad, which for around 40 years specialised in undercover operations.

Mick Creedon took over a Metropolitan Police investigation called Operation Herne, and in addition to these latest allegations about the Lawrence family, Operation Herne is also looking into claims about the use by police officers of dead children's identities, the conduct of officers who had infiltrated environmentalist groups and other serious matters. Given the nature of those allegations and the many years the special demonstration squad was in existence, we should not be surprised if further allegations are made, and I want to be clear that all such allegations will be investigated.

Operation Herne is led by Chief Constable Creedon and elements are supervised by the Independent Police Complaints Commission. I can tell the House today that the Metropolitan Police are also referring details of the new set of allegations to the IPCC, meaning that this aspect of the investigation will also be supervised. I know that some Members have suggested that the IPCC should take over Operation Herne completely, and that is an understandable reaction. I spoke to Dame Anne Owers, the chairman of the IPCC, earlier today, and I can tell the House that she does not believe a greater degree of IPCC control would enhance the investigation, but I can confirm that where the Creedon investigation finds evidence of criminal behaviour or misconduct by police officers, the IPCC will investigate and the officers will be brought to justice.

I have also spoken to Mick Creedon today. He told me that the first strand of his work regarding the allegations about the identities of dead children will report before the House rises for Summer Recess. At present, there are 23 police officers working on the case, with a further 10 police staff working in support. In the course of their investigation they have already examined in the region of 55,000 documents and have started to interview witnesses, including police officers who worked in the special demonstration squad.

I want to emphasise that undercover operations are a vital part of protecting the public, but it needs very detailed supervision, and undercover operations need constant reassessment to ensure that what is being done is justified. For obvious reasons, members of the public cannot know the details of the police's undercover operations, but we need to have the assurance

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that this work is conducted properly, in accordance with a procedure that ensures that ethical lines are respected.

In February last year, Her Majesty's Inspectorate of Constabulary reported on how forces go about undercover policing. This work was undertaken partly in response to allegations about the conduct of a police officer named Mark Kennedy, who had been tasked to infiltrate an environmental protest group. HMIC's report made a series of recommendations designed to improve the procedures that police forces have in place for managing and scrutinising the deployment of undercover officers. Among other recommendations, HMIC said that the authorisation arrangements for high-risk undercover deployments should be improved and that additional controls should be put in place where a deployment is intended to gather intelligence rather than evidence.

Since March this year, HMIC has been working on a further report that will check on how the police have implemented its recommendations, and I can tell the House that this report is due to be published on Thursday. I can also tell the House that Tom Winsor, the new chief inspector, plans to undertake a further review of undercover police work later this year.

Last week, my right honourable friend the Minister of State for Policing and Criminal Justice told the Home Affairs Select Committee that the Government intend to bring forward legislation to require law enforcement authorities to obtain the prior approval of the Office of Surveillance Commissioners before renewing the deployment of an undercover officer for a period exceeding 12 months. In future, authorisation should also be sought under the Regulation of Investigatory Powers Act for any activity to develop a cover persona.

I want to turn now to the allegations regarding the Lawrence family. The investigation into Stephen's murder has cast a long shadow over policing, especially in London. That is why, in July last year, I asked Mark Ellison QC to investigate allegations of deliberate incompetence and corruption on the part of officers involved in the original investigation into the murder. Mr Ellison was the lead barrister in the successful prosecutions of Gary Dobson and David Norris, and he was supported by Alison Morgan, junior counsel from the prosecution.

I have spoken to Mr Ellison today, and I encouraged him to go as far and wide as he would like in his investigation. I have also spoken to Mick Creedon to make sure that Mr Ellison will have access to any relevant material uncovered in the course of Operation Herne. We must await the findings of the Ellison review, which, given the latest allegations, will be published later than originally intended. When the review concludes, a decision will have to be made on whether its findings should lead to any formal police investigations.

I am determined that we should have zero tolerance of police corruption and wrongdoing. That is why the Government are beefing up the IPCC, making the inspectorate more independent, and why we asked the College of Policing to establish a code of ethics for police officers.

As the House knows, I have also launched a panel inquiry into the murder of Daniel Morgan, and I am determined that we get to the bottom of these latest allegations. We must do so to ensure public confidence in the police and the criminal justice system, not least for the sake of Doreen and Neville Lawrence, and for the memory of their son Stephen. I commend this Statement to the House".

My Lords, that concludes the Statement.

7.31 pm

Baroness Smith of Basildon: My Lords, I am grateful to the Minister for repeating the Statement. I join in his comments of support for Doreen and Neville Lawrence and their family. I suspect that no words can give comfort in a situation such as this. Having had to cope with the horror and the tragedy of the murder of their son Stephen, they had almost 20 years of campaigning for justice before anyone was brought to book for his murder. They then had to wait for a public inquiry into the Metropolitan Police's handling of the investigation and the institutionalised racism at that time. We are still awaiting action to address the devastating failures and shocking decisions made by the Metropolitan Police at the time of Stephen's murder.

Today, we have these disgusting allegations. Officers were tasked to spy on the Lawrence family to find "dirt" on them and their supporters. It is alleged that police officers logged who went in and out of the Lawrence family home, yet at the same time they were failing to gather sufficient evidence to prosecute Gary Dobson and David Norris, and any other suspects at the time. We can only imagine the hurt, distress and anger—and also the deep sadness and sense of betrayal that the Lawrence family and their supporters must continue to feel. With allegations made last year that corruption within the Metropolitan Police contributed to the failure to get justice for the Lawrence family, we called for a wider public inquiry into those allegations of corruption and we also considered it an opportunity to address more widely the progress within the police in addressing racism. Instead, the Home Secretary allowed the Metropolitan Police to review itself and, as the noble Lord has indicated today, asked Mark Ellison QC to review the paper work on this specific issue.

It would be helpful today for the Minister to update your Lordships' House on the progress in that case. He said something about it but it would help to have a little bit more information. Does he consider whether there is any overlap in these new allegations? A specific concern is whether police officers providing information to Mr Ellison have withheld relevant information from him. Will the noble Lord comment on that specific point? We have previously endorsed the call of Doreen Lawrence, Stephen's mother, for the reinstitution of a public inquiry to examine any dereliction of duty by the Metropolitan Police at the time of Stephen's murder and, more widely the progress made in implementing the Macpherson report's 70 recommendations. We continue to support that call.

On the substance of today's allegations, clearly this links in with wider concerns, as the Minister has addressed, about the use of undercover and covert operations by the police. Noble Lords will be aware that I have previously raised in your Lordships' House

concerns over the identities of dead children being used by officers, without the consent or the knowledge of their families. We have had evidence of shocking allegations and instances of inappropriate relationships. I do know whether the Minister had the opportunity to read the *Guardian* magazine this weekend, but I would recommend the article by Rob Evans and Paul Lewis on the activities of SDS police officers. The impact of their activities on individuals shows how serious and devastating such behaviour can be.

I know that the noble Lord shares our concern about transparency in any investigation on inquiries into these issues. I spoke to him earlier about this and, as he said, the only way to restore public and professional confidence is to have openness in the investigation and openness in the actions taken to address any problems. We have some concerns about the Home Secretary's approach in wrapping these allegations together with the pre-existing investigation being undertaken by Derbyshire's Chief Constable Creedon and supervised by the IPPC. That investigation is looking at complex and covert investigations into environmental and animal rights groups that go back many years. In the past month, new allegations have been made about corporate protests and potential undercover police involvement. This is another monster of an inquiry being undertaken by the IPCC. It is already taken 20 months and cost £1.2 million, although no arrests have yet been made. This will take some years. Alongside Hillsborough, the scoping of Orgreave, and many other investigations, it is unclear whether the IPCC will be able to prioritise and deal with all those issues in an appropriate timescale. Rightly, these are all huge issues of concern.

In addition to the undercover element, there is a common theme. It was so powerfully evidenced in relation to Hillsborough, as the noble Lord and I discussed at the time, and is now reinforced in the case of the Lawrence family—namely, that police institutions seek to undermine victims. Police institutions try to smear those seeking justice as being agitators or they even try to find some evidence of their being criminals—trying to smear them in the process. The agony that the Lawrence family has endured since the day Stephen was murdered has also made this case uniquely damaging to British policing and public confidence. Unless that is effectively and properly dealt with, not only will that lack of confidence endure, it will undermine the confidence of the majority of police officers who seek to serve the public honestly and decently.

We now have two different inquiries: the investigation, Operation Herne, and the new Ellison review dealing with very similar things. I have a few questions for the noble Lord. I want to get to the bottom of whether the Government are absolutely confident that these inquiries will, first, be sufficiently focused; and, secondly, have complete co-operation from police officers. They also have to ensure that whistleblowers will be sufficiently empowered and protected to come forward. A number of recent cases show that the actions of whistleblowers have been vital in exposing the allegations of serious corruption within public institutions. Crucially, we seek an assurance that there is no information or evidence that could be lost in a black hole between the different inquiries.

The Home Secretary has chosen not to institute, as we requested, a swifter IPPC-led investigation that is independently resourced. Will the Minister confirm that the Government will ensure that chief constable Creedon reports on the specific allegations before the House of Commons Summer Recess? I think that the Home Secretary indicated this afternoon that that was the case in the comments that she made. It would be helpful if he would confirm that for us.

The Lawrence family and the public need the truth and they need it quickly. They deserve the truth. I shall summarise the points that we wish to raise with the Minister and the Government. First, we need a swift investigation by the IPPC into any allegations of misconduct in relation to spying on the Lawrence family; secondly, an update on the corruption allegations; and a clear need for a wider inquiry as Doreen Lawrence, Stephen's mother, has called for. We need urgent progress and all those three areas and I hope that the noble Lord can give serious consideration and respond positively to all these issues.

7.40 pm

Lord Taylor of Holbeach: My Lords, there is no doubting the seriousness of these allegations, nor indeed the determination of the Home Office, and the Home Secretary in particular, to expedite investigations and report the conclusions of those investigations to Parliament. I emphasise that elements of the inquiries in Operation Herne, the Creedon investigation, will be reported to the Home Secretary and in turn to Parliament as the sections of those investigations are concluded. A Statement will be made to the House before it rises in the summer on the particular aspects that were mentioned by the noble Baroness.

I think it is true to say that police officers are just as appalled as Members of this House at these latest allegations which, if they are true, suggest a mindset that existed in those days, quite some time ago now, which sought to discredit victims. That is an intolerable thing for policing to accept. The Home Office is determined to pursue these matters.

There has been some criticism. I was in the other place earlier and heard the Opposition there suggest that perhaps what we need is one big investigation. I think that the current investigations are actually making considerable progress. The burden of the new allegations will, of course, add to the work that needs to be done. We will make sure that the work is properly resourced and that Parliament hears about the progress of the reports.

Mark Ellison QC has indicated to the Home Secretary that the inquiry of his team is going much wider than just using Metropolitan Police Service files. Because of that, and because of the allegations that are involved, the inquiry is going to take longer to come to its conclusions, but it hopes to report in the late autumn. The Ellison review is working with other investigations. The allegations made in the media today will form part of Ellison's task, as well as forming part of Mick Creedon's own investigations through Operation Herne.

I hope I can reassure the noble Baroness that we understand her determination to get to the bottom of this, but I think that the police as a profession want to

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do so as well, to make sure that we know how these things happened in the past and that there is no risk of them happening in this day and age.

Earl Attlee: My Lords, for the benefit of the House, perhaps I may remind noble Lords that short questions should be put to the Minister in order that my noble friend can answer as many as possible.

7.43 pm

Lord Fowler: My Lords, I was the shadow Home Secretary at the time of the Macpherson report, and like the then Home Secretary, Mr Straw, I did not hear a whisper of this. This is a vastly serious charge to make against the police. Perhaps the assumption is that nothing of this kind would happen today, but I think the Andrew Mitchell case shows that that is not necessarily true. I wonder if the time has come when, in addition to the criminal inquiries that have been set up, there should be one public inquiry to look at the whole question of police ethics. Would not that be to the benefit of the police and the public?

Lord Taylor of Holbeach: My Lords, I can understand the concern of my noble friend, who speaks from considerable experience of these matters. As he will know, the Home Secretary has set up the College of Policing, one of the principal tasks of which is to review police ethics and to establish within the policing profession a code of ethics that will guarantee that within the police force itself there is an acknowledgement of what is proper and what is acceptable in policing terms. I share my noble friend's concern; it is the reason why we are taking things which happened in the past so seriously. We recognise that if we do not eliminate these issues from policing practice, there is a risk that we could see events similar to the ones that we have to talk about today.

Baroness Howells of St Davids: My Lords, I can tell the House that on the night that Stephen was murdered, I was the community relations officer detailed to keep an eye on what was happening. A week after the murder, I was invited to meet the Minister for race relations in the Home Office, the then Mr Peter Lloyd. I was asked if I could say something about what was happening in Greenwich. I explained to him that the Lawrence family were the epitome of any British family. They were married, they had three children who went to school regularly, and they played tennis. Five Englishmen set upon their eldest son and murdered him in the street. At the time the community, in its grief, was concerned about how the police were reacting to the death of an 18 year-old. On the night of the murder, I went to the hospital and had to drive along the road, but the police had not cordoned off the area where Stephen had been murdered. I have said this many times, but today I can say it publicly: we were all very concerned.

After I had explained in detail what was happening, we were told that Peter Lloyd was so moved that he appointed a Member of this House to visit Greenwich. The Member called into the police station and spent a day with the police, and he said in his report that the police were doing everything they could. He did not contact the local council, he did not contact the community relations council and he did not contact the community. He did none of those things. We were outraged because we knew that something was wrong.

I stayed by the Lawrences in their struggle for 10 years, at which point I felt that they were strong enough. I would like to ask whether the Member of this House who spent a day with the police will be questioned during this inquiry. He gave the police confidence that they were doing a good job. The community knew that they were not, the race relations people knew that they were not, and the council knew that they were not.

For the black community, the police perjuring themselves in the way they have done is well known. A lot of young people were disenfranchised because of how the police treated them. They would arrest them, but when they asked, "What have I done?", they would be charged with obstructing the course of justice. There was a time when the Metropolitan Police made it impossible for a young black person to walk the streets of London. If the Government are taking this seriously, and I am sure that they are, this cannot be a "surface" inquiry. I feel that the House deserves to know how a Member of this place could give the police such a good report while the families were suffering. I thank all noble Lords for listening.

Lord Taylor of Holbeach: My Lords, it has been a privilege to listen to the noble Baroness, who has recreated some of the fears and anxieties which the Macpherson report sought to address. There have been few more damning indictments of an institution than that report. What is currently being alleged is that there may have been some aspects of policing at the time which were not reported to Macpherson, including this particular unit and its activities. These are matters of great concern. I have to be brief because other noble Lords want to come in, but I am pleased to have listened to the noble Baroness.

Lord Dear: My Lords, first, I declare my interest as a senior officer in the police service, and also that in the past 18 months I have given professional advice as part of a small group advising HMIC on the Kennedy case. That should go on the record.

I associate myself absolutely with the comments in the Statement that the noble Lord has read out to us. I share entirely the concern, and the tone of that Statement chimes exactly with my own feelings. I would also like to associate myself with the comments that have been made about the Lawrence family, and I will not go over that again. The whole issue is deeply worrying. I have only one small query in my own mind: why has it taken so long for that undercover officer to come forward? No doubt that will be a matter of record later on.

I will make one point and pose one question. The point I would like to make is that my knowledge of undercover operations at the extreme end is that it is a critical and highly dangerous part of policing. Penetrating officers into organised crime groups is difficult. It is

critical—as the Front Bench has already acknowledged—and a very dangerous involvement indeed, which was not the case with Lawrence and is not the case with Kennedy either. I hope that the ongoing investigations will bear in mind the important end—the dangerous end—of undercover operations.

The noble Lord, Lord Fowler, has already mentioned the need for ethics and I subscribe to that. He is quite right, but I would take it a stage further. My question to the Minister concerns leadership. Ethics are no good unless the values of the service and the moral and professional compass of the service are there first. It needs leadership to hold it together and move it forward. This is a drum I have beaten here before, as the Minister knows. I would like reassurance from him that the whole question of leadership—not the College of Policing but leadership—is being addressed as a matter of urgency within the Home Office. It is to do with recruiting and training the right people, giving them the space to operate and encouraging leadership rather than management. With good leadership, this sort of thing should not and would not happen. That is the essence of the whole problem that we are looking at.

Lord Taylor of Holbeach: Many senior police officers are aware that there is far too much focus on management and not enough on leadership. It is, after all, the police force that we are talking about. Police forces need leadership and command and a sense of direction and focus. All that the noble Lord has said, from his vast experience, points to the disappearance of some of that focus in modern policing. The Home Office is determined to get it back. I hope that addresses the issues that concern him.

Lord Dholakia: My Lords, this is one of the most positive Statements to have emerged from the Home Office on this episode. Obviously, differences of opinion remain about the nature of the inquiry. I will make three points.

First, we endorse the sentiment expressed with regard to the tragedy and the further agony that the Lawrence family will experience on realising that the undercover operation was actually trying to implicate them—the nasty part of British policing. Two questions arise. The Macpherson inquiry talked about institutional racism. Would that inquiry have stopped talking about institutional racism if it had known that the police were involved in such an undercover operation? Would it not have recommended at that stage the need to criminally investigate police who were involved in this undercover operation? I raise this because there has been botched operation after botched operation in the investigation of this case.

My second point concerns the nature of the investigation, which the noble Baroness from the Opposition spoke about. I have full confidence in the IPCC and how it is supervised. However, public perception is still that the police and others tend to investigate themselves no matter how one supervises them. I do not believe in that. In this case, it is matter of innocent people against whom the police acted wrongfully. We need clear answers and that can come about only through an independent investigation.

The third point, if the Minister could reply, is that whereas one endorses what he says about covert operations where matters of national security are involved, this is an ordinary family who had lost a family member. What is the matter of national security in relation to this case? The sooner we get to the root of this problem with an independent inquiry, the better for British policing.

Lord Taylor of Holbeach: My noble friend is absolutely right. The Macpherson inquiry was only as good as the information that was made available to it. I said in my earlier response that if the Macpherson inquiry had had knowledge of the allegations that we are now aware of, there would have been a fuller investigation of this particular aspect, which may have changed the tone of that report even further.

I emphasise that the Ellison inquiry is an independent report. It stands outside the police force. However, we know that we need the police to investigate these sorts of matters. They are the vehicle in this country—they have the powers of arrest. They have the power and we need that power if we are going to pursue these allegations fully. Having Mark Ellison working alongside them, investigating the scope of these investigations at the same time, we have that degree of independence, which justifies the parallel passage of these inquiries and investigations.

The Lord Bishop of Ripon and Leeds: My Lords, I express from these Benches the way in which our hearts go out to Doreen and Neville Lawrence at this fresh pressure upon them at this time. In that context, accepting the point made by the Minister that undercover operations are necessary to protect the public, I emphasise that the distinction between undercover operations and dishonest deception is a fine one. Therefore, can he tell us more about the possibility and timescale for a clearer code of conduct for undercover operations? How much—if any—of that could be published?

Lord Taylor of Holbeach: In order to set up proper supervision of undercover operations, primary legislation will probably be required; certainly legislation of some sort will be required, as was indicated by my right honourable friend Damian Green last week. He talked about secondary legislation to raise the level of authorisation for long-term undercover deployments to that of chief constable and to introduce a system of independent approval by the Office of Surveillance Commissioners for all renewals of long-term undercover deployment at 12-month intervals, so that there will be supervision by an independent body, set up by Parliament, to ensure that these operations are properly supervised.

Of course, the right reverend Prelate is absolutely right that we cannot reveal details without blowing the operation. However, the principles under which these operations are conducted will be established by using the Office of Surveillance Commissioners to supervise them.

Baroness Uddin: My Lords, I echo the sentiment of the House and pledge our support to Doreen Lawrence, whom I have the privilege of knowing personally. It must be devastating to learn, just as she begins to build a relationship with the police, hoping that there will be proper and full justice for her son, that she faces yet another blow. If these despicable allegations are true, were the Home Secretary or the Metropolitan Police Commissioner at the time aware of them? If so, what assurance will the Minister give to the House that there will be zero tolerance for institutional racism, not only within the Metropolitan Police but all across our institutions in this country?

Lord Taylor of Holbeach: There is no tolerance of racial discrimination in this country. It is one of the features that have changed since those times. The Home Secretary became aware of these allegations only on Thursday last week. No Home Secretary that I know of has been aware of these allegations. We know that the noble Lord, Lord Condon, who is not in his place today but who was commissioner at the time, has widely condemned these allegations and had no knowledge of them, as he says in a statement which he issued earlier today.

Lord Elystan-Morgan: My Lords, I most warmly congratulate the Minister on the sincerity and sensitivity with which he has approached these grave allegations. The question has been raised as to exactly how boundaries should be drawn. I respectfully suggest that this House, sitting in its appellate capacity in the Loosely case 13 years ago, laid down very specific and intricate rules. If those can be made a living law—exactly how that is to be done I am not sure—the problem, to a large extent, would be answered.

On the Lawrence question, it is perfectly clear to the House that a small, select, covert and confidential cell was set up to do a very specific job—to besmirch the Lawrence case. That decision could not have been a haphazard one. It must have been arrived at at a fairly senior level of management. The British public will want to know who that person was. Anything short of that would leave a huge gap in credibility.

Noble Lords: Hear, hear.

Lord Elystan-Morgan: Saying that gives me no pleasure, as someone who was Police Minister in the other place 45 years ago and thinks that we still have a most splendid police force, with few exceptions.

Lord Taylor of Holbeach: What the noble Lord says is quite clearly the nub of the issue. That is what the investigation of these allegations is designed to discover. It is not going to be easy. This was quite some time ago and many of those involved have passed on. It will not be easy to get to the truth. The paper trail and the documents may not exist—we do not know. However, I believe that the public demand this sort of scrutiny and transparency and it is right that they do so. We need to pursue the allegations with vigour because we need to show that this cannot be tolerated in retrospect and it certainly cannot be tolerated today.

Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013

Motion of Regret

8.05 pm

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

That this House regrets that the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013, laid before the House on 4 March, will result in the loss of Motability provision for many disabled people; and that this House considers that transitional arrangements should be put in place urgently. (SI 2013/389)

Lord Alton of Liverpool: My Lords, the House will be aware that this Motion of Regret refers to the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013. My three particular concerns, referred to in earlier debates, relate to: first, the way in which the changes in regulations will impact on the support which disabled people need to ensure mobility; secondly, the role of Atos Healthcare in assessing those who will be reassessed for PIP as a consequence of the changes; and, thirdly, the 20/50 metre criteria used for enhanced personal independence payment.

On the latter question, I begin at least with a welcome for the Government's decision to consult, over the summer, on the 20/50 metre criteria for enhanced PIP. I hope that the Minister will be able to assure the House that this will be a genuine consultation and not simply a paper exercise, going through the motions, to avoid judicial review. In a Written Answer on 13 February, the Minister said:

"Once PIP legislation is in place, any consequence of a failure to meet the entitlement conditions for the enhanced mobility component would not result in a judicial review as long as the legislation was applied fairly to the claimant. We have robust dispute resolution procedures in place to ensure that this is the case".—[*Official Report*, 13/2/13; col. *WA 157*.]

Presumably, the new consultation is a recognition that the earlier announcement was not based on fairness. If this really is to be a genuine consultation this time, and the new regulations applied fairly to each claimant, the Government will need to assure us that they will publish the responses to their consultation and explain the reason for their eventual decision. Will the Minister outline the procedure that will be followed? Until the consultation has been undertaken, how will current claims be assessed? Which rules will apply? What will happen to those claimants if the consultation determines that the rules have to be changed?

There are two other two issues which I want to explore: the impact on disabled people's mobility and the role of Atos Healthcare. On February 25 last, with the support of my noble friend Lady Grey-Thompson, who has been unable to join us this evening because of pressing family commitments but who wishes to be associated with these remarks, I moved an amendment in Committee to the Welfare Benefits Up-rating Bill.

My amendment was a plea to the Government to think about providing a transitional arrangement—perhaps at least a two or three-year period of grace—for those who already have vehicles and who risk losing them. Prior to that amendment, on 17 January, 24 January and 13 February, and in a series of Written Questions, I pressed the Government about the impact of their proposals on disabled people.

Subsequently, on 30 April, the Minister for Disabled People and Member of Parliament for Wirral West, Esther McVey, met my noble friend Lady Grey-Thompson and me, along with Jane Young, who has done a great deal of work in ensuring that this issue does not slip from sight. The Minister told us that the DWP would be announcing its own transitional arrangements this month. Can the Minister tell us what has happened to them? Since our meeting, Ms Young has been told that the department's transitional arrangements would be reworked into joint transitional arrangements with Motability. Can the Minister can tell us whether that is so? How will that assist those who use their higher-rate mobility component on an alternative means of independent mobility other than the Motability scheme? I hope the Minister will be able to tell us.

During those discussions we made the point, which I reiterate tonight, that this is not a trivial issue. According to the noble Lord, Lord Sterling, who does such admirable work chairing Motability, there are 620,000 Motability vehicles on the road, which he says is probably the largest fleet of such vehicles in the world. That figure simply refers to Motability vehicles, not to the significantly larger number of people who rely on other forms of transport to ensure a degree of independent living. The Government have been unable to tell us, throughout these debates, how many people will have their vehicles sequestrated or repatriated and how many people who currently receive help with transport will lose access to that help. My noble and learned friend Lord Hardie has also been attempting to extract information about the numbers of people. Members of your Lordships' House will have seen his recent Written Questions about this. I suspect that obtaining that information has been rather like drawing teeth.

I for one do not believe that Parliament has any business enacting government policies without knowing what the full effect will be of their proposals. For Parliament to be asked to walk blindfolded into decisions will undoubtedly result in some Motability users having their specially adapted vehicles repossessed. That is simply unconscionable and deeply irresponsible.

Although I am appreciative of the time that Esther McVey spent with my noble friend and me, I freely admit that I am still no wiser about the number of people who will lose their vehicles or be affected by these changes. The detail of the Government's proposals is still inadequate; we simply do not know. The inadequate consultations match that. The transitional arrangements which are to be put in place by both Government and Motability are simply in the ether. We do not know what they are. It is for that reason that I tabled this Motion of Regret this evening and to ensure that the noble Lord, Lord Freud, who has spent a lot time on these questions, has the opportunity to come to your Lordships' House to explain in more detail and answer some of these questions.

On 17 January I asked:

"Can the Minister confirm the Government's own prediction, made earlier this month, that 27% fewer working-age people will be eligible for the Motability scheme once PIP is fully rolled out? Disability organisations say that the new proposal means that 42% fewer disabled people of working age will be eligible—an average of 200 people in every constituency".—[*Official Report*, 17/1/13; col. 818.]

I received no reply on that day but on 13 February the Minister told us:

"Yes, my Lords, there is some churn".— [*Official Report*, 13/2/13; col. 742.]

He also said:

"My Lords, we know how many people will get the higher mobility component, a figure that will clearly be fewer under PIP than under DLA. I have provided those figures but, just for the record, the figure of roughly 1 million people on the DLA component in a steady state will reduce to roughly 600,000".—[*Official Report*, 13/2/13; col. 741.]

How does that translate into repossessed vehicles and into the loss of Motability support?

Let us be clear. One third of disabled people live in poverty. Some claimants will lose as much as £150 per month if they fail to meet the newly tightened criteria, an annual loss of around £1,800. Their situation will be unbelievably bleak. On the other side of the coin, Oxford Economics estimates that the mobility provided for disabled people contributes to our nation's economy by the equivalent of £1.3 billion every year, as I pointed out in an earlier debate after being referred to the document by the noble Baroness, Lady Hollis.

The Disability Benefits Consortium, which represents more than 50 disability rights groups, reminds us that it is not just about the positive contribution made by disabled people. Motability vehicles are,

"their means of independence and participation, the lifeline that enables them to get to work, to GP appointments, to the shops or to take their kids to school".

We simply do not know what is going to happen to people, some of whom have had very expensive adaptations to their vehicles, and who will be left without an adequate method of getting around. We especially do not know what the effect will be on people living in places where public transport is not easily available or accessible. As my noble friend Lady Grey-Thompson told the House in February:

"The short timescale between notifying someone of their car being removed and it being taken away could make life extremely difficult. Without some further protection, it could lead to chaos for many disabled people".

She continued:

"At the briefing that was held on the PIP regulations on 22 January 2013 with the Minister, the noble Lord, Lord Freud, and the Minister in another place, Esther McVey, it was my understanding that the timescale for someone having to return their car if they were no longer eligible for PIP could be relatively short, perhaps just a matter of a few weeks".—[*Official Report*, 25/2/13; col. 937.]

Can we now have further clarity on the timescale? I should be grateful if the Minister would remind the House how much public money is provided to Motability

[Lord Alton of Liverpool]
each year and tell us what discussions the Government have had with Motability about transitional arrangements and a package of support.

8.15 pm

I was surprised to see that when Norman Baker MP, Parliamentary Under-Secretary for the Department for Transport, was recently questioned by the House of Commons Transport Select Committee, he admitted that his department had,

"not particularly been involved … in any Motability discussions",

with DWP and that his department should have done more to consider the impact on tens of thousands of disabled people who are set to lose their right to use the Motability car scheme. So much for joined-up government. Norman Baker also said that the department would,

"try to make sure that there are alternatives available through public transport and … that they are as accessible as possible".

He obviously had little experience of how inaccessible this country is for sick and disabled people, something which the Mayor of London accepts, stating that,

"the reality is that even with complete Mayoral commitment a fully accessible service will take many years to achieve".

That is why, when referring to the mobility component changes from DLA to PIP, Boris Johnson's formal response to the DLA reform consultation states:

"The Mayor does not support this change".

To understand why he and many of us do not support these changes, Mr Baker and the Minister should read my noble friend Lady Grey-Thompson's account of how she has literally had to crawl on and off trains, or how Kaliya Franklin was left in a tradesman's office and forgotten about at a main London train station while waiting for help.

For people faced with losing their adapted cars and being forced to rely on public transport, the prospects will indeed be bleak and are made even worse by the lack of clarity about how the policy will be implemented. There has been speculation that users may be allowed to keep their cars for one extra month in order to give them time to find a replacement, and perhaps provided with some financial support to help them make adaptations to their replacement vehicle. Clearly, even if people come out of the process with between £500 and £1,000, that is not the same as still having their vehicle. What figure does the Minister put on the assistance that will be given? Can he tell us how many vehicles will be offered for sale—something he referred to at the briefing that was held in an upstairs committee room? It seems extraordinary to me that disabled people could have their own vehicles offered to them for sale. At what average price does he anticipate that they will be sold? How does he expect disabled people to find the funds for these purchases or for new vehicles and modifications?

I turn to my third point. I would like to hear the Minister's reaction to a story published last week by Disability News Service and written by John Pring—I have given the Minister prior notice of my raising this. It reflects serious concerns over the Atos Healthcare tender document and how it was awarded the contract to assess disabled people for personal independence payment in London and the south of England. Disability News Service suggests that Atos has broken a series of firm pledges that enabled it to win a £184 million disability assessment contract. The story comes as the DWP is rolling out the assessments for PIP across the UK and it surely raises worrying questions about the transparency and management of contracts won by tender and involving millions of pounds of public money.

The tender document stated that Atos had "contractually agreed" with 22 subcontractors for them to provide a network of 750 assessment sites across that area. This has fallen to just eight subcontractors since the contract was signed—22 down to eight. Atos stated:

"Each partner has contractually agreed to providing accommodation to the required specification"—

DWP's specification. It also said:

"We conducted an evaluation process, including site visits, to select the PIP consultation locations of the highest quality. This has allowed us to identify sufficient, suitable accommodation, ready for go live and available for the length of the contract".

Atos estimated that its "hyper-local" service would mean that no claimant had to travel more than 60 minutes by public transport to attend an assessment. Atos has now refused to say how many of the 750 assessment sites are left, while a DWP spokeswoman said last week:

"We do not have that information. We really don't know. We are not sure".

This is another example of not knowing how policies are going to work out. Perhaps the Minister can tell us tonight.

Why does it matter? It matters because the changes will mean that many disabled people with significant mobility and care needs will face longer journeys—possibly up to 90 minutes by public transport—to reach their assessments, rather than the maximum of 60 minutes promised by Atos when it bid successfully for the contract.

Can the Minister confirm that the award of the two PIP contracts are, together, worth nearly £391 million to Atos over the next four years and say what discussions he is having with it about the failure to honour the tendering commitments? Has he also raised with Atos the earlier complaints made last October by disabled people's organisations that it had used misleading information about its links with those organisations to help to win two of the contracts?

The article quotes my noble friend Lady Grey-Thompson as remarking:

"There were many assurances given during the debates on PIP … People believed that a significant number of assessment centres would be available, and the geographical location would make travelling much easier. If the number of assessment centres is radically different to the number that were in the tender document then that should be openly explained".

I entirely agree with her. I would like to know whether the Minister has been in touch with the NHS foundation trusts cited in the article to which I have referred. Cambridge University Hospitals NHS Foundation Trust is quoted as saying:

"We never got that involved at all. They put our name in the tender document, although they shouldn't have done. I think they emailed us, but we said, 'No, we are not interested'."

North Essex Partnership NHS Foundation Trust, also mentioned in the tender document, said:

"The trust never had an agreement or contract with Atos. We had exploratory discussions as part of a consortium ... which did not go any further".

Norfolk Community Health and Care NHS Trust said that it became aware that it had been mentioned in the tender only some time after the document was submitted to the Government. A trust spokeswoman said:

"We cannot be responsible for what they have put in, but it wasn't with our agreement".

There are similar comments from Norfolk and Norwich University Hospitals NHS Foundation Trust, Mid Essex Hospital Services NHS Trust, and University Hospitals Bristol NHS Foundation Trust, which said that,

"no formal agreements of any sort were reached before discussions were terminated by mutual agreement".

An Atos spokeswoman was quoted in the article as saying that DWP was,

"fully aware throughout of the fact that contracts were not in place between Atos and its selected suppliers".

Perhaps the Minister can confirm whether that is true and on what basis the DWP's spokeswoman was able to tell Disability News Service:

"We have no reason to doubt that Atos and their partners are able to deliver [the contract] successfully".

At the very minimum, this must reinforce the doubts that so many of us have about Atos and the new arrangements which the Government are putting in hand. Perhaps the central question is why the Government are content to spend taxpayers' money paying a company that fails to honour its contract to the detriment of disabled people. Do they accept that, by failing to hold Atos to account, they will encourage it to behave in ways that it believes its paymaster will approve rather than providing an objective service to disabled people?

This latest saga also underlines how many health authorities Atos proposed to use. As these are organs of the publicly funded National Health Service, why could the Government not have appointed them to carry out this work, cutting out the Atos middleman and giving much better value for money to the taxpayer? Perhaps some of the money that they saved could be used to prevent the sequestration of disabled people's specially adapted Motability vehicles in these hard times which we are constantly told drive the Government's policies.

I hope that some of these well founded concerns—about the lack of clarity about the scale of the impact on disabled people; about the criteria that will be used for assessments; about the arrangements being put in place by Atos to carry out assessments; and about the absence of transitional arrangements—will be properly addressed and that, when these policies are implemented, no one, especially Ministers, will be able to say they had no idea that these would be the regressive consequences of the ill starred measures which the Government have promoted. I beg to move.

Baroness Thomas of Winchester: My Lords, I am extremely grateful to the noble Lord, Lord Alton, for giving us this opportunity to raise again the issue of PIP and the higher rate mobility component. This, of course, is the gateway to the Motability scheme which enables so many disabled people—including myself—to get about. I declare that interest.

I shall say a word about PIP in general, but turning to these regulations, I am pleased that Motability has stated that it aims to avoid recovering vehicles from hospital in-patients affected by this change. If the car has been adapted to suit the claimant's condition, then it could be very expensive for a Motability car to be recovered and for the claimant to apply again when he or she comes out of hospital, and another Motability car has to be adapted in due course. Presumably the payment of the higher rate mobility component of DLA will continue to be paid if a person is in hospital for more than four weeks. Perhaps the Minister could tell me if that is the case.

Turning to other matters, I am very glad that the DWP is reopening the consultation which it failed to do on the final version of the PIP criteria. Even though the amending regulations should make the position clear, none of us who has taken part in these discussions has any confidence that the assessors will properly take the criteria in the amending regulations into account—even though they are mandatory. I hope that the new consultation will not be an empty exercise and that the DWP will take on board what disabled people say and change the original criteria if the consultation makes it clear that this should happen.

One matter which I am very disturbed about is the figure of 600,000 claimants that the Government say will disappear from their books once PIP is introduced. Where did the DWP get this figure from? Is it saying that these people are not disabled enough, or that they are now receiving DLA fraudulently? How closely is it in touch with the Department of Health, which might be able to enlighten it about improvements in treatments for many disabled people, meaning that they are likely to live longer with their disabilities?

The mantra we hear constantly is that PIP is to be targeted at those who need it most. However, although that sounds good and right, it is actually pretty meaningless because DLA and PIP are not to be means-tested. So one is left with a subjective judgment by a DWP decision-maker—heavily influenced by the assessor. Without targets, how will the decision-maker judge one person against another? Outside the Chamber, the noble Lord, Lord Alton, said they would need the judgment of Solomon. Instead, they have the judgment of Atos. I know which I prefer.

Tonight we heard more from the noble Lord about the Atos contracts, so I shall not repeat those facts, which are very disturbing. In general, I supported the move to PIP, because of the inadequacy of the DLA form, but there are too many question marks over the whole process for me to have any confidence in it any more.

Baroness Hollis of Heigham: I want to make three brief points, but first declare an interest. Two members of my extended family have Motability cars and they are their lifeline. I shall make a point about statistics, one about appeals and finally a point about isolation. I shall try to be quick because we are pressed for time.

[Baroness Hollis of Heigham]

On statistics, as I recall when we were doing the Welfare Reform Bill, we were told that something like 600,000 of those getting the higher rate DLA mobility component would drop and about 200,000 of those on a lower rate would go up, leaving a net loss of 400,000 people on DLA mob. As understand it from our debates at the time, something like 27% of those people converted their DLA higher rate mob into a car. Therefore it means we are talking about the loss of potentially 180,000 Motability cars from disabled people who are dependent upon them. These are cars which in many cases have been extremely expensively adapted to them and therefore are of relatively little use for people following after, because they have been customised. This leaves the disabled person without any ability to afford alternative transport, because they too cannot afford those adaptations done by Motability. So on my first point about statistics, I think we are dealing with about 180,000 cars. If the Minister can correct me on this, I should be pleased to know, but it is a huge number.

Secondly, there are appeals. At the moment, between 40% and 50% of all appeals on DLA are successful. One reason is that there is often a considerable time between the DLA assessment and the appeal, by which point someone may have got worse or, possibly, better and, as a result, the evidence is contested. The problem is the length of time taken to hear the appeal. If it takes six months to hear an appeal against Atos, you lose your car after one month, you win your appeal, but then you have to wait for a new car with all the expensive adaptations while 180,000 cars are effectively on the scrapheap, that seems a foolish and unwise use of money.

8.30 pm

How can we overcome that? We have to link the transitional arrangement under which you can hold on to your car to the end of the appeals procedure. That could be three months; it could be six months. I am sure that the Minister will say, "That would encourage everyone to appeal". Possibly, but we could at least have a decision-maker review in the first place, which would winnow out some and get that information looped back to the person appealing. If the Minister so chose, that would lead to an acceleration of the appeals process, which in all decency would be a good thing in any case. It would allow for better quality judgments, because the appeal would be heard much closer to the original decision and would therefore be based on the same evidence, which is not what is happening at the moment. That would be good for both the department and the disabled person.

Can the Minister give us an assurance that we can link the length of time it takes to have an appeal to the transitional time during which you can hold on to your vehicle? Otherwise, it is really absurd. I know that the Minister can find a way around this if he chooses.

The third point is about isolation. What comes out clearly time and again is that if you take away the Motability car, you turn a disabled person from being independent to being dependent on other people. More than that, you lock the person on whom he depends—I say "he", and it is therefore likely to be his wife—into a shared isolation with him. She has to be permanently his runaround carer as well as his home carer, because he has no capacity to have any independent life apart from her support. That locks them into a shadowy dance into isolation, which is disastrous for them both.

Those are my three points: the number of cars that we are talking about, which I judge to be about 180,000; the problem of the length of time to hear appeals, which mean that more cars will be lost which then have to be restored—unless the Minister can calibrate and bring together the two; and, thirdly, the need to ensure that we do not send disabled people and their carers into isolation. That is particularly marked in rural areas. There, disabled people have few options. They cannot afford taxis, they do not have buses, they cannot walk those distances, and they cannot run scooters because the distances are too far. Without their Motability car, they are locked into their home as well as their isolation, as are their partners. For those three reasons, I very much hope that the Minister can give us more satisfactory reasons this evening than we have had so far.

Lord Hardie: My Lords, I declare an interest as honorary president of Capability Scotland and share noble Lords' concern about the changes to the regulatory regime. In that regard, I refer noble Lords to my observations of 13 February at cols. 737-78, which I shall not repeat. The present regulations, among other things, affect claimants who have entered into a Motability agreement and are thereafter hospitalised. The noble Baroness, Lady Thomas of Winchester, derived some comfort from the assurance that Motability will not recover those vehicles if a patient is hospitalised, but if one reads paragraph 7.10 of the Explanatory Notes, one sees that that is not what the Government have said. They say that the Motability scheme has stated that it would aim to avoid recovering vehicles from hospital in-patients affected by that change.

That is not the absolute assurance that hospital patients will not lose their vehicles. Without such an assurance, the reality is that if a person is in hospital for a particularly long period, the payments made by the department to Motability on behalf of the patients will not be made and the vehicle—the car, motorised scooter or motorised wheelchair—may well be recovered. Indeed, the Explanatory Notes recognise that if it has to be recovered, Motability will give some allowance, depending on the condition of the vehicle when it is recovered.

These are concerns, because the present system means that payments direct to Motability continue to be made after the hospitalisation of a claimant. That is recognised as an exception to the rule that social security benefits are affected after hospitalisation. In my view there is a good reason for that, because these payments are payments of a capital nature to enable people to have the necessary facilities to give them the independence that they need. They are different from revenue paid direct to the person for their maintenance.

Regulations 10 and 11 remove this exemption for no good reason. It is no answer to say that it is intended to bring Motability users into line with

other recipients of DLA or PIP. As I have sought to explain, they are in a different position to the other claimants. Moreover, the consequences of this change are draconian. There is a real risk of the repossession of necessary equipment, resulting in the inability of such claimants to lead independent lives after they leave hospital until they are able to renegotiate other Motability contracts. The noble Baroness, Lady Hollis, explained the complexities of that. There will be a delay in obtaining necessary equipment, during which period these people will not be able to live the independent lives that they have enjoyed previously. Can the Minister advise the House what timescale is involved between the order and delivery of a purpose-built powered wheelchair, scooter or modified vehicle?

I also ask the Minister what is the urgency in promoting this change, particularly in view of the announcement by the DWP on 17 June, already mentioned, of a further consultation on the mobility component of PIP? Would it not make sense to have an integrated approach and to leave these changes to form part of the consultation process? Has there been any consultation with interested parties or the public at large about this significant change? If the Government are not willing to await the outcome of the consultation, can the Minister tell the House how many people will be affected by this proposed change?

The loss of a wheelchair or car may have greater implications in different parts of the country. I have been anxious to assess the whole issue of Motability payments and their geographical distribution because I suspect that the impact of the loss of a vehicle might have greater impact in rural areas than in cities where there are probably better—although not ideal—transport facilities for wheelchair users. On 4 June, I tabled four Questions for Written Answer about the Motability scheme and received a reply dated 13 June. I refer noble Lords to Hansard cols. WA 255-56. I commend the Minister and his officials for the speed of the reply but it did not answer all my questions. My Questions HL594 and HL595 sought data for three years—2010, 2011 and 2012—but the answer provided data only for the last year, preventing me from undertaking any effective analysis.

Moreover, in relation to Questions HL596 and HL597 seeking information about participants in the Motability scheme, the Minister replied:

> "The Department does not hold information on the numbers of Motability customers in each local authority district or area of Great Britain". [*Official Report*, 13/6/13; col. WA 256.]

That reply echoes his statement on 13 February at cols. 741-42.

I have some difficulty with these statements. As I understand the system, if a claimant elects to use the Motability scheme, payments on his or her behalf are made by the department directly to Motability. If my understanding is correct, the department must know how much it is paying to Motability and on whose behalf payments are being made. This information will identify the local authority, district or area of each claimant on whose behalf payments are made. I have written to the Minister seeking a full answer to my Questions and I look forward to receiving that in due course.

If it is truly the case that payments are made by the department to Motability without it knowing the identity of the beneficiaries, it is a matter of concern that the department cannot account for these payments. Such a failure may be of interest to the Comptroller and Auditor-General, the Public Accounts Commission and perhaps even the Treasury. Until the department provides the House with the information about such payments, I invite the Minister to amend these regulations by deleting this particular change.

Lord Wigley: My Lords, I am grateful for the opportunity to speak in this debate and to congratulate the noble Lord, Lord Alton, on bringing it forward. I should declare an interest as president of Mencap in Wales and a number of other disability organisations. The matter that we are discussing is of immense concern to countless thousands of disabled people who are dependent on the vehicles they get for their mobility. This is true generally; it is a particular problem in rural areas, to which I will come in a moment. Perhaps I might pick up the points as they have been made in turn.

First, on consultation, may we please have an assurance from the Minister that all relevant disability organisations will have a full opportunity not just to submit evidence but to engage in meaningful two-way discussion on this matter, and that the process will not be truncated and time-limited?

Secondly, on the more than 600,000 Motability vehicles, the Government must know how many people stand to lose their adapted vehicles, so why will they not come clean with the statistics? As the noble and learned Lord, Lord Hardie, mentioned a moment ago, they must know those statistics. I congratulate him on the Questions that he has tabled and the statistics that he has obtained, which bring this matter into sharp focus.

Thirdly, I draw the attention of this House to the disproportionate geographical impact. I obviously have concern with Wales. With 5% of the population, it has 7.4% of the total casework and 8.4% of the higher rate caseload. This is for an amalgam of historic industrial reasons, which we will not go into now. Those people stand to lose, and many are in areas with the lowest incomes per head in these islands—places such as Blaenau Gwent and Merthyr Tydfil, where I used to live, and where almost 13% of the population have a dependency on the mobility component. In my next-door area of Anglesey, which has one of the lowest GVAs per head of anywhere in the United Kingdom, at just 55% of the UK average, there is a caseload of 7.2%. That is in a rural area where they do not have alternative means of transport and taking away vehicles will deprive disabled people of the ability to get around.

The changes we are talking about will compound the disability and poverty suffered by these people. It will be made infinitely worse if they cannot have their mobility. They will be very badly impacted by these changes.

Baroness Wilkins: My Lords, I declare a tangential interest as a recipient of DLA since its inception, although being no longer of working age I am

[Baroness Wilkins]
unaffected by the introduction of PIP. I will not repeat many of the excellent points that other noble Lords have made.

In a recent document, Motability set out the ways in which it is trying to ameliorate the changes and lessen the punitive impact of reclaiming customers' vehicles. It states that the price to individual customers wishing to buy their current car will be in the order of £8,000 to £12,000. In the current climate, when disabled people have been repeatedly hit by cuts, how will many be able to afford that kind of outlay? Will the loan sharks be out in force to make yet another killing from people desperate not to lose their employment?

The Minister for Disabled People's answer to those people facing the loss of their employment because of the introduction of PIP has been the Access to Work scheme. What work has been done to see if this could in fact be a more expensive alternative? For example, the chief executive of my local disability organisation needed to use Access to Work while he could not drive a car. The daily cost of the journey both ways was £80—£400 per week. On top of that, he has the cost of taxis for shopping, getting to the doctor, et cetera. Compare that to £55.25 high-rate mobility element of DLA, which provides him with a transport for all these activities.

8.45 pm

Finally, the Care Bill is currently making its passage through this House. One of its main planks emphasises prevention as an essential element in minimising the cost of social care. It has been the disability living allowance which has been one of the most effective provisions in helping the less severely disabled people maintain their independence and reduce their costs for social care, as the noble Baroness, Lady Hollis, has so ably said.

Are we faced yet again with another glaring example of the Government's silo mentality, making austerity cuts which ultimately result only in much higher costs to the public purse?

Baroness Masham of Ilton: My Lords, I thank my noble friend Lord Alton of Liverpool for tabling this regret Motion. He has spoken so clearly and fully on the worrying situation that the Regulations 2013 may result in the loss of mobility for many disabled people.

The mobility scheme has been a great assistance to many disabled people who would not have otherwise been able to afford a car or an electric wheelchair. This scheme is headed by Her Majesty the Queen. It has given mobility and independence to many people. Can the Minister tell me whether it is really a possibility that many people will lose their cars and the ability to run them?

I would add a few words about the vital need for a car if one lives in a rural area, as I do—even more so if one is disabled. A car enables a disabled person independence to take part in everyday life, getting to a job if they can work, taking children to school, shopping, going to the doctor, and just getting around. Making people mobile is so important. There is very limited public transport, if any, in some rural areas. I cannot understand that the Government are going backwards in penalising disabled people.

Before the mobility scheme existed there were small three-wheeler cars which were maintained by the Government. They were not ideal as a disabled person could not take a passenger, but they were better than nothing. I cannot think the Government could be so cruel to take mobility away from people whose lives are changed when they have it and are isolated if they do not.

Baroness Sherlock: My Lords, I should begin by acknowledging all the work done by the noble Lord, Lord Alton, in bringing to the attention of the House, not just today but repeatedly, the concerns of people who are in receipt of mobility payments and who are worried about the effect of these changes and the way they are being implemented.

This debate this evening has made very clear just how important Motability cars and other mobility schemes are to so many disabled people. I was very moved by the account just given by the noble Baroness, Lady Masham, who explained so well the consequences for so many people; of how important it has been to have access to these cars and the fears that would accompany their departure.

The scheme, as Motability itself puts it, gives disabled people,

"the freedom to get to work or college, meet up with friends, enjoy a day trip out with their families, attend a medical appointment, or go shopping; to enjoy the independence that so many of us take for granted.".

Yes, quite so. One of the things that we have struggled to get to tonight is the game of numbers—a point made by the noble Lord, Lord Alton, the noble Baroness, Lady Thomas, my noble friend Lady Hollis and others. It has proved very difficult to get a clear picture of just how many people will be affected by these changes since the Government have so far been unable to give us precise figures for those who might lose their cars or adapted vehicles. My noble friend Lady Hollis offered up 180,000. In the absence of anything from the Government, I suggest we all adopt that figure tonight. If the Minister will not accept that, please could he give us his own figure?

In past debates, the Minister has contended that because the decision to lease a vehicle is an individual one and the contract between the individual and Motability is a private one, it is not a matter for the Government. In response to that, first, the noble and learned Lord, Lord Hardie, made the very interesting point that if direct payments are made, the Government must know that information. Even if they do not, irrespective of the fact that a number of people will choose no longer to lease a vehicle, a number will automatically lose theirs simply by virtue of the fact that they will no longer be entitled to the enhanced rate when they transfer to PIP. The Government surely must have at least an estimate of what those numbers will be. Could they please share those numbers with us? Could the Minister tell us his best estimate tonight?

Secondly, if the Government intend to press ahead in the way they have announced, those affected will clearly need to make plans about how to manage the

effects of the changes. What are the Government doing to publicise the changes and inform people who will be affected? The noble Lord, Lord Alton, and my noble friend Lady Hollis asked what transitional arrangements would be put in place for people losing their cars. The Government have told the House previously that they were in discussions with Motability but could not then give further detail. The noble Lord, Lord Freud, has said previously that he had sympathy with the concerns of the noble Lord, Lord Alton, and he was keen to find a way of supporting people during the transitional period. In the debate on 13 February, the noble Lord, Lord Freud, said in response to my noble friend Lord McKenzie of Luton:

"We are actively exploring what extra support we can give to disabled people to ensure that they can still get to work. We are looking at whether we can use access to work as that particular vehicle. We want to ensure that mobility support remains in place during any transition between the Motability scheme and access to work".—[*Official Report*, 13/2/13; col. 740.]

What is the position on Access to Work, an issue also raised by my noble friend Lady Wilkins? Will it be possible to use Access to Work for this? What will happen with transitions? Will the sums of money available be enough to deal with the kinds of things described by my noble friend? Where have the Minister's conversations got to? Also, where have his discussions with Motability reached? Will he provide more information as to what transitional measures might be put in place? In particular, what opportunities will be given to claimants to either buy or continue to lease adapted vehicles, and at what price? Will he clarify the position of in-patients in hospitals? That point was raised by the noble and learned Lord, Lord Hardie, the noble Baroness, Lady Thomas, and others.

This would also be a good time for the Minister to give the House some more information about the new consultation on PIP criteria and how that will link in with the inception of this new scheme—a point made by many noble Lords, understandably. It might help if the House understood more of the Government's thinking on questions such as the 20/50 rule and the issues on which other campaigners have been pushing the Government to consult. How will this affect people in receipt of the higher rate of DLA who use Motability cars? What advice would he give them at this stage, looking ahead and trying to plan?

There is then the question of geography, raised by the noble Lord, Lord Wigley, and that of people in rural areas, raised by my noble friend Lady Hollis and the noble Baroness, Lady Masham. Have the Government done any assessment of the variable impact around the country? Can we even have a sense of impact by region, or the difference between urban and rural impact? I am sure that the Government would not have made a change on this scale without having considered that. Will the Minister share that with us?

Finally, at the risk of running slightly wide of the Motion, has the Minister given any thought to the context in which these changes are taking place? We know that support for disabled people wanting to move into work has been in trouble. The Work Programme is struggling generally and is clearly failing to help disabled people into work. The latest report from the Employment Related Services Association suggests that the numbers of people on ESA getting a job start as a result of referral to the Work Programme are terribly low: just 6% of referrals in the ESA flow payment group had a job start, 5% of those in the ESA volunteers group, and just 2% of referrals in the ESA ex-IB group. Given that, will the Minister take this opportunity to give the House some reassurance that the Government are concentrating in a cohesive and integrated way on the kind of support needed to help disabled people into work and to support them when they are there?

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My Lords, I have some difficulty in framing this answer because the debate was very wide but the regulations we are discussing are actually extremely narrow. What we are actually discussing is bringing the treatment of patients in hospital into line between those who receive Motability and those who stop receiving it after a certain period. There was an exemption for the Motability element and we are just bringing the two into line. I acknowledge that there has been a very wide debate on the whole area but we are talking about something that is actually much narrower. I hope noble Lords will understand as I try to juggle the two. I will try to deal with some of the wider issues but I will deal with the actual issue first.

I will set a little bit of context by saying that even in these hard economic times this Government continue to spend around £50 billion a year on disabled people and services to enable those who face the greatest barrier to participate fully in society. That figure compares well internationally. We spend almost double the OECD average as a percentage of GDP—2.4% against the OECD average of 1.3%. Only two out of the 34 OECD countries spend more. Through the reforms of DLA and the introduction of PIP, we will make sure that the billions we spend provide more targeted support to those who need it most. Three million people will continue to get DLA or PIP and half a million will actually get more under the new system.

While I am on figures, to answer the question from the noble Lord, Lord Alton, about the money flow to Motability, £1.6 billion went through to it in terms of transfer of benefit. My noble friend Lady Thomas asked what happens to the transfer. Clearly we recognise that some people will lose out but we have sought to ensure that those who lose out are those whose disabilities have the least impact on their participation in society. On our sampling of this, many people—more than half a million—will be winners under PIP.

The UK has a proud history in furthering the rights of disabled people and we want to ensure that all people are treated fairly. The provisions under debate, which also apply to claimants of PIP, are a case in hand. They ensure that everyone receiving the mobility component of DLA or PIP in the future will be subject to the same payment rules, whether or not they have a Motability vehicle. The history of this was that when the mobility component of DLA stopped being paid to hospital in-patients in 1996, transitional provisions were built in, including a measure which allowed for payments to continue in order to cover the costs of the lease on a Motability vehicle. These arrangements

[LORD FREUD]
represented a reasonable adjustment at the time for those in-patients who were committed to a mobility contract when the rules changed. However, noble Lords must understand that any lease held by someone in 1996 will have now long expired and these arrangements are past their sell-by date for the users affected at the time.

In response to the question from the noble and learned Lord, Lord Hardie, about consultation, we clearly signalled our intention to implement this change in our consultation on the detailed design of our reforms to DLA. In that consultation we made clear that this change was not intended to penalise Motability users but to introduce fairness between how we treat those who chose to take out a lease with Motability—some 600,000 people—and the vast, or substantial, majority who do not, which is 1.1 million people.

9 pm

We received some support for our proposals. Unsurprisingly, some concerns were expressed as well. There were requests from some of the respondents to the consultation that the mobility component of both DLA and PIP should be paid continuously for all recipients while in hospital. I am sure that noble Lords would agree that to continue paying a benefit intended to meet the additional costs of disability indefinitely when they are already being met by the NHS would be a waste of financial resource, regardless of the financial climate. Adult in-patients will continue to receive their DLA for 28 days, which compares with an OECD estimate of the average hospital stay of between seven and eight days, and benefit payments will continue for 84 days for children.

The consultation told us that we needed to strike a better balance between attaining equal treatment for all DLA recipients in hospital in the future while recognising the particular concerns of those who currently have a Motability vehicle. In particular, concerns were expressed about existing Motability users who could not have planned for these new arrangements at the time they took out their lease. We have therefore introduced transitional protection for those people who had a Motability vehicle and were in hospital when the new rules came in. This will allow customers who were in hospital on 8 April to run out their current lease. However, in contrast to the previous provisions, we have set a backstop so that the protection will end after three years. I think noble Lords will agree that this is an extremely generous transitional protection period.

Therefore, the provisions apply only to people newly entering hospital and remaining there in excess of 28 days if an adult or 84 days if a child. I appreciate that where a Motability vehicle is recovered, this may have an impact on the user's family—a concern that was also raised by some people in the consultation. However, I stress that a Motability vehicle is meant to be for the use of the disabled person, not to meet any mobility or transport requirements for family members or visitors to hospital. To quote from the Motability scheme's own terms and conditions:

"The car is used by, or for the benefit of, the disabled person".

Motability provides additional clarity in the terms and conditions:

"This does not mean that the disabled person needs to be in the car for every journey. In practice, this means other named drivers in the household can use the car for shopping and other routine activities, as long as the disabled customer will benefit".

I leave noble Lords to decide whether the use of a vehicle by others when someone is in hospital is of a sufficiently direct and immediate benefit to the disabled person. In our view it is not, there being insufficient material benefit to the disabled person, particularly in meeting their own limitations in mobilising, as exemplified by the examples Motability uses.

I also understand that some users are concerned about when Motability would recover their vehicle and whether they would lose money as a result. I assure noble Lords that we have worked closely with Motability on this issue. It has confirmed that where payment of the mobility component stops, it will allow a further protection period of up to 28 days in which to recover the vehicle. Motability has also said that when a vehicle is returned any advance payment outstanding will be returned on a pro rata basis. Once these protections end, Motability will discuss with scheme users the return of the vehicle and, on a case by case basis, whether it may be more appropriate to defer the return of the vehicle. Clearly, if someone is expected to be discharged shortly or the vehicle is heavily adapted, that will be fully considered in any discussions. However, let me be clear: that will be an independent decision by Motability.

I will give noble Lords some figures around the scale of the issue—the numbers that the noble and learned Lord, Lord Hardie, requested. We estimate that there were around 1,500 in-patients with Motability vehicles when the new rules came in on 8 April. As I mentioned earlier, these people will be allowed to run their lease down, but will be subject to a backstop of three years' protection. In the future, we estimate that there may be around 800 new in-patients a year who have a Motability vehicle, remain in hospital beyond 28 days or 84 days and will be subject to the new rules. These people will benefit from up to an additional 56 days a year of vehicle use and in all cases the return of the vehicle will be subject to one-on-one discussions with Motability, which may include retaining the vehicle for an additional period.

I will now try to pick up some of the broader points that were raised on the general position and the introduction of PIP. As I have mentioned, clearly some Motability customers will not receive the enhanced rate of the Motability component of PIP once DLA reassessment begins later this year, and will lose their vehicle. We cannot reliably estimate at this stage how many people will be impacted as decisions on whether somebody takes a Motability lease are claimant-led rather than led by an assessment of their need. We are, however, working closely with Motability on that, and we will aim to get a bit of a better—

Baroness Hollis of Heigham: The Minister knows what the figures were in the past; why can he not project them forward? I am relying on memory now, of debates we had 18 months ago, but am I not right in thinking that he told us at the time that something like

29% of those in receipt of higher rate mobility turned it into a Motability vehicle. If that figure is correct, which I believe it to be, then he can surely extrapolate that to the numbers of gross losers coming down from high rate DLA mobility, which I understand, again relying on memory, was 600,000. Therefore, 29% of 600,000 brings me to my 180,000 figure. What is wrong with that figure?

Lord Freud: The reason that it is wrong is that we do not know that the Motability figure lines up at that same percentage into the mobility. That is the reason. As a rule of thumb, it is one way of going, but we actually do not know whether or not the kind of people who will maintain their higher rate mobility will be the ones with Motability. That is the issue.

One of the questions that the noble Baroness was particularly concerned about in this area was the heavily adapted cars, and I think she described it as the foolishness of moving a heavily adapted car back. I emphasise that only 2% of Motability cars are heavily adapted, so this is a much smaller problem; most are just standard cars.

Baroness Hollis of Heigham: I was a patron—or something or other—of Motability, and that is certainly not my experience. They may be standard cars but they have been adapted to make them comfortable. Even people who drove ordinary cars beforehand transferred to a Motability car in order to get the adaptations and so on which made it comfortable as well as possible for them to drive. Obviously I am in no position to argue with his 2% figure, but I suspect from my own experience that another 20%, 30% or 40% will be using a Motability car which, to some extent or other, has been personalised or tailored for their use.

Lord Freud: My Lords, I do not think we have time to debate what heavily adapted comprises. However, the figure for cars heavily adapted for a disabled person is 2%. Clearly, we all personalise cars to some extent. I can let the noble Baroness have some more information on that to the extent that I have it, but that is the figure that I have. I confirm that the noble Lord, Lord Sterling, is looking carefully at how Motability can help to mitigate the impact for those who may be affected by the move to PIP.

Lord Alton of Liverpool: Before the Minister leaves that point, will he tell us a little bit more about what he is doing to create joint transitional arrangements, if that is what they are to be, with Motability, and when they will published? When will opportunities occur for people to be consulted and to respond to the consultation?

Lord Freud: My Lords, we are working with Motability currently on what the arrangements might be. I have no information at this stage on where we are with those discussions between the department and Motability, but clearly we are in discussions. I am not informed as to when I can update the House on that matter.

On the judicial review, as noble Lords have seen, there is a consultation on the 20 metre/50 metre issue. I can assure my noble friend Lady Thomas that this is a genuine consultation which we are entering with an open mind and we will be looking to hear the views of individuals and organisations. Once that consultation is closed, we will publish our response, including how we intend to act.

The noble Lord, Lord Alton, referred to changes to Atos's supply chain since the tendering stage of the PIP. I assure noble Lords that the department's decision to award the contract was not based on the mention of any particular organisation in the bids to deliver the PIP. It is usual for there to be changes between contract award and delivery. Indeed, we expect Atos's use of supply chain sites to rise and fall in line with referral numbers. The department made a change to the reassessment timetable after Atos submitted its tender, which means that there will be significantly fewer assessments in 2013-14 than it had originally planned. However, it is important to note that Atos has kept the department informed about changes and we are confident that Atos and its partners are able to deliver successfully.

The noble Lord asked about the £391 million that the Government are said to have given Atos over three years. I do not have that information to hand but I will write to him on that matter.

Lord Alton of Liverpool: I am grateful to the noble Lord. He will recall that I also asked him specifically whether the 60 minutes' travelling distance which Atos had said would be the maximum that people would have to travel to an assessment centre will be maintained or whether it will now be extended to 90 minutes, as has been alleged. Will the total number of assessment centres be reduced from the number I cited earlier to just a handful?

Lord Freud: I remind noble Lords that Atos tendered for four of the contract areas and received two, so it is not surprising that the 22 sites it was looking at have been reduced, given that it has a smaller number of contract areas. My information is that the 22 figure has gone down to 14. I will add to my letter any information I have on travel times estimates.

In summary, this issue is about balance and fairness—fairness to those who have a Motability vehicle and to the substantial majority of mobility component recipients who do not. However, this is fairness tempered with appropriate mechanisms to ensure that the impact on existing and future users of the scheme is minimised. Specific transitional arrangements are in place for those directly impacted when the measure was introduced and there will remain appropriate and generous provisions in the future. I commend the hospital in-patient arrangements to the House and trust that they have reassured the noble Lord, Lord Alton, and that as a consequence he will not press the Motion.

Lord Alton of Liverpool: My Lords, as always, I am grateful to the Minister for the way in which he answered the questions that were put to him, although I think he would be the first to agree that a number of questions raised during the debate remain unanswered. However, he will also understand that, although the measures may be narrow, parliamentarians have to

[Lord Alton of Liverpool]
take their chances. If they can find a hook on which to hang their coat, they are obliged to do so. That is surely part of our role as scrutineers. Your Lordships will be glad to know that I do not intend to drag this out although there is no time limit. Even though this is a dinner hour debate, we could have gone on for much longer. I think those taking part in the following debate will recognise that we have been pretty disciplined in the way that we have gone about this.

The issues that we have covered range from the disproportionalilty in the way that these changes will affect rural areas and poorer areas and concerns about the statistics that have still not been shared with us. We do not know the number of people who will be impacted by these changes and the cost of the vehicles, which was a point made by the noble Baroness, Lady Wilkins. Will it cost between £8,000 and £12,000 for someone to purchase one of these vehicles—a vehicle that had been made available to them previously by an Act of Parliament? It was an Act of Parliament that laid down the criteria under which people qualified. Surely we are guilty of behaving without due concern for the effect of the changes that we have put in place.

I repeat what I said in our deliberations earlier this year. It is our duty to understand the impact of the decisions we make. The Minister has just said that we cannot reliably estimate the impact; we do not know. That is not a good position for us to be in. Decisions will affect the mobility and independence of people with disabilities. The noble Baroness, Lady Hollis, put it very well when she said that you turn a person from being independent to being dependent when you take such decisions.

Just as we found a way of encouraging the Minister to come to the House this evening, I know that I and other Members of your Lordships' House will look for other ways of holding the Government to account to ensure that we mitigate the worst effects of these changes. On the basis of the reply that has now been given, I beg leave to withdraw the Motion.

Motion withdrawn.

Marriage (Same Sex Couples) Bill

Committee (3rd Day) (Continued)

9.17 pm

Amendment 46C

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

46C: After Clause 14, insert the following new Clause—

"Equality Act 2010

In the Equality Act 2010, after section 212, insert—

"212A Expression of opinion or belief as to marriage

For the purposes of this Act, the expression by a person of the opinion or belief that marriage is the union of one man with one woman does not of itself amount to discrimination against or harassment of another.""

The Lord Bishop of Leicester: My Lords, I am aware that the hour is getting late and I hope not to detain the Committee for too long. The amendment would insert a new section into the Equality Act 2010 to make it clear that expressing a traditional view about marriage,

"does not of itself amount to discrimination or harassment",

under the Act.

In our briefing to Peers at Second Reading, the Lords spiritual said that the reasonable expression of opinions or beliefs on the nature of marriage ought not, in our view, to be the subject of claims against individuals under existing discrimination or harassment provisions in the Equality Act 2010. Some recent high profile cases, which I shall not quote as they have been widely circulated, have highlighted where there is potential for risk in a workplace context. If an amendment to the Equality Act were introduced to put beyond doubt that the expression by a person of an opinion or belief about traditional marriage did not of itself amount to discriminating or harassing another, that would provide reassurance and a degree of legal protection for employers and employees and others who express their views in a reasonable way. "Reasonable" is a crucial point to stress; this is not and should not be a charter vocally to agitate in the workplace.

We very much welcome the Government bringing forward earlier in Committee their own amendment to the Public Order Act to put beyond doubt that "discussion or criticism" of same-sex or opposite-sex marriage shall not be taken of itself to be threatening or intended to stir up hatred. I recognise once again the readiness of the Secretary of State and her colleagues to respond positively to the Church of England's concerns in this area. But this on its own, while welcome as a clarification of the criminal law, is not quite enough. This amendment is the natural and logical counterpart to it in relation to civil equality law. It also follows the precedent set out by the Government that it is acceptable to write such provisions into legislation, as they put it, for the avoidance of doubt.

Some may have concerns that this amendment would give permission, as it were, to those who wish to use language or justify practices that are anti-gay or homophobic. On these Benches we are clear that we have absolutely no truck with that. As the most reverend Primate said in the Second Reading debate, such behaviour is utterly unacceptable. Indeed, I think he used the word "sickening". This amendment is deliberately drafted in a positive way to give reassurance and legal protection for the avoidance of doubt to many who share an understanding of the churches and other faiths, and those of no faith, about what they believe marriage to be. Ministers have said on frequent occasions that this Bill is as much about freedom of religion as it is about equality and marriage. Accepting this amendment to give recognition and legal certainty to those of many of the world faiths and none who continue to hold a belief about marriage in its traditional form would be well within the grain of that understanding of the Bill.

At root, this amendment is largely about establishing cultural norms and expectations about what will continue to be acceptable in terms of public discourse about marriage. Its insertion into the Equality Act 2010 would signal that Parliament, as Ministers have often sought to reassure us, considered it to be acceptable to maintain and express the traditional understanding of

marriage. As I go about the market towns and villages of the heart of England in Leicestershire, that is the view of marriage that people have grown up with and are used to understanding. We cannot expect those cultural assumptions and norms to change overnight or at the speed at which legislation may emerge.

I had an exchange with the Minister, the noble Baroness, Lady Stowell, in this House on 11 December last year in response to the announcement of the consultation results. During that exchange the noble Baroness said to me:

"We are not changing society. We are bringing forward changes to reflect society as it is. We are seeking to do so in a way that is respectful and understanding of different views".—[*Official Report*, 11/12/12; col. 992.]

I acknowledge that, but I would beg to differ on the point about this Bill not changing society. It establishes through law new and different cultural norms and expectations, introduced at some speed. If we are to do this in a way that the noble Baroness rightly identified as being,

"respectful and understanding of different views",

the law needs to give expression to that principle. This amendment achieves that and helps insulate against what I might call an isolating or even chilling effect for some of those who are already finding themselves somewhat left out in the cold. I beg to move.

Lord Pannick: My Lords, I am puzzled by this amendment because I cannot see any realistic circumstances whatever in which the expression by a person of the opinion or belief that marriage is the union of one man with one woman does of itself amount to discrimination or harassment. It is simply inconceivable that any court could so find. This amendment would have a real disadvantage because it would wrongly imply that the mere expression of other views might amount to discrimination or harassment, contrary to all the principles of the equality legislation.

Baroness Thornton: My Lords, I thank the right reverend Prelate for his measured and thoughtful introduction of the amendment. We discussed much of this last week and the views of these Benches have not changed since then. We think that the equality legislation covers this point. The noble Lord, Lord Pannick, is right in what he said. Indeed, my noble friend Lady Royall confirmed the view of these Benches that we think that the safeguards are in place, that they are respectful and that they do the trick. I look forward to listening to what the Minister has to say, but we have not changed our view that things are already safe.

Lord Cormack: My Lords, it seems to me that adding the amendment to the Bill can do no harm to anyone and give reassurance to many. In that context, I hope my noble friend Lady Stowell will be able to give a reply that shows she understands why the right reverend Prelate introduced the amendment and why a number of us feel that he was entirely justified in so doing.

Baroness Stowell of Beeston: I am grateful to the right reverend Prelate the Bishop of Leicester for introducing his amendment and also for quoting me from December of last year when I repeated the statement of my right honourable friend the Secretary of State when the Government published their response to the consultation. I actually remember what I said to him that day about the Bill, as we intended at that time, not being designed to change society but to reflect society as it is changing. I stand by that statement in response to his question that day. I hope that I can reassure him and other noble Lords that the protections already exist to allow people to express a perfectly legitimate belief that marriage should be only between a man and a woman.

I know what my noble friend Lord Cormack has just said but I think it is important for me to stress again that that is an absolutely legitimate belief. People have the absolute right to express that belief and such a religious or philosophical belief is a protected belief under Article 9 of the European Convention on Human Rights and under the Equality Act 2010 itself. I am sure from the contribution he made in earlier debates that if the noble Lord, Lord Lester, was here he would also refer to the Human Rights Act and quote,

"so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights".

Perhaps more significantly in this context, Section 13 provides:

"If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right".

There is therefore no doubt at all that belief that marriage should only be between a man and a woman is both legitimate, as I have said, and mainstream. I hope that from the debates we have had already on this topic during Committee, and my responses to them, I am able to reassure noble Lords. However, I will go over some of the key points again in response to the right reverend Prelate the Bishop of Leicester.

Our commitment to protecting the right of people to believe that marriage should be of one man with one woman was demonstrated in particular, as he has acknowledged, by the Government's amendment to the Public Order Act 1986, which the House agreed last week. This puts beyond doubt that offences regarding stirring up hatred on the grounds of sexual orientation do not outlaw the reasonable expression of the view that marriage should be between a man and a woman. We were able to insert this clarificatory wording in that case because it amends an existing avoidance of doubt provision. There was therefore no risk that it might cast doubt on whether the reasonable expression of other views might amount to hate crime.

However, that is not the case with this amendment. This amendment would open up uncertainty as to whether discussion or criticism of other matters, such as civil partnerships or homosexuality in general, might of themselves constitute unlawful discrimination or harassment under the Equality Act 2010. However, as I have said, we recognise and agree that there is a need to ensure that employers and public authorities do not misinterpret or misapply their responsibilities in this regard. That is why we have committed to working with the Equality and Human Rights Commission to

[Baroness Stowell of Beeston]
ensure that its statutory codes of practice and guidance in this area are as clear as possible. During the debate on Amendment 13 on the public sector equality duty, I undertook to write to the noble Baroness, Lady O'Loan, to set out how the provisions contained in the Equality Act 2010 will provide adequate protections for religious organisations and individuals, and why the equality duty cannot be used to penalise those who do not agree with same-sex marriage.

I understand the concern that has been expressed by the right reverend Prelate and understand the points that have been made by my noble friend Lord Cormack. However, I do not think that I can be any clearer than I have been today, and in response to previous debates, in making the point that it remains absolutely legitimate for people to have that belief and it remains absolutely legitimate for them to be able to express that belief. The Bill as we have drafted it protects the religious freedoms of faiths that want to maintain their existing belief in marriage being between a man and a woman. I hope that, with my restating all these points, the right reverend Prelate will feel able to withdraw his amendment.

9.30 pm

The Lord Bishop of Leicester: My Lords, I am grateful to the Minister for her clear and thorough response. I defer of course to the legal argument of the noble Lord, Lord Pannick, although I would remind him that an employee who was demoted by his housing association employer for expressing the view on his personal Facebook page that same-sex marriage in church was, as he put it, "an equality too far", successfully brought a breach of contract claim against the employer. My contention is that he should not have been put in the position of having to do that. That is the kind of reassurance I am looking for today.

Baroness Stowell of Beeston: We debated this at great length last week when the same example was used on several occasions to make a similar point. As it has been raised again, I think it is worth repeating that the right reverend Prelate is quite right that it is so frustrating that somebody had to go through that process of establishing their freedom in order for it to be made clear. I regret that it was necessary for him to do that. However, the law, as it stands, did protect the man in question. I hope that the efforts that we are making with the Equality and Human Rights Commission properly to inform public authorities of the absolute rights and freedoms of people to express their religious beliefs will reduce the number of cases of the kind to which the right reverend Prelate refers.

The Lord Bishop of Leicester: I am grateful to the Minister for that clarification. I understand it and I hope that she will understand the sprit in which I raised this question.

Lord Alli: I understand what the right reverend Prelate is trying to do and completely agree with it. However, I wonder whether he might also take away with him the issue of employees of the Church of England. The church is the only organisation exempt from the employment regulation that would otherwise prevent the church from dismissing somebody for simply being gay. It was an exemption that it argued for and received. When the right reverend Prelate talks about other employers, I say with absolute humility that it would be lovely if the Church of England could revisit that decision about being able to sack gay priests who are not active homosexuals and are not having sex but who simply identify themselves as being gay. I will listen much more sympathetically to the arguments that the right reverend Prelate puts forward when that anomaly is corrected.

The Lord Bishop of Leicester: My Lords, I am grateful to the noble Lord, Lord Alli, who asks, through me, whether the Church of England would revisit a number of issues and a number of stands that it has taken. I wish that the church would do that and would certainly want to play my part in ensuring that it does. I have taken careful note of speeches made around this House during the passage of this Bill and of what the most reverend Primates the Archbishop of Canterbury and the Archbishop of York have said on this. I take his point and think it is well made.

Tomorrow evening, I will be acting as host to 50 or 60 of the world faith leaders in my garden in Leicester. We work closely together and I know how deeply concerned they are about their freedoms to follow and proclaim the traditional teachings of their faith and how much they look to their bishop, who has the privilege of a seat in this House, to do everything possible to ensure that those freedoms are underwritten by the Bill. It is in that spirit that I brought forward this amendment today. I now beg leave to withdraw the amendment.

Amendment 46C withdrawn.

Amendment 46D not moved.

Amendment 47

Moved by ***Lord Dear***

47: Before Clause 15, insert the following new Clause—

"Review of impact of same sex marriage

The Secretary of State must arrange—

(a) for the operation and effects of this Act to be reviewed two years and five years after this Act is passed;

(b) for the report on the outcome of the first review to be produced and published within thirty months of this Act being passed;

(c) for the report on the outcome of the second review to be produced and published within five years and six months of this Act being passed; and

(d) for both reviews to be conducted by a Lord Justice of Appeal taking appropriate evidence with particular regard to the impact of this Act on civil liberties and the rates of—

(i) opposite sex marriage, and

(ii) same sex marriage."

Lord Dear: My Lords, by any stretch of the imagination same-sex marriage is something of a social experiment. Its consequences cannot accurately be foretold, certainly not in this country. Amendment 47 requires a review of the legislation to be conducted by a Lord Justice of Appeal, two years and again five years after the Act is

passed, with reports published within six months of each of those two reviews. If the amendment is carried, the reviews are to focus particularly on the impact of the legislation, first on civil liberty and secondly on the rates of opposite and same-sex marriage.

The reasoning behind the amendment is that the impact of same-sex marriage on marriage rates should be reviewed, because evidence shows that redefining marriage undermines support for marriage in the wider society. I draw two examples. After same-sex marriage was introduced in Spain, marriages across the whole population plummeted by more than 20% in the following six years. It has been said that the relaxation of divorce laws that occurred at about the same time as the introduction of same-sex marriage had something to do with this fall. No doubt it did, but it could not account for the full extent of that 20% fall. Without going into the detail, the Netherlands also saw a significant fall in marriage rates after marriage was redefined there.

The focus of the reviews on the consequences of same-sex marriage for civil liberty will enable evaluation of the effectiveness of the Government's quadruple lock. More broadly, many civil liberty concerns, some of which we have just heard again in the preceding amendment, have been raised with respect to the Bill, only to be largely dismissed by the Government and other supporters of the legislation. With the greatest respect for the Minister, I must say that we have now seen more than 50 amendments in Committee. On several occasions I would have expected words from the Front Bench along the lines of, "We will take away what has been said and consider it", or, "We intend to review what has been said in the Chamber", or, "I will take this away and discuss what he has said with the noble Lord". I can think of only two examples of this taking place. If the Minister can disabuse me of the idea that only two or three amendments have received that sort of response, I will be delighted to know how many more there are.

It seems to me that the noble Baroness's instructions are heavily annotated with, "Do not concede". From my standpoint, and that of others who have spoken to me in the margins of Committee before this third day, it seems that the Government are putting some sort of stone wall around the Bill, and refusing to concede anything at all of any substance. Whether that is right or not—and I look forward to being disabused of that idea—I would be delighted to know that the Government are going to take away substantial parts of this discussion to review before we come to Report.

Putting that to one side, the reviews set out in the amendment will be able to consider the extent to which the Government's assurances have been vindicated or contradicted by events. Concerns about the impact of same-sex marriage on civil liberty arise partly because of what has already happened. Again, we have just had a comment on that in the preceding amendment. Believers in traditional marriage have been punished, both in the UK under the current definition of marriage, and also internationally in those countries which have redefined marriage. We have heard the case of Aidan Smith, which has been much quoted in the last three days of Committee, and was referred to again by the right reverend Prelate the Bishop of Leicester.

There were three more examples in very quick time. The former leader of the SNP, Gordon Wilson, was voted off the board of Dundee Citizens Advice Bureau for supporting traditional marriage. Arthur McGeorge, a bus driver, faced disciplinary action by his bosses simply because he had shared during his break time at work a petition backing traditional marriage. The World Congress of Families wanted to hold a conference on redefining marriage at the Queen Elizabeth II Conference Centre, but it was banned by the Law Society and the conference centre, because, as they said, discussing the subject of redefining marriage would be a breach of diversity policies.

Elsewhere in the world—to get the drift of where all this is going—a Christian florist in Washington state who said that she could not provide flowers for a gay couple's wedding because it was against her beliefs is being sued by the couple concerned. In Canada, a sports journalist, Mr Damian Goddard, was fired for tweeting that he supported traditional man-woman marriage. In April this year, New Zealand voted to redefine marriage, with the law taking effect from August this year. Within weeks of the vote, the charity, Family First New Zealand, a leading opponent of same-sex marriage, was told by the New Zealand Charities Registration Board that it would lose its charitable status because its activities did not provide public benefit.

This is the climate that we are in. My proposed new clause seeks to have the Bill reviewed at two stages when it becomes law—assuming that it does, and I am sure that it will. I say to the Front Bench that if the Government are so very confident that there is nothing to fear and that the Bill is watertight—and I would be delighted to find that that were the case—it follows that they should have no fear of demonstrating its success by those reviews. I am not so sure necessarily that that will follow. To go out to public consultation, to go out to opinion polls as to where this goes—we have heard this debated in your Lordships' House in the past. On the one hand, 83% of people taking part in the consultation on the Bill were apparently against it. The ComRes poll and the bulging postbags that we have heard about all seem to show that the Bill is not a very good idea. On the other hand, the polls that have been put forward by Stonewall and others suggest that the Bill is probably a very good idea. Going out to the public in those sorts of ways is not going to produce much of a result. To measure the result of the Bill at the two-year point and the five-year point, and having it done independently and with judicial scrutiny, seems to me to be the way to resolve whether it is going to work and will allay a great deal of public concern which exists at the moment. I beg to move.

Lord Fowler: My Lords, I have not spoken previously in this Committee, but I am anxious to make amends to the noble Lord. When he spoke at Second Reading, someone in the public was watching the television and wrote to me complaining that my facial expressions seemed to indicate some disagreement with him. I very much apologise for that and, even better than that, I am glad to say that I have some sympathy with the principle of what his proposed new clause sets out—although I am bound to say that his remarks did their best to alienate me as I went along.

[LORD FOWLER]

My view has always been that all Acts—or certainly all major Acts—should be subject to post-legislative scrutiny. It is one of the curiosities of this place that we sometimes, although not always, have pre-legislative scrutiny, which is doubtless of some value, but not the more important post-legislative scrutiny, seeing whether it has all worked out properly or at least as Parliament has intended. From that point of view, therefore, I have sympathy with what the noble Lord is proposing, although he did not much dwell on that aspect of it. Sadly, however, I cannot agree with the detail of the noble Lord's amendment. A review after two years, for example, is frankly far too early for any sensible conclusion.

What is basically wrong is the process by which this post-legislative scrutiny will take place. Why do we need a Lord Justice of Appeal to carry it out? I have never heard of post-legislative scrutiny being carried out by a Lord Justice of Appeal. I would have thought that it was essentially a job for Parliament and, above all, for this House. This is what we do rather well. I find it extremely difficult to go along with the noble Lord. I cannot support him, but if he would join me in a general proposal—not just on this Bill, which would be foolish—to try to introduce post-legislative scrutiny to Acts generally then we would very much be on the same side.

Both on the detail and above all on the specifics of the way the noble Lord has set it out in this Bill, I cannot support the proposed new clause. I do not think that it adds up to what even the noble Lord really wants.

9.45 pm

Lord Anderson of Swansea: There may be differences on the detail in relation to the nature of the review and its timing—as the noble Lord, Lord Fowler, has said—but I hope that my facial expression as conveyed by television will indicate that I am in broad agreement with the principle of the noble Lord, Lord Dear.

I pose a simple question to the Minister in this respect. What do the Government lose by acceding to the request for a review after a reasonable interval? They have given assurances that there will be no adverse consequences to any individual and that all the litany of adverse consequences on people in this country and abroad will not come to pass because they have a watertight Bill. If they are so confident of those assurances that there is no possible harm to those who wish to express their deeply held views, why are they likely to contest this in principle?

In the past, when we have cited problems which have arisen—perhaps in Washington state, the Netherlands or in Sweden—it has been easy for the Government's spokesman to argue: "Our position is different. We are not Sweden and we are not the Netherlands". Let us concede that this is a laboratory experiment. We do not in fact know how watertight the reassurances that the Government have given will be. We do not as yet know what will actually happen in practice. After a reasonable interval, we can review and find out whether the assurances are indeed as watertight as the Government claim. Therefore I support the principle that there should be some form of review and I hope that the Government will accede to it.

Lord Cormack: My Lords, on these issues I do not often find myself more in sympathy with my noble friend Lord Fowler than with the noble Lord, Lord Dear—a man I admire very much. However, I am bound to say that I strongly agree with my noble friend Lord Fowler that all major legislation should be subject to proper post-legislative scrutiny. That is the job of Parliament, and as he said, this House is particularly well suited to carrying out that task.

I could not support this amendment because the noble Lord, Lord Dear, puts before us a wholly unrealistic proposition. We should not appoint a Lord of Appeal to do this. The timescale is wrong and, frankly, although I share the noble Lord's real concerns about this Bill, which I have made plain in various interventions on Second Reading and in Committee, if this change comes about—and like the noble Lord, Lord Dear, I think that it will—it is an irrevocable change to our society. I agree with what the right reverend Prelate, who has temporarily left the Chamber, said in his speech a few moments ago. This is a real change to our society

Whatever a Lord of Appeal might say, he or she will not put the clock back. What those of us who believe firmly, strongly and deeply in traditional marriage must do is to use every opportunity that we have, as we have repeatedly been assured that the Bill will allow, to state our beliefs calmly, clearly and unequivocally, while in no sense attacking those who will avail themselves of the opportunities that the Bill will give them. That is what we must do: be positive in our defence of traditional marriage between a man and a woman. Nothing that any Lord of Appeal can say or do will begin to rival that as a way to champion traditional values.

Although I join my noble friend Lord Fowler in saying to the noble Lord, Lord Dear, that an amendment that wrote into the Bill the need for post-legislative scrutiny would certainly have my support, it probably does not need to be written in. An assurance from my noble friend would go some way to meeting my concerns in that regard. I do not believe that the amendment offers any realistic way forward.

Lord Stoddart of Swindon: My Lords, like the noble Lord, Lord Anderson, I agree with the amendment in principle, and any defects can be rectified at a later stage. One reason why there should be a post-legislative review is that we did not have any pre-legislation. That is the great defect. In a Bill of this sort with such far-reaching consequences, there should have been pre-legislation so that all the possibilities could have been ironed out over quite a long period and then a Bill which had considered all the consequences could have been brought before Parliament. Indeed, perhaps there would have been time to put it to the people in the manifestos—or perhaps, this will be discussed later—by way of a referendum. That is one very good reason why we should have post-Bill scrutiny.

The other reason is that the Bill, although it is short, is so complicated and has such far-reaching consequences—unintended consequences—that we ought to be able to have a post-legislative review of it to see

whether it is working well and, indeed, whether it should be improved. For that reason, as I said at the beginning, I support the amendment moved by the noble Lord, Lord Dear.

Baroness Cumberlege: My Lords, I, too, support the noble Lord, Lord Dear, on the principle of the amendment. The noble Lord, Lord Stoddart, is absolutely right that in this amendment we can make up for past omissions—things that should have happened but have not. I am conscious that, at this moment, the Mental Capacity Act is subject to post-legislative scrutiny, which has been very successful. We have the principle already and I am sure that we have done it with other Acts in the past. The National Health Service, about which I know a bit, is simply an organ of the state, of Parliament, and it is endlessly under scrutiny. At the moment, the Care Quality Commission is going through the wringer, as we know, because people are so concerned that the regulator is not doing the job that people hoped it would.

Having listened to what the noble Lord, Lord Dear, had to say about the different cases, I find it interesting that throughout this Committee stage noble Lords—the noble Lord, Lord Lester, in particular—have assured us that there is no problem with this Bill because we have safeguards in both European and national legislation. Yet we hear of these cases all the time and this is before the Bill has been enacted. At least one of the safeguards that we could have is the principle laid down by the noble Lord, Lord Dear, that we should have some post-legislative scrutiny.

Baroness Royall of Blaisdon: My Lords, in my view this amendment is absolutely unnecessary in the terms put forward by the noble Lord, Lord Dear. I think that the process that the noble Lord suggests is flawed and unnecessary. However, I am a great fan of post-legislative scrutiny and I know that the committee looking into the Mental Capacity Act is doing a splendid job. I think that every Act should be subject to pre-legislative and post-legislative scrutiny as a matter of course, so I would not be against post-legislative scrutiny, but I am utterly against the sort of judicial process that the noble Lord speaks of.

I say to my noble friend Lord Anderson that I find it slightly offensive that he talks of this Bill as a sort of laboratory experiment. I recognise that it brings about a profound change in our society—from my perspective, a very welcome change—but it is certainly not a laboratory experiment. I wish to put that on record.

I say to the noble Lord, Lord Dear, that his suggestion would be completely impractical. The first same-sex marriages will not take place until about a year after the Act has passed. A review in two years' time would be completely mad. I have discussed this with the Minister and I think that there will be some standard post-implementation evaluation of the Bill, which will be very welcome, but that will rightly not take place for some time. I ask the noble Lord whether he looked at his own marriage one or two years after he entered wedded bliss. I suspect not. In same-sex marriages we tend to think about the seven-year itch, which is a long time after the two years that the noble Lord is talking about.

The thing that would interest me in 10 years' time would be to go back to noble Lords who are currently against or have deep concerns about the Bill to see whether their views of same-sex marriage have changed. I would wager that the same acceptance that we now have on all Benches for civil partnerships—

Lord Anderson of Swansea: The difference is that, whatever reasonable time one chooses, this is not about looking at the nature of marriage or the changes brought about; it is about looking at the protections that have been promised and whether or not they are effective. That is the real purpose of a review, whether it be a post-legislative review or something else, at the appropriate time.

Baroness Royall of Blaisdon: I understand what my noble friend is saying and, as I say, in terms of post-legislative scrutiny I think that that is not a bad thing to look at. However, I point out that views of civil partnerships over the past nine years have changed profoundly and I think that we will find that views of same-sex marriage will change also. Many of the fears that people expressed at the time of the Civil Partnership Bill were very much the same as the concerns being expressed about the same-sex marriage Bill.

The noble Lord, Lord Dear, cited statistics about Spain and the Netherlands. He has his set of statistics and we have ours. I do not have my own statistics to hand. It would be extremely helpful if the Minister could, in due course, write with our interpretation of those statistics so that they, too, are on record.

Lord Singh of Wimbledon: Does the noble Baroness think that the use of words such as "mad" or personalising issues by saying "look at your own marriage" really help this debate?

Baroness Royall of Blaisdon: My Lords, I was being slightly flippant when I asked the noble Lord to look at his own marriage. I should perhaps have talked of my marriage. If I had looked at my own marriage after one year, it would have been far too soon. In saying "mad", I was not referring to people or meaning to personalise. I was not accusing the noble Lord of being mad but expressing a view about his suggestion that there should be a judicial process to look at the Bill in two years' time, which is not sensible. Perhaps I should be more measured in my language. I apologise to the noble Lord.

10 pm

Lord Mackay of Clashfern: I support the principle of the amendment tabled by the noble Lord, Lord Dear, in rather the same way as my noble friend Lord Fowler does. It would not be particularly suitable to ask a Lord Justice to do this sort of work. The sort of inquiries that Lord Justices and other judges are asked to do are usually into some specific matter in which their talent and fact-finding is thought to be of particular importance. It has been said that the results of their recommendations are often not quite as influential as the findings that they make on facts. Anyhow, post-legislative scrutiny of this Bill, as with other Bills,

[Lord Mackay of Clashfern]
would be extremely valuable. It has been said more than once that marriage is the building block of our society. If you change the building blocks, that is quite likely to produce some change in the building, whether for good or bad. It would be right to have this as a subject of post-legislative scrutiny. So far as my marriage is concerned, a very significant change occurred within the first year.

Baroness Northover: I think that I recognise the sort of change that happens in the first year and from the other little ones who come along after that.

I begin by agreeing with noble Lords that the Bill, if enacted, should be reviewed, as is standard practice for any significant legislation. Whether they are for or against the Bill, noble Lords are pushing at an open door. Let me address quickly the slightly different point made by the noble Lord, Lord Dear—the argument that there have been few changes to the Bill during its passage. I point him to the comprehensive answer that my noble friend Lady Stowell gave to counter that point when the noble Lord, Lord Anderson, made it earlier.

In terms of a review of how this legislation works, we agree with the principle. I welcome the support that has come from my noble friends Lord Fowler, Lord Cormack and Lady Cumberlege, my noble and learned friend Lord Mackay and the noble Baroness, Lady Royall. We would envisage post-legislative scrutiny covering issues such as an assessment of how the Act has worked in practice, which would no doubt address the kind of concerns that the noble Lord, Lord Dear, has mentioned, should they arise. We also envisage it covering: when and how different provisions have been brought into operation; any provisions that have not been brought into force, or enabling powers not used; details of the associated delegated legislation, guidance documents or other relevant material prepared or issued in connection with the Act; and any specific legal or drafting difficulties that had been matters of public concern. That was perhaps the kind of issue that the noble Lord, Lord Dear, was talking about—for example, where litigation has resulted, as the right reverend Prelate mentioned on the last grouping.

However, the timing of such a review needs to be carefully considered, with some flexibility built into the process, which is why arrangements for review are typically not set out within a Bill. In line with established Cabinet Office procedures, a memorandum will be produced containing a preliminary assessment of how the Act has turned out in reality, measured by the objectives set out during the passage of the Bill—including, for example, the protections mentioned by the noble Lord, Lord Anderson. That would be part of the way in which the Act would be reviewed. It will then be a matter for a Select Committee to determine whether it wants to go on to hold a wider post-legislative inquiry into the Act. I thank my noble friends for the support they have given on the process. The convention is that a review is undertaken three to five years after Royal Assent—perhaps earlier than the noble Baroness indicated—in order to provide sufficient time for the new law to bed in and operate as intended. The scrutiny would be done at an appropriate time.

While I appreciate the intention behind this amendment, what is proposed instead by the amendment is something more complicated, as noble Lords have indicated, and not proportionate to what needs to be done, involving as it does two separate reviews and a potentially lengthy process, which would delay the answers that I am sure we would all be keen to hear. So, in essence, we are in agreement on the need for a review but not on the mechanics. That is why I ask the noble Lord to accept my reassurances and to withdraw his amendment.

Lord Dear: My Lords, I am particularly grateful to the noble Baroness, Lady Royall of Blaisdon, for deciding that I am sane and not mad.

Baroness Royall of Blaisdon: On this occasion.

Lord Dear: I have to say that I remain a little confused about this, but at a much higher level. Everyone on all sides of the House seems to say that the principle is very good. That started with the comments made by the noble Lord, Lord Fowler, and shortly after that by the noble Lord, Lord Cormack, and the noble and learned Lord, Lord Mackay. If the principle is right, perhaps we need not worry too much about the detail. I for one would not push the detail at all—whether it is one year or five years, or indeed whether it is a Lord Justice of Appeal or not.

I thought that those who spoke in support of the amendment in specific terms—the noble Lords, Lord Anderson and Lord Stoddart of Swindon, and the noble Baroness, Lady Cumberlege—in effect all said the same thing, which is that there has been no real pre-legislative scrutiny at all. We know that the Bill came into the House of Commons at a rate of knots. For that reason alone, it is well worth while looking at the workings of the Bill once it becomes an Act of Parliament and goes through into society.

The point has been made several times on both side of the House. The Bill is so complicated and so fundamental to society—"building block" was mentioned—and there is so much concern about it outside that the argument can be carried quite easily that we need to look at its workings at some stage in the future. I do not want to get into the detail; this is something of a probing amendment in any case and I am more than happy to withdraw it at this stage.

Amendment 47 withdrawn.

Amendment 48

Moved by ***Lord Anderson of Swansea***

48: 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 7 May 2015.

(3) If the Secretary of State is satisfied that it is impossible or impracticable for the referendum to be held on 7 May 2015, or that it cannot be conducted properly if held on that day, the Secretary of State may by 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 June 2016.

(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—

"At present, the law in England and Wales defines marriage as the union of a man and a woman. Should the law be changed to define marriage as the union of two people—whether a man and a woman, or woman and a woman, or a man and a man?".

(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 Anderson of Swansea: My Lords, Amendment 48 stands in my name and those of the noble Lords, Lord Cormack and Lord Singh, both of whom are present this evening.

If Amendment 48 were adopted, after this Bill reached the statute books there would need to be a referendum of the people of England and Wales in which a simple majority supported the redefinition of marriage proposed by this Bill before the new legislation could take effect. The proposed new clause sets out the date—of course, that of the general election, to ensure a good turnout in the referendum. In my judgment, the question is a fair and simple yes or no to the proposed change.

I readily admit that there was a time when referendums were alien to our British tradition. Those of my grandparents' generation never got to vote in any referendums. Of course, things have changed in recent years. Leaving aside the vote on Sunday opening of public houses in Wales, there was in 1975 the Common Market referendum; in 1979 the first devolution referendums; in 1997 the second devolution referendums; in 2011 the Welsh Assembly referendum; and of course there was the referendum on PR for Westminster elections in May 2011. If the Prime Minister has his way, in 2017 there will be a further referendum on our future membership of the European Union. That proposed referendum is on a relatively complex matter. By contrast, the referendum on this Bill would be a simple choice. In my view, there is a far greater public interest on this issue than in several of the other referendums. There is a clear constitutional precedent for the use of referendums now in decision-making and clearly the Government have no objection in principle to the use of referendums.

What is it about this particular issue that merits the provision of a referendum? I give three main reasons. First, there is the magnitude of the change. In the first instance, we need to recognise the very radical nature of the change proposed by the Bill. While there is no denying that aspects of marriage have changed over the years, the basic definition that it is a lifelong commitment of a man and a woman in a potentially procreative context has not changed for millennia. Indeed, there is a very real sense in which marriage predates the state and in which our marriage laws do not so much define marriage as reflect a pre-existing definition. In that context, seeking to redefine marriage is revolutionary: first, because marriage has been defined in one way for so long; and secondly, because we are seeking to use a political means to redefine something that was not defined politically in the first place. Many champions of the limited state would suggest that we should respect the boundary between civil society and the state and not engage in such projects. However, if one is to do so, the need for a very clear mandate becomes particularly developed.

Secondly, there is the magnitude of the change in the absence of that electoral mandate. Surely no person speaking on behalf of the Government can plausibly claim that there is an electoral mandate for this change. We need to understand that there has been no mandate. It is one thing to seek to introduce a more modest change without an electoral mandate but to engage in this kind of fundamental change without such a mandate is frankly shocking. There was no manifesto commitment from any party within the coalition or from my own party without. Some have sought to point to the Conservative Party's *A Contract for Equalities* as justification but that will not do. It was an entirely separate document from the 2010 manifesto, published just three days before the election and long after postal voting had begun. Moreover, that contract did not commit to redefine marriage, only to consider reclassifying civil partnerships as marriage—something that would have involved only amending the Civil Partnership Act, not rewriting the Marriage Act. Equally, during that election campaign the then leader of the Opposition told Sky News that he had no plans to redefine marriage. Of course, during the passage of the Civil Partnership Act it was made clear from the then Government's Front Bench that that did not constitute a step towards equal marriage. Thus, the strength of particular pressure groups appears to be quite formidable.

Thirdly, there is the violation of constitutional due process. In this mandate-less context for a very far-reaching change, one would have expected the Government to tread with some deliberate care and to strive to make up for the lack of an electoral mandate by being careful to do everything very properly: conducting a number of high-quality consultations, perhaps publishing a Green Paper and then a White Paper, or perhaps establishing a royal commission. One would certainly have expected a draft Bill and some form of pre-legislative scrutiny by a Joint Committee of both Houses. The only thing we got was a single and very flawed consultation process. In the first instance of that process, all submissions were anonymous so there was nothing to stop people with strong views making multiple submissions. Moreover, the anonymity also means that we have no way of knowing what proportion of submissions came from abroad, perhaps in response to a particular foreign pressure group. That should certainly be considered in light of the fact that those submissions were not made by British citizens who stand to be affected by any change in our domestic law.

10.15 pm

Compounding the lack of regard for the electorate and the failure to bother with a manifesto mandate, the Government first intimated that the consultation would be on how, not whether, to redefine marriage. After protests, it was agreed that the first question should ask people whether they supported a redefinition

[Lord Anderson of Swansea]

of marriage. Mindful of that first question and the fact that it was answered by the Coalition for Marriage petition, the coalition asked the Government in turn whether signatories to the petition could be counted as submissions in the process. They were assured that signatories would be counted as submissions to the consultation and signatories acted accordingly. That assurance proved wholly worthless and was totally abandoned by the Government.

It does not take much to imagine the outrage of those who were so advised when the Government announced after the conclusion of the consultation that it was not counting the 500,000 Coalition for Marriage signatures that were delivered to them as submissions to the consultations. The only words of explanation provided were that of course the Government took the petition signatories into consideration but not as submissions to their consultation, and that, back to their earlier message, the consultation was never about the "whether" but about the "how". The end result was that the Government could claim that 53% of submissions were in favour of redefining marriage.

Had the 500,000 petition signatures been included, they would have provided a far more robust source of data since each signature came with a name and an address proving that they were British resident citizens. The result would have then been 83% against. As it was, the so-called consultation carried out by the Government proved worthless and totally bogus. As if that was not enough, the Government then announced that they intended to make the changes they proposed even more radical by extending the project from the redefinition of civil marriage to the redefinition of marriage per se. Seldom can a Bill with such far-reaching consequences be developed with such scant regard for constitutional propriety.

We come to parliamentary scrutiny, over which I will go fairly speedily. At Second Reading in another place, Members of Parliament were given only four minutes to deliver their speeches. They were in fact all whipped to attend. When it went to Committee, instead of allowing all Members to speak, vote and move amendments, which the other place had done on much lesser issues, the Bill was committed to a Committee of just 19 Members. By convention, Bills affecting the constitution—I submit this is certainly such a Bill—are debated by a Committee of the whole House. This was sent to a Public Bill Committee and the Second Reading Division was not accurately reflected in the allocation of Committee seats. Fifteen of the 19 on the Committee had voted for the Bill. Unsurprisingly, no amendments were made. The assumption was, and remains, that the Government had got it essentially right from the start. Spokesmen for the Government and the Opposition were joint cheerleaders for the Bill. Of the words spoken at Committee, 60% came from three dissenters. The Opposition moved only 15 amendments in five days of debate, 11 of them being discussed in a single 30-minute debate.

Then, in a development that beggars belief, the programme Motion on Report allocated just two and a quarter hours to debate amendments on what has been one of the main areas of debate in this House—all the conscience and religious liberty issues—but four and a half hours were given to humanist weddings and transsexual benefits. Numerous Members wanted to speak during the debate on the very vital conscience amendments but were unable to do so because there was inadequate time. Eight amendments were selected but there was time to divide on only three. By contrast, despite the four and a half hours allocated, there were no Divisions at all on humanist weddings and transsexual benefits. There were suggestions that this was a free vote, but one Front-Bencher was compelled to remove his name from all amendments on Report and there was clear evidence of substantial pressure put on Members. A cross-party group of MPs was so aggrieved about the way in which the Bill was handled in the other place that they took the unusual step of writing to Peers to highlight the problems.

Of course, it can be argued that there has also been unseemly haste in your Lordships' House. Only two days were originally scheduled for Committee. Of those two original days, one debate went beyond 11 pm and the other beyond midnight. It was assumed that this third day would be relatively short, but it is now 10.20 pm and a number of amendments remain to be debated. Only two days have been scheduled for Report, on 8 and 10 July.

I submit that when we have regard for the way in which this Bill has been handled, it far from dignifies our constitution by affirming good practice. Surely any constitutional observer would be puzzled by the speed. Will the Minister answer this simple question: what is the reason for the hurry? Why, after all the long debate and the long period in which there has been a simple and agreed definition of marriage, is the juggernaut now rolling at such speed? What is the reason for the speed? Even Stonewall came round to support for so-called equal marriage only a couple of years ago. Does Mr Cameron have the zeal of a convert? Why is he so desperate to complete all the stages before the Summer Recess, which has run over the timetable for a number of other Bills that many would consider far more relevant and important than this? Is it because this is such a neuralgic issue for his party and for Conservative activists that he is desperately anxious to put the issue behind him, recognising that we are now less than two years from the next general election? Perhaps the Minister can give some objective reason for the hurry, which is highly unusual for any Bill.

In short, it is very clear that when we put together the three considerations that I have reflected upon today—the magnitude of the change in question, which renders a democratic mandate imperative; the lack of any democratic mandate; and the compounding of the grievance resulting from the lack of any democratic mandate because of the multiple offences of due process in the passage of this Bill—we find ourselves with a very serious problem. We can kid ourselves, pretending that it is acceptable to build far-reaching changes on this slim and shaky foundation, and proceed speedily, regardless of the consequences. However, that would surely be unwise.

It is in that context that I believe Amendment 48 is of great consequence. As I noted at the outset, if your Lordships' House supports Amendment 48 it will not

stop this Bill becoming law, but there must be a referendum that secures majority support before the law can take effect—which Amendment 59 provides for. It would be an opportunity for the people to have their say, not on the question of homosexuality but on the question of their views on traditional marriage. That will serve two purposes. First, it will compensate for the lack of an election mandate, so vital in the context of such a far-reaching and radical measure. The debate in your Lordships' House has revealed some disagreement about the state of public opinion. Different opinion polls on this issue have been cited by my noble friend and myself. If the Government are so confident that they have the majority of the public on their side, surely they should have no fears about asking that same public to express their views. There is also the additional advantage for the Government that a referendum in favour of the Bill would cement the change in our law. No future Government would dare to be bold enough to seek to reverse that which the people had endorsed.

Secondly, it would also make up for the lack of respect for constitutional and due process that has been exhibited massively in the development of this Bill to date. As we know, the Prime Minister would like to have a referendum on our membership of the European Union. I submit that having a referendum on this marriage question is just as important if we are to address the constitutional problems that have surrounded the development of the Bill. By the European Union Act of two years ago, the Government have ensured that there will be a referendum on even relatively trivial transfers of power to Brussels—what a sense of priorities. Some might argue that this is not a constitutional issue; I completely disagree.

Finally, the marriage issue lends itself to a referendum because referendums work well only when the presenting dilemma can be encapsulated in a simple question. That is eminently the case here: "Do you believe that the definition of marriage should change from that between a man and a woman for life, to that between two people for life?". In my judgment, the text satisfies the test for holding a referendum that it is a matter of major public concern and it is easy to understand the choice. This would have the additional safeguard that it would result from a settled view of the British people, rather than from the spurious government consultation process that I have outlined. I beg to move Amendment 48.

Lord Cormack: My Lords, I added my name to this amendment. I referred to the desirability of testing public opinion at Second Reading, but I will not detain the House for more than a few moments; the hour is late and we have had a very long exposition of the need for a referendum, and of the deficiencies of the Government in the way that this Bill has been handled so far. I endorse all that the noble Lord, Lord Anderson, said in that regard; the consultation process was deeply flawed and there has been an element of haste that was, frankly, not necessary.

My main reason for supporting the idea of a referendum is this: we do not know what the majority feeling is in our country on this very important social issue. All sorts of figures have been bandied around on both sides. I know no more than the noble Lord, Lord Dear, the noble Lord, Lord Anderson, or any other noble Lord in this place about what the majority view of the public is in England and Wales. There is only one way to find out and that is to give them the chance to vote.

When I first came into politics in 1970 in the other place, I was strongly opposed to the whole concept of the referendum. I wish that we had never gone down that route, but we have and the noble Lord, Lord Anderson, has indicated that. We have had referenda on a whole range of issues and he has listed them. If it is justified—and I am not suggesting it is not—to have a vote on the opening hours of public houses in Wales, it is surely appropriate to give the people of England and Wales an opportunity of saying whether or not they really wish for the state of marriage to be changed irrevocably in our country. This is something that should commend itself to all true democrats. I very much hope that when we come to Report, the House will have the opportunity to vote on this. We will be able to test the opinion of colleagues when we are perhaps a little fresher, and, one would hope, a little earlier in the day.

It is important that the noble Lord, Lord Anderson, introduced this amendment. I warmly commend it to your Lordships, not in any spirit of criticism or opposition to those who wish to be able to avail themselves of the married state. They know that I have reservations about that word, but it is going to be that word or nothing. All of us should allow the public out there to say whether or not they really want this change. A simple majority will suffice, but let them have the opportunity to pass their judgment on our deliberations.

10.30 pm

Lord Singh of Wimbledon: My Lords, this amendment is also in my name. It is a pleasure to follow the noble Lord, Lord Cormack. I echo his views and those of the noble Lord, Lord Anderson.

Before I go to the substance of what I want to say, I want to make a quick comment on three days of debate in Committee in which amendment after amendment has been put forward expressing concerns relayed from the general public about freedom of expression and freedom of belief, particularly in the workplace. I agree that if all those on the receiving end of harassment in the past, of which we have had examples, and potentially in the future were lawyers with deep-lined pockets, they could address the issues much more easily. Unfortunately, most people are not lawyers and do not have deep-lined pockets and can easily be subjected to harassment. Amendments were brought to try to bring clarity and reassurance to such people but they have been brushed aside.

It is revealing to note that those supporting this legislation have focused their comments on the benefits that might accrue to the gay community, with little or no consideration as to the effects on wider society. In this House, we have a responsibility to the country to take a wider view. As regards the building blocks of the noble and learned Lord, Lord Mackay, in the 1960s and 1970s, it became common to take out a wall between two adjoining rooms to give more space,

[Lord Singh of Wimbledon]
generally without conducting any sort of structural survey. The result was often structural damage costing thousands of pounds. The Bill seeks to change the definition of marriage, and with it the structure, meaning and purpose of the family unit, without any consideration of the consequences for the structure and stability of society and, importantly, for the well-being of children.

It is important to look at this from the perspective of both types of relationship. Let us start with commitment to care and fidelity. In both formalised heterosexual relationships and same-sex relationships there is due emphasis on commitment. Heterosexual marriage, however, also requires an unequivocal pledge of fidelity to stay together to the exclusion of others to provide a stability that is critical for children. In same-sex marriage there is no parallel requirement of fidelity. There is no religious, social or legal sanction to prevent a party to the relationship having other liaisons with others of the same sex. This devalues the importance of commitment and fidelity in the eyes of children and can only add to the "me and my" culture and the ever increasing number of children taken into what we euphemistically call care.

The bonding between parents and children of natural birth parents starts from the very moment of birth. I am not saying for a moment that same-sex couples cannot be excellent parents, but heterosexual parents have an important and early advantage in giving a desired level of stability and support to children and in helping them to adjust to, and appreciate, those of an opposite sex to their own. What I am saying is that these two distinct forms of relationships, equally respected by law and society, are inherently different, and a different form of words to describe them simply makes for clarity. To my mind, gay people demean themselves when they seek to hide their separate identity under the guise of the heterosexual term "marriage". Gay people have an absolute right to respect for their way of life, but they and their supporters should extend the same consideration to others and their institutions.

Legislation on important social change must take into account the implications of such change. The legislation before us was not put in any party manifesto; there was no consultation on its merits. The Prime Minister David Cameron explicitly ruled out shortly before the election that he would introduce the legislation. It was effectively introduced through the back door. The electorate as a whole has been treated with contempt. Those with religious beliefs have been treated with contempt. It is true that near absolute protection has been given to the Anglican Church—not out of respect but because of the complexities of the link between church and state, making it difficult to do anything different. Other religions, including my own, have been neither considered nor consulted. We were told on Wednesday that no offence was intended in dealing with other religions; it was simply too difficult. Is complexity a valid reason for not looking at the impact of legislation on other faiths?

It is beyond doubt that the implications of this major social change have not been properly considered and 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 this legislation—through a referendum on the lines suggested in the amendment. The Bill has caused an unprecedented fracturing of society; a commitment for all parties to accept the results of a referendum and the beginning of a healing process. If, however, the Government choose to ride roughshod over the concerns of millions and ignore public opinion, they and their supporters will pay a heavy price in the coming election.

Lord Fowler: My Lords, as with post-legislative scrutiny, I have some sympathy with the principle of referendums. I am totally unlike my noble friend Lord Cormack. We came into the House of Commons at the same time, in 1970. I am slightly unusual in being a pro-European who is in favour of referendums. In my 1970 election address, I said that before Parliament decided on entry into the Common Market there should be a referendum. Conservative central office was not very happy with that but there we are; it is one of those things.

The referendum took place before Parliament had taken a decision, so that Parliament could be guided. Here we are being asked to support a referendum in two years' time—not even tomorrow, but in two years.

Lord Anderson of Swansea: My Lords—

Lord Fowler: Hang on! The noble Lord spoke for 20 minutes. I have spoken for one, so he might retain a little patience.

We are being asked to support a referendum in two years' time—two years after both Houses on a free vote have overwhelmingly voted in favour of the legislation. That is the fact of the matter. All the arguments put forward by the noble Lord, Lord Anderson—

Baroness O'Loan: My Lords—

Lord Fowler: I shall give way in a moment. All the arguments put forward by the noble Lord, Lord Anderson, were made on Second Reading. He may not like it but they were rejected massively and overwhelmingly in both Houses of Parliament. I give way to the noble Baroness.

Baroness O'Loan: That is most gracious of the noble Lord. I would like to suggest that perhaps the vote on Second Reading in this House was not an overwhelming endorsement. There was rather a feeling in this House that the Bill should be given a Second Reading, the other place having voted so overwhelmingly in favour of it. It was a vote in favour of Second Reading rather than anything else, and I do not think that it is quite accurate to portray it as anything else.

Lord Fowler: My Lords, I do not think that the noble Baroness or anyone else has the right to keep on going back to the votes and saying, "Although we lost by two to one, actually it really was not right. They should have taken this into account and that into account". The fact is that those results were massive and, in my opinion, almost unprecedented for a free vote.

The only point I want to make in what is intended to be a short speech is that all the arguments we have heard so far have been put before and have been rejected. I am sorry to put it in that way—

Baroness O'Loan: My Lords—

Lord Fowler: If the noble Baroness does not mind, I am not going to give way again.

I do not think that we can or should try to double-guess what is taking place in the other place, or the process that it goes by, or the way it comes to a vote. We will get into a terrible mess if we do that. Not surprisingly, this proposal is going to be seen as a wrecking amendment in the hope, I presume, that it can be defeated when it comes to a referendum. I leave aside the dispute about opinion polls, although every poll I have seen actually appears to suggest that there is a healthy majority in favour of this proposition and not the other way around.

My major reservation is this—it is a point that was touched on by the noble Baroness—concerns the role of this House. We do valuable work checking and improving legislation. What we do not do is stand in the way of legislation so clearly passed by the other place and, incidentally, endorsed in this House. That is what the debate about the future of the House of Lords was all about: what our place was. It was not a sort of double-guessing on major things that come from the House of Commons. I do not think we can possibly defer for two years a piece of legislation that has been—I say it again—overwhelmingly passed by both Houses. We would not dream of doing that for any other legislation I can think of, saying that we would have a referendum in two years' time, although it has been passed in this way. I do not think that we should do it now. In this case, the proposition of a referendum is misapplied and wrong.

Lord Browne of Belmont: My Lords, I rise briefly to support Amendment 48. As has been made plain throughout the debates on the Bill, marriage is a vital institution and, as such, the subject of redefining marriage touches people's deepest feelings and beliefs. It is not a change that should ever be countenanced without a clear manifesto mandate. I know that some noble Lords have tried to suggest that it is not always necessary to have a manifesto mandate. In response to that, however, I agree strongly with everything that the noble Lord, Lord Anderson of Swansea, has said.

There are some changes that perhaps it is possible to introduce without a mandate, although I have to say that it does not seem particularly like best practice unless one is responding to an urgent national security imperative. When it comes to changing the definition of something that has been defined one way for millennia and in relation to which there is a real sense that Parliament has not so much defined marriage, but rather reflected a pre-existing definition, it is absolutely imperative to have a manifesto mandate. I find it shocking that such an innovation should have been produced without one.

I know that there is a notion that the Conservative Party's *A Contract for Equalities* is somehow a manifesto mandate, but I believe that that does not stand up to scrutiny. In the first instance, that document was not the manifesto. In the second instance, it talked in terms only of considering same-sex marriage, but did not make a pledge to redefine it. The change it said the party would "consider", on page 14 of the document, was to reclassify civil partnership as marriage. That is a considerably more moderate proposal than what has been presented in this Bill. In the third instance, it was not published until three days before the election, long after postal voting had begun.

The problems associated with the failure to approach the very far reaching changes proposed by the Bill without respect for the basic rules of democracy have been greatly compounded by the subsequent disregard for constitutional due process: the lack of a Green Paper, a White Paper, a draft Bill and pre-legislative scrutiny. Of particular concern, however, has been the way in which the one consultation on the Bill was conducted. The noble Lord, Lord Anderson of Swansea, has already commented on that.

10.45 pm

The sense of disregard for due process has continued during the scrutiny of the Bill. In another place, although there was a clear desire for full scrutiny on the Floor of the House during Committee, the Bill was sent to a Committee of only 19 MPs. The BBC's Mark D'Arcy was not far off when he commented on the Committee's deliberations as,

"a bit of a ritual. The dissenters dissent and the supporters support, and the whole thing is as mannered as a minuet danced at the court of Louis XVI".

Huge numbers of the British population have had their beliefs overlooked. There was no mention of the Muslim population, the Hindu population, and the Sikh population during public evidence sessions. There was no mention of the ethnic minority churches. Indeed, in a joint letter to the *Daily Telegraph,* an alliance of pastors and elders, which includes the leadership of the UK's biggest so-called black majority churches, accused the Government of turning their backs on traditional values to satisfy the demands of a "white, liberal elite" while ignoring growing ethnic minority communities who might otherwise be part of their core vote.

There is a clear need to intervene and correct these failings by giving the people a say through a referendum. If the Government receive a mandate for their policy through a referendum then all the other procedural failings to date would become an irrelevance. The resulting legislation would not suffer from ongoing questions about its legitimacy that would inevitably gnaw away at and undermine it. Moreover, Amendment 48 would help to redeem our reputation as a democracy committed to constitutional due process and fair play. Therefore, I strongly commend Amendment 48 to the House.

Lord Dobbs: My Lords, I will attempt to be very brief, I promise that. We have a flexible and unwritten constitution, which means that proposing a referendum in these circumstances is unusual, irregular but not improper. However, in my view, it is wholly wrong. I endorse almost every word that the noble Lord, Lord Fowler, said in his objections to the amendment. I add that there is something strange. I do not understand

[Lord Dobbs]
why the amendment insists that Peers would be denied a vote in this referendum. It is restricted to those entitled to vote at parliamentary elections. However, that is not my fundamental objection to the amendment. The noble Baroness, Lady Thornton, is as outraged as I am about it.

At the heart of the Bill is that we will no longer discriminate against individuals because of what they were born. If the noble Lord, Lord Anderson, believes that that is revolutionary then so be it. I would not resile from that description. We would not be considering the amendment if we were changing the law to give women equal rights with men or black people equal rights with whites. Would we throw the entire principle of equal rights into doubt in those cases by insisting on a referendum? I think not. I suspect we would find such a suggestion appalling.

I asked myself a very simple question about the amendment, as with so many amendments that we have discussed. If we were to strip the word gay or same-sex from it and replace it with black, women or, indeed, Welsh, what would happen? There would be rivers of outrage flooding throughout the country. That is why I believe the amendment to be entirely misconstrued. To discriminate against people for the way that they were born is wrong. In my view, it is indefensible. No amount of referendering could ever make that right.

Lord Stoddart of Swindon: I support the amendment moved by the noble Lord, Lord Anderson. Together with him, I suggested this solution at Second Reading. The fact is that this bit of legislation has undoubtedly split the country. All of us have had very abnormal postbags and e-mails in this context. Indeed, I have had the biggest postbag since I proposed, promoted and got through this House a Bill to ban same-sex wards. It is quite obviously something that the public think very strongly about. It can only really be tested through a referendum because it not only makes such a difference to an institution that has been around for some thousands of years but has constitutional implications. Those are some of the reasons why there should be a referendum.

The political parties have had their say and are virtually unanimous. The Cabinet has had its say; whether that was unanimous I do not know. The wider Government have had their say. The House of Commons, albeit with a so-called free vote, has had its say, and has made a decision. The House of Lords is having its say. The only people who are not having a say—because they have never been given the opportunity—are the wider public and the people who are going to be affected by the Bill. That is why I believe that there should be a referendum.

There is another reason: I am not satisfied by the way that the Bill has been gestated. The noble Lord, Lord Anderson, asked, "Why the speed? What do the Government want to go so fast for?". As it so happens, I have a newspaper cutting here, from the *Sunday Telegraph,* of a very interesting article by Mr Christopher Booker. I am not going to read the whole article out, as it is a bit late for that, but I will read a part of it. He writes:

> "As I recounted here on February 9, the drive to get same-sex marriage into law was masterminded from 2010 onwards by an alliance between Theresa May, the Conservative Home Secretary, Lynne Featherstone, the Lib Dem equalities minister, and gay pressure groups, led by one called Equal Love. They pushed the issue forward, not in Westminster, but through the Council of Europe, culminating in March last year with a day-long 'secret conference' chaired by Miss Featherstone in Strasbourg. With the public excluded for the first time in the Council's history, it was here that—with the active support of Sir Nicolas Bratza, the British president of the European Court of Human Rights (ECHR)—a deadline was set for their planned coup of June 2013. If, by this date, 'several countries' had managed to put gay marriage into law, Sir Nicolas pledged that his court would then declare same-sex marriage to be a Europe-wide human right".

It seems to me that that was the gestation, or part of it, of this particular Bill. It almost sounds like a conspiracy, but I do not like using that word. Nevertheless, that is the article by Mr Christopher Booker, or part of it. I think it is good for this House to have heard it, because it gives the Government the opportunity to say whether Mr Booker's article and his findings are correct. I therefore hope that that will help the noble Lord, Lord Anderson and of course, as I have already said, I will be delighted to support his amendment.

Lord Aberdare: My Lords, I hope that the House will forgive me for making a brief intervention at this stage. I am not convinced that this Bill is significantly more revolutionary than, for example, the introduction of civil partnerships. I believe it is a logical next step to take. Indeed, I agree with the noble Baroness, Lady Royall, that in 10 years' time it may well be widely, if not universally, accepted as such. I also believe that it will ultimately have a positive impact on society and social cohesion. It will make the status of marriage, which I see as a vital building block of society, available to same-sex couples and parents, and remove any possibility of their being treated in a discriminatory way by comparison with opposite-sex married couples.

A number of noble Lords have spoken of the lack of an electoral mandate, but the Bill enjoys support across all parties. As the noble Lord, Lord Fowler, reminded us, it received a substantial majority in a free vote in the other place, and another large majority at Second Reading in this House. Whatever the process hitherto, the Bill is now receiving detailed scrutiny in your Lordships' House, as indeed it should. I do not believe a referendum would be appropriate, or indeed that its cost would be justifiable. I welcome the Government's initiative in introducing and pressing forward with this Bill, and I believe that the time is right.

Baroness Thornton: My Lords, I shall be very brief, and say two things. One is that when you are losing the political argument, it seems to me that you always go for the methodology or, in the case of the noble Lord, Lord Stoddart, for Europe. The second thing is that I agree with everything said about this by the noble Lord, Lord Fowler. The majority supported it in the free votes. I really think that there is nothing else to add, and the referendum the amendment proposes is a very bad idea indeed.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I wish I could be so brief, because the noble Baroness has just summed up the

position very well indeed. As has been made very clear, the amendments proposed by the noble Lord, Lord Anderson, would prevent the Bill being enacted before the next general election by adding a new provision calling for a referendum in England and Wales on proposals to make the marriage of same-sex couples lawful. Indeed, the next general election would be the earliest date which is provided for by the amendment, which also provides reasons to extend it until 2016.

The Government do not believe that this is a sensible course of action, and nor is it required. The Government's position is that referendums should be used only in issues of substantial constitutional significance. Noble Lords may recall that the Constitution Committee of your Lordships' House published a report in 2010 on referendums in the United Kingdom. I was a member of the Constitution Committee at that time. The report was clear that matters of substantial constitutional significance would fall within the following proposals:

"To abolish the Monarchy … To leave the European Union … For any of the nations of the UK to secede from the Union … To abolish either House of Parliament … To change the electoral system for the House of Commons … To adopt a written constitution … To change the UK's system of currency".

The noble Lord, Lord Anderson, listed the kind of referendums that we have had, and I think they all fall within these definitions, these issues of constitutional significance. We do not believe that the amendments are appropriate or necessary. This is because while I acknowledge that extending the existing institution of marriage to same-sex couples is of huge significance and importance to those couples who are currently being prevented from marrying, and quite clearly from our debates this evening is the subject of strong feelings among those who oppose it, we do not believe that these are matters of substantial constitutional significance along the lines of those which the Constitution Committee identified.

Turning to technical matters, my noble friend Lords Dobbs pointed out that Members of your Lordships' House would be denied a vote in any such referendum. I also note that there was an interesting point about the question, because the Political Parties, Elections and Referendums Act 2000 makes provision for how a question should be dealt with if it is present on the introduction of the Bill, or indeed if the wording is to be done subsequently by way of order. It does not make any provision for what would happen if a question was introduced at a later stage. Quite clearly, my noble friend and the noble Lord, Lord Anderson, see no role for the Electoral Commission in judging the merits of the question and reporting to Parliament, as now seems to be an accepted part in other circumstances of our arrangements on referendums.

11 pm

I remind your Lordships, as did my noble friend Lord Fowler most effectively, that in spite of the opposition to the Bill—and I respect the fact that those views are sincerely held—the other place, a democratically elected House, voted overwhelmingly in favour of this Bill on a free vote. To those who seek to suggest that it was not quite so free, I say carefully as a member of the Liberal Democrat part of the coalition that on issues such as Europe, where there is a government line, trying to get some Conservative Members necessarily to support it is not always easy. I simply do not believe that, when there is a free vote, full advantage is not taken of it.

Further, this House voted by a significant majority to give the Bill its Second Reading. The noble Baroness, Lady O'Loan, said that some people perhaps voted because they thought that it was constitutionally right to give the Bill a Second Reading, but there was nevertheless a substantial majority in this House in favour of a Second Reading and we are now doing what the House wished us to do; that is, to scrutinise the Bill. I believe that we have done that very effectively. I do not believe that anyone has filibustered; the amendments have been very properly considered. I do not propose to go into all the procedures that were adopted in the other place, because it is not really for us to do that, but I simply observe that not all the time allocated to the Public Bill Committee was taken up in their deliberations. Perhaps crucially, if those who voted in the other place are seeking election again in May 2015, they will have to account to their electors as to how they voted. That is the proper way in which our democracy works; that is where our democracy will have its proper fulfilment. People who are elected will have to argue why they voted in a particular way on this measure.

The noble Lord, Lord Anderson, made just as fully at Second Reading a number of the points that he raised today. Those points were effectively dealt with then by my noble friend Lady Stowell in her response to the debate, when she referred to matters such as the contract for equalities which was published alongside the Conservative manifesto. I do not propose to rehearse all those arguments again this evening.

My noble friend Lord Dobbs put his finger on it when he said that this Bill is not about numbers, but that at the heart of it is doing the right thing and ensuring equality for same-sex couples and religious freedom. The Bill also tries to give proper protection to those who have a strong religious belief. With the greatest respect, I take exception to what the noble Lord, Lord Singh, said about our not having had regard to those who are concerned about freedom of speech and religious belief. I think that there is unanimity in this House that we must try to ensure proper protection for those who wish quite legitimately to express a view which opposes marriage of same-sex partners. We have striven to reassure religious organisations and individual priests and celebrants within them that provisions are in place to give the kind of security with regard to religious belief which we believe is proper.

Lord Singh of Wimbledon: I referred specifically to the intricacies and differences within faiths. Just to say that all faiths are protected is not really sufficient. We are different in our different religions. There are different concerns. They have been ignored.

Lord Wallace of Tankerness: My Lords, I of course recognise that there are differences. The Government fully recognise that that there are different concerns within different religions, but I do not believe for one moment that they have been ignored. No religion will

[Lord Wallace of Tankerness]
be obliged to conduct a same-sex marriage against the views and wishes of that religion. We have tried to build in as many safeguards as possible to do that. It is something to which we are acutely sensitive and we wish to ensure that adequate protection is given.

It is important to remember that civil partnerships were introduced to give same- sex couples equivalent rights and responsibilities at a time when marriage was not available to them. Despite the opposition at the time, their introduction led to greater acceptance and inclusiveness for same-sex couples in wider society.

History shows that undertaking important social change to extend fundamental rights to minority groups who experience inequality and social injustice is not always easy. Not all is necessarily favoured by the majority, but certainly the opinion polls that I have seen from more recent times show that there probably is a majority. I believe that providing for a referendum on same-sex marriage in this Bill would delay progress in removing a current and manifest unfairness. I therefore ask the noble Lord to withdraw his amendment.

Lord Anderson of Swansea: If there is a majority, as the noble and learned Lord suggests, what fear does he have about testing the real opinion of the people of this country? If he is concerned about delay, why not bring it forward, even before the date of the election? The election date was mentioned only because it would ensure a good turnout, which perhaps an earlier referendum would not. The noble and learned Lord suggested, for example, that in the past we have had referendums only on constitutional issues. Yet he supported a proposal that ensures that even trivial transfers of powers to Brussels will trigger a referendum. That is hardly consistent with what he suggests.

I know that we could go on debating this, but I will end by first thanking all those who contributed to this short debate, particularly my co-sponsors, the noble Lords, Lord Cormack and Lord Singh. To the noble Lord, Lord Dobbs, I say that even if noble Lords do not have a vote on this, they do not have a vote in general elections at the moment. It is hardly illogical that noble Lords do not have a vote in a referendum on this matter. It is consistent, but if the noble Lord wishes to move an amendment and it is accepted, so be it.

It was highly simplistic of the noble Lord to suggest that gay equality is the same as black and white equality. I was a leader of the anti-apartheid movement in Europe over a number of years, because I could see no difference at all between blacks and whites, as there was in the Group Areas Act in South Africa and so on. However, in my judgment, there are serious differences between a traditional marriage and a gay marriage and it is wrong to equate them. It is naive and simplistic to suggest otherwise.

To the noble Lord, Lord Fowler, I say this: if he thinks that there will be delay, again he might suggest that the date of the referendum be brought forward. Even he cannot suggest that the Government now have a mandate for this change. No one has answered what is perhaps a key question: why the hurry? Why, after all these years when there has been no change, are the Government in such a rush? There must be some plausible reason. I cannot see any serious reason for it, but equally why are the Government so afraid of giving people a voice?

Finally, I remind the Minister that many noble Lords chose not to vote against the Bill at Second Reading—I can attest this from my own knowledge—either because of their view that the House should show restraint when there has been a majority in the other place, or because of the view that we are principally a revising Chamber. It would have been inconsistent to prevent scrutiny, but they would look again at the matter when it came to the vote on Third Reading. I am not convinced that the Government have made any serious concessions—certainly in respect of the conscience matters, although I am ready to look again at the list that the Minister gave me during an earlier debate.

If the Government have failed to make other serious concessions relating to existing and future registrars, teachers, the public sector duty and so on, then Amendment 48 will inevitably become more attractive. In the mean time I shall not press it at this stage. I shall again ask the Government to give a simple answer to the question: why the hurry? I shall reflect further on the position, and beg leave to withdraw the amendment.

Amendment 48 withdrawn.

Amendment 48A

Moved by ***Lord Stoddart of Swindon***

48A: Before Clause 15, insert the following new Clause—

"The European Convention on Human Rights

In the event that the provisions of this Act are found by the European Court of Human Rights to be incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms, the Secretary of State shall act to withdraw the United Kingdom's signature to the Convention."

Lord Stoddart of Swindon: My Lords, back to Europe, I am afraid, and the European Convention on Human Rights. In speaking to this amendment, I am grateful to the Public Bill Office for its assistance with the wording, in order to discuss this matter. It is, of course, a probing amendment and I shall not put it to a vote.

The amendment envisages the possibility of a future ruling from the European Court of Human Rights in Strasbourg that some part of the Bill is incompatible with the European Convention on Human Rights. I want to focus in particular on the possibility that it may rule that the opt-out provisions that protect religious groups from being forced to take part in same-sex weddings are a breach of the human rights of same-sex couples who want to get married.

Much has been said about the robustness of the Government's legal mechanisms to protect places of worship that do not want to register same-sex weddings. Ministers, no doubt in good faith, have promised that their quad locks will prove watertight. Under their proposals, they say that no religious organisation or individual minister can be compelled to marry same-sex couples or to permit that to happen on their premises if they do not opt in.

The Government must recognise that there is an appetite to see churches compelled to opt in. When an Ipsos MORI survey asked whether religious organisations should be required to conduct same-sex weddings, 44% of 18 to 24 year-olds said yes, they should. Of course, that is not the view of the Government or the majority in this House, but we keep being told how important it is that we take into account the views of young people. That survey suggests that there would be a significant demand to test the limits of the quad locks, so any concern that those quad locks might have weaknesses must be properly addressed, in particular those relating to the European Convention on Human Rights.

Strasbourg has been consistent in saying that gay marriage is not a right found within the convention, a view upheld as recently as 2012, but there are features of the convention that, in relation to the Bill, cause great unease about the future. If Strasbourg were ever to find that there is a right to same-sex marriage, the protections provided by the Government's quad locks would be completely undermined—or I believe they would. Article 12 of the convention holds that men and women of marriageable age have the right to marry and to found a family. That is the only article that explicitly refers to gender, showing that marriage is understood to be between a man and a woman. However, one of the convention's most notable features, frequently reiterated in judgments, is that it can be interpreted according to what the court calls emerging consensus and common values in international law. It is said to be a living instrument governed not just by the wording of the convention agreed decades ago but by present-day standards. In other words, it changes its mind about what the words mean.

Three years ago, in the case of Schalk and Kopf v Austria, Strasbourg ruled against an Austrian same-sex couple who were arguing that the convention must be adapted to fit in line with apparently changing social views on same-sex marriage. At the time, the court was not persuaded that social attitudes had changed enough for same-sex marriage to be regarded as mandatory. It interpreted the right to marry in Article 12 as being limited to unions of persons of the opposite sex. It justified its ruling by reference to the fact that there is no European consensus in support of gay marriage.

However, the court left open the potential for future claims on the basis of Article 12. I quote from the ruling:

"Regard being had to Article 9 of the charter, therefore, the court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex. Consequently, it cannot be said that Article 12 is inapplicable to the applicants' complaint. However, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the contracting state".

So the current position of Strasbourg, and the current European climate, is that Article 12 does not impose an obligation to grant same-sex couples the right to marry. However, clearly that could change and, if it did, the whole legal landscape would change with it. In that new legal landscape, the so-called quad locks could look pretty obsolete, especially for the Church of England, which, as an emanation of the state, has a duty to marry anyone in the parish.

11.15 pm

Aidan O'Neill QC has issued a written legal opinion calling into doubt many of the assurances that we have heard from the Government. He points out that, even under Strasbourg's current agnostic stance on same-sex marriage, once the state introduces same-sex marriage, the court imposes a stricter burden on that state. He says that,

"differentiation in treatment between opposite sex and same-sex marriage would be subject to particularly strict scrutiny by the Strasbourg court and the offending state would have to show particularly convincing and weighty reasons to justify any such a difference in treatment".

So we cannot be sure that the court will be happy with the difference in treatment enshrined in this Bill, whereby a same-sex couple are much less likely to be able to get married in a church than an opposite-sex couple.

Regarding the future approach of the court, Mr O'Neill also says that,

"it has to be acknowledged that this is an area in which rapid developments have taken place in the jurisprudence of the court, such developments being justified by the court on the basis that the convention is a 'living instrument' and that there has been a shift in current European consensus on this issue. Should the court detect further shifts in the European consensus then doubtless we can anticipate further changes in its case law".

Some say that the Article 9 right to freedom of religion would protect religious freedom in any clash with Article 12. However, the recent ruling against the registrar Lillian Ladele shows only too well the European court's unsympathetic approach to religious beliefs about marriage.

Aidan O'Neill has put his professional reputation on the line by providing a written opinion expressing grave reservations about this Bill in relation to Strasbourg. We do not know whether he personally supports the Bill or not—although I understand that he is in a civil partnership—but his measured views about the risks generated by this Bill should not be ignored.

The Church of England keeps being prayed in aid in support of the quad locks, but in its briefing paper it said that it doubts,

"the ability of the Government to make the legislation watertight against challenge in the European courts".

What about the hundreds of other denominations and religions, including the Sikhs, of which many are deeply unhappy with the position? The Catholic Church has strongly criticised the quad locks, as have many smaller denominations that submitted memoranda to the Public Bill Committee in the other place. As these are people whose fundamental liberties are at stake, we really should pay more attention to whether they are satisfied with the protections that we are offering them.

If Strasbourg ever finds that there is a right to same-sex marriage, the protections provided by the Government's quad locks would be severely undermined. Even if it does not, the refusal of churches—especially the state church—to solemnise same-sex marriages could still end up being ruled on by the European Court of Human Rights and the court will take a more interventionist view regarding differences in treatment of same-sex couples within England and Wales once same-sex marriage is legal here.

[LORD STODDART OF SWINDON]

If this shift in Strasbourg jurisprudence takes place, all the ministerial assurances in the world will in fact be worthless. We should take a long, hard look at what else could realistically be done to safeguard the long-term position of the churches. It matters a great deal to these people. As the House knows, I am not religious, but I think that we should do everything that we can to protect the civil liberties of religious people and, indeed, of others. In the face of the evidence of risk, ministerial assurances are really not enough. I look forward to hearing whether the Government have really considered the unpredictability of the European court and what that could mean for the future, and what we can do about it. I beg to move.

Baroness Royall of Blaisdon: Briefly, my Lords, the noble Lord speaks of the need to protect religious freedom. I am sure that everybody in this Chamber absolutely agrees with and espouses that. However, knowing the noble Lord's view of the European Convention on Human Rights and his view of the Bill, it seems that he may be a little torn, if I may put it like that. In a way, he is using the Bill as a vehicle to withdraw the UK's signature to the convention. He does not like the Bill, as has become apparent—

Lord Stoddart of Swindon: As a matter of fact, I am not opposed to the European Convention and the European Court of Human Rights. After all, I am old enough to have been around when the convention was drafted and signed by this country. I supported it then and, indeed, as long as the court does its job and does not try to increase its influence and powers, I remain in favour of it.

Baroness Royall of Blaisdon: I beg the noble Lord's pardon. My entire hypothesis seems to be wrong, so I will merely say that I do not believe that this amendment should be accepted because, in any event, we should not withdraw from the European Convention on Human Rights. However, it is an entirely unlikely happening because the Bill as it stands does not offend against any element of human rights, freedom of speech or freedom of religion.

Lord Wallace of Tankerness: My Lords, I thank the noble Lord for his amendment, which gives us a further opportunity to set out yet again how we believe that the European Convention on Human Rights supports rather than threatens the religious protections in the Bill. The noble Lord indicated in response to the noble Baroness, Lady Royall, that he is not opposed in principle to the European Convention on Human Rights, but I know that he has expressed some concerns about the development of the jurisprudence of the court. I am not sure whether he took part in the debate last Thursday when the House had an opportunity, during a debate introduced by my noble friend Lord Lester, to consider these human rights issues.

The Government have made it clear why we do not believe that there would be a reduction in the protection available to religious organisations and individuals as a result of the Bill. I am happy to repeat those assurances. Indeed, I have sought to do so in the previous debate in replying to the noble Lord, Lord Singh of Wimbledon. The noble Baroness, Lady Royall, has said it again. There is unanimity in this House on the wish to secure the protection of religious organisations and individuals.

Article 9 of the European Convention on Human Rights guarantees the right to freedom of religion. Any attempt to compel religious organisations to solemnise marriages that they consider to be doctrinally impermissible would quite clearly be an interference with their right—and indeed the right of their members to religious freedom. I believe that the religious freedoms contained in this Bill reinforce that protection.

The noble Lord, Lord Stoddart, suggests that if Strasbourg finds that there is a right to same-sex marriage, religious organisations would be forced to conduct such ceremonies. We do not believe that to be the case. Under this Bill, we will be providing same-sex civil marriage ceremonies, but the protection of Article 9 would mean that a couple could not force a religious organisation to marry them according to its right purely because they want a religious ceremony.

It is also worth noting that after many years since the introduction of civil unions for same-sex couples in a number of countries that are members of the Council of Europe, including the United Kingdom, there has been no decision of the Strasbourg court holding that there is right to a civil union, in other words to any legal relationship at all for same-sex couples.

Clause 2 of this Bill provides clear protection for individuals and religious organisations who do not wish to conduct or participate in a religious marriage ceremony on the grounds that it is the marriage of a same-sex couple. The case law of the European Court of Human Rights is equally clear that the question of whether, and if so how, to allow same-sex marriage must be left to individual states to decide for themselves. I simply believe that it is inconceivable that the court would require a religious organisation to conduct same-sex marriages in breach of its own doctrines. We believe the position is clear—and indeed has been strongly supported by a number of our most respected legal minds. In his written submission to the Public Bill Committee in the other place, the noble Lord, Lord Pannick, said:

> "For the European Court of Human Rights to compel a religious body or its adherents to conduct a religious marriage of a same sex couple would require a legal miracle much greater than the parting of the Red Sea for the Children of Israel to cross from Egypt. The Court unanimously decided in Schalk and Kopf v Austriain 2010"—

the noble Lord, Lord Stoddart, also referred to this case—

> "that there is no right to same sex marriage under the European Convention on Human Rights. It is in the realms of legal fantasy to suggest that the Court would impose an obligation on a religious body to conduct such a ceremony, especially when civil marriage will be available in this country for a same sex couple and when Article 9 of the Convention protects religious beliefs and practices".

Indeed, the noble Lord, Lord Pannick, followed that up and confirmed his position in the oral evidence which he gave to that committee.

I briefly note the practical effects of the amendment. It would be extraordinary for a Secretary of State to be required, as this amendment would envisage, to act

unilaterally to withdraw the United Kingdom from the convention without further reference to Parliament—although I accept that the noble Lord said it was a probing amendment. Furthermore, to make such a decision contingent upon the outcome of a court case dealing with unknown and unspecified issues would be equally extraordinary, particularly if the successful challenge related to a technical matter which could be readily remedied by legislation passed in Parliament.

Before I conclude, I refer to the point made by the noble Lord, Lord Stoddart, in a previous amendment, when he read a newspaper article which suggested that there had been some secret conference involving my right honourable friend the Secretary of State, Teresa May, my honourable friend Lynne Featherstone and the Council of Europe. I understand that this secret conference was an event attended by 300 people, invited by the Government of the United Kingdom, when the United Kingdom held the presidency of the Council of Ministers. Nicholas Bratza, who was then president of the European Court of Human Rights, spoke for five minutes. I am informed that the text of his speech is on the court's website. He made it clear that the court's case law had left the issue of gay marriage to be decided by national authorities.

Not just in this debate, but in a number of debates during Committee we have sought to give reassurances that the protections for individuals and religious organisations are very real. I would hope that having had the opportunity to have this debate, the noble Lord, will withdraw his amendment.

Lord Stoddart of Swindon: My Lords, I am most obliged to the Minister for his reply—both to the assertions of Mr Booker and to my own amendment. In relation to his reply, of course I accept his assurances. The problem is that throughout my life—it has been quite a long one—I have seen government assurances come and government assurances go. The European Court of Human Rights now it has powers, translated into British law, which are very wide indeed. Some of its decisions in private and other cases have not been very friendly towards the Government and this country, if I might say that. We really do not know what will happen once the Bill is passed.

11.30 pm

I read the remarks of the noble Lord, Lord Pannick, to, I think, the Commons committee. Of course, in talking about miracles, it would have been thought miraculous in 1950 when the European Convention was signed that we would have a Bill before Parliament suggesting that there should be single-sex marriage—but here we are. We are discussing it and I have no doubt that Parliament will pass it. I hope that the safeguards in the Bill will be upheld and not undermined by the European Court. If they are, if I am still here—which is doubtful—I shall come back and remind noble Lords of that. I beg leave to withdraw the amendment.

Amendment 48A withdrawn.

Clause 15 agreed.

Schedule 7 : Transitional and consequential provision etc

Amendments 49 to 53

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

49: Schedule 7, page 50, line 23, at end insert—

"(1) Section 25 (void marriages) is amended as follows.

(2) At the beginning insert—

"(1) A marriage shall be void in any of the following cases.".

(3) The existing wording of section 25 becomes subsection (2) of that section; and, at the beginning of that subsection, for "If any persons" substitute—

"(2) Case A is where any persons".

(4) For the words after paragraph (d) substitute—

"(3) Case B is where any persons knowingly and wilfully consent to or acquiesce in the solemnization of a Church of England marriage between them by a person who is not in Holy Orders.

(4) Case C is where any persons of the same sex consent to or acquiesce in the solemnization of a Church of England marriage between them.

(5) In subsections (3) and (4) "Church of England marriage" means a marriage according to the rites of the Church of England."."

50: Schedule 7, page 53, line 10, at end insert—

"After section 49 insert—

"49A Void marriages: additional provision about same sex couples

(1) If a same sex couple knowingly and wilfully intermarries under the provisions of this Part of this Act in the absence of the required consent, the marriage shall be void.

(2) In this section, in relation to a marriage of a same sex couple, "required consent" means consent under—

(a) section 26A(3), in a case where section 26A applies to the marriage (but section 44A does not apply to it);

(b) section 26A(3) and section 44A(6), in a case where section 26A and section 44A apply to the marriage;

(c) section 26B(2)(b), in a case where section 26B(1), (2) and (3) apply to the marriage;

(d) section 26B(4)(b), in a case where section 26B(1), (4) and (5) apply to the marriage;

(e) section 26B(6)(d), in a case where section 26B(1), (6) and (7) apply to the marriage."."

51: Schedule 7, page 53, line 45, at end insert—

"( ) After subsection (5) insert—

"(6) If, for the purpose of any provision of this Act, a relevant governing authority has given written consent to marriages of same sex couples, the validity of that consent is not affected only because there is a change in the person or persons constituting that relevant governing authority."."

52: Schedule 7, page 54, line 19, at end insert—

"After section 13 insert—

"13A Void marriages: additional provision about same sex couples

(1) If a same sex couple knowingly and wilfully intermarries under the provisions of this Act in the absence of the required consent, the marriage shall be void.

(2) In this section "required consent" means consent under section 1(3)."."

53: Schedule 7, page 54, line 22, at end insert—

"Public Order Act 1986 (c. 64)

(1) Section 29JA of the Public Order Act 1986 (protection of freedom of expression (sexual orientation)) is amended in accordance with this paragraph.

[Baroness Stowell of Beeston]

(2) The existing provision of section 29JA becomes subsection (1) of that section.

(3) After that provision insert—

"(2) In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred."."

Amendments 49 to 53 agreed.

Amendment 54 not moved.

Amendment 55

Moved by ***Lord Mackay of Clashfern***

55: Schedule 7, page 55, line 11, at end insert—

"32A For paragraph 13(2) of Schedule 27 to the Civil Partnership Act 2004 substitute—

"( ) In subsection (1), for the words from "solemnized" to "shall", substitute "a man and any other of the persons mentioned in the first column of Part I of the First Schedule to this Act, or between a woman and any other of the persons mentioned in the second column of the said Part II,"."".

Lord Mackay of Clashfern: My Lords, this is the last amendment that we shall consider at any length in this Committee. However, it is rather an important amendment and it is in the nature of a probing amendment, as I will make clear as I proceed.

When the Marriage Act 1949 was passed, Section 1 set out the prohibited degrees in a way that said "A man shall not marry" and then a column of positions of a woman whom he could not marry, and "A woman shall not marry" and another column of men of different positions that she could not marry. If Section 1 had stayed as it was then it would not apply to same-sex couples.

In the Civil Partnership Act 2004, as I said in my speech at Second Reading, the intention was to produce for people who were in same-sex relationships a legal position as like marriage as possible. In order to do that, Section 1 of the Marriage Act had to be amended so that instead of expressing it in these columns it did it by way of relationships. That was that done in the Civil Partnership Act. Section 1 of the 1949 Act was also amended so that the Act no longer proceeded on the columns but went on relationships as the Civil Partnership Act did.

When the 1949 Act was passed, as I said, there was no question of it applying to same-sex marriage. I strongly believe that the same-sex couples marriage which this Bill introduces is different in important respects from opposite-sex marriage. In particular, opposite-sex marriage includes as one of its purposes—not its only purpose—the natural procreation of children. That is not a purpose of the same-sex couples marriage for reasons that are obvious.

The second point I want to make is that I have heard same-sex couples marriage described as gay marriage. That is not correct. The correct description is same-sex couples marriage and I can see nothing in the Bill that suggests anything to do with sexual relationships. Therefore it is perfectly open for people in same-sex marriages to have a completely platonic relationship. That raises the question of the applicability of the prohibited degrees to same-sex marriage. I want to raise the question of whether prohibition requires reconsideration in relation to same-sex marriage. It is one thing to have it for opposite-sex marriage but does it require reconsideration in respect of same-sex marriage?

In introducing the Bill, my noble friend said:

"So much do we believe in marriage and its importance to our society, we want all couples, whether gay or straight, who are prepared to affirm publicly their commitment to each other and all the responsibility and joy that comes with it, to be free to marry".—[*Official Report*, 3/6/13; col. 938.]

That means all. Obviously if someone is married already there is no possibility or freedom to remarry, but subject to that kind of consideration the general assertion is that all couples should be free to marry. Therefore we have to look at the prohibited degrees which are prohibitions on couples who may wish to marry. One such couple—to take an example—is brothers. I know of no love which is more widely commended than brotherly love. There is nothing to suggest that brothers cannot love each other perfectly properly and in such a way as to be willing to commit to each other in the full sense with which my noble friend used the expression in introducing this Bill, unless of course it has some relationship to what the noble Baroness, Lady Deech, was talking about later—earlier—today. Yes, I am getting confused. At 11.40 pm it is not surprising.

Earlier today she raised the question in relation to civil partnerships but I raise the question more fundamentally in relation to marriage and same-sex marriage in particular. At present I do not understand why it should be closed to all of the present prohibited degrees. I would like to know to what extent the Government have previously analysed this position and have reached a conclusion on it because as yet I have seen no discussion of this particular aspect in any detail. It is an important aspect to my mind, and I think it has a bearing on how some people in our society view the provision for same-sex couples marriage. A lot of people—we have heard it today once or twice—refer to it as gay marriage. That is restricting the scope of this Bill in a way that is not justified by the terms of the Bill itself.

The importance of the fact that ordinary marriage—what I will call opposite-sex marriage—has as one of its purposes the natural procreation of children is that the institution is there to offer protection and safeguards to children. When it works properly it is a very effective safeguard for children. As I said the other day, the state has not shown the ability to protect children to anything like the same extent as a well functioning marriage.

I received in connection with this Committee stage a request to make it clear that I am against homophobic bullying in any way. I certainly want to make that abundantly clear. The function of ordinary marriage—the marriage of opposite sexes—includes protecting the children against any form of bullying and any form of homophobic bullying, and preventing them taking part in such bullying. We all know that children are quite quick to notice differences between their circumstances and those of other children, perhaps in the same class. That is often a source of improper bullying of one kind or another. I make it clear that I

regard one of the functions of opposite-sex marriage as protecting against all forms of damage to the children.

The noble Baroness on the Opposition Front Bench referred, in the context of another amendment, to the presumption that when a child is born to a married woman the other party to the marriage is parent of the child. That presumption is set aside in this Bill—an important fact that must be taken into account. In opposite-sex marriage the three ways in which children of the marriage can be produced are by natural procreation, IVF or adoption. In same-sex marriage it will be by IVF or possibly full sexual relations, which according to the Bill may constitute adultery—which is slightly unfortunate from the point of view of the child being produced. According to the Bill, that child will have no relationship with the marriage at all. Of course, the other method is by adoption.

Same-sex marriage, as the Bill makes plain, does not embrace children in the same way as the natural child is embraced by the marriage of opposite-sex couples. All of this has a bearing on the relationships that are prohibited—the prohibited degrees. At the moment I can see no reason why brothers and sisters should not be able to have a same-sex marriage if they felt that they wanted to. A noble Lord pointed out earlier that of course you can end a relationship only with a divorce. That is absolutely true. The marriage relationship would be over and above the relationship between sisters or brothers. If they decided to end the marriage relationship that would be sad, but it can happen with same-sex and opposite-sex couples and it is sad whenever it happens. However, it could happen. One would not wish to contemplate that as happening very often, but of course it is certainly a possibility.

Against the background that all couples who love one another are able to marry—that is what we want—I find it difficult to see why brothers or sisters who are willing to marry should not be able to do so. The Bill needs to consider a little more carefully than it has done this provision raised by the noble Baronesses on the Front Bench in their amendment for no presumption in favour of a child born to a woman in a same-sex marriage. That child is left without any marriage connection at all as far as I can see. That seems to me be highly unfortunate. Although it is important to consider the rights of adults in relation to same-sex marriage—that is what the Bill is primarily about—it is extremely important to think about future generations and the relationship with children as well as the prohibited degrees matters that I mentioned. I believe that the prohibited degrees were first inserted into the marriage institution for the primary reason of protecting against inbreeding with normal procreation. These reasons, of course, do not have any place in same-sex marriage, and therefore I think we need to look at the justification, if any, for the prohibited degrees, at least in their present form. I beg to move.

11.45 pm

Baroness Thornton: My Lords, in all the time that I have been in your Lordships' House, I have enjoyed and loved the way that the noble and learned Lord, Lord Mackay of Clashfern, has often weaved a sticky web of legal mischievousness around issues that we have had before us, and so he has done this evening. I look forward to the conversation that the two learned Scots before me are about to have on this issue.

Lord Wallace of Tankerness: My Lords, I welcome the interesting debate that my noble and learned friend Lord Mackay has generated. He is right to challenge us to consider it and I can indicate at the outset, although I will say more, that the Government do not feel able to support his amendment. It would permit siblings of the same sex to marry, and I assume that that could include uncles and nephews, grandfathers and grandsons and mothers and daughters. The Government do not feel able to accept the extension of marriage to close relatives. Clearly, as my noble and learned friend indicated, the origins of this go back to concerns about the need to prevent incest and potential inbreeding.

However, it is also fair to point out that, in terms of procreation, not all marriages, even heterosexual ones, are contracted for the purposes of procreation. It would almost be a logical extension of the argument that when an opposite-sex couple are past a certain age, or the woman passes a certain age and is incapable any longer of having children, perhaps the degrees of affinity regulations and prohibitions should fly off. Even just saying that indicates the real sensitivity around this and how it is difficult to readily accede the point being made by my noble and learned friend.

Before returning to some of the substance of his argument, my noble and learned friend indicated in his opening remarks that he seeks by this amendment to restore Section 1 of the Marriage Act 1949 to what it was before the Civil Partnership Act 2004 amended it. It is important to point out that the 2004 Act created one gender-neutral list setting out the prohibited degrees of relationship. The amended Marriage Act makes it clear that no person can marry any relative listed in Schedule 1.

I am not founding my argument on this point because it is a technical matter which no doubt could be addressed. But in reverting back to the original Section 1 of the Marriage Act 1949, the amendment does not lead to any change in the relevant schedules, so that certainly could lead to confusion, although no doubt my noble and learned friend could do something about that if he wished to persist with this and bring forward amendments to the schedules as well. Paragraph 17 of Schedule 27 to the Civil Partnership Act 2004 replaced the two separate lists. Under the amendment, that single gender-neutral list would still stand and would need to be repealed and the original wording restored.

I have sought to indicate that the Government do not accept the principle of what my noble and learned friend is trying to achieve. He referred to platonic relationships. If this Bill is passed, it will be open to individual couples, whether of opposite sex or of the same sex, to determine whether to engage in sexual activity and to consummate their marriage. Couples are not required to consummate their marriage; there is only an option for opposite-sex couples to apply for an annulment if one party applies to have the marriage annulled on that basis.

[Lord Wallace of Tankerness]

On the point about two brothers being able to marry, as I indicated, the Marriage Act sets out the relationships of people who cannot marry each other. The Government want to ensure that same-sex couples are able to marry under the same provisions as opposite-sex couples. The provisions in the Marriage Act on prohibited degrees of relations are already capable of applying to same-sex couples and therefore no change from what was put in place for civil partnerships is required.

My noble and learned friend referred to the debate we had earlier on the amendment moved by the noble Baroness, Lady Deech. In my response to that I referred to tax issues. To be fair to my noble and learned friend, he did not use that argument. His argument was based more on grounds of principle. Nevertheless, the proposal would have consequences in terms of tax. However, I also think—I made this argument during that debate—that there are power relationships within families. Who is to say that pressure could not be brought to bear on a brother to marry another brother if it was thought that that would best serve his inheritance interests? You cannot tell what goes on in families. That is why my noble and learned friend is absolutely right to talk about the need to protect children. We are not necessarily talking about infant children or children under the age of 16, but within families lots of power can still be exerted when children are young adults or even older. While concerns about incest and inbreeding clearly lie at the heart of the prohibited degrees of marriage, there is also a recognition that within families powerful relationships can often be at play.

As I indicated, this amendment would allow father and son, mother and daughter, uncle and nephew, aunt and niece to marry. We think that the pressure is more relevant at an intergenerational level than at a sibling level, although that is not to say that it could not occur at a sibling level. Therefore, we should be very cautious about going down that road. Indeed, the noble Lord, Lord Alli, referred to civil partnerships in this connection. We believe that the nature of marriage is one which people recognise as being different from the relationship that exists between two close members of the same sex of a family. For these reasons, I ask my noble and learned friend to withdraw the amendment.

Lord Mackay of Clashfern: My Lords, if I had an answer, I would be happy to withdraw the amendment. The point I am making relates, for example, to brothers. The idea that this is something to do with pressure is ridiculous because, as we know, pressure is exerted in families far beyond same-sex relationships, and that has to be dealt with somehow. There are plenty of laws relating to undue pressure being put on people to get married or otherwise. What I am talking about is the marriage that was described by my noble friend at the beginning, where people love one another and wish to undertake the responsibilities of marriage.

I can understand that there are different considerations for different parts of the prohibited degrees, and that is why this needs to be considered. However, I have a feeling, and I may be entirely wrong—

Lord Wallace of Tankerness: I thank my noble and learned friend for giving way. Does he accept that if a man at, say, the age of 60 wished to marry his sister who was aged 60, where procreation and therefore inbreeding was not possible, the rules on the prohibition of close relationships should be set aside after a given age, if they love each other and want to make that commitment? Is that his argument?

Lord Mackay of Clashfern: This is a justification for same-sex marriage that has been put forward. That is what I am talking about. I said in my speech at Second Reading—I invited correction but so far that has not come—that the reason for the prohibited degrees applying across marriage generally is because the natural procreation of children was a central purpose. I quite understand that people far beyond the age of childbearing are subject to the rules, and if George Clooney does not hurry up, you never know what might happen. The rules are there because a central purpose of opposite-sex marriage is the normal procreation of children, and therefore the rules are put generally to the whole lot. That does not apply to same-sex marriage at all.

The idea of pressure is just as likely to occur in relation to people who are not directly related. Parents, particularly in some situations, try to persuade their daughter to marry X for reasons of their own rather than hers. That kind of pressure is something that has to be looked at. However, I do not see why such pressure should be particularly rife between brothers at full age and thus perfectly entitled to consider what they want to do. I cannot see that it is a reason for cutting brothers out. So far, I have not heard any reason that contradicts the general statement of principle which was made when introducing same-sex marriage into our law.

At midnight it is not suitable to press my amendment, but I think that this needs to be considered, and I would like to hear more about it before Report. On the technical point, what we have done is amend the statute and the schedule that works in accordance with the statutory provision. It does not matter because I can easily alter it, but the amendment was tabled with assistance, as noble Lords will understand. I do not say that they necessarily got it right, but I think it is right. Anyway, if it is wrong, I can easily put it right; it is a very technical point and my noble and learned friend has accepted that. However, the essential point needs to be considered carefully and I would like to hear more about it by Report. In the mean time, at one minute to midnight, I am happy to withdraw the amendment.

Amendment 55 withdrawn.

Amendment 56

Moved by ***Lord Dear***

56: Schedule 7, page 56, line 6, at end insert—

"39A After section 26 (harassment) insert—

"26A Discussion or criticism of same sex marriage

For the purposes of this Act, and for the avoidance of doubt, discussion or criticism of same sex marriage shall not be taken of itself to be discrimination or harassment.""

Lord Dear: My Lords, I am conscious of the fact that a pumpkin will shortly come into your Lordships' House. I would simply reflect that Amendment 56 is a freedom of speech amendment and sits closely to Amendment 46C, moved and debated in this Chamber by the right reverend Prelate the Bishop of Leicester. In fact, one is the obverse and reverse of the other. Had the time been different, I would have tried to distinguish between them, but having regard to the similarity of the amendments and the fact that we have already had a full debate on Amendment 46C—and particularly because of pumpkins in the air—I beg leave to withdraw the amendment.

Midnight

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): My Lords, I am afraid I have to ask the noble Lord, in view of the fact that he has spoken to the amendment, if he would please move it before withdrawing it, in order to give noble Lords a chance to address it if they wish

Lord Dear: I beg your pardon. I beg to move.

Baroness Stowell of Beeston: I am grateful to the noble Lord. I am particularly grateful to him for drawing comparisons with the amendment that was put down in the name of the right reverend Prelate earlier this evening. I agree with him that it is very similar and the response and arguments that I would have made to the noble Lord, Lord Dear, are similar to those which I have made at length on several occasions in Committee.

I will take this opportunity to make a couple of points. First, I hope that if this Bill is to become an Act—and I certainly hope that it will—we arrive at a point where it is accepted that the law allows marriage of same-sex couples, and it is possible for us all to respect differences of view about whether marriage should be between a man and a woman. Although the noble Lord, Lord Singh, is no longer in his place, I take exception to his assertion earlier that we have brushed aside concerns about freedom of speech in Committee. I have been happy to respond comprehensively to the debates we have had on that matter. I take on board the serious concerns that people have had in this area, and hope that I have been able to offer reassurance to noble Lords.

By the same token, I was a little perturbed by the comment that the noble Lord, Lord Dear, made earlier about me not responding with any real scope for consideration of the debates that have taken place in Committee. As my noble and learned friend will be responding to the final amendment and this will be the last time I am on my feet in Committee, I point out that in addition to the list of amendments I referred to in response to the noble Lord, Lord Anderson, that we have already tabled to the Bill, during debates at Committee, I—or my noble and learned friend—have committed to respond to noble Lords on a range of different issues.

This is not an exhaustive list and I am sure we may have other meetings with Peers on other topics. I have, for example, already agreed to have a meeting with my noble friends Lady Cumberlege and Lord Elton to discuss registrars. On the amendment earlier this evening about religious freedom for faith schools, I said that this was a matter that we continue to consider. In the debate earlier today about transgender matters, I said that I would write to the noble and learned Baroness, Lady Butler-Sloss, about her particular point. I am sure that the noble Baroness, Lady Thornton, my noble friend Lady Barker and I will probably meet to discuss that again. On the public sector equality duty and the definition of "compel", we have agreed to write in detail to the noble Baroness, Lady O'Loan, about the points she raised. I add, because it was not mentioned during the debates last week, that I have already had a meeting with my noble friend Lady Berridge and the Secretary of State has already met the noble Baroness on that matter.

On humanists, I said that we would reflect further. On presumption of parenthood, I said that I would write in great detail to set out what is proposed in that very important area, which my noble and learned friend has just referred to again. On reviewing of the Act, which was an amendment from the noble Lord, Lord Dear, earlier today, my noble friend Lady Northover responded comprehensively. While there were differences in approach, it was clear that we were very committed to seeing the need for a review of the Act in future. On the debate about pensions, as the noble Lord, Lord Alli, was gracious to acknowledge in his response to me at the beginning of today's debate, I took the time to speak to the Pensions Minister before the debate took place today.

I say all that because I want to put on record that we are listening, we continue to listen and the debates will continue. I am grateful to the noble Lord for saying that he will withdraw his amendment on freedom of expression.

Amendment 56 withdrawn.

Amendment 56A

Moved by ***Baroness O'Loan***

56A: Schedule 7, page 56, line 6, at end insert—

"39A Section 149 (public sector equality duty): after subsection (9), insert—

"(10) Compliance with the duties in this section requires ensuring that a belief regarding the definition of marriage as being between a man and a woman is respected and that no person should suffer any detriment in respect of the holding or the reasonable expression of such a belief."."

Baroness O'Loan: I appreciate how late it is, and will be brief, but I do want to move Amendment 56A, which relates to Part 2 of Schedule 7, on the last page of the Bill. As I reflect on tonight's debate, I would say to the Government that this may not be as simple as it seems. The reality is that, despite the repeated assurances of certain noble Lords, the United Kingdom has repeatedly been found to be in breach of its obligations under the convention and, more recently, under the Human Rights Act.

Along with the noble Lord, Lord Anderson, I would say to the Minister that there is both courage and common sense in considering the Bill again and in

[Baroness O'Loan]
bringing it back on Report with amendments. I have heard the Minister's comments on that and have seen government amendments. I asked the question that the noble and learned Lord, Lord Mackay, asked at Second Reading. However, I did not get any response to any of my questions at Second Reading—a matter on which a number of noble Lords commented to me.

More remains to be done and I am pleased to hear the noble Baroness, Lady Northover, say that the door is open. However, I would like to see something rather than just ex post facto post-legislative scrutiny. We need more than that because there is an expectation in this House that the Bill will become law and I want to place on record that I was somewhat concerned at the earlier tenor of the debate. I understood that the process in this House was to raise issues in general at Second Reading, to put amendments in Committee and hear a government response, and to revert to unsolved issues on Report. Otherwise, surely, there would be no point in anything other than Second Reading and wherein would lie our scrutiny function? I would also like to place on record, in response to the noble and learned Lord, Lord Wallace of Tankerness, the fact that I and, I think, several other noble Lords have received a letter signed by a significant number of Members in the other place, saying that although it was broadcast as a free vote, it was not quite as free as it was made out to be.

The Bill as drafted is not limited in its consequences to the issue of conducting same-sex marriages, et cetera. It does not ensure that there can be no detriment to an individual or organisation in their interactions with a public authority, because it does not deal, in this context, with a Section 149 issue and does not deal with the risk of the attribution of discriminatory action against persons with a protected characteristic; namely, sexual orientation. I want therefore to speak very briefly about individuals who, for reasons of conscience, feel unable to promote same-sex marriage in the way that the law, currently, would appear to suggest that they might have to do.

Teaching sex and relationship education tends to be something which is asked of teachers who do not specialise in the topic but may be mathematicians, physicists or historians. SRE has to be taught and some staff must teach it. The risk for a teacher is that, directly or indirectly, something they say may be interpreted as relating to the subject matter of the Bill and may be interpreted as discriminatory by pupils of a homosexual orientation. The noble Lord, Lord Alli, was right when he said earlier that teachers of course have to act as professionals. They can develop rules; for example, that in their classroom no teacher or pupil can be asked a personal question. However, the reality is that a classroom of 30 or more teenagers is not the easiest place to operate. There may be pupils who see an opportunity to embarrass a teacher by asking repeated questions, by making suggestions or by their conduct generally as the teacher tries to ensure that all the children are kept safe, that there is no bullying and that the children actually learn. Teaching is not the easiest occupation.

We even have to take into account that a teacher may have to face what may be a mischievous, but nevertheless damaging, allegation of discriminatory behaviour which is completely unwarranted. We know that there are mischievous and unfounded allegations of sexual abuse of children in schools. I know that that is a difficult issue to introduce in this context but we need to be aware that working in the classroom is not as simple as some noble Lords appear to think it is.

Finally, it is my belief that this amendment, or a similar one, could be introduced to prevent the adverse and unintended consequences to which the noble and learned Lord, Lord Wallace of Tankerness, referred earlier. It would provide protection against detriment resulting from the operation of Section 149 for any person holding conscientious beliefs that marriage is between a man and a woman. It would not permit homophobic action, but it would provide a balancing between these difficult and sensitive competing rights.

Lord Alli: My Lords, I think we have debated this issue, like a number of others, over and over again, so I do not wish to detain the House for any longer than is necessary. However, I want to say that this is a good Bill and a balanced Bill. As the Minister said, there is some work to do before Report, but this is the last amendment in Committee. I put on record my thanks, and I am sure the thanks of many Back Benchers, to the Front Benchers of both parties for the way in which they have conducted this stage of the Bill. It does them credit, and this House too.

Baroness Thornton: My Lords, I shall address my remarks to the actual amendment, which is about the public sector equality duty. This amendment seeks to place an express requirement on public authorities to protect individuals who hold a view that marriage should be between a man and a woman under the public sector equality duty. This amendment misunderstands what the public sector equality duty does, and I am slightly surprised that the noble Baroness would suggest it. It is a duty to:

"have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act:

Advance equality of opportunity between people who share a characteristic and those who don't:

Foster good relations between people who share a characteristic and those who don't".

It is not a duty to compel or ensure certain actions by a public body, as Amendment 56A would require. However, that due regard applies to religious belief in the same way that it applies to sexual orientation. No other beliefs or specific issues are singled out for special consideration under the public sector equality duty. Singling out one particular belief above any other risks undermining the equal balancing of protections for religious organisations and other protected characteristics, which is specifically enshrined by this duty. We suggest that this amendment is both unnecessary and potentially damaging to the protections—

Baroness O'Loan: My Lords, I did not deliver the speech I had intended to deliver, given the lateness of the hour. I therefore ask the noble Baroness whether she is aware of the increasing jurisprudence of the

European Court of Justice, which indicates that in balancing individual rights and rights which affect such issues as discrimination on grounds of sexual orientation, the courts actually give a greater measure of discretion to the state. It is therefore important that the state acts to protect individuals. I can make that argument at greater length if colleagues wish me to do so, but that is the point I ask the noble Baroness.

Baroness Thornton: I thank the noble Baroness for those comments, but there is nothing that she has just said that would take me away from the view which I have just expressed, because this is domestic law. I add that I think the Government team which has handled this Bill, led by the noble Baroness, Lady Stowell, has done a brilliant job in taking it through Committee. I look forward to the next stage.

Lord Martin of Springburn: My Lords, I have listened to many amendments in Committee. Like the noble Baroness, Lady O'Loan, I worry that it would be a great pity if someone in a local authority stated publicly that the most important thing to them was marriage between a man and a woman, and that somehow they were threatened with the loss of their job, but the local authority would not step in to try to defend them. I know it is late in the evening, but I have been here for the best part of the day, and if the Chief Whip will allow me—

Baroness Anelay of St Johns: For the assistance of *Hansard*, I make it clear that it was not the Government Chief Whip who made any comments. I would not want that to be recorded in *Hansard*.

Lord Martin of Springburn: I am sorry about that. I am behind the times. I worry, and I reflect on some of the cases. In one case it was not a local authority but a government agency—namely, a housing association—which disciplined someone because they had left a crucifix on their van. It was claimed that offence would be given to other drivers if that type of thing continued. I share the worries of the noble Baroness, Lady O'Loan.

12.15 am

Lord Wallace of Tankerness: My Lords, I am grateful to the noble Baroness, Lady O'Loan, for her further amendment regarding the public sector equality duty. It is similar, although not identical, to Amendment 13 in the name of the noble Baroness and that of the noble Lord, Lord Singh, which the Committee discussed at length last Wednesday. I certainly do not intend to rehearse all the points that were made then. I undertook, following that debate, to write to the noble Baroness on a number of points that were made in that debate—I think that that suggestion was made by the noble Lord, Lord Deben—and to circulate the letter to all those who took part. I also indicated that if the recipients of that letter wished to follow it up with a meeting, I would more than happy to do so. Certainly, if there are any further points arising out of the contributions to the debate that have been made this evening which require to be covered by that, I shall do so.

The amendment is couched in different terms from Amendment 13 and would have a slightly different effect but, again, the Government believe that it is unnecessary and potentially harmful. As we discussed last week, the public sector equality duty places a duty on public authorities to have due regard to the need to eliminate unlawful discrimination because of, among other matters, religion or belief. Where this is relevant to the exercise of their functions, public authorities are already required to have due regard to the possible impact of their policies on people who believe that marriage should be between only a man and a woman. The amendment is therefore unnecessary.

However, the amendment is also potentially harmful—the noble Baroness, Lady Thornton, was right to say that this is our domestic legislation. The amendment would mean that public authorities would be required to consider this particular belief about marriage, giving precedence to it over all the other beliefs to which they are required to have due regard whenever they take a decision, regardless of the context and the relevance to the decision.

Moreover, the public sector equality duty is a duty to have due regard. It is a duty to think; it is not a duty to act or to achieve a particular outcome. The amendment goes far beyond the duty to have due regard. It places a duty on a public authority to ensure that the belief that marriage should only be between a man and a woman is respected, and to ensure that no one expressing such a belief will suffer any detriment. That is of course a desirable outcome, but it is not clear to me how any single public authority, or indeed all public authorities working together, could ensure that that would happen. I take the point made by the noble Lord, Lord Martin of Springburn. It was in one of our first debates that my noble friend Lord Lester made the point—I think that the noble Lord, Lord Alli, then quoted it back—that you cannot legislate against some public authorities or some individual doing a daft thing; "idiotic" may have been the word that he used. Mention has been made of the case of the housing officer who lost his job for something that was put on a public website, when in fact the law actually protected him. When the case went for judicial review, the judge put it on the record that, had he taken the matter to an employment tribunal, he would have had more substantial damages than he was able to get under a judicial review. The law has worked. I say to the noble Lord, Lord Martin, that I think that we all get very frustrated sometimes when daft things are done, but we believe that the Bill ensures that those protections are in place. I do not believe that the way to deal with those occasions where public authorities have not applied the current laws properly is to start trying to meddle with the equality protections and to risk unintended consequences. Rather, we should address them by doing what we can to ensure that public authorities understand the nature of the requirements on them and what they mean in practice.

That is why, as I explained on Wednesday and as my noble friend Lady Stowell has also explained, the Government will work with the Equality and Human Rights Commission to ensure that its guidance for public authorities is as clear as possible, in particular by making it clear that the equality duty cannot be

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used to penalise an organisation or individual for opposing same-sex marriage and indeed that to do so would be unlawful. I also remind the Committee of my commitment given last Wednesday that we will address issues relating to the equality duty when we respond to the Joint Committee on Human Rights before Report.

On behalf of my noble friends Lady Stowell and Lady Northover, I thank noble Lords for the kind words that have been said. I thank all Members of the Committee, because we have had some very important and worthwhile debates. I hope that the noble Baroness, Lady O'Loan, has received the further reassurance on this issue that she has sought. I therefore ask her to withdraw her amendment.

Lord Mackay of Clashfern: My Lords, before the noble Baroness withdraws her amendment, I would like to associate myself from this side of the House with her comments about the Front Benches on both sides.

Baroness O'Loan: My Lords, in withdrawing this amendment, I also express my appreciation to the Front Bench for the way in which they have conducted the debate. I reserve the right to bring this matter back, not in multiple amendments, but in an amendment on Report. I beg leave to withdraw the amendment.

Amendment 56A withdrawn.

Schedule 7, as amended, agreed.

Clause 16 : Orders and regulations

Amendment 57 not moved.

Amendment 58

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

58: Clause 16, page 12, line 37, leave out paragraph (a)

Amendment 58 agreed.

Clause 16, as amended, agreed.

Clauses 17 and 18 agreed.

Clause 19 : Short title and commencement

Amendment 59 not moved.

Clause 19 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 12.22 am.

Grand Committee

Monday, 24 June 2013.

3.30 pm

The Deputy Chairman of Committees (Baroness Andrews): My Lords if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Local Audit and Accountability Bill [HL]

Committee (3rd Day)

3.30 pm

Schedule 5 : Eligibility and regulation of local auditors

Amendment 14F

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

14F: Schedule 5, page 43, line 21, leave out "1221 (approval of third country qualifications)"

Lord McKenzie of Luton: My Lords, Amendment 14F is quite a narrow probing amendment. At the start of our deliberations today, perhaps I should just make clear that although we have some concerns about the fragmentation of the new local audit regime—an amendment to cover this will be forthcoming on Wednesday—we accept the broad technical means by which the Government seek to implement its framework, drawing on the Companies Act 2006 and the Audit Commission Act 1998. Our probing should be seen in that context.

The Companies Act 2006 sets out who may be treated as holding an appropriate qualification for the purposes of acting as a statutory auditor. A Secretary of State can include in this persons who are qualified to audit accounts under the law of a foreign country and someone who holds a professional qualification in a specified foreign country. For these purposes, an EU state is not treated as a foreign country. These provisions are specifically excluded from operating under the Bill, so can the Minister please confirm, under the local audit regime, what is the position of individuals qualified in an EU country regime, especially given the broader nature of local bodies' audit? What is the rationale for excluding other foreign qualifications, which are included in the Companies Act? I beg to move.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, the Government believe that the Bill provides for sufficient suitable qualifications to be recognised for the purposes of local audit. As the noble Lord said, this amendment seeks to find out about the qualifications and, in particular, the approval of overseas qualifications from non-EU countries for the purpose of statutory audit. It also sets out the conditions that will need to be satisfied relating to the assurance of professional competence of those holding an overseas qualification.

Section 1221 provides for approval of all those in a specified country who are qualified to audit accounts or only those who hold specified qualifications in that country. In the case of the latter, the Secretary of State may specify any additional requirements to be satisfied. The section allows the Secretary of State to recognise an overseas qualification only if there is comparability and/or equivalence of treatment of United Kingdom qualifications in the country in question.

For local audit, an auditor will hold a suitable qualification if it is one recognised under Part 42 of the Companies Act 2006 or if it is another qualification recognised under the Bill. If a third-country audit qualification has been recognised for company audit through the application of Section 1221 of the Companies Act 2006, it would be deemed an appropriate qualification for local audit. I must stress that we would expect anyone employed under those circumstances to have experience of local audit as carried out in this country. I hope that will help the noble Lord and that he will feel able to withdraw the amendment.

Lord McKenzie of Luton: I thank the Minister. I may have missed it, but what provision allows the Secretary of State to take account of a third-country qualification? I ask because the Bill specifically omits the provisions of the Companies Act which permit that. I was trying to spot the precise bit of the Bill that allows that to happen. I think it is entirely appropriate that it does—if it does—but if the noble Baroness could give me the particular reference, that would be good. Presumably for EU nationals, the position has not changed. Whatever EU directive applies, they would be entitled to be considered, as indeed someone with a UK qualification would be in Europe.

Baroness Hanham: My Lords, EU auditors may be subject to an aptitude test if they practise local audit in the United Kingdom on a permanent basis. Under all these provisions, the expectation is that people would be qualified, as they are in the United Kingdom, to carry out local audit. We shall come to that further on, because it is the qualifications that will matter. We would not see any dilution of the competence of auditors, whether they come from here, the EU or non-EU countries. Have I still not answered the noble Lord's question?

Lord McKenzie of Luton: Perhaps we might deal with it in correspondence. I was just trying to see the particular reference that allows back in the approval of those with third-country qualifications. I can see the provision that takes it out of the starting point, which is the Companies Act 2006. I think there may be something else coming from the Box.

Baroness Hanham: My Lords, it is blindingly obvious—the provisions in paragraph 8 of Schedule 5 to the Bill, which amend the Companies Act. Why did I not think of it immediately?

Lord McKenzie of Luton: My Lords, I think I am grateful for that follow-up. I shall read the record to see that it remains blindingly obvious. From what the noble Baroness has said, I do not disagree and am supportive of the provisions and facilities made in the

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Bill. It is important that there is no lessening of standards, whether a qualification is an overseas one or a UK one. For the time being, I beg leave to withdraw Amendment 14F.

Amendment 14F withdrawn.

Amendment 14G

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

14G: Schedule 5, page 44, line 27, leave out paragraph 6

Lord McKenzie of Luton: My Lords, this amendment relates to Schedule 5 again, which relates to the new regulatory framework for auditors of local public bodies. It draws heavily, as we have discussed, on the framework contained in the Companies Act 2006, the provisions of which, as I have said, have our broad support. Schedule 5 applies Part 42 of the 2006 Act to local audits, as it does to statutory audits, but with some exclusions. The purpose of this amendment is to understand the exclusion of Section 1215(2) to (7) of the Companies Act.

Section 1215 takes us back to the subject of independence, and requires a statutory auditor to resign immediately on becoming prohibited from acting because of lack of independence, and this requirement is imposed similarly on local auditors. However the legal sanctions which underpin the failure to comply with this requirement for statutory auditors appear to have been omitted in the case of local audits. Doubtless the Minister will tell me that it is blindingly obvious and covered somewhere else. Could she draw my attention to a specific provision? I beg to move.

Baroness Hanham: My Lords, we may need to explain to *Hansard* that I was joking. The new audit framework sets out robust arrangements to provide confidence in the independence of the local auditor. This amendment seeks to replicate the criminal offences in Section 1215 of the Companies Act 2006 in the local audit framework, as the noble Lord explained. We have chosen not to replicate these particular criminal offences as we consider that there are other, more suitable mechanisms to do so—in short, the disciplinary powers of the recognised supervisory bodies and the ethical standards raised by the Financial Reporting Council.

The rules and practices that the recognised supervisory bodies will put in place will cover the independence of the auditor. They will also outline the disciplinary sanctions that could be applied if the independence requirements were found to have been breached. This could ultimately include the withdrawal of registration, and other sanctions could include that the firm responsible for the audit would not be able to accept new audits or particular types of audits, that a person may no longer be a responsible individual and that a specific employee may no longer be involved in audit work.

The Government have also been mindful of not introducing any new offences unless there is a compelling case to do so. Even though these offences are in the Companies Act 2006, they would be considered as new offences if applied to the provisions in the Bill.

That is the explanation. I hope that the noble Lord will be happy with it and that he will feel able to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am certainly going to withdraw the amendment. If I understand the position correctly, there will be a difference of approach between local audit and the Companies Act provisions, where private sector auditors will continue to be subject to this regime. In a sense, they will still be subject to the supervisory requirements for local auditors that the noble Baroness outlined. Is that correct?

Baroness Hanham: My Lords, I think it is correct. As I suggested, the Financial Reporting Council issues ethical standards for auditors, and those cover the integrity, objectivity and independence of auditors, and it applies in the audited financial statement. Therefore, I think that we are covered from that point of view. We have also been working with regulatory partners, including the Financial Reporting Council, to decide how these may need to be applied to auditors of local bodies. Therefore, I think that some discussion is still going on about the matters that the noble Lord has raised.

Lord McKenzie of Luton: I will not dwell on it but I thought that one of the objectives of the current exercise was to align local audit with private sector audit arrangements. This seems to be creating a divergence. However, I am not sure that there is going to be further fruitful discussion on this. I hear what the Minister has said and I beg leave to withdraw the amendment.

Amendment 14G withdrawn.

Amendment 14H

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

14H: Schedule 5, page 46, line 3, at end insert—

"( ) The requirements must in particular take full account of the need to understand the wider scope of public audit covering the audit of financial statements, regulatory, propriety and value for money."

Lord McKenzie of Luton: My Lords, as we discussed, Schedule 5 is concerned with the eligibility and regulation of local auditors. It covers independence requirements, the qualification requirements, the monitoring of audits and the inspections. The requirements that may be specified to be an appropriate qualification, enabling a person to act as a local auditor, include their qualification experience, practical training, examinations passed and so on. However, this amendment specifically requires that, in evaluating whether somebody has an appropriate qualification, regard must be had to the need to understand the wider scope of public audit. In fact, this is an issue that also runs for the Financial Reporting Council, which is of course to be the overall regulator.

The scope of public sector auditing was raised at the pre-legislative scrutiny committee—in particular, during the exchange with Mr Steve Freer, the chief executive of CIPFA. On 20 November 2012, he said in response to Question 378:

"Over the past 20 or 30 years—the period in which the commission has been in operation—we have seen that the entry of firms into this market"—

that is, the public sector market—

"is quite difficult. That reflects the fact that the transition from private sector auditing, which firms are clearly extremely good at, to public audit is not straightforward; it is very challenging and difficult".

He went on to explain that the firms currently involved in public audit work would tend to set up specialist divisions. The responsibilities of auditors in the public sector include not only statutory functions in relation to financial statements but statutory functions in relation to being satisfied that there are proper arrangements for securing economy, efficiency and effectiveness in the use of resources.

It is clearly vital that an understanding of and an ability to undertake this wider role is part of an appropriate qualification for local auditors. The Minister will doubtless tell us that it is implicit in the requirements that may be specified in paragraph 8(5) of Schedule 5, but the amendment would make it explicit. It gives us the chance to probe the Government's assessment of how many firms are likely to be in the market for local audit work, certainly for principal body audits. We are told that there were just 13 firms which prequalified when the Audit Commission outsourced its in-house practice, although only seven firms were appointed. Schedule 5 provides for the register of auditors of be maintained. When is it expected that the register will first be published and when might we have sight of the draft regulations? In particular, can the Minister say something more about the Government's assessment of how many firms are likely to be in the market for local audits, and will they be appropriately qualified and have an understanding of the wider role of public audit? I beg to move.

3.45 pm

Lord Tope: My Lords, I express my appreciation to the noble Lord, Lord McKenzie, for raising this issue, because I know it is one of concern. Indeed, it was one of the concerns, as I think he mentioned, expressed by the Chartered Institute of Public Finance and Accountancy, best known to us all as CIPFA. One of the concerns that it raised in its Second Reading briefing was that the wider scope of public audit has not been fully embedded in the Bill. This is perhaps an example of that. CIPFA makes the point, which those of us familiar with local government will understand very well, that public audit is a good deal wider than private sector audit. I do not think I need to labour the point. We are looking forward to the Minister's response, which I see she is eager to give us.

Baroness Hanham: Too eager, perhaps. I say at the outset that we are absolutely clear that the auditors must be competent, appropriate and steeped in local government finance. We should start there, with that as the interest common to us all, to make sure that any changes are made in the most appropriate way so that we can be sure of getting the same high standards of auditing that taxpayers expect and to which they have been accustomed.

The Bill sets out a pretty robust regulatory regime. The National Audit Office will have to develop the underpinning code of audit practice and produce supporting guidance that will set out how auditors perform their role. What this means, essentially, is that the boards going for public audit will not change. In addition, the future local audit framework will require all auditors to be suitably qualified and competent to carry out local audits.

The Bill requires auditors to hold an appropriate qualification. This is either a qualification recognised under Part 42 of the Companies Act 2006, for a statutory audit, or another qualification recognised under this Bill. The Secretary of State will be able to make regulations setting out the minimum requirements that other qualifications will need to meet in order to be recognised for the purposes of local audit.

It is clearly crucial that local auditors are, as I have said, suitably qualified, that they attain an appropriate qualification and that that demonstrates that an individual understands, among other things, auditing standards, accounting standards and audit procedures. These standards and skills must be applied to audit assignments regardless of whether they are in the public or private sector.

However, while holding an appropriate audit qualification is necessary, it is not sufficient in itself for those individuals within firms assigned responsibility for signing audit reports of local bodies. What is important for local audit is that auditors have the skill and experience of local audit, which includes understanding the wider scope of public audit. As such, we believe that the amendment is unnecessary as the Bill requires all individuals to have this appropriate level of competence to carry out local audits, regardless of whether they hold a qualification under Part 42 of the Companies Act 2006 or another one recognised under the Bill. This critical requirement regarding competence is set out in paragraph 27 of Schedule 5. The amendment would apply only to the other qualifications recognised under the Bill, and not those recognised under Part 42 of the Companies Act.

It maybe helpful for me to outline briefly how the framework works for the companies sector and then explain how the framework for local audit will ensure that all local auditors understand the wider scope of public audit, thus removing the need for this amendment. Under the Companies Act, it is for the recognised supervisory body to set out the requirements for approving those individuals who will be responsible for signing audit reports for companies. The requirements established by the recognised supervisory bodies are subject to agreement and oversight by the Financial Reporting Council. Once an individual has been approved to sign an audit report of a company, it does not follow that they could sign such a report for any company. That individual would need to be competent to sign the audit report of the specialism of that particular company; they would need to have the relevant skills, experience and knowledge of the relevant subject matter of the company or industry in which they work.

We are replicating this framework for local audit. The recognised supervisory bodies for local audit will have responsibility for approving the individuals

[Baroness Hanham]
nominated by its member firms for signing the audit reports of local bodies. This will also be overseen by the Financial Reporting Council. Under rules that it will agree with the Financial Reporting Council, a recognised supervisory body will approve an individual to take a key responsibility in the audit of a local body only if that individual has an appropriate level of competence to carry out local audits. A firm that cannot demonstrate that a nominated person has recent experience of auditing a local body and understands the wider scope of local audit will not be considered competent and therefore cannot be approved by the recognised supervisory body.

To provide further assurance on this issue, I should also say that there are established standards and professional obligations with which firms must comply regardless of whether they are appointed to a company or a local public body. In particular, the international standard on quality control requires all firms to have policies and procedures that ensure that individuals have the right knowledge and experience to undertake a specific engagement. For local audit, this would mean that a firm could not put forward an individual to be responsible for a local audit if that individual did not understand the wider scope of public audit. If it did so, it would be in breach of its obligations and would risk breaching the terms of its registration with the recognised body.

The noble Lord, Lord Tope, raised the question of CIPFA and the discussions that have taken place. It may be helpful for noble Lords to know that I recently saw and had discussions with CIPFA about this, and it is being closely involved in discussions that are going ahead with the council, so its views are well taken into account. We recognise that it is probably one of the very few bodies with qualifications that continue to exist for auditors who will be required to do this work.

The register will be published when we see the draft regulations, which will be available at the next stage in the Commons. The register will be published in 2016, in time for the local appointment of auditors. We have discussed the question of how many firms will be able to do this, and I remember saying earlier that we hope and anticipate that smaller local firms will be able to get their staff qualified, if they do not have that qualification, so that they can bid for contracts. We expect that the smaller, new contracts will open up the market to smaller firms. We are anticipating that this will not just be the big four or the bigger four and three bidding—which I think got us to seven before—and that there will be increasing competition. We believe that there should be plenty of smaller companies available, once local authorities start to appoint their own auditors.

I hope that has picked up the points on the register and those made by CIPFA. I know that it is involved in what is going on to ensure that these regulations and qualifications are satisfactory.

Lord McKenzie of Luton: I thank the Minister for a very full reply. It is very helpful to have that on the record. I also thank the noble Lord, Lord Tope, for his support for this line of enquiry. I note that the register will not be available until 2016, but it is good that the draft regulations will be available when the Bill goes into the Commons. I think we shall have to see the outcome of that and how many local firms end up in a competitive position in the market. One of the fears is that those firms that are active in the local audit market currently do it through specialist divisions. They have the financial clout to invest in the training in these sorts of arrangements. I think we would have common cause in wanting there to be a number of firms in the market—certainly it should be expanded from the existing base. I am somewhat sceptical about whether that would be achieved. In the mean time, I beg leave to withdraw the amendment.

Amendment 14H withdrawn.

Amendment 15

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

15: Schedule 5, page 49, leave out lines 15 and 16

Lord Wallace of Saltaire: My Lords, this amendment removes an unnecessary provision from paragraph 16 which is a supplement to paragraph 15 of Schedule 5. Paragraph 15 substitutes Section 1248 of the Companies Act 2006, with which I am sure noble Lords are all familiar. It enables the Secretary of State to direct a relevant authority to retain an auditor to carry out a second audit in certain circumstances.

Paragraph 16 substitutes Section 1249 of the Companies Act 2006 and inserts supplementary provisions about second audits. Subsection (3) states that a direction given to retain a second auditor may be enforced by injunction, which exactly replicates the wording in Section 1249 of the Companies Act. However, given that all public authorities, unlike companies, are subject to judicial review, we now wish to remove subsection (3) which refers to the use of an injunction; this is clearly not necessary. Should a relevant authority fail to comply with the direction relating to a second audit, an action could be brought for judicial review. This is currently the way in which local public bodies are brought to account. This is a minor and technical amendment that removes an unnecessary provision. I beg to move.

Lord McKenzie of Luton: I thank the noble Lord, Lord Wallace of Saltaire, for the explanation of this amendment, and I have no problem with it. My question was about what alternative the Government had in mind by deleting this enforcement by injunction. The Minister dealt with that; it is by judicial review. As to being familiar with the Companies Act 2006, I have a great affection for it; it was the first piece of legislation I ever worked on. I spent days carrying the bag of the noble Lord, Lord Sainsbury, around committee rooms on it, although do not ask me what is in it. I support this amendment.

Amendment 15 agreed.

Schedule 5, as amended, agreed.

Clauses 17 and 18 agreed.

Schedule 6 agreed.

4 pm

Clause 19: General duties of auditors

Amendment 16 not moved.

Clause 19 agreed.

Clause 20: General duties of auditors of accounts of health service bodies

Amendment 16A

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

16A: Clause 20, page 14, line 12, leave out subsection (4)

Lord McKenzie of Luton: My Lords, Clause 20 covers the general duties of auditors of a health service body and sets down the areas on which the auditor must be satisfied. These include that the body has made proper arrangements for securing economy, efficiency and effectiveness in the use of its resources. Clause 20(4) precludes the auditor's opinion on the accounts making any reference to this requirement unless he is not satisfied in that matter, so the auditor cannot positively state that he is satisfied that the body has made proper arrangements for securing economy, efficiency and effectiveness in the use of its resources. Obviously, an informed reader of the auditor's report would be able to interpret what appears to be silence on this, but it seems an odd restriction. Perhaps someone could explain its purpose. I beg to move.

Baroness Hanham: My Lords, either my noble friend Lord Wallace or I will reply to the amendments. In this case it is me.

The amendment would remove the provision for auditors to report on value for money only when they are not satisfied that the authority has made arrangements for securing value for money. This would result in every audit report containing a specific conclusion on value-for-money arrangements.

I hope that it will help the Committee if I start by setting out why the Bill provides for value-for-money conclusions to be included only where the auditor is not satisfied about the arrangements. The provision relates only to the reporting of the results of the audit. The local auditor will still be required to carry out work to confirm that the arrangements for securing that value-for-money arrangements are made. The technical standards for that work will be set out by the National Audit Office in the code of audit practice that it will produce.

The report of the auditor is a detailed and technical document. The Government are of the view that for health bodies—in this clause we are referring only to health bodies—the audit report should contain those matters that are most important to the reader. We consider them to be: the opinion on the true and fair nature of the accounts; for those bodies that are directly funded from resources provided by Parliament—which includes all bodies that are now part of the health service—to confirm that the funds have been used for authorised purposes; and any cases where arrangements to secure value for money are not appropriate. This approach would provide for greater focus and attention where value-for-money arrangements are not in place.

The provision in the Bill also aims to bring consistency for all health bodies. Currently, the audit opinions of health commissioning bodies and NHS trusts contain a specific opinion on value-for-money arrangements. The audits of foundation trusts do not, so we are taking the opportunity to bring all reporting into line and to improve the clarity of auditor reporting in the health service. I stress that the work carried out by the auditors is the same, whatever the reported opinion.

I hope that that provides greater understanding of what we are doing and that the noble Lord will withdraw his amendment. If not, I look forward to what he is going to say.

Lord McKenzie of Luton: My Lords, I am grateful to the Minister, as ever, for her explanation. I remain somewhat bemused about why there could not be positive reporting in this area, although it is not a matter that I intend to pursue. I accept that, whatever the outcome, the nature of the work and the task in hand would be undertaken in any event.

The Minister said that the opportunity had been taken to align foundation trusts and other health bodies' provisions, presumably, from what she said, in favour of the foundation trust formulation. Is that right?

Baroness Hanham: Yes, my Lords. At present the other parts of the health service are required to have value-for-money audit reports. Foundation trusts do not. The noble Lord is correct that it is being amalgamated under the foundation trust umbrella.

Lord McKenzie of Luton: I am grateful for that further explanation. I am bound to say that it did not give me much greater comfort. Given what has gone on with some foundation trusts—I think we will come on to them later—and how many reports there have been about the nature of their financial circumstances, they do not seem to be a good precedent on which to focus an alignment of practice. Perhaps we will pick up that issue later in our proceedings. In the mean time, I beg leave to withdraw the amendment.

Amendment 16A withdrawn.

Clause 20 agreed.

Clause 21 agreed.

Clause 22: Offences relating to section 21

Amendment 16B

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

16B: Clause 22, page 16, line 3, at end insert—

"(d) a person who fell within any of the provisions under paragraphs (a) to (c) at a time to which the information or explanation required by the local auditor related."

Lord McKenzie of Luton: My Lords, this is another quick one, I expect. This amendment relates to an offence under Clause 22. Clause 21 provides for an auditor's right to documentation and information. Clause 22 makes it an offence without reasonable excuse for a person to obstruct the process or to fail to comply with any requirement of a local auditor. A person guilty of an offence can be subject to a fine on summary conviction. A local auditor can recover reasonable expenses in connection with proceedings alleged to have been committed by certain persons from the relevant authority. Those persons include, for example, a member or officer of the relevant authority. The amendment seeks to makes certain that the right to recovery runs, albeit that the person committing the offence is no longer a member or officer of the authority. This raises the issue of when an offence might have been committed when it includes, for example, continuing failure to provide information or explanations by somebody who has ceased to be a member or officer and perhaps put themselves in that position deliberately. This ties the position back to Clause 21(8)(f), which brings such individuals within the scope of those from whom the auditor can seek information. We do not want anyone to escape by jumping ship or, indeed, for the recovery of costs to be precluded in those circumstances. I beg to move.

Lord Wallace of Saltaire: My Lords, Clause 21 gives auditors a right to access documents and information that they consider necessary for them to exercise their functions under this Bill. Clause 22, as the noble Lord has just explained, provides that a person who obstructs the auditors' rights under Clause 21, without reasonable excuse, commits an offence. Clause 22 enables the auditors to recover their expenses from relevant authorities in connection with offences committed by members or officers of the authority.

This amendment enables me to highlight two improvements we have made to the Bill since we published it in draft. First, we have included former members and officers of a relevant authority within the duty to provide information and explanation as required by the auditor. Secondly, we have increased the provisions supporting the auditors' recovery of their costs. Auditors will be able to recover reasonable costs from the authority being audited for their time. We expect that the contracts between the auditor and relevant authority will also enable this, but to remove doubt, the Bill includes specific provisions to enable the auditors to recover costs or expenses for specified functions.

As I have set out, Clause 22 enables the auditors to recover reasonable expenses incurred from the authority as a result of any offence committed by a member or officer of the authority or a person within a connected entity of that authority.

This amendment would extend the provision set out in this clause to enable auditors also to recover expenses regarding offences committed by former members or officers of an authority from the relevant authority. This is a matter to which we gave some thought when we were strengthening the provisions supporting the auditor to recover costs and expenses incurred in undertaking its functions. We concluded that there are some circumstances under which it would not be right for a relevant authority to be required to fund these costs automatically; for example, where a person was a member or officer at the time to which the information or explanation relates but commits the offence of obstructing or not complying with the auditor after they have left the position. Rather than legislating to provide for such rare situations, we consider that it would be preferable for the relevant authority and auditor to agree via their contracts how the auditor's costs and expenses would be covered in such an unusual situation. I hope my explanation allows this amendment to be withdrawn.

Lord McKenzie of Luton: I am grateful to the noble Lord. I think his explanation confirms what I thought was an issue about somebody who was involved and who had committed an offence but subsequently left the organisation. In those circumstances, if I understand the explanation, that precludes the recovery of the auditor's reasonable expenses. Did I understand that correctly?

Lord Wallace of Saltaire: My understanding is that it means that the recovery of the reasonable costs does not automatically fall to the authority. If the person who had left the employment of the authority was unreasonably obstructing the provision of the information—refusing to give it—there are circumstances in which the reasonable costs might indeed fall on him or her; that would be a matter to be agreed in the contract between the auditor and the authority.

Lord McKenzie of Luton: I am grateful for that. I missed that part of the explanation originally. If we are not saying that the costs are not going to be recovered, if it is not the audited body, it is going to be the individual. I am grateful for that explanation, and I beg leave to withdraw the amendment.

Amendment 16B withdrawn.

Clause 22 agreed.

Amendment 17

Moved by ***Lord Wills***

17: After Clause 22, insert the following new Clause—

"Auditors right to documents and information of private contractors

(1) A local auditor has a right of access at all reasonable times to audit documents from private companies that the local authority have contracted services to during the last financial year.

(2) A local auditor must publish any audit documents, obtained under subsection (1), as part of a local audit publication."

Lord Wills: My Lords, both this amendment and Amendment 18A, which is grouped with it, seek to improve transparency in these new arrangements for local government. Such transparency is key to greater accountability and therefore to better government and over and over again we have seen what damage can be done when transparency is smothered. The NHS has

provided some tragic examples recently, as the Francis report into Mid Staffs and the Grant Thornton report for the Care Quality Commission have both shown.

The work carried out by private contractors for local authorities will often be of equal importance in the way that it involves issues of public safety, but it may also raise other issues of concern to the public such as corruption. The public should also have rights of access under the Freedom of Information Act to the work carried out by local auditors, because they are the ultimate clients of those auditors. Those auditors may be carrying out their tasks for a local authority, but that local authority serves the public.

The amendments are particularly necessary because the Localism Act envisages that a growing proportion of local authorities' functions will be carried out for it by private companies under contract. If the authority carries out the work itself, then all information about that work is subject to the Act and subject, of course, to the exemptions in the Act. But the public's right to information is less straightforward when the work is done by a private contractor. Section 1 of the Freedom of Information Act establishes that the right of access is to information which a public authority holds. Section 3(2)(b) of the Act provides that information which another person holds on behalf of the authority is treated as held by the authority itself.

However, how much of the information a contractor holds about the contract is held on behalf of an authority? The answer is not self-evident. The contract itself may specify that particular information is to be treated as held on behalf of that authority or it may say a specified type of information must be provided to the authority if it asks for it, to help it answer an FOI request. But what if such a provision applies only to a very limited class of information?

4.15 pm

The effect may be to exclude the public from access to any information which is not specifically mentioned. The amendments will help, I think, to overcome any such oversights. I return here briefly to an example which I have given previously in your Lordships' House about the contentious issue of parking tickets. In 2007, Islington Council received a freedom of information request for information about the criteria used to reward parking attendants for good results. The parking attendants were employed by National Car Parks Ltd under a contract with that council, and the rewards included bonus performance payments and points that could be spent at Argos.

The requester wanted anonymised information about the rewards provided to the best performing attendants, including the number of penalty charge notices issued by them, the number of complaints involving those attendants and the number of notices subsequently cancelled. The requester clearly suspected that the incentives were leading parking attendants to issue as many notices as they possibly could, regardless of the justification. The council replied that it did not hold such statistics, and the contract did not give it power to obtain them from National Car Parks.

The Information Commissioner examined the contract in force at the time and found that it imposed no requirement on National Car Parks to provide statistical information about the Argos points, the performance payments to individual staff or the criteria used to decide who should receive these. The commissioner concluded that this information was not held on the council's behalf and was not accessible to it under the Freedom of Information Act. Yet that information was central to any attempt to understand whether the incentives were encouraging notices to be issued improperly.

I am sure that many of your Lordships will be aware of just how sensitive this issue can be. This is the kind of problem that may occur when people attempt to use the Freedom of Information Act to obtain information about such contracts. The amendments seek to address some of these issues, although sadly it is not possible within the scope of this Bill to address all of them.

Amendment 17 seeks to make the work of local auditors scrutinising private sector bodies performing work contracted to them by local authorities—in other words, work of a public nature—accessible to the public under the Freedom of Information Act. It seeks to make it clear that such bodies are so covered in the Bill.

That is not to say that such information will have to be disclosed. If the local auditor is asked to publish information under the Freedom of Information Act, under proposed new subsection (2), it will be subject to the exemptions in the Act to protect legitimate interests. For example, the exemption in Section 43 of the Act protects trade secrets or information likely to prejudice the commercial interests of the contractor or the authority, subject to a public interest test. Again, Section 40 protects personal information about any identifiable individual, including members of the contractor's staff, if disclosure would breach the principles of the Data Protection Act. Other exemptions apply where disclosure would be likely to endanger health or safety, prejudice law enforcement or defence, or cause other types of harm.

Whenever freedom of information is involved, those opposed to transparency in government rehearse arguments about cost as a reason for opposing it, and I hope that Ministers will not do that today because there need be no substance in such arguments. This requirement should not be onerous for local auditors. They will have the raw data already; they will not have to set up new mechanisms to collect them. All they will have to do is process them, and efficient information management systems should make that easy and cheap. If local auditors do not have efficient information management systems, then they should have. They should accept whatever marginal costs transparency to the public imposes on them as the price of their entry ticket into such a lucrative new stream of public sector work.

If any local auditors seek to pass on such marginal costs to the local authority, then competition for this new stream of work should enable the local authority to find an auditor who absorbs such costs. If the Government were to suggest—and I hope they will not—that such competition does not exist because of the relatively limited number of such auditors available to do such work, then, as a Government that believe in

[LORD WILLS]
the virtues and beneficial effects of free markets, I hope they will make sure that such competition exists in future.

Amendment 18A is a straightforward attempt to place local auditors in the same position as the Audit Commission now being replaced by them in making them subject to the Freedom of Information Act. As with Amendment 17, this provision will be subject to the exemptions in the Act to protect legitimate interests. I tabled this amendment in addition to Amendment 17 because that amendment only provides access to information which the auditor obtains from the contractor, not to other information held by the local auditor. Although some of this information will come from the local council, there is no right of access to other information held by the auditor, including information that it generates itself—notes of meetings with the council or third parties or correspondence that it has with bodies other than the council such as people objecting to the accounts. Amendment 17 on its own does not bring auditors into line with the position of the Audit Commission, which is already fully subject to the Freedom of Information Act, but this amendment does.

There is one further difference between the arguments for Amendment 17 and this one. Amendment 17 seeks to extend transparency. This amendment seeks simply to maintain the existing situation. For the Government to resist it would represent a significant restriction of transparency in local government. Quite apart from the fact that this would resile from the commitment made in the coalition agreement, it would in my view represent another threat to the public interest, in the way I have already described.

We have seen over and again how restricting freedom of information and transparency damages the public interest. It is revealing how those in the Care Quality Commission saw freedom of information as a key threat to their cover-up. The deputy chief executive is quoted in the Grant Thornton report as saying that the internal report,

"had to be deleted as it was posing an 'FoI risk' for the organisation as it was negative and therefore damaging",

for the Care Quality Commission.

In so many ways, work that the local auditors will be scrutinising will be as important to the public as that scrutinised by the Care Quality Commission. We have seen that auditors can be as prone as anyone else to seeking to cover up their mistakes. Transparency and freedom of information are among the best weapons the public has against that.

If the Minister is minded to resist one or both of these amendments, I should be grateful if she could explain why the Government believe that transparency and a duty of candour are so important in the NHS, but not in local government. On the other hand, if the Government resist, as I fear they might, only because they feel the drafting of these amendments is defective in some way—and drafting can usually be improved—I should be grateful if the Minister could at least indicate that the Government are content with the principles underpinning them and work with me to bring forward improved amendments on Report. I beg to move.

Lord McKenzie of Luton: I speak briefly in support of my noble friend's amendment concerning freedom of information. He has opened up a very important area of discussion. My understanding—as he said—is that the Audit Commission, as a public authority, is subject to freedom of information, but that those private sector firms appointed to undertake local public audits are not. The purpose of the amendment is to put them in a position where they would be subject to freedom of information. My noble friend made a good case for this.

As I understand it, there was a consultation on that in 2011 and the Audit Commission's response was that it was sensible for auditors to be brought within the Freedom of Information Act, adding that it would be necessary to make it clear that freedom of information requirements applied only to information held in support of the functions of local public auditors. My noble friend made a good case.

In relation to Amendment 17, I am not quite clear about the extent to which my noble friend wishes this to proceed. It talks about the audit documents from private companies to which the local authority has contracted services. It is sometimes, possibly frequently, the case that it is not just one entity that is providing services. There is a whole range of sub-contractors in the chain and I am not sure quite how it would work in those circumstances. However, I believe that my noble friend has raised a very important point and, like him, I look forward to the Minister's reply.

Lord Wallace of Saltaire: My Lords, I recognise the importance of this transparency issue. I suppose that I should start by declaring an interest as someone who has received a number of parking tickets from Wandsworth Council. It strikes me as odd that I have never received any parking tickets from Bradford Council. London councils must be sharper on the draw on this, and of course they use private contractors rather more than do councils in Yorkshire and, for all I know, councils in Newcastle.

There was considerable consultation on this issue, and I regret to tell the noble Lord that one thing that came back most strongly from it was a fear that this sort of provision would increase audit fees.

Amendment 17 seeks to give auditors a right of access to the audit documents of companies with which local authorities have entered into contracts and a duty to publish those documents. Following consultation, we believe that the Bill provides sufficient powers for local auditors to access all documents and information that they need in order to undertake the audit and that they have powers to publish those documents, and that therefore the amendment is not needed.

Clause 21 includes a broad power that enables auditors to access all documents and information that relate to the relevant authority which the auditor thinks are necessary to support him or her in undertaking the audit. These rights apply not only to documents and information held by the authority, its members and staff but to documents and information held by other persons—including the authority's contractors—that the auditor thinks are necessary to undertake his or

her statutory duties in relation to the audit of the relevant authority. Clause 22 makes it an offence to obstruct the auditor's power to obtain these documents and information or to fail to comply with the duty. These provisions are very similar to those under the existing Audit Commission Act regime, which have not proved to be lacking.

In terms of publication of documents, the auditor is able to refer to information and documents from private companies in audit reports where these are appropriate to the audit of the local authority. In addition, the Government's code of recommended practice for local authorities on data transparency encourages local authorities to publish all expenditure over £500, as well as copies of contracts and tenders. All councils are publishing spend above £500 and many provide contracts information. In late 2012, we consulted on updating the code and making it mandatory through regulations, and we will publish a government response later this summer.

Amendment 18A would amend the Freedom of Information Act so that auditors appointed by local authorities are defined as public authorities and are subject to the provisions under that Act. Auditors appointed by the Audit Commission are not currently included within the remit of the FOI Act. When we originally consulted on the future of local audit framework in spring 2011, we asked whether the future regime should bring local auditors into the Freedom of Information Act. After considering the broad range of responses to the consultation, the Government concluded that there was no compelling case to bring the auditors' public office functions within the remit of the FOI Act.

There are two key reasons for that. First, we believe that doing so would add little to the existing provisions within the Freedom of Information Act and this Bill. Local authorities are already covered by the Freedom of Information Act, and therefore these requests could be directed at the local authority. Secondly, all respondents to the question—I stress "the respondents", not the Government—said that they thought that bringing auditors into the Freedom of Information Act would increase audit fees.

In addition, the Bill already supports local transparency and local electorate access to the auditor in a number of ways. For example, the Bill retains all the existing rights for electors to inspect the statement of accounts and audit documents, and to raise questions and objections with the local auditor. Schedule 11 to the Bill enables an auditor to release material in response to this, unless it could prejudice the effective performance of the auditor's functions.

I hope that that provides assurances that the new regime will support openness and transparency at all stages of the audit process. Auditors will have access to all documents and information that they consider relevant to the audit, local authorities will publish information relating to expenditure and contracts with private firms and local people will be able to inspect the accounts and raise objections with these assurances.

Having debated many previous amendments on other Bills with the noble Lord, I suspect he may nevertheless say that he is not entirely satisfied with all this. If he would like to talk to the Government between Committee and Report, we would be happy to do so, but I hope that, with those assurances, he will be prepared, at this stage, to withdraw his amendment.

4.30 pm

Lord Wills: First, I am very grateful to the Minister for that response and for the offer to talk to the Government. I will be very happy to take it up. He is not right that I am not entirely satisfied with his response; I am not at all satisfied with his response. Indeed, I find myself rather saddened by this resiling from the fundamental principle of the importance of transparency. It is in the coalition agreement that the coalition Government are committed to greater transparency. After all the evidence we have seen from the NHS in recent months, I would have thought that the Government would have been persuaded of the importance of that commitment but, sadly, we have the same old excuses that are always trotted out when freedom of information and greater transparency are proposed.

For all that the Minister says that local authorities should be able to provide all the information needed under freedom of information, he did not address the specific examples that I gave to show why there may be cases where the current provision is not adequate in which people will not be able to gain access to the information to which they are entitled. I hope that when he and his officials read *Hansard*, they will look at that again before we meet so that we can examine this particular case because existing provision is not adequate and neither is the provision in this Bill.

On the question of audit fees, again I had hoped that I would have pre-empted some of these arguments but it is, I have to say, pathetic for the Government to accept this argument. This is an argument for a steady withdrawal of transparency from the public in terms of local government as more and more services are contracted out, as the Government wish, rightly or wrongly, because that is envisaged in the Localism Act. There was a lot of discussion of it when that Bill was going through. As that happens, there will, according to the argument just advanced by the Minister, be decreasing transparency. That stands to reason. The provisions in this Bill are not adequate for that, so I am very disappointed.

Finally, I shall withdraw the amendment for the time being, subject to further discussions with the Minister and officials, but I ask Ministers to reflect on this. There will be abuses of power in local government. Wherever power resides, whether in local government or anywhere else, such as in the National Health Service or in central government, power is abused. Nearly always, greater transparency and freedom of information are the key to preventing, or at least mitigating, the effect of such abuses of power. We have seen it over and over again. So at some point in the future, unless changes are made to the Bill, this Government will be in the dock for having had the opportunity to increase transparency and having refused to do so. The consequences will then be visited, perhaps on some future Government, and some hapless Minister will have to stand up, as we have just seen Health

[Lord Wills]
Ministers do twice in the past few months, and apologise to all those who tried to get the information and were denied it and will then have to take remedial measures. Ministers have a chance to do something now before further damage is done. I hope they will think again.

Lord McKenzie of Luton: Before my noble friend withdraws his amendment, will the Minister clarify something? I think part of his answer was that all the transparency that is needed is provided for in the Bill and the regime that we are discussing. In that case, why is there concern about additional audit fees? What extra transparency is being forgone to keep those audit fees down if they would rise if my noble friend's amendment is pursued?

Lord Wallace of Saltaire: I take the noble Lord's cynicism about it always being a question of costs, although costs are not entirely a negligible issue at the moment for any of us. We had better pursue through further discussions the particular examples that the noble Lord raised and the question of how far into the internal workings of private contractors one needs to go to be sure that one is getting the value for money and service that one really requires.

Lord Wills: I am very grateful. My noble friend reinforces the point about the pathetic nature of the Government in accepting these arguments about increased audit fees. They really need not be there. These auditors are getting access to a very lucrative new stream of work and they should pay the price to the public in making information available.

Lord Beecham: Before my noble friend withdraws the amendment, what is the present position when a contract is let by the local authority for a particular service in terms of the audit? What is the relationship of the district auditor to a council-commissioned contract in relation to its own service? Does he have access and is he subject to the same disclosure requirements that my noble friend seeks as if the council itself were directly providing that service?

Lord Wallace of Saltaire: My clear understanding is that auditors do have access to the relevant accounts of the contractor, but that would probably differ a great deal from one contract to another. I therefore need to make sure that in saying that they have access I am talking about all the cases rather than some. It may well be that a number of contracts differ one from the other.

Lord Wills: Again, I am grateful to my noble friend, who has made an important point. We will return to these issues in private discussion and I hope that I can persuade the Government that they need to be a little more robust in responding to the consultations. They often are, but not in this particular case. In the mean time, I beg leave to withdraw the amendment

Amendment 17 withdrawn.

Clause 23 agreed.

Amendment 17A

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

17A: After Clause 23, insert the following new Clause—

"Comptroller and Auditor General: prescribed persons

The Secretary of State will undertake that the Comptroller and Auditor General be added as a prescribed person for the purposes of the public interest disclosure provisions."

Lord McKenzie of Luton: My Lords, the pre-legislative scrutiny committee reminds us that in many instances serious cases of financial or governance failure are not identified through the audit itself but are brought to the attention of the appropriate authorities by individual whistleblowers. This matter could hardly be more topical. It is vital that robust protections are available for individuals in all relevant bodies, including health bodies.

So far as whistleblowers are concerned, currently the Audit Commission is a prescribed person under the 1998 public interest disclosure provisions. Its appointed auditors are also prescribed persons. The Public Interest Disclosure Act protects from recriminations employees who make disclosures about a range of subjects. Whistleblowers can claim protection by disclosing their concerns either to an employer or, if they prefer, to another organisation authorised to receive disclosures—a prescribed person. The commission provides a confidential public interest disclosure line for employees of councils and NHS bodies where they are unable or unwilling to report internally. Once employees contact the commission, the commission alerts the relevant auditors.

The Bill makes no mention of whistleblowers, and this is an area that needs to be strengthened. We believe that, while appointed auditors should remain a prescribed person, there should also be another prescribed body which could pass on information to an auditor—for example, in cases where employees are unable to contact the auditor directly or where, as the ad hoc draft Bill committee suggested, they may not be comfortable approaching a private auditing firm that has a commercial relationship with the local body or council.

The draft Bill committee recommended that the Comptroller and Auditor-General should take on this role in the future, and that is what the amendment provides for. We may be at one with the Government on this issue and the NAO can provide a hotline for whistleblowers. If the Government are to provide this by order, what requirements will be placed on the NAO as to what it does with the information provided? The Audit Commission would currently, as I said, forward any disclosures to the relevant auditor. I beg to move.

Baroness Hanham: My Lords, I shall respond briefly, but I can also pick up some extra points that the noble Lord raised.

The Government, in response to the committee that undertook the scrutiny of the draft local audit Bill, have already indicated their intention to make the

Comptroller and Auditor-General a prescribed person under the Public Interest Disclosure (Prescribed Persons) Order 1999. It is not necessary to include this in the Bill, as we intend to do it by making an amendment to the order following the closure of the Audit Commission.

On the powers of the NAO, at present it is the auditor that considers a disclosure in the context of the existing statutory powers and duties—for example, in relation to considering whether to make a public interest report on the matter. We do not think that it is necessary or appropriate to duplicate this by giving additional powers to the Comptroller and Auditor-General. This mirrors the current arrangements.

The noble Lord also asked why the Bill did not say anything about whistleblowing. We do not believe that it is necessary for the Bill to include provisions around that matter, because that is covered in other legislation. The Audit Commission and its auditors are included as prescribed persons in the Public Interest Disclosure (Prescribed Persons) Order 1999. Amendments will be made to that order to designate local auditors and the Comptroller and Auditor-General as prescribed people—that is, the people to whom whistleblowers can go. The Comptroller and Auditor-General will not necessarily have a duty to investigate those concerns as a disclosure in the context of the existing statutory powers and duties—for example, in considering whether to make a public interest report on the matter. We do not think that it is necessary or appropriate to duplicate this by giving extra powers to the Comptroller and Auditor-General, as I said.

I hope that it is clear that we are not in any way trying to reduce the role of whistleblowers or to put them under any sense of restriction from acting in such a way. There will be a very clear route concerning to whom whistleblowers can go, and they will be protected, as they are at the moment, from any retribution if they do that. I hope that that gives the noble Lord a satisfactory explanation.

Lord McKenzie of Luton: My Lords, again, I thank the Minister. I accept entirely that there is no attempt to dumb down the role of whistleblowers and that that will be fully supported. What is it that the Comptroller and Auditor-General is expected to do with information provided to it as a prescribed person which does not go to the local auditor?

Baroness Hanham: My Lords, exactly as happens at the moment, the Audit Commission directs whistleblowers to the relevant auditor, who is the person in power to take appropriate action. Whistleblowers will continue to be able to go directly to the auditor, as I said, and we extend that to the Comptroller and Auditor-General, who will refer it back again to the local auditor to take up.

Lord McKenzie of Luton: I am grateful for that and beg leave to withdraw the amendment.

Amendment 17A withdrawn.

Schedule 7 : Reports and recommendations

Amendment 17B

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

17B: Schedule 7, page 60, line 13, leave out "before" and insert "when"

Lord McKenzie of Luton: My Lords, the amendment amends the requirement that a local auditor must notify a relevant authority's auditor panel before making a public interest report and requires the notification to be made when the report is made. There was a very strong recommendation from the pre-legislative committee that an auditor should be able to raise a public interest report without prior reference to the audited body's auditor panel or audit committee. This amendment would fulfil that recommendation in the knowledge that the Bill is an improvement on the draft, which required consultation with the auditor panel.

Public interest reporting is, of course, a vital part of public auditing and assurance. There is a statutory requirement in the Audit Commission Act and the Bill that we are considering. Under Section 8 of the Audit Commission Act 1998, the appointed auditor is required to consider whether to issue a report in the public interest of any significant matter coming to his or her notice in the course of an audit and to bring it to the attention of the audited body and the public.

4.45 pm

Public interest reports have been an effective tool, causing local public bodies to act on concerns which have been raised by auditors. Of course, many local authorities have gone to some lengths to stop them being issued.

Auditors have, I think, issued the following public interest reports in recent years: in 2013-14, one to date; in the previous year, two; the year before that, one; the year before that, two; in 2009-10, one; in 2008-09, four; and in the year before that, three—that is, principal bodies' public interest reports. The majority of public interest reports were issued to parish councils; for example, I think that 62 were issued in 2011-12 and 58 in 2010-11.

There have been no public interest reports issued for foundation trusts—which, of course, now appoint their own auditors—since they came into being in 2004, even though there have been significant financial management and governance failures in the sector. Concerns were expressed by the pre-legislative committee that this is indicative of auditors being in a more exposed position. The committee report made reference to the argument of the noble Lord, Lord Heseltine, that the pressure to be reappointed and the fear of being branded as a difficult firm might compromise the auditor's independence.

The Audit Commission has stated publicly that it is not appropriate for the auditor to consult an audit panel before making a public interest report. In our view, the provision in the Bill to notify the auditor panel is an improvement on the draft Bill, which required the auditor to consult the panel. However, it agrees that Amendment 17B, which changes "before"

[Lord McKenzie of Luton]
to "when", is helpful in that it does not give the impression that this is a hurdle to be jumped before the auditor does work on the public interest report. This does not, of course, preclude the local auditor from discussions with the audit committee or the auditor panel, but it does not require it.

The pre-legislative committee also referred to indemnities for auditors raising public interest reports. Schedule 7 makes reference to the recovery of reasonable costs arising from determining whether to make a public interest report and reasonable costs in actually making one. Can the Minister explain the position in relation to legal and court costs? Although we are in a different era now, few will need reminding of the 14 years it took to resolve the Westminster City Council case. We are bound to say that we are sceptical of limitation of liability agreements but we wonder whether there might be a role for indemnities, perhaps on a case-by-case basis.

Amendment 17C calls for the National Audit Office to provide advice and support to auditors both during and before a public interest report process. This is to replace the part currently undertaken by the Audit Commission as the sounding board for auditors contemplating a public interest report.

It is accepted that the process of issuing a public interest report will be covered in the audit code, which, it is understood, will become the responsibility of the National Audit Office, but this amendment requires explicit acknowledgement that the NAO should be empowered and resourced to support local auditors during the process. I beg to move.

Baroness Hanham: My Lords, the Bill retains the auditor's duty to consider whether there are any issues on which he or she should make a public interest report, and auditors will use their professional judgment to decide whether to do so, as they do now. The auditor must inform the auditor panel before issuing a public interest report.

These two amendments would change the auditors' consideration of whether to issue a public interest report. Amendment 17B would require the auditor to inform the independent auditor panel at the same time as, rather than before, issuing a public interest report. Amendment 17C would place a duty on the National Audit Office to provide advice and support to the auditor, if asked, before and during the issue of a public interest report. The noble Lord made that very clear in his opening remarks.

I understand the intent behind these amendments but do not consider them to be necessary. First, regarding the requirement on the auditor to inform the auditor panel, I should explain that we have refined this requirement in the light of the pre-legislative scrutiny committee's recommendations. The draft Bill required the auditor to consult the auditor panel before making a public interest report, but the Bill now requires the auditor only to inform the panel before issuing a public interest report.

As we have discussed, an auditor panel has a key role in overseeing the independence of the relationship between the auditor and the relevant authority. We believe that this requirement on the auditor to inform the panel supports the panel's role in overseeing the independent relationship between the auditor and the audited body. We would not expect the panel to try to influence the auditor in the discharge of his or her functions or on whether to issue the report. In practice, auditors will often need or wish to discuss issues with persons within the relevant authority when investigating the matters under consideration to ensure a full understanding of the situation and to gather the evidence. I therefore do not believe that it is necessary or particularly desirable to make this change.

Secondly, on the role of the National Audit Office, the Bill already places a duty on the Comptroller and Auditor-General to produce and maintain the code of audit practice and provides a power to issue guidance in support of the code. These will support auditors to undertake their full range of functions under the Bill, including the issue of public interest reports. We do not believe that placing a duty on the National Audit Office to provide guidance is the right approach. Auditors are accountable for their actions and will exercise their professional judgment when deciding how to undertake their functions. Individual auditors will base decisions on their professional judgment, supported by their firms. This is how it operates now. The Audit Commission issues guidance but does not seek to influence the auditor's judgment. I think it would be fair to say that the Comptroller and Auditor-General would stand behind the auditor. The guidance will be there, and I am certain that under it if the auditor wished to seek further clarification, it would be perfectly possible under this legislation for them to do so from the National Audit Office or the Comptroller and Auditor-General.

Auditors will still have a statutory duty to consider whether they need to make a public interest report. That will occur at the time of informing the panel or subsequently, and they do not need to do anything more than inform it and tell it they are going to do it, although they may discuss it if necessary. Their professional judgment will decide whether a public interest report is necessary. Nothing will change in that respect, and the Bill provides for auditors to recover reasonable costs.

Finally, the noble Lord raised foundation trusts, which appoint their own auditors but have a regulator. Monitor said to the draft Bill scrutiny committee that there is a rigorous monitoring system which detects problems early and tiered support and intervention from Monitor to help resolve problems before they escalate, so the system is different. Also, auditors have qualified accounts of foundation trusts which demonstrate that they are not reluctant to give bad news or to raise issues as necessary.

I hope that the noble Lord will be satisfied with those responses and will feel able to withdraw his amendment.

Lord McKenzie of Luton: I thank the Minister for her reply. The point that I was trying to make was that, since foundation trusts have appointed their own auditors, the lack of public interest reporting has been equated with concerns about how independent auditors are and whether they feel that they have the strength and support to issue those reports. I take the point that some

of them may well have had their accounts qualified, although I do not know on what grounds. I think that it may help to put the issue in context if we could have a note on how many foundation trusts have had their accounts qualified and in what respect.

I accept entirely that the Bill as it stands is a considerable improvement on where the draft Bill was on these issues. In a sense, the amendments that I was seeking to press are relatively minor, although I suggest that they are important. The noble Baroness made reference to the importance of the auditor panel being informed before the report is issued. I am a bit unclear as to what it is then expected that the auditor panel will do. I think that in a lot of instances there will, as the Minister said, be engagement along the way before we get to the final document. However, the difference between it being done when the report is issued and before that suggests that there is a perceived role for the auditor panel before the document is finally issued. It is another hurdle, and that is what I was seeking to avoid with this amendment.

I well understand the point about the NAO and the code of practice, and that that will be the route. However, from what has been said, whether it will replicate the sort of sounding board that the Audit Commission has and currently exercises for auditors who are contemplating developing thoughts around public interest reporting, I am not sure. I do not think that I got the sense from the Minister's reply that that more proactive engagement was expected. If it were not, that would be a loss, but perhaps the Minister will follow up on that.

Baroness Hanham: My Lords, I am sorry if I did not make it clear that the NAO, while issuing the guidance, will also be behind the auditor, who will be able to discuss issues with it and receive support. The Audit Commission will, as in the past, provide the backbone to the auditor and clarify how to go ahead. That will not change, and I think that there will be strength in that.

We have not really covered this but the noble Lord's amendment would effectively mean that the auditor about to issue a public interest report would not have discussed it with anybody outside. He would have to issue the report to the panel and the council at the same time. The ability to go to the auditor panel and say, "This is what we are about to do, this is what we think is wrong.", would, first, probably just give the auditor panel responsible an opportunity to know that something was coming up which it would need to be aware of. Secondly, it would possibly give the auditor the ability to discuss a particular issue with someone independent of the council. I do not think that that would in any way be a retrograde step; it would give strength to the auditor.

Lord McKenzie of Luton: I thought that I said when moving the amendment that I recognised that in many instances there would be engagement with the auditor panel or the audit committee, or whatever the final formulation might be, but that I was keen to ensure that there was not another loop in the process at the point that the auditor concluded what he or she needed to do. There might be no engagement at all. It might be an issue that affects the relationship between the auditor panel and the authority involved. It was a case of not wanting to put in an additional loop right at the end of the process without in any way restricting or precluding the opportunity of engagement along the way, which I imagine would be the norm.

There was one other point. If the Minister covered the issue of indemnities, I was at fault and missed it. I should be interested in the Government's view on that issue.

5 pm

Baroness Hanham: The noble Lord is right that the new framework does not replicate the Audit Commission's indemnity scheme, which funds legal expenses faced by auditors as a result of their exercising their functions. We believe that it is appropriate for private audit companies to bear the risks and costs for any consequences resulting from the exercise of their functions, covering by definition anybody who is employed by them. Furthermore, we do not believe that this will unduly deter auditors from exercising their functions. The Audit Commission's indemnity has very rarely been called upon.

Lord McKenzie of Luton: I understand that; we have been through that before. I can see that it would not be the norm, but if there is no ability to give indemnity on some basis, what if we have a repeat of risks of the Westminster council sort, and 14 years of litigation? I accept that we are in a different era, but on technically complex issues, will that not discourage auditors from issuing that report?

Lord Beecham: If I might add to my noble Friend's question, will that not deter smaller firms from engaging in the tendering process?

Baroness Hanham: My Lords, I am not sure that the Westminster case is very helpful now. We are a very long way down the line. As others will know, it was not a straightforward case by any stretch of the imagination. The legal action was taken to recover the surcharge, so it was not only to do with the report, but with trying to surcharge the councillors.

If the company concerned appoints an auditor, it has to stand behind them as well. That would be the expectation of indemnity in this case. I am sure it will not be unique to a company to have to do that. With regard to small auditors, the situation would remain the same. They would presumably cover themselves for the risks.

I hope the explanation is sufficient. If not, and the noble Lord has other points that I have missed, perhaps we can pick them up by correspondence.

Lord McKenzie of Luton: I am grateful for those further points. I do not think we are a million miles apart on this; our differences are perhaps fairly narrow. I shall reflect on our discussion. In the mean time, I beg leave to withdraw Amendment 17B.

Amendment 17B withdrawn.

Amendment 17C not moved.

Schedule 7 agreed.

Clauses 24 and 25 agreed.

Clause 26 : Right to make objections at audit

Amendment 17D

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

17D: Clause 26, page 18, line 10, leave out "thinks" and insert "has reasonable grounds for considering"

Lord McKenzie of Luton: My Lords, Clause 26 draws on Section 16 of the Audit Commission Act. This allows a local government elector for an area to make objections in respect of matters where the auditor could make a public interest report, or where the auditor could seek a declaration that an item of account is unlawful. Where objections are received, the auditor must decide whether to take action under these powers.

The purpose of the amendment is to open up some debate around the circumstances where the auditor does not need to consider an objection, circumstances which do not appear to be spelled out in the Audit Commission Act. The amendment introduces a slightly higher threshold for the auditor not to consider an objection, by adding that the auditor must have reasonable grounds for considering that exemptions apply. The Minister may say that this is implied by the current wording. We have no problem with the auditor being able to ignore frivolous or vexatious objections, or indeed an objection that has already been considered. The reason of disproportionate cost is somewhat more problematic and requires potentially more refined judgment—especially when it may involve governance issues rather than considerable sums of public money. Of course, there is a get-out clause in that these provisions cannot be used to avoid the action of an auditor who has serious concerns as to how an authority is managed. Is it envisaged that there would be guidance on this matter—part of the audit code, perhaps? Would the Minister expand on the Government's views of the parameters of this particular provision?

Baroness Hanham: My Lords, the Bill retains the rights of local government electors to question the auditor, as the noble Lord, Lord McKenzie, has said. They can raise objections, if they think that there are matters that the auditor should report on in the public interest, or items that they think constitute unlawful expenditure. The auditor can decide not to investigate an objection—and noble Lords have mentioned the frivolous or unconstitutional—if he or she thinks that it meets certain criteria.

Amendment 17D replaces the basis for an auditor not to consider an objection from "thinks that" to "reasonable grounds for considering". This means that an auditor would be required to meet a reasonableness test before being able to decide not to investigate an objection. Following consultation, the Government decided to modify the objection process. The Bill, therefore, gives an auditor the discretion not to consider an objection in certain circumstances—where the auditor thinks that the objection is frivolous or vexatious, or it repeats an objection previously considered. The auditor has further discretion to not consider an objection if the financial value is disproportionately small when compared to the cost of the auditor's time in investigating the issue, as long as the auditor does not think that the objection might raise concerns about serious failures of leadership or management within the organisation.

These specific exclusions are new and we think that providing the auditor with discretion not to consider objections as outlined can help to avoid circumstances where an authority—and therefore the taxpayer—incurs significant additional costs for auditors' time in investigating an objection which is vexatious, or for the other reasons I have mentioned. Auditors will continue to use their professional judgment in exercising this discretion, as they do now for all their functions. We believe that this amendment would add an additional burden and cost in that an auditor would need to meet a reasonableness test before deciding not to investigate an objection. The auditor's independence and professional exercise of duties is sufficient to ensure that this will be undertaken properly.

I hope that the noble Lord will accept the explanation and withdraw his amendment.

Lord McKenzie of Luton: My Lords, I will not pursue the issue. I was with the noble Baroness until the end, when the comments about a reasonableness test being an extra burden were outlined. If it is envisaged that undertaking a reasonableness test is a significant event, then that is all the more reason to have it because, presumably, it is a meaningful process. I beg leave to withdraw.

Amendment 17D withdrawn.

Clause 26 agreed.

Clause 27 : Declaration that item of account is unlawful

Amendment 17E

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

17E: Clause 27, page 18, line 35, at end insert—

"(2A) The court may also—

(a) order that any person responsible for incurring or authorising expenditure declared unlawful shall repay it in whole or in part to the body in question and, where there are two or more such persons, that they shall be jointly and severally liable to do so;

(b) if the expenditure declared unlawful exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of a local authority, order him to be disqualified for being a member of a local authority for a specified period."

Lord McKenzie of Luton: My Lords, this amendment concerns the declaration that an item of account is unlawful. It draws on Section 17 of the Audit Commission Act 1998, which contains similar provisions, although this Bill does not give the Secretary of State power to sanction an item of account which is contrary to law—unless it is tucked away somewhere else in the Bill, in which case perhaps the Minister would let us know. However, the Audit Commission Act does give power to the court to order a person responsible for

incurring or authorising unlawful expenditure to repay it in whole or in part to the body affected. It can order that the person is disqualified from serving as a member of a local authority for a specified period. These powers seem to be missing from Clause 27, and the amendment simply seeks to rectify the omission by using the wording from Section 17. The Minister will doubtless say that it is blindingly obvious that these powers are covered elsewhere. If they are, it would be helpful to know where—and, if not, why the exclusion?

Baroness Hanham: My Lords, there is a sort of déjà vu about this amendment. The power of surcharge, as the noble Lord said, enables auditors to recover money from individuals whose actions caused losses to their councils, and was taken out in 2000. It was first introduced in the 19th century, and it is felt to be quite unnecessary in modern local government. In its 1997 report on standards in public life, the Nolan committee concluded that surcharge was an "archaic penalty"; what was archaic in 1997 is surely even more so today. Moreover, surcharge was unfair because of the technical difficulties in calculating the relevant sums, which could be well beyond the means of the individuals involved and bore no relation to people's ability to pay. This could result in damage to families as property and assets were disposed of to pay the surcharge.

I note that this amendment offers no protection to those who act in the belief that the expenditure that they were authorising was lawful, meaning that, as it stands, the amendment might result in councillors or officials having to make a substantial payment as a result of a decision that they make in good faith. Following the abolition of surcharge, the Standards Board regime was introduced to prevent personal misconduct by councillors in office. Unfortunately, the Standards Board regime became a vehicle for petty and malicious complaints so, in 2012, we abolished it and put in place new arrangements for the conduct of councillors. These new arrangements include tough new rules to prevent genuine, wilful corruption, with councillors having to be transparent about their pecuniary interests. The auditor can himself, or after a concern has been expressed, raise the issue of a public interest report, as we have just discussed. We have backed up these rules with a criminal penalty for the wilful disregard of pecuniary interests, giving the courts the power to impose a fine of up to £5,000 and to disqualify a guilty councillor from office.

Surcharge is archaic but, what is more, it is unnecessary. I hope, with my reassurance and a reminder of things as they stand, the noble Lord will withdraw his amendment.

Lord McKenzie of Luton: My Lords, I think that I had better move swiftly on. I am grateful for that explanation and a bit of a history lesson, and I beg leave to withdraw the amendment.

Amendment 17E withdrawn.

Clause 27 agreed.

Clause 28 agreed.

Schedule 8 : Advisory notices

Amendment 17F

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

17F: Schedule 8, page 67, line 20, at end insert—

"(d) where two or more auditors are appointed in relation to the accounts of a relevant authority, other than a health service body, the power to issue an advisory notice may be exercised by the auditors acting jointly, or by such one of them as they may determine"

Lord McKenzie of Luton: My Lords, in moving the amendment, I shall speak also to Amendment 17FA. I have now noticed that the point that it seeks to cover is, I think, dealt with in Clause 7(7). Clause 27 is concerned with advisory notices and who can issue them. Under Clause 7(7) it seems clear that, in the case of joint appointments, it can be done jointly or by either one of the joint auditors, which was the point that I sought to cover. The same point comes up with regard to who can make an application for judicial review, although I notice that, in Clause 30, the reference is to the Senior Courts Act 1981. The Audit Commission Act, unless it has been amended since, makes reference to the Supreme Court Act 1981. I ask for confirmation on those points and beg to move.

Baroness Hanham: My Lords, the noble Lord is correct that Clause 7 dealt with this. However, I think he has a winner coming, because the amendment has raised concerns about its exact correctness. We will ask parliamentary counsel to have a look at this before the next stage. We will probably, or may, return to it and I will advise the noble Lord, in which case, which way. It clearly needs a tweak. I hope the noble Lord will be happy that he has moved us in one direction and will be willing to withdraw the amendment, although, as I say, I think we will be looking at it again at the next stage.

5.15 pm

Lord McKenzie of Luton: I am grateful to the Minister. I knew there was some reason why I moved this amendment. Can the Minister deal with the point about the reference to the Senior Courts Act and the Supreme Court Act? What is the difference there? Something has happened along the way, I guess, to make each of those separate expressions meaningful in its context. It may be that the noble Lord would wish to write on that, unless there is a meaningful note from the Box

Baroness Hanham: My Lords, I will certainly write, but I also think we will check. That seems to be the first thing to do. The noble Lord has raised yet another interesting point on this amendment and, if I may, we will come back on both those aspects.

Lord McKenzie of Luton: I beg leave to withdraw.

Amendment 17F withdrawn.

Amendment 17FA withdrawn.

Amendment 17G

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

17G: Schedule 8, page 69, line 23, leave out sub-paragraph (3)

Lord McKenzie of Luton: My Lords, this is a probing amendment concerning advisory notices. It would appear that this regime has replaced the prohibition order regime contained in the Audit Commission Act 1998, but with some key differences. Advisory notices can be served if an auditor considers an authority is about to make a decision that would be unlawful or lead to unlawful expenditure. Under the advisory notice regime, the decision or course of action would be unlawful unless the authority, having reflected, considers it appropriate to proceed. This would appear to contrast with the prohibition order procedure, whereby, unless the order revokes it, the action or decision remains unlawful subject to an appeal to the High Court. Is that correct? Presumably, the risk of proceeding when faced with an advisory notice is that the order would seek a determination from the court that the expenditure involved is unlawful, so the onus has been switched from the local authority to the auditor. Can the Government explain this changed approach?

Our specific amendment was to delete the protection given to auditors from any loss of damage alleged to have been caused by the issuing of the advisory notice, which was issued in good faith. This mirrors the protection given in respect of prohibition notices and raises the question of who is to suffer the loss if there is one. Obviously, this is not without its importance given the difficult financial times that local government is in.

Can the Minister also take the opportunity to spell out for us the difference of treatment of health service bodies where the duty of the auditor is just to refer equivalent circumstances to the Secretary of State and the National Health Service Commissioning Board? What follows from this? I beg to move.

Baroness Hanham: My Lords, my note is rather short; it is getting briefer by the minute. The Government think it is important to retain this exemption in order to support the auditor's ability to undertake the important function according to their professional judgment without fear of facing a damages claim, which, even were it not upheld, would be costly and time-consuming to defend.

Auditors generally report on things that have happened, their opinions on the accounts and the issue of public interest reports, and apply to the court for a declaration that there has been unlawful expenditure. The power to issue an advisory notice is forward-looking, seeking to prevent the authority taking some action that could be unlawful. It is possible, therefore, that auditors will have to act quickly and action may be based on partial evidence. The limitation of liability is to give the auditor some protection to enable them to use their professional judgment. We think it would be right to continue the protection.

With regard to the noble Lord's questions, the Audit Commission Act includes advisory notices. No major changes have been made to the power to issue an advisory notice. It is still there. This mirrors existing provisions under which the auditor can issue an advisory notice if he thinks that the authority or an officer has undertaken or is about to undertake an unlawful action: a decision on carrying unlawful expenditure, unlawful action or entering an unlawful item of account. There are detailed requirements about the contents of the advisory notice and how it should be served. Within seven days of issuing an advisory notice—this may be something that requires quick action—the local authority is going to have to serve a statement of its reasons for putting forward the advisory notice.

The noble Lord asked me about the difference from the health service. I think I may be able to answer that question—it would seem that I will be writing to the noble Lord to clarify this point on health service bodies, except that I can tell that him that the clause contains the current requirement for local authorities. An equivalent requirement for health bodies has not existed previously and is not required because the governance arrangements for health bodies are different. Health bodies are consolidated into the accounts of the Department of Health and are covered by the requirements of *Managing Public Money* issued by Her Majesty's Treasury. As such, they are accountable to Parliament for their expenditure, not to local people. The difference between the two is in the process. Under those circumstances, I may not need to say that I will write to the noble Lord on health service bodies. He will tell me whether he thinks I have answered his question and the others. I hope that I have given him a satisfactory explanation.

Lord McKenzie of Luton: Indeed, the Minister has given me satisfactory explanations. It appears that my copy of Audit Commission Act is not quite up to date because it certainly has references to prohibition orders. I imagine that, somewhere along the way, that was adjusted to advisory notices.

Baroness Hanham: My Lords, we will check the matter the noble Lord has raised. I will write to him about that. He will tell me whether he is happy about the health services bodies, in which case, I will not need to write to him.

Lord McKenzie of Luton: I can exempt the Minister from writing on health service bodies. I am happy with the explanation and to receive a note on the broader drafting point. I beg leave to withdraw the amendment.

Amendment 17G withdrawn.

Schedule 8 agreed.

Clauses 29 to 31 agreed.

Committee adjourned at 5.23 pm.

Written Statement

Monday 24 June 2013

Middle East Peace Process

Statement

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Honourable Friend the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (Alistair Burt) has made the following Written Ministerial Statement: I would like to provide the House with an update on the Middle East Peace Process, following recent visits by myself and the Secretary of State for Foreign and Commonwealth Affairs to Israel and the Occupied Palestinian Territories.

The search for Middle East peace remains an urgent global priority in 2013. At the start of this year we were clear about the overriding need for the United States, supported by the international community, to lead an effort to revitalise the peace process. The events of the Arab Spring, particularly the threat posed by conflict in Syria, make the need for progress even more pressing. We therefore deeply appreciate the leadership which the US, and particularly Secretary Kerry, are showing on this issue. Britain stands fully behind these efforts to revive the peace process. We remain in close contact with the United States. On 12 June in Washington, the Foreign Secretary discussed with Secretary Kerry the prospects for progress on the Peace Process and stressed UK support for his efforts.

The Foreign Secretary visited Israel and the Occupied Palestinian Territories on 23-24 May, to demonstrate UK support for US efforts to bring about credible negotiations. He met with key figures from both sides, including Prime Minister Netanyahu and President Abbas, and welcomed their clear commitment to a two-state solution and to work to achieve peace for the Israeli and Palestinian people. With both parties, the Foreign Secretary set out the urgent need for them to show bold and decisive leadership and engage seriously with US efforts. The Foreign Secretary made clear that there was no credible alternative to Secretary Kerry's initiative.

The Foreign Secretary set out the UK's commitment to seeing a negotiated two-state solution. We want to see a sovereign, viable and contiguous Palestinian state; based on 1967 borders with agreed land swaps, living in peace and security alongside a safe and secure Israel and their other neighbours in the region, with Jerusalem the shared capital of both states and a just, fair and agreed solution on refugees. Where both prosper and both enjoy privileged partnerships and enhanced trade relations with the EU.

The Foreign Secretary also underlined UK concern about Israeli settlement activity and the threat this poses to the two-state solution. He visited a Bedouin family in the E1 area of the West Bank, where he heard about the impact of the Israeli occupation on vulnerable Palestinian communities, including the threat of house demolition and the issue of settler violence.

I subsequently visited Israel and the Occupied Palestinian Territories on 11-13 June, to reinforce our support for US efforts and the priority of serious engagement. In Israel, I met Justice Minister and Chief Negotiator Tzipi Livni, International Relations and Strategic Affairs Minister Yuval Steinitz and Prime Minister Netanyahu's personal envoy Isaac Molcho. In Ramallah, I met Palestinian President Abbas and Prime Minister Hamdallah (who has since resigned), and paid another visit to the village of Nabi Saleh in the West Bank. I also visited Gaza and southern Israel, to understand the impact of movement and access restrictions on the livelihoods of ordinary people, and the reality faced by families who live in fear of rocket attacks. We are clear that a solution to the problems of Gaza is urgently needed, that economic restrictions should be lifted and that any negotiated two-state solution must include Gaza—Gaza is a fundamental part of a future Palestinian state.

Both the Foreign Secretary and I made clear to our Israeli and Palestinian partners that maintaining the status quo is neither desirable, nor practicable. As Secretary Kerry has said, a stalemate today will not remain one tomorrow. We are running out of time to achieve a two-state solution as the situation on the ground continues to deteriorate. Yet any alternatives would be harder still. There is no such thing as a one-state "solution", only a one-state reality, which would not fulfil the legitimate national aspirations of the peoples of either side.

The parties, and we, currently face a choice: either we move towards peace, with the strong support of the region and the wider international community, or we face an uncertain and dangerous future. This is why the Government will continue to do all we can to support US efforts. In this context, we will discuss specific steps the EU can take in support at the EU Foreign Affairs Council on 24 June. And we will continue to work actively with the United States, the Israelis and Palestinians, and our other international partners including the Arab League, to achieve peace before the window for a two-state solution closes.

Written Answers

Monday 24 June 2013

Asil Nadir

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government, further to the Written Answers by Lord McNally on 21 December 2010 (WA 279), 19 January 2011 (WA 28), and 17 January 2012 (WA 119), and by Lord Wallace of Tankerness on 10 January 2012 (WA 15) and on 24 January 2012 (WA 202), whether they will now answer those questions relating to the prosecution of Asil Nadir; and whether they will place copies of all relevant documents in the Library of the House. [HL723]

The Advocate-General for Scotland (Lord Wallace of Tankerness): Further to the Written Answers given by Lord McNally on 21 December 2010 (WA 279), 19 January 2011 (WA 28), and 17 January 2012 (WA 119):

Following an incident on 4 December 2010, which resulted in the arrest of Mr Asil Nadir for breach of bail, the Ministry of Justice oversaw an investigation by Serco Group plc, the electronic monitoring contractor. The investigation found that the field monitoring officer (FMO) who had called at Mr Nadir's address for the purpose of upgrading the monitoring equipment had not, as he had claimed, knocked at the door to ascertain whether Mr Nadir was present. (The FMO did, however, ask the control centre to ring the address to try to contact Mr Nadir. The control centre did so, but obtained no response.) Mr Nadir was arrested for breach of his curfew, but was released later that day.

A disciplinary hearing was held on 29 December 2010. It concluded that the FMO's failure to follow the correct procedure and misreporting of the outcome of the visit amounted to serious misconduct. He was summarily dismissed. Following the investigation, the access procedure was reviewed and guidance re-issued to all field staff.

Further to my Written Answers on 10 January 2012 (WA 15) and on 24 January 2012 (WA 202), the issues that arose regarding the investigation and prosecution of Asil Nadir in 1993 have been examined in detail during the court proceedings which has now concluded. There is nothing further to add.

Banking: LIBOR

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what is their assessment of the European Commission's proposal to transfer the regulation of LIBOR and other key benchmark indexes to the European Securities and Markets Authority; and whether any decision in that area would require unanimity. [HL755]

The Commercial Secretary to the Treasury (Lord Deighton): The Government recognise the importance of benchmark reform and has been leading the way on this issue through domestic steps relating to LIBOR and in international fora.

The European Commission's proposal on benchmark reform has not yet been published. When the proposal is published, the Government will work with others over the course of negotiations to ensure that the final legislation that is adopted is fit for purpose, improves markets, and protects UK interests.

The voting requirements in relation to this proposal will depend upon its legal basis when it is published.

Burma

Question

Asked by ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government what assessment they have made of the recent Human Rights Watch Report on Burma which concluded that ethnic cleansing and crimes against humanity have taken place against the Rohingya. [HL873]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): I refer the noble Baroness to the answer given by my noble friend Lord Wallace of Saltaire on 10 June, *Official Report*, cols WA211-2.

Children: Internet and Mobile Phones

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government how will they ensure that children are taught about the potential dangers of the internet and mobile phones, with specific regard to (1) cyberbullying, (2) grooming, (3) pornography, and (4) sexting. [HL530]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): Through the UK Council for Child Internet Safety (UKCCIS), the Government is working with law enforcement agencies, the internet industry, children's charities and other experts to ensure children and young people are taught about how to stay safe online.

As part of the Government's reforms to the national curriculum, we will be strengthening the requirements to teach e-safety as part of changes to the new computing programmes of study. From September 2014, children in key stages 1 and 2 will be taught about using technology safely.

The Government take all forms of bullying, including cyberbullying very seriously. Every school must have a behaviour policy which includes measures aimed at preventing all forms of bullying among pupils. Many charities and organisations such as Childnet International and Beatbullying, provide excellent educational resources to schools, pupils and parents. The Beatbullying CyberMentors programme, funded by the Government, enables children and young people who are being

bullied to seek support from other young people who have been trained and volunteer their time to help victims of bullying.

The Child Exploitation and Online Protection Centre (CEOP) have set up the award-winning "ThinkUKnow" programme, which aims to reduce the harm caused to children through the misuse of technology to sexually abuse or exploit them. Over 2.6 million children have seen the ThinkUKnow resources.

Schools can use Sex and Relationship Education (SRE) to teach children about the dangers of pornography should they choose, and we trust in the professional judgement of teachers to do so appropriately. SRE is compulsory in maintained secondary schools and although primary schools do not have to teach it, many choose to do so in later years.

UKCCIS and its members are working to improve the awareness and understanding of children and young people's online behaviour and the potential risks. CEOP and Childnet International both have specific programmes on the issue of sexting, which are extensively used by schools.

Dyslexia

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government what action they will take to ensure that children with dyslexia and other learning difficulties receive appropriate careers advice. [HL529]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): Young people, including those with dyslexia and other learning difficulties, have access to appropriate support through a legal duty on schools to secure independent and impartial careers guidance for year 9-11 pupils.

Statutory guidance underpinning the duty is clear that young people with special educational needs, learning difficulties or disabilities should receive independent, impartial advice about the mainstream and specialist education and training options available to them. The guidance also highlights that this group will particularly benefit from face-to-face careers guidance.

From September 2013, the requirement to secure independent and impartial careers guidance will be extended to all young people up to and including the age of 18 in schools and colleges, and 19 to 25 year-olds in colleges with a current Learning Difficulty Assessment in place, under section 139a of the Learning and Skills Act 2000.

Local authorities retain their legal responsibility, under section 68 of the Education and Skills Act 2008, to make available support that will encourage, enable and assist the participation of young people in education or training. In the case of individuals with learning difficulties and/or disabilities, this applies up to the age of 25.

We are making more information available on how effective schools and colleges are in supporting young people into the next stage of education and training through Destination Measures. In July, we will publish a further breakdown of the latest destination data, including destinations of children with special educational needs leaving key stage 4. This will provide more transparent information than ever before on how each school is helping children with special educational needs make the transition into post-16 education, training, or employment.

Education: Japanese

Question

Asked by ***Viscount Trenchard***

To ask Her Majesty's Government what change there has been in the number of entries for (1) Japanese language examinations, and (2) all modern language examinations, at GCSE level during the last decade. [HL906]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The requested information is given in the table below.

GCSE (Full Course) entries[1] in Japanese and any modern language

Year: 2001/02 - 2011/12[2]
Coverage: UK

Language	*Entries*											
	2001/02	*2002/03*	*2003/04*	*2004/05*	*2005/06*	*2006/07*	*2007/08*	*2008/09*	*2009/10*	*2010/11*	*2011/12*	*Percentage change 2001/02 to 1011/12*
Japanese	780	803	978	1,120	1,197	1,187	1,344	1,477	1,313	1,119	1,139	46.0
Any modern language	559,115	547,189	534,839	468,889	418,162	393,699	377,780	362,436	348,191	307,386	313,432	-43.9
Of which												
French	341,604	331,890	318,963	272,167	236,427	217,525	202,136	188,764	177,618	154,221	153,436	-55.1
German	130,976	125,851	122,161	105,259	90,345	81,131	76,802	73,475	70,169	60,887	57,547	-56.1
Spanish	58,271	61,490	64,167	62,489	62,163	64,207	67,108	67,089	67,707	66,021	72,606	24.6
Arabic	1,775	1,831	1,854	2,194	2,419	2,614	2,610	3,129	3,166	2,639	3,236	82.3
Bengali	2,174	2,266	1,927	1,867	1,792	1,702	1,516	1,408	1,368	996	1,092	-49.8
Chinese	2,635	2,675	3,141	3,098	3,034	3,008	3,004	3,468	3,648	2,104	2,541	-3.6

GCSE (Full Course) entries[1] in Japanese and any modern language

Year: 2001/02 - 2011/12[2]
Coverage: UK
Language Entries

	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	Percentage change 2001/02 to 1011/12
Dutch	291	295	310	383	459	504	587	607	496	431	434	49.1
Modern Greek	704	593	575	608	549	521	498	502	460	418	386	-45.2
Gujarati	1,319	1,216	1,156	1,104	1,064	1,021	877	814	665	565	586	-55.6
Modern Hebrew	399	456	406	442	400	467	486	419	433	445	458	14.8
Italian	5,597	5,542	6,049	5,494	5,245	5,492	5,377	5,417	5,290	4,343	5,023	-10.3
Japanese	780	803	978	1,120	1,197	1,187	1,344	1,477	1,313	1,119	1,139	46.0
Panjabi	1,436	1,477	1,453	1,340	1,248	1,198	1,178	1,042	909	885	967	-32.7
Portuguese	707	784	938	1,029	1,174	1,430	1,637	1,671	1,832	1,397	1,721	143.4
Persian	322	376	436	442	443	445	528	484	517	394	464	44.1
Polish	290	268	323	405	833	1,909	3,052	3,649	4,087	3,369	4,128	1323.4
Russian	1,640	1,585	1,704	1,738	1,775	1,898	1,881	1,959	1,905	1,899	1,982	20.9
Turkish	1,209	1,189	1,384	1,337	1,519	1,479	1,493	1,474	1,590	1,293	1,379	14.1
Urdu	6,986	6,602	6,914	6,373	6,076	5,961	5,666	5,588	5,018	3,960	4,307	-38.3

[1]. Figures are based on JCQ (Joint Council for General Qualifications) data which cover candidates of all ages in England, Wales and Northern Ireland.

[2]. 2001/02 - 2008/09 figures are final, 2009/10 - 2011/12 are provisional and consistent with those published by the JCQ.

Environment: Sites of Special Scientific Interest

Question

Asked by ***Lord Fearn***

To ask Her Majesty's Government how many sites of environmental interest they have designated in north-west England. [HL985]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): There are 440 sites of special scientific interest (SSSIs) in north-west England.

Food: Sugar

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government, further to the remarks by Lord De Mauley on 3 June (HL Deb, GC 165), whether the £900 million unused European Union funds allocated to assist sugar-producing African, Caribbean and Pacific and developing countries will be carried over for future use in that context. [HL656]

Baroness Northover: The €956 million referred to by Lord de Mauley during the recent debate is the total amount that has been made available during the period 2007-13 under the European Union's Accompanying Measures scheme for sugar producers in the African, Caribbean and Pacific countries. As of April this year, €682 million (71%) of this had been allocated to projects to help these countries restructure their sugar industries. Unallocated funds cannot be rolled over into the next funding period, 2014-20, but the UK will continue to press the European Commission to commit as much of the unallocated funding as possible before the end of this year. Future EU spending will be assessed in terms of national needs, not specifically in relation to the sugar industry. Funding priority will be given to poorest countries.

Health: Cancer

Question

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what steps they are taking to involve (1) cancer patients, and (2) charities representing cancer patients, in the development of their new system of value-based pricing. [HL943]

Earl Howe: We consulted on our proposals for *A new value-based approach to the pricing of branded medicines* from December 2010 to March 2011. As part of this process, a number of patient organisations contributed their views and these were reflected in the Government's response to the consultation, published in July 2011.

Following the start of negotiations with the Association of the British Pharmaceutical Industry in 2012, we have received representations from patient organisations, including those representing cancer patients. We held a series of engagement events during 2012 with a wide range of participants including a range of patient organisations. We will continue to ensure that there are further engagement opportunities for patient organisations and other stakeholders so that the interests of all National Health Services patients are taken into account when finalising the new medicines pricing arrangements.

Health: Cancer Drugs Fund

Questions

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what powers NHS England has to continue the operation of the national Cancer Drugs Fund list after the end of March 2014. [HL939]

To ask Her Majesty's Government whether any legislative changes would be required to continue the Cancer Drugs Fund beyond the end of the current arrangements in 2014. [HL940]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Cancer Drugs Fund is not created in statute and its existence is not dependent on a specific power of NHS England other than the legislation determining the scope of NHS England's specialised commissioning responsibilities. We do not expect that any legislation would be required to either end or continue the Fund.

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what estimate they have made of the future demand for medicines currently funded through the Cancer Drugs Fund which will not be covered by the value-based pricing scheme from January 2014. [HL941]

Earl Howe: Negotiations with the pharmaceutical industry on new pricing arrangements for branded medicines are ongoing and the scope of the value-based pricing arrangements, including the medicines to be covered, is a matter for these negotiations.

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what consideration they have given to how medicines currently funded through the Cancer Drugs Fund could be incorporated into value-based pricing. [HL942]

Earl Howe: Value-based pricing will focus primarily on new medicines.

It is possible that a small number of existing drugs, such as some cancer drugs previously considered but not recommended by the National Institute for Health and Care Excellence (NICE), could be assessed under value-based pricing. However, it is not our intention under value-based pricing to reassess routinely treatments already appraised by NICE.

International Monetary Fund

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what is the United Kingdom's total monetary stake in the International Monetary Fund; whether annual contributions are made to the organisation; and what is the organisation's annual expenditure on administration and total number of employees. [HL754]

The Commercial Secretary to the Treasury (Lord Deighton): The UK's lending limit to the International Monetary Fund (IMF), as approved in legislation, is currently special drawing rights (SDR) 38.8 billion (£37.9 billion). However, only SDR 29.4 billion (£28.7 billion) of this is currently committed, pending the implementation of the 2010 IMF quota and governance reforms.

The IMF only draws down on committed resources as required. Currently, UK loans outstanding to the IMF total around SDR 5.7 billion (£5.6 billion). UK loans to the IMF are official reserves and, therefore, have no impact on the UK's public spending and do not contribute to public sector net debt.

The UK does not have an annual subscription to the IMF and does not contribute to its administration costs. These are financed out of the IMF's own revenue.

The IMF's medium-term budget report was published in March 2013 and sets out the anticipated administration expenditure for the period 2014-16. Under this, the budget for financial year 2013 is $997 million (f641 million). This includes projections for 2,672 full-time equivalent employees (including temporary workers).

The budget report is available on the IMF's website[1].

All currency conversions were made using the exchange rate on 11 June 2013.

[1] http://www.imf.org/external/pp/eng/2013/032813.pdf.

Kenya

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government how many deaths occurred during the Kenya emergency; how many were caused by the Mau Mau and the security forces respectively; and how many people were judicially executed. [HL902]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): Estimates of the numbers of those killed vary enormously so it is difficult to give exact figures. We estimate that over 11,000 Mau Mau members were killed during the Emergency Period, and the Mau Mau were responsible for over 2,000 deaths of whom 1,800 were Kenyans. Academic research suggests that 1,090 Mau Mau were judicially executed.

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they intend to set a time or other limit to claims and limits to future individual and overall compensation amounts in respect of the Kenya emergency.[HL903]

Baroness Warsi: My right honourable friend the Foreign Secretary's Statement on 6 June, Official Report, column 1692, sets out the terms of the settlement agreed with Leigh Day on behalf of 5,228 Kenyans. Under the Limitation Act 1980, the court has discretion, in certain circumstances and on a case by case basis, to exclude the usual time limit in respect of claims of personal injury and death. There is an absolute time

bar for events that occurred before 4 June 1954. Those who wish to bring a claim under the UK courts have the right to do so and we will continue to judge current and future cases on their merits, and to reserve our right to defend them.

Kurdistan

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 10 June (WA 215), when it became their practice not to comment on considerations for proscribing or deproscribing alleged terrorist groups; and what assessment they have made of the withdrawal from Turkey of the armed members of the Kurdistan Workers' Party, and of the search for a comprehensive settlement of the Kurdish question. [HL836]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): This Government has never commented on considerations for proscribing or deproscribing terrorist groups. This practice reflects that of previous administrations.

A peaceful resolution of the Kurdish issue would bring prosperity and security to Turkey's south-east, potentially benefiting millions of Turkish citizens. We welcome the positive moves made by the Turkish Government recently— including starting talks with the Kurdistan Workers' Party (PKK), and delivering key human rights reforms, for example around the Kurdish language.

We welcome the announcement of a ceasefire in the long-running Kurdish conflict. The withdrawal of PKK militants from south east Turkey is an important contribution to a political settlement in the Kurdish issue.

The UK remains steadfast in support of Turkey's efforts to tackle terrorism.

Overseas Aid

Questions

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what assessment they have made of possible methodologies for determining the options for the 11th European Development Fund aid allocations, and of the balance in the methodologies between scientific assessment and political goals. [HL973]

Baroness Northover: The European Commission and External Action Service are working on allocations for the 11th European Development Fund and have shared a methodology with Member States. The proposed model is based on recent research by FERDI (Fondation pour les études et recherches sur le développement international). It has a quantitative element which uses the internationally agreed indicators of population, gross national income, human asset index, economic vulnerability index, and world governance indicators. The Commission will also apply a qualitative adjustment based on indicators such as the political and security situation and past co-operation with the EU, which will be reflected in final country allocations.

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what assessment they have made of the impact of focusing on scientific as opposed to political approaches in determining the 11th European Development Fund aid allocations on future development co-operation with the African, Caribbean and Pacific group of states. [HL974]

Baroness Northover: The 11th European Development Fund (EDF) aid allocation methodology must comply with the criteria of the Cotonou agreement which governs political, trade and development relations between the European Union and the Africa, Caribbean and Pacific group of states. This states that resource allocation shall be based on standard, objective, transparent needs and performance criteria, with resources targeted where they are most needed to address poverty reduction and where they can have the greatest impact. The European Commission and External Action Service are working on allocations for the 11th EDF and have shared a methodology with member states which will be discussed in July.

Overseas Conflict: Sexual Violence

Question

Asked by ***Baroness Stern***

To ask Her Majesty's Government how much funding they currently provide to programmes to prevent and respond to violence against women and girls in Afghanistan. [HL580]

Baroness Northover: Preventing violence against women and girls is a strategic priority of the UK Government's activity in Afghanistan. However, as this is delivered across a range of programmes it is not possible to disaggregate the exact amount of funding provided.

Support includes UK funding for the Tawanmandi programme—£19.95m over five years—which supports Afghan civil society organisations, including on tackling violence against women and girls. The UK Government are also providing specialist training to provide the Afghan police and judiciary with skills and tools to curb violence against women, and continue to work with the Afghan Government to ensure that the law on elimination of violence against women is fully implemented.

Roads: A10

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether the Secretary of State for Communities and Local Government intends to call in for his own determination the planning application for an access road between the A10 and the Brookfield shopping centre, Broxbourne. [HL978]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The proposal for a link road between Halfhide Lane and the A10 interchange, Cheshunt was referred to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction 2009. The Secretary of State has received a number of requests to call-in the application for his own determination, and will carefully consider this case against call-in policy, as set out in the Written Ministerial Statement of 26 October 2012, *Official Report* col. 71WS.

In the meantime, a direction under Article 25 of the Town and Country Planning (Development Management Procedure) Order 2010 has been issued which prevents the council granting permission on this application without specific authorisation. This provides the opportunity for the issues around the proposal to be considered, and for the Secretary of State to decide on whether or not the application should be called in by him. It would be inappropriate to comment on the detail of the applications, while considerations are still ongoing.

Roads: Road Schemes

Question

Asked by ***Lord Beecham***

To ask Her Majesty's Government what is (1) the estimated cost, and (2) the length, of each of the 18 road schemes announced in October 2010. [HL702]

Earl Attlee: The table below gives the estimated cost and the length of the 18 road schemes announced in October 2010 for which we stated that we would continue work on these schemes for potential future construction.

Scheme Name	*Approved Range Estimate*		*Scheme Length*	
	Min (£m)	*Max (£m)*	*Km*	*Miles*
A453 Widening	138	167	11.5	7.1
A45/A46 Tollbar End Improvement	109	150	3.0	1.9
M1 J19/M6 Improvement	185	273	Jct	Jct
A14 Kettering Bypass	80	107	4.6	2.9
M6 J10a-13	140	201	15.4	9.6
M3 J2-4a *	134	183	21.6	13.4
A5/M1 Link	134	189	4.5	2.8
M25 J30 Improvement	n/a	n/a	Jct	Jct
M4 J3-12 *	525	720	51.2	31.8
A21 Tonbridge to Pembury	94	119	4.1	2.5
A160/A180 Immingham	89	132	Jct	Jct
A19/A1058 Coast Road	113	166	Jct	Jct
A63 Castle Street	129	192	1.5	0.9
A27 Chichester Bypass	n/a	n/a	5.5	3.4
A19 Testos	n/a	n/a	Jct	Jct
A38 Derby Junctions	n/a	n/a	Jct	Jct
M20 J10a *	66	98	Jct	Jct
M54 to M6/M6 Toll *	n/a	n/a	3.5	2.2

The table includes the 14 schemes listed in paragraph 26 of the October 2010 "Investment in Highways Transport Schemes" announcement and the 4 'review' schemes (highlighted by an *) listed in paragraph 27.

Schemes with a range estimate which are referenced by an n/a indicates that the range estimate is not available. These schemes are early in the life cycle where a number of options are still under consideration covering a wide range of potential costs. Once the preferred options have been selected, estimates will be confirmed for each.

Schools: Free Schools

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government how many new free schools have been approved since 2010 in each region of England. [HL979]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The first free schools opened in September 2011. There are now 81 open free schools. In addition to these open schools, a further 211 free schools are due to open in September 2013 and beyond. The regional breakdown of these figures is as follows:

English Region	*Number of open free schools*	*Number of free schools in the pipeline*
East	13	18
East Midlands	5	8
London	26	85
North East	2	4
North West	9	22
South East	9	27
South West	3	14
West Midlands	8	14
Yorkshire & Humber	6	19
Total	81	211

Schools: Phonics Screening

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government what was the (1) estimated, (2) average, and (3) actual, cost (a) nationally, (b) regionally, and (c) in the five metropolitan boroughs of Merseyside, of running the inaugural statutory phonics screening check for all Year 1 pupils. [HL706]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The cost of developing and piloting the phonics screening check in 2011 was £300,000. This figure also includes the cost for developing the check for 2012, 2013 and 2014. In addition, an independent evaluation of the pilot in 2011 cost £75,000.

The total cost for delivering the phonics screening check in 2012, the first year it was introduced nationally, was £600,000. The budget forecast for this had been £515,000.

The department does not separately identify data on a regional or local authority level.

The phonics screening check has been introduced to confirm whether pupils have learnt phonic decoding to an appropriate standard, so children who struggle with reading can get the help they desperately need.

Last year's check identified more than 235,000 six year-olds who would benefit from additional support.

Schools: Sixth Forms

Question

Asked by ***Lord Knight of Weymouth***

To ask Her Majesty's Government how many secondary schools which were graded (1) satisfactory, or (2) inadequate, have subsequently expanded to include sixth-forms in each of the last three years. [HL751]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): In August 2011, there were 983 satisfactory and 94 inadequate secondary schools. Of these, four satisfactory schools had a sixth form added during the 2011-12 academic year. No inadequate school had a sixth form added.

In August 2012, there were 933 satisfactory and 107 inadequate secondary schools. Of these, 12 satisfactory schools had a sixth form added during the 2012-13 academic year. No inadequate school had a sixth form added.

The Education Funding Agency does not hold records prior to 2011-12.

Security: National Security

Question

Asked by ***Lord Strasburger***

To ask Her Majesty's Government how many of the 197 intelligence reports received by GCHQ in the 12 months to May 2012 which were generated by the National Security Agency's PRISM system were individually authorised by a Minister. [HL816]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): It is the long-standing policy of successive Governments not to comment in detail on matters of intelligence.

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