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PARLIAMENTARY DEBATES
(HANSARD)

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17 June 2013

THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE THIRD SESSION OF THE FIFTY-FIFTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGTHEENTH DAY OF MAY IN THE
FIFTY-NINTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXLVI**

SECOND VOLUME OF SESSION 2013-14

House of Lords

Monday, 17 June 2013.

2.30 pm

Prayers—read by the Lord Bishop of Liverpool.

Autism

Question

2.36 pm

Asked by ***Lord Touhig***

To ask Her Majesty's Government what assessment they have made of the findings of the campaign by the National Autistic Society, Push for Action, launched on 14 May. I declare an interest as vice-president of the National Autistic Society.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, the National Autistic Society's Push for Action campaign coincides with the Government's review of the 2010 adult autism strategy. We are already taking forward some of the campaign's recommendations, and we will consider others that fall to government during the review, the investigative stage of which is due to last until the end of October.

Lord Touhig: I must say that I am encouraged by the Minister's words. Four years after Parliament passed the groundbreaking Autism Act, this National Autistic Society report reveals that despite some progress far too many autistic adults are missing out on everyday support. A shocking 70% of adults and their carers say they get no help from social services, and this is not always down to money. Indeed, economic modelling by Deloitte shows that every pound invested in services for autistic adults with moderate needs brings a return of £1.30. When the Government review the autism strategy, will they consider providing an innovation fund so that local councils can provide the cost-effective services that all autistic adults need and actually demand?

Earl Howe: My Lords, we will certainly consider the idea of an innovation fund during the course of the review. We have allocated some central funding already to support the implementation of the autism strategy, for example in commissioning a range of training products from expert bodies to support local areas and professionals. I hope the noble Lord will agree that the strategy and the statutory guidance that goes with it mark a great step forward for adults with autism in England. We now need to take an honest look at how it is all working and come up with further ideas and actions as necessary.

Lord Clement-Jones: My Lords, I declare an interest as president of Ambitious about Autism. Can my noble friend confirm that the Government's review of the adult autism strategy will pay close attention to the kind of day support services, such as the NAS's Horizons service, which the recent Deloitte report, *Ending the Other Care Crisis,* has demonstrated not only leads to increased quality of life and reduced dependency but has clear economic benefits?

Earl Howe: My noble friend draws attention to a very important strand of support for people with autism. Many people with this condition can benefit from small amounts of advocacy, help and support often through less formal support networks and not necessarily through the local authority. We will certainly be looking at that area.

Baroness Browning: I declare my autism interest in the Register to the House. Does my noble friend accept that the Department of Health is the lead department on the Autism Act, but that other departments have responsibilities as part of the strategy? He will be aware of the finding of the Upper Tribunal (Administrative Appeals Chamber) in a case against the Secretary of State for Work and Pensions that the case has to be made that autism is different. Can I ask him to make sure that that case is made by his department to all other government departments involved in the care of people with autism?

Earl Howe: I can give my noble friend that assurance. The autism strategy is, of course, a cross-government strategy. A number of departments will look at their role in supporting it, including the Department for Work and Pensions and the MoJ. I am hopeful that when we come out in October with some considered proposals, my noble friend will take heart from the fact that this has involved all relevant government departments.

Baroness Howarth of Breckland: My Lords, one of the great concerns of people with autism is the transition arrangements between young people and adults, particularly the difficulties created now that education and social care provision are separated in adult education centres for these children and young people. What is intended to ensure that this does not continue to disadvantage these young people?

Earl Howe: My Lords, the Children and Families Bill, which was introduced into Parliament this month, will usher in from next year new joint arrangements for assessing and planning commissioning services for children and young people with special educational needs. We realise the difficulties that young people with autism can face in making that transition to adulthood. Under the autism strategy, my department and the Department for Education funded the social policy research unit at the University of York to examine how statutory services are currently supporting young people on the autistic spectrum. Its report, published in February, points the way to some important lessons that we should take on board during the review.

Lord Collins of Highbury: My Lords, despite the strategy, only 63 out of 152 local authorities have a pathway to diagnosis. Will the Minister give an assurance that the department will produce a clear guide for CCGs on how to commission the right diagnosis and support services?

Earl Howe: My Lords, we are indeed currently supporting, along with NHS England, a practical guide for CCGs to support health professionals and others in implementing the adult autism statutory guidance, as well as the NICE guidelines on recognition, referral and diagnosis, and the management of adults on the autism spectrum. This will be published later in the summer through the Joint Commissioning Panel for Mental Health.

Baroness Greengross: My Lords, I was recently privileged to chair a commission that looked for the first time at the large numbers of people who grow into old age with autism. I would very much like the noble Earl to assure the House that these people will not be ignored, will also receive diagnosis, and that professionals will be trained to ensure that a preventive support system of care is introduced so that it is not always crisis-driven. Can he tell us that?

Earl Howe: I do agree with the noble Baroness that the needs of those with autism in older age should not be forgotten. We will meet the National Autistic Society, following the publication next month of their report on autism and ageing, to see how we can support the taking forward of this work, which builds on that done by the autism and ageing commission in this House. We are also looking at the whole issue of the training of health professionals, in particular the core curricula for doctors, nurses and other clinicians.

Lord Campbell-Savours: Is there a connection between the MMR jab and autism?

Earl Howe: My Lords, no.

Royal Navy: Escort Vessels

Question

2.45 pm

Asked by ***Lord Lee of Trafford***

To ask Her Majesty's Government what assessment they have made of the ability of the Royal Navy's escort vessels to meet the United Kingdom's maritime commitments.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, the Royal Navy continues to meet its operational commitments. Looking forward, we are introducing six new Type 45 destroyers and seven Astute class submarines. In addition, the first of the four Tide class Royal Fleet Auxiliary tankers will enter service in 2016. We are rebuilding our strike capability through the Queen Elizabeth class carriers and, with the Type 26 global combat ship, we have a new programme to develop more flexible frigates of the future.

Lord Lee of Trafford: My noble friend's carefully crafted and well camouflaged reply hardly answers my specific Question. In 1982 at the time of the Falklands, we sent 22 escort vessels down there. Now, we probably have hardly 12 that we could put out operationally at any one time to meet all our worldwide commitments. The pressure is increasing, with Russia reviving its nuclear submarine patrols to the South Pole and China determined to become a major maritime power to support its growing overseas interests. In addition, the early warning Crow's Nest radar system, to be integrated into our Merlin helicopters, apparently will not be ready until five years after our first new carrier is operational, thus increasing our position of vulnerability. Is the Navy not more concerned about the lack of escorts than anything else—and should not we be?

Lord Astor of Hever: My Lords, I am grateful to my noble friend for his compliment about the carefully crafted response. SDSR set out how the Government would secure Britain in an age of uncertainty. Central to this is maintaining the trade routes and access to resources and protecting United Kingdom citizens, territory and trade from terrorism, piracy and unlawful restrictions on freedom of navigation. My noble friend mentioned Crow's Nest. The final assessment phase was approved in January and is due to come into

service in 2020, with a deployable capability shortly afterwards. Navy Command and Defence Equipment and Support are exploring whether funding can be made available sooner, to bring forward the in-service date by up to two years.

Lord West of Spithead: My Lords, the Minister, for whom I have great admiration, knows that we have insufficient escort hulls and need more. Nineteen are simply insufficient for our nation and paying off four Type 22 escorts in the strategic defence and security review—since when £12 billion of underspend has been created—was a terrible error. However, one must not dwell on these mistakes of the past. Does the Minister not agree that the £250 million per annum that we will pay BAE Systems not to build warships should perhaps be used to build escorts?

Lord Astor of Hever: My Lords, I cannot comment on what the noble Lord says about BAE. However, I compliment him on his resolute lobbying for the Royal Navy to attend the Royal Australian Navy's 100th anniversary. The noble Lord has had a word with me two or three times about it. I can now assure him that the Royal Navy has responded to his request and will attend the 100th anniversary. HMS "Daring", a Type 45 destroyer, will also be out there.

Lord Craig of Radley: My Lords, bearing in mind the reduction in the number of surface vessels over the past few years, what commitments have Her Majesty's Government had to give up as a result?

Lord Astor of Hever: My Lords, the Naval Service, which includes the Royal Navy, the Royal Marines and the Royal Fleet Auxiliary which supports them is able to fulfil commitments around the globe and maintain a maritime presence in priority regions, such as the South Atlantic, the Gulf and the Indian Ocean. The Naval Service also safeguards the security of home waters, meets our defence commitments in the North Atlantic and the Caribbean, patrols the Antarctic waters and undertakes periodic deployments to other areas, such as the Far East and the Pacific.

Lord Palmer of Childs Hill: My Lords, the Minister referred to the next generation of escort ships. Where are we with the development of Type 26 global combat ships? Are they still on target to come into service in the early 2020s; what does "the early 2020s" mean; and do we still intend to have 12 to 13 of these vessels?

Lord Astor of Hever: My Lords, the Type 26 will be the workhorse of the future Royal Navy. It is in its assessment phase. I understand that the main investment decision will be made in the middle of the decade. The aspiration is that Type 26 will be in service by 2020, and the number we are hoping to have is 13.

Baroness Wilcox: Can the Royal Navy still deploy and support a Royal Marines brigade, given what the Minister has just said?

Lord Astor of Hever: My Lords, 3 Commando Brigade Royal Marines continues to provide a key element of our high-readiness response force. With the Royal Navy's amphibious shipping, 3 Commando Brigade has strategic reach and is able to land and sustain from the sea a commando group of up to 1,800 personnel, together with protective vehicles and other equipment. Other elements of the Royal Marines continue to undertake a wide range of tasks, including protecting the nuclear deterrent and contributing to operations against piracy in the Indian Ocean.

Lord Rosser: My Lords, there is a significant gap in our maritime surveillance capability. How and when do the Government intend to plug it?

Lord Astor of Hever: My Lords, there is no gap. Everything is carefully thought out. We would not be irresponsible enough to do what the noble Lord said.

Women: Board Membership

Question

2.51 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what plans they have to increase the number of women on boards.

Baroness Northover: My Lords, the Government are supporting the voluntary, business-led strategy of the noble Lord, Lord Davies, to increase the number of women in UK boardrooms. At the time of the noble Lord's latest report of April 2013, women had secured 34% of all FTSE 100 board appointments in the previous year. The UK corporate governance code now requires boards to report on their diversity policy. Head-hunters have pledged to ensure that women make up 30% of longlists and, from October 2013, quoted companies will be required to disclose the gender balance at various levels within their organisation.

Baroness Thornton: My Lords, this is not what the Cranfield review of women on boards says, which is that that in the past six months, progress in the number of female non-executive directors in FTSE 100 companies has reached a plateau; it is flatlining and stuck at between 26% and 30%. It also says that there has been a lack of progress at the executive-director level of FTSE 100 companies. A rise from 5.5% to 5.8% since 2010 is not impressive. What will the Government do next? It seems that they have got the low-hanging fruit on this issue. If they have set their face against quotas, what does the Minister suggest doing about the abysmal lack of gender diversity, about ageism and about the lack of ethnic diversity in the country's boardrooms?

Baroness Northover: I start by paying tribute to the noble Lord, Lord Davies, the noble Baroness's colleague, for all that he has done to flag up this issue, and for the way in which he has driven it forward. He in turn has thanked the media for what they have done to make

[Baroness Northover]
sure that this moves forward. He is absolutely right that we need to continue to make progress. There was an indication of plateauing. The situation now seems to be improving again. Business needs to show that it is making progress—as the noble Lord, Lord Davies, says—so that the Government can say that no quotas are needed. However, they are there as a back-stop.

Baroness Kramer: My Lords, my understanding is that the Government put a sword of Damocles over the industry by saying that if voluntary approaches—which I think we would all prefer—were not successful, they would look again at quotas. I believe that that was confirmed by both the Home Secretary and the Prime Minister. Will the Minister give assurances that the sword of Damocles is still in place and that the Government will be willing to let it fall if need be?

Baroness Northover: We are indeed pleased at the progress that is being made but the noble Baroness is absolutely right, as is the previous noble Baroness, that progress needs to continue. The Prime Minister said in February 2012 that further action has to be considered as a back-stop and Vince Cable said in April 2013 that the Government would, if necessary, adopt tougher measures. The warning is there. If there is continued progress, that is great. If not, there are sticks.

Baroness Pitkeathley: Does the noble Baroness agree that one of the problems is that the boards are not sufficiently flexible in what they see as the requisite experience for serving on boards? For example, many women who hold senior positions in the voluntary and charitable sector are never considered because their experience is not considered relevant.

Baroness Northover: The noble Baroness is right, and boards need to take a wider view in terms of the experience and expertise that are there. I should like to quote one of the remaining FTSE 100 companies, Melrose, which still has an all-male board. It is,

"a leading British-based investment company specialising in the acquisition and performance improvement of underperforming businesses".

There are no women on its board. How is it to ensure that companies are geared to the 21st century if it is so outdated in its own approach?

Baroness Howe of Idlicote: My Lords, is the Minister satisfied that enough attention is being given to encourage companies to allow flexible working for both sexes, so that women and men can continue their careers to board level and spend time with their families?

Baroness Northover: The noble Baroness is right that flexible working both for women and men is something that companies need to look at to make sure that they do not lose the talent that they have brought forward. Businesses need to encourage all talent to join them and then they need to make sure that they continue to support people right the way through their careers and on to board level at the end.

Baroness Wheatcroft: Does my noble friend the Minister agree that it is the job of Government to encourage the sort of changes on boards that we are talking about but that it is not the job of Government to dictate? It is the shareholders who own the business who should decide who sits on the board.

Baroness Northover: My noble friend is quite right that the Government, and indeed wider society, should encourage businesses to look at this and to recognise their own self-interest in the 21st century.

Lord Pearson of Rannoch: My Lords—

Baroness Gould of Potternewton: My Lords—

The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford): My Lords, I think there is time for both if we have the noble Lord, Lord Pearson, very quickly and then Labour.

Lord Pearson of Rannoch: My Lords, as a supporter of women on boards, I have to ask whether we really need the edict from Brussels which—

Noble Lords: Oh!

Lord Pearson of Rannoch: Noble Lords may not be aware of it, but it would make them mandatory. Can the noble Baroness tell us how the so-called "yellow card" issued by your Lordships' House and seven other EU Houses of Parliament against that edict is progressing? Is subsidiarity winning or losing as usual on this one?

Baroness Northover: The directive that is potentially coming from the EU is a useful discipline. We need British business to demonstrate that it does not need to be applied in the United Kingdom because we have already made sufficient progress.

Baroness Gould of Potternewton: My Lords, I appreciate that the Government are very keen to get as many women as they can on to company boards but does exactly the same position apply to the appointment to public boards for which the Government are responsible? Perhaps she could tell us what is the Government's strategy to get more women on to public boards?

Baroness Northover: The noble Baroness is quite right. We have an aspiration, as she probably knows, that 50% of appointments to public boards should be women by 2015. I have seen the figures that are just being finalised for the current state of affairs, and it is looking encouraging that we are moving in the right direction, but we are not complacent.

Lord Brooke of Sutton Mandeville: My Lords, Damocles was a man. Will the Government consider a female sword?

Baroness Northover: I look to the noble Lord to come up with one.

Baroness Scotland of Asthal: My Lords, how long will the Government wait to decide whether the sword needs to be used?

Baroness Northover: That is a very interesting question and I expect to have many more opportunities to discuss it.

Visas

Question

3 pm

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government what is the average time taken to assess and process an overseas visitor's application for a visa.

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My Lords, in the financial year 2012-13, on average, visit visa applications were processed in under 10 working days—the exact figure is 9.17 working days. We measure this from the time that the customer submits their biometric information to when the application is ready for collection by the customer.

Baroness Smith of Basildon: My Lords, the president of the China International Travel Service has criticised the Government's changes to the visa system as making little difference in encouraging Chinese tourists to the UK and complains that the system is even more complicated than that to get into the US. Does the Minister accept that the potential loss of income to the UK economy remains at £1.2 billion? What urgent discussions will Ministers have with the Chinese authorities and tour operators to make it easier to apply for UK visas without compromising security, as other countries seem to be much more successful at doing this?

Lord Taylor of Holbeach: My Lords, I read the article containing Miss Yu's comments. It is vital that the UK is seen as being open for visitors and business. That is very much the case as far as China is concerned. The President of China has talked about there being 400 million visitors from China by 2018. We need to recognise the need for a customer focus in our visitor offer. That is why the Government have broken up the UK Border Agency into two parts, one of which deals with immigration enforcement. The other, UK Visas and Immigration, is dedicated to delivering a high-quality customer service to those wishing to enter the UK.

Lord Naseby: Is my noble friend aware that the new fast-track system introduced in Colombo for prospective visitors, particularly from the business sector, is working well and is greatly to be welcomed? On behalf of those who are using it, I say a huge thank you to the Home Office for listening and implementing this new system.

Lord Taylor of Holbeach: I thank my noble friend as brickbats are often flung on Questions such as this. I emphasise that the Government are actively looking at ways in which we can improve the focus of UK Visas and Immigration. I have met Sarah Rapson, the new director-general of the service. The whole point behind the creation of this new service is to make sure that our offer to visitors is competitive and customer-oriented.

Baroness Symons of Vernham Dean: My Lords, may I ask the Minister particularly about business users? I declare an interest as the chairman of the Arab British Chamber of Commerce. Is he aware that we are getting an increasing volume of complaints from the countries of the Arab League about the delays in getting visas? Would he be kind enough to meet those of us who have concerns on this issue to discuss why this is the case and what can be done to ameliorate the position?

Lord Taylor of Holbeach: I certainly would be prepared to meet the noble Baroness and any people she wishes to bring along. As I have emphasised, we want to expedite visa processing. Ninety-four per cent of visas are processed within 15 days. That is a pretty good figure. It can be improved but 94% are processed within 15 days and, in the case of China, the figure is 99%.

Lord Dholakia: My Lords, what arrangements are in hand to review the decisions of entry clearance officers? My noble friend will be aware that in the past immigration adjudicators overturned the decisions of entry clearance officers in many cases. How do we ensure that there is no bias in the way decisions are taken, particularly as regards family visits and visits to attend marriages and funerals, when people wish to be in the country for a very short period?

Lord Taylor of Holbeach: I am grateful to the noble Lord. He has a strong focus on this issue. Indeed, the noble Baroness, Lady Hamwee, is presenting a report, which we will be debating shortly, on the whole question of family visas. We need to make sure that we have a proper balance between safeguarding our own position and our commitments within the wider communities here in the United Kingdom and, at the same time, facilitating visits to this country.

Lord Lea of Crondall: My Lords, one of the concrete points made by the Chinese authorities in this article to which reference has been made is that a decreasing proportion of Chinese visitors to Europe—the European Union, broadly—are coming to this country, because they can get a Schengen visa for all of the continent, in effect, and the extra hassle of getting a visa for Britain deters people from adding Britain to the European tour, as it were. Will the Minister carry out a study as to whether our documentation could not be nearer in line with what is done for the Schengen countries without our sovereignty being impugned so that, as a result, a bigger proportion of the Chinese would be able to come to this country?

Lord Taylor of Holbeach: I think the noble Lord is very perceptive in anticipating future debates on this subject. This is clearly one of the difficulties that we have in not being party to the Schengen agreement. Given that the House, I am sure, would not welcome our incorporation into the Schengen agreement, we are seeking to discuss with others, including the Schengen countries, ways in which we can maximise the opportunities for visitors to come to this country.

Lord Avebury: My Lords, since the Secretary of State rightly disbanded the UKBA, what steps has she taken to address the dysfunctionality, not only in terms of immigration visas for visitors but throughout the whole system, to ensure that the immigration service universally provides an adequate service to people entering the United Kingdom?

Lord Taylor of Holbeach: My right honourable friend the Home Secretary is in Liverpool today addressing former UK Border Agency staff, and I have given a pretty clear indication that we want to make sure that, in future, this service reflects the needs of the customer.

Education (Amendment of the Curriculum Requirements for Second Key Stage) (England) Order 2013

Motion to Approve

3.07 pm

Moved by ***Baroness Garden of Frognal***

That the draft order laid before the House on 16 May be approved.

Relevant document: 2nd Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 12 June.

Motion agreed.

Marriage (Same Sex Couples) Bill

Committee (1st Day)

3.08 pm

Relevant document: 4th Report from the Delegated Powers Committee

Clause 1 : Extension of marriage to same sex couples

Amendment 1

Moved by ***Lord Hylton***

1: Clause 1, page 1, line 5, leave out "Marriage" and insert "Union"

Lord Hylton: My Lords, this amendment is partly probing and partly to do with language, and it may have some constitutional overtones. I have tabled it for discussion because I believe that it is not the business of government or of Parliament to change by legislation the long accepted meaning of words. As has already been said, the proposed change recalls Alice in Wonderland or, indeed, Orwell's Newspeak. Certainly the meaning of words evolves, and sometimes changes direction almost completely. This, however, does not justify changing known meanings by law. To do so undermines confidence in all generally accepted meanings. It devalues language and the honesty of spoken and written meanings. On those grounds, I appeal to the Government and those behind the Bill to have second thoughts.

I should say something about the word "Union" in my amendment. It is a strong and honourable word. For example, the union between Scotland, England and Wales has been a strong one, originally uniting the Crowns and later the Parliaments of the two countries. I trust that it will not end in divorce. The United States has similarly stood the test of time and survived a terrible civil war. Even the Union of Soviet Socialist Republics produced a strong central power capable of threatening the rest of the world.

I said at Second Reading that civil partnership should be regarded as an honourable estate or status. I take the same view of unions between two persons of the same sex. Another speaker in that debate suggested that "espousal" would be appropriate to describe the intentional coming together of two men or two women. I suggest that such an expression is a little archaic and may not convey permanence or lifelong qualities. I submit that "Union" is a better and stronger word and has wholly honourable connotations. To have two different words to describe two very different kinds of relationship would be far clearer. It would also make things far more straightforward for teachers, parents and others who have to explain relationships to young people.

If "Union" had appeared in the Bill here instead of "Marriage", the Government would have saved themselves a great deal of trouble. They would not have been faced with a petition from more than 650,000 people. They would not have aroused deep fears and anxieties throughout all parts of England and Wales, as we saw from the huge volume of letters sent to Members of both Houses. The Conservative Party would not have alienated many of their natural supporters.

Traditionally defined marriage had and has a sacramental character in many of the great religions. Leaving that point aside, it has represented the coming together of two families with their histories and traditions, and embraces the widest possible set of relationships surrounding and supporting the married couple and the children of their begetting. This is something immensely valuable that we should not risk devaluing. We should seek to avoid the problems beginning to re-emerge in countries that have thus far legislated for same-sex marriage.

I offer the amendment to your Lordships and the country in the hope of stimulating new and constructive thought. I beg to move.

Lord Cormack: My Lords, I went to the Public Bill Office last week to table this very amendment, only to find that the noble Lord, Lord Hylton, had beaten me to it. I therefore, of course, added my name to the amendment and was very glad to do so.

A couple of weeks ago we had an extremely moving debate, with some powerful speeches on both sides. I am bound to say that the result of that debate did not clearly reflect the division. I would much rather that we had not had a Division because I know that a lot of colleagues voted for constitutional reasons, believing that it was not right to seek to vote down something on Second Reading that had received such a large majority in another place. Yet I know from many personal conversations with colleagues in all parts of the House that there is deep concern and real unease about calling same-sex relationships "marriage".

3.15 pm

I detected a strong feeling in the House during that debate that same-sex relationships should be accorded a higher status than civil partnerships allow. It was implicit in the speech of the most reverend Primate the

Archbishop of Canterbury, and it was certainly explicit in mine and in a number of others, that there should be a new definition for same-sex relationships which goes profoundly beyond civil partnerships and the civil privileges that that arrangement brings. A number of us referred to "union", which the noble Lord, Lord Hylton, has clearly defined in his speech. Like him, I regard this amendment as a probing one. Indeed, I hope there will not be any votes during Committee on this Bill. This House is at its best when it reflects on the Committee stage and then votes, where appropriate, on Report. I certainly would not wish to press this amendment to any Division today, and I gather from what the noble Lord, Lord Hylton, said that he would not wish that.

However, I say to noble Lords in all parts of the Committee that surely we can find it within us to come up with a definition which gives to those who want to make a lifelong commitment to a same-sex relationship the same thing which marriage gives to heterosexual couples. As became clear during the debate a fortnight ago, there are differences that cannot be eradicated by the change of a name. The union between two men or two women can never be the same, in actuality or potential, as the union between a man and a woman. We all have to give and take in a debate of this nature. I would not only be content with, but would welcome, my church—the Church of England—blessing same-sex unions, and therefore giving them a recognition and permanence that they do not currently enjoy.

I ask friends in all parts of the House who are themselves gay—a number made very moving and powerful speeches in the last debate—to recognise that there is a strong feeling in this country that the relationship between a man and a woman is marriage and should remain marriage, and that we should look for some other definition beyond civil partnership for same-sex relationships. Whether there is a majority or not for that I do not know; only a referendum would tell. It is in that spirit, which I hope is one of understanding and tolerance, that I commend this amendment to your Lordships' House, and hope that we can discuss it and perhaps come back to it on Report. I cannot speak for the noble Lord, Lord Hylton, but for my part, if another word was preferred to "Union" I would not object at all. "Union" is a good word—an honourable word of long estate—but something that can and should be seriously considered by your Lordships' House. With those few words, I strongly support what the noble Lord, Lord Hylton has said.

Lord Lloyd of Berwick: My Lords, I did not speak at Second Reading, but I found myself in agreement with almost all those who spoke against the Bill. In particular I agreed with the speech of the most reverend Primate the Archbishop of Canterbury. My noble friend Lord Quirk also made a short and very effective speech. Like other noble Lords, I have received well over 100 letters from those who feel very strongly about the Bill; indeed, some have written to me more than once. They differ from the sorts of letters one gets on these occasions in that they are all clearly written from the heart. Equally, there are those who feel strongly the other way. I have received only a few letters from them. I do not know why there should be so few compared with the great mass of letters on the other side, but I have great sympathy with their views.

What has been missing in all this has been any attempt to find some sort of compromise between the two positions; in other words, a way of giving the gay community what it so obviously desires, without destroying the meaning of the word "marriage". It seems like many weeks since I received a booklet which does exactly that. It is issued by ResPublica and written by Professor Roger Scruton. It is extremely well argued and, in my view, provides exactly the sort of compromise that is needed. I do not think it was mentioned on a single occasion at Second Reading, but it should have been.

It was with great joy, when I arrived in the House half an hour ago, that I found an amendment tabled in the name of my noble friend Lord Hylton and the noble Lord, Lord Cormack, expressing exactly the view which I would have expressed if I had spoken at Second Reading. I have not had time to develop the argument in support of the amendment but, with your Lordships' permission, I will read just one short paragraph from the ResPublica *British Civic Life* document, which is entitled *Marriage: Union for the Future or Contract for the Present*:

> "To the Churches, we recommend that they recognise that the demand for same sex marriage comes from a serious desire for permanent loving homosexual relationships to be recognised and embraced by society, by Christianity and by other faith groups. The demand for secular marriage equality is in part an appeal for religious acceptance, which the Government's proposals cannot offer. We believe the Churches should consider offering not civil partnerships but *civil unions*"—

exactly what this amendment proposes—

> "to same sex couples a celebration and a status that recognises a transition from partnership into permanence. And the churches and other faith groups should therefore grant civil partnerships a religious celebration and recognition making them a civil union. Churches should recognise not just that homosexual persons are as they are, but they also are owed recognition of the permanent relationships they choose".

It is for those reasons that I will support this amendment as strongly as I can and hope that it will at least be considered by the Government.

Lord Phillips of Sudbury: My Lords, at Second Reading I suggested that the term for a same-sex marriage might be "espousal", but I accept the point made by the noble Lord, Lord Hylton, that it is an archaic or anachronistic word. I also said at Second Reading that I intended to sound out the House on whether there would be much support for that nomenclature, and now I have to say that there was not sufficient support for me to feel that bringing it forward at this stage would be the right thing to do.

The reason that I want to persist in the suggestion that there should be a different word for same-sex unions is largely to do with reconciliation. This measure has excited more public interest and reaction than any other measure that I can recollect in recent times, and there is undoubtedly a widespread feeling among a large mass of our fellow citizens—decent people who are not remotely driven by prejudice—that, as the noble Lord, Lord Cormack, and I said at Second Reading, there is a fundamental physical difference

[Lord Phillips of Sudbury]
between the two unions. It is not a difference either of status or esteem; nor a difference of stability or love, but none the less, it is a fundamental difference. What is quite interesting is that a number of the letters I have received have taken me up on the point that not all heterosexual unions have procreative potential. If a couple are coming together aged 96, there is not likely to be procreative potential. The same goes if one of the couple is unfortunately sterile. However, that escapes the point that same-sex unions can never have procreative potential.

Those who support using exactly the same language will ask, "What's the point; what's the difference; what are you trying to do?". All I am trying to do is to reconcile the bulk of this country to this important, evolutionary change in our law. I sincerely believe that refusing to compromise in the matter of nomenclature would be a big mistake. After this measure has become law, we do not want a rumbling continuance of objection which could conceivably crystallise and increase. I am, therefore, still in favour of a different word. I would be willing to accept "union" which the noble Lord, Lord Hylton, suggested, though I would prefer the word "matrimony", proposed in Amendment 46—which is part of this group—in the name of the noble Lord, Lord Armstrong of Ilminster. So I hope that we can find a compromise that will give honour to both sides—if I can call them that—although there are infinite shades of grey between the two extremes.

The Marquess of Lothian: My Lords, I strongly support what my noble friend Lord Phillips of Sudbury has said. In my speech at Second Reading, I said that there is a great difference between a definition in law and the real meaning of words. This is one that troubles me considerably. I agree with him that Amendment 46, in the name of the noble Lord, Lord Armstrong of Ilminster, suggests a way forward particularly because the word "matrimony" in the Oxford English Dictionary derives from the Latin word "mater", which means "mother", and therefore has the meaning of children related to it. Whether or not a marriage produces children is, in a sense, irrelevant. The meaning of the word is there, and it is there for a particular purpose.

I have found it very difficult to work out the best word to use. I have problems with the equal use of the word "marriage". I personally believe that marriage is between a man and a woman and, although I shall certainly obey the law, whatever it says, I shall never cease to believe that. Whatever we do in terms of same-sex marriages, we are not creating the same meaning, but a legal definition which will be applicable in this country and in this country only. We could be creating enormous problems of definition if, for example, a couple who, believing that they were married under this piece of legislation, were to go to another country which did not accept that definition of marriage—and Russia comes to mind, given what its parliament did the other day.

I hope that the Government will look closely at this to see whether there is a way of finding a distinction between what I call "real marriage"; what in some amendments is called "traditional marriage"; and what my noble friend Lord Cormack has called "union". I am not sure that any of these words is quite correct, but I think we need to ensure that when this legislation is through, rather than continuing to have this divisive and abrasive distinction, we can have two definitions which can live happily alongside each other. In the course of debating this legislation, I hope we will come to that conclusion.

3.30 pm

Lord Armstrong of Ilminster: My Lords, as both the noble Lord, Lord Phillips, and the noble Marquess, Lord Lothian, referred to Amendment 46, which is in my name, I will take this opportunity to speak to it.

The Bill reminds me irresistibly of Humpty Dumpty, as other noble Lords have said it does them. Your Lordships will remember that, from his seat on the wall, Humpty Dumpty said to Alice:

> "When I use a word, it means just what I choose it to mean—neither more nor less".

A little later, he said:

> "You see it's like a portmanteau—there are two meanings packed up into one word".

I should not of course think of casting the Prime Minister, with his many other qualities, as Humpty Dumpty but I am sure that the noble Baroness, Lady Stowell, and her colleagues will not have forgotten Humpty Dumpty's fate. Sitting on his wall, he failed to assess the risk of falling off it and had a nasty accident. Unfortunately, he could not be saved, even though the military were called upon in aid of the civil power.

The Bill would change the meaning of the word "marriage", which has hitherto denoted a loving and lifelong commitment between a man and a woman, often—although as the noble Lord, Lord Phillips has said, not always—leading to the procreation of children and the perpetuation of the human race. If and when the Bill becomes law, marriage would become a portmanteau word. Marriage between same-sex couples would be lawful as well as marriages between a man and a woman. The intention is that same-sex couples who choose to marry should enjoy equality of rights and equality of esteem with men and women who choose to marry. I have no problem whatever with that, although equality of rights is something that can be, and largely has been, achieved by changes in the law without any change of nomenclature while equality of esteem, although it may be assisted by a change in the law, will not be achieved by that alone.

My amendment today is concerned solely with the law. The Bill changes the meaning of the word "marriage", which is where Humpty Dumpty comes in. It makes marriage between same-sex couples as lawful as marriages between a man and a woman. As the noble Lord, Lord Cormack, said, there still remain some ineluctable differences between the two kinds of marriage. The law will need to recognise, and be able to provide for, this distinction. The Bill already shows that some of the existing legislative provisions which apply to marriage, as we have known it, cannot apply to marriages between same-sex couples, although we should want them still to apply to marriages between a man and a woman. My amendment proposes that, for the purposes of the law, marriages between a man and a woman should be

"matrimonial marriages". This would mean no change in the meaning of the word "matrimony", which would continue to mean what it has always meant: the act of two free persons mutually taking one another for husband and wife. I do not need to pray Humpty Dumpty in aid of my amendment.

There are precedents for a qualifying adjective for certain kinds of marriage. For instance, in continental legal systems—although not I think in English law—there used to be morganatic marriages, where a man and a woman were lawfully married but the children of the marriage were disqualified from inheriting the father's hereditary honours. The amendment which I am proposing would provide a convenient means of distinguishing in legislation, where necessary, between marriages of a man and a woman—matrimonial marriages—and marriages of same-sex couples. The word and concept of marriage would apply to both kinds of marriage, but the amendment would provide a serviceable legal distinction for one kind of marriage. It implies no moral, ethical or value-based judgment, or discrimination, between the two kinds of marriage. I commend it to the House.

Lord Lea of Crondall: My Lords, I would like to know the basis on which any noble Lord would disagree with the sentiments expressed by the noble Lord, Lord Armstrong of Ilminster.

Lord Waddington: My Lords, I agree entirely with my noble friend Lord Phillips. We are talking about two types of union which are entirely different: different in the way in which the union is manifested, in the obligations that flow from that union, and in the sanctions that can be obtained if one party defaults.

At Second Reading my noble friend Lord Jenkin missed the point entirely, which is very rare for him. He did not think that lumping together these two unions was redefining marriage, and said that it was not going to redefine his marriage. With respect to my noble friend, that is not the point. What about those coming up to marriageable age who are contemplating whether to marry? Might not this mishmash of traditional marriage and the union of two people of the same sex, with the accent no longer on family, make some people wonder whether to go ahead? What will they feel when denied the opportunity to have a traditional marriage?

One of the strangest assertions I have heard during this debate is that marriage will be strengthened if we go ahead with this Bill. There is not a jot of evidence to support that proposition; in fact, all the evidence is to the contrary. Some of us may have heard Dr Patricia Morgan when she—

Baroness Thornton: Since the noble Lord thinks there is not a jot of evidence that marriage will be strengthened by this Bill, what evidence does he have—apart from his assertion—that this Bill will put people off getting married?

Lord Waddington: I was just getting to the experience of other countries, and it does seem that some people have been put off. Dr Patricia Morgan produced evidence to show that since gay marriage was introduced in Spain in 2005, the decline in heterosexual marriage has been precipitous. It has been just the same in Holland since 2001, and also in Scandinavia. There is not one example of this change going ahead and marriage increasing. The result has been exactly the opposite.

Lord Alli: If we are repeating Second Reading speeches, the noble Lord knows that at the same time that same-sex marriage was introduced in Spain, the divorce laws were liberalised. That is what led to the decline in marriage, not the introduction of same-sex marriage.

Lord Waddington: I am afraid that the noble Lord is wrong about that. It was certainly true that in Spain there was a relaxation in divorce at the time of the introduction of same-sex marriage, but I am talking about new marriages. There was a big decline in new marriages in Spain since the change came about. So it seems obvious that if marriage between same-sex couples is to be allowed, at the very least it should be made clear that it is very different from traditional marriage.

Baroness Williams of Crosby: My Lords, political decisions are often influenced by issues of conscience. Speaking for myself, I have never confronted a more difficult decision than the one about equal marriage in the Bill that confronts us today. I voted against the amendment of the noble Lord, Lord Dear, because I believe that the House had a duty to look scrupulously at and scrutinise carefully every detail of this complicated Bill. I also believe that it was wrong to try to nullify a decision made in the other House as a result of a substantial majority on a free vote. Since then, I have had to confront the outcome of that and, with others in this House, consider very carefully the proposals before the Committee.

In my view, marriage has been for a long time the foundation of family life in this country and elsewhere. In that case, I believe that it is indeed a framework for procreation and the raising of children. As we all know, among mammals, human beings take longer to reach maturity than virtually any other creature on the planet. It takes between 15 and 18 years for a child to mature—if one takes an optimistic view—and I think many of us recognise that nowadays the actual figure may be well over 20. What that means is that we are looking at a very different proposition from other mammals. We are looking at what has to be a very large part of a life's commitment to raise children properly, which is a very substantial factor that we have not yet considered sufficiently.

As my noble friend Lord Alderdice has pointed out, the evidence from social workers and psychiatrists suggests—I will not put it more strongly than that—that it looks as if a marriage between a man and a woman is probably the best and most stable basis for raising children that we have so far invented. I would also suggest that there is another factor than simply the biological one. Of course, we know that there is a biological difference between the genders but it is also critical to say that there is a difference between the approaches of the genders to a whole range of issues. As the famous American writer Carol Gilligan pointed out in her book, *In a Different Voice*, women and men

[Baroness Williams of Crosby]
approach relationships, and very often their relationships with the whole of society, rather differently; above all, they complement one another. That is the basis of what is known in the churches as holy matrimony and something that we have to consider very carefully indeed.

Traditional marriage also gives equal value to parents of both genders. In a moving statement yesterday, Mr Lammy, the Member of Parliament for Tottenham, pointed out that there had been a serious devaluation of the role of fathers in our society, citing his own experience as the child of a single-parent family. Today hundreds of thousands of children—more than 1 million—are being brought up without fathers or mothers or another permanent, loving or male presence. Single-parent families often display truly amazing—indeed, nearly miraculous—commitment to their children. Many of them are the breadwinners as well as the main carers for their families. I am often breathless with amazement at the extraordinary courage and dedication that the heads of single-parent families bring to that duty. But often they find it utterly exhausting to try to handle the whole burden on their own. That is not to condemn in any way single-parent families but to say loudly and clearly that the role of fathers should once again be sustained by the state and by society because they are such a crucial element in sustaining a long-lasting and loving family between two parents.

However, of course there is a different side to the argument. The most reverend Primate the Archbishop of Canterbury said that he had been stunned by the quality of some of the relationships between gay men and lesbian women that he had come across. I accede to that completely. Among my own friends, some of the most remarkable examples of human union that I have ever come across are between my gay and lesbian friends and their partners. Therefore, why should there be any difference in the nomenclature? The distinction is perhaps best made by pointing out the very different roles, as has been done already by several speakers in this debate, of a marriage that is based on the outcome of procreation—the long-term maturing of children—and a relationship that is based on the huge, total and intimate relationship between two people who wish to live their lives together.

Quite straightforwardly, the churches have a great responsibility in being asked to be forgiven for some of the attitudes taken towards gay people in the past. The Christian churches are fundamentally about forgiveness—not about vengeance, but about forgiveness. Jesus Christ asked not only that human beings be forgiven but that human beings forgive one another for their mutual and reciprocal sins. I say loudly and clearly that the Christian churches, believing as they do in forgiveness, should ask forgiveness for the long, abusive and often cruel treatment of gay people over many years. I hope that that is something they will address now that they are under charitable and understanding leadership.

3.45 pm

In conclusion, I strongly agree with the noble and learned Lord, Lord Mackay of Clashfern, and indeed with the noble Lord, Lord Armstrong of Ilminster, that we need different descriptions for what are essentially different commitments. Equality is about equality of respect and equality of dignity. I strongly support it and I have done all my life. But equality is not the same as sameness. That is the fundamental mistake in this Bill. Therefore, there is no reason why a different nomenclature describing different levels and different kinds of commitment should not be part of this Bill. I strongly urge that we find nomenclature that describes the real differences—equal differences, but differences nonetheless—between couples who are married according to the traditional method and couples who are married because they seek a life-lasting union under this Bill. I support the noble Lord, Lord Armstrong of Ilminster.

Lord Brown of Eaton-under-Heywood: My Lords, when I came into the Chamber this afternoon, it never occurred to me that there might be something original to be said. Having listened, however, to all the speeches thus far, it seems to me that it is original to point out that the very purpose of this Bill—its underlying objective—is inclusivity; it is sameness; it is to eliminate, so far as possible, any differentiation in regard and in treatment of same-sex couples from heterosexual couples. It is to give same-sex couples the exact same status, benefits, comfort, joys, estimation, reputation—call it what one will—of marriage. The Bill is so called and the Explanatory Notes make that plain. With the greatest respect to those who move and support these amendments, they are calculated, if not indeed designed, essentially to undermine that core purpose of the legislation.

In truth, this is a root-and-branch attack on the Bill, almost in the same way as was advanced at Second Reading. I, too, regret I was unable to speak at Second Reading—I was in fact celebrating my own golden wedding. I am happy to say that my noble and learned friend Lord Lloyd of Berwick was among those who joined me in the celebration. He says today that to talk of civil unions, instead of using the language of marriage would be, and I think I quote him accurately, "to give the gay community what it so obviously desires". With the best will in the world, it would not. They have civil partnerships. It is absurd to suggest, I would argue, that civil partnerships and civil unions are distinct.

Lord Elton: I think that there is a misunderstanding between us about the difference between being equal and being the same. If you have two different things and put them together, you do not arrive at a larger quantity of the thing that was originally there; you arrive at something new. If you add one part of hydrogen to two parts of oxygen, you finish up with water.

Whatever you say in the law, there are two different categories here; what we are trying to do, in all charity, is to bring them together and bring some sort of reconciliation and mutual recognition of understanding, which is being made exceedingly difficult, if not impossible, by the way this thing has been introduced into Parliament and into public life. However, the fact remains that when you have one part hydrogen and two parts oxygen, you finish up with water and not hydrogen.

Lord Brown of Eaton-under-Heywood: I, of course, need the most rudimentary lectures in any scientific subject you care to mention, but I appreciate—and it was said time and again at Second Reading—that there is a distinction between equality and sameness. However, that is no bar to giving the gay community—same-sex couples—the same term to celebrate and enshrine their faith in and commitment to each other. If the Bill goes through in its present form and those couples are henceforth asked, "Are you married?", they will be able to say yes, but if the amendments that are now suggested go through, they will still have to say no, and I for one would regret that.

Lord Elystan-Morgan: My Lords, I find myself in total agreement with the submissions made so clearly by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. I have immense respect for and sympathy with those who stand firmly on each side of this argument. If it is proven that there can be no actual sameness in single-sex and dual-sex marriage, then on a very artificial basis the argument seems to be carried that way. There cannot be total sameness, and we all know that.

However, the question that we should humbly be asking ourselves this afternoon is: can there be so much in common that the idea of marriage can accommodate both in respect and in status? That, I think, is the real question. If the argument was that the Christian concept of marriage is now and always has been immutable, unchangeable and utterly the same from generation to generation, then my case would fail. However, is that in fact the case?

Prior to 1836, people could get married in this country only in the Church of England. My forebears were staunch Welsh Presbyterians but they had to submit to a ceremony that they regarded as wrong. Was that not a massive change in so far as the institution of marriage was concerned in 1836? I am sorry to pontificate about matters that are well known to many distinguished lawyers in this House but before 1882 and the Married Women's Property Act of that year, a married woman could not hold substantial property in her own name. She could hold what I think was called her "paraphernalia" but other property became the property of her husband and she herself was essentially a chattel of her husband's estate. Immediately after that Act of 1882, could anybody say that marriage had not changed at all, any more than one could say it after 1836?

Then, in 1925, the criminal law was substantially changed. Previous to that point, if a married woman was present when an offence was committed by her husband, there was a clear presumption—a rebuttable presumption, it is true—that she was acting under his dominion and under his orders. Would one not say that that substantially changed the situation of marriage in the criminal law?

Lord Anderson of Swansea: The noble Lord is giving us a very fine history of a number of changes which have, by statute, been brought about in relation to the definition of marriage. Is he suggesting that any of those changes was of the scale and nature of the change now being proposed?

Lord Elystan-Morgan: Ultimately, bearing in mind the whole ethos of society, it is a matter of judgment, whether the totality of these changes has substantially altered the institution of marriage. Prior to 1991 a husband could rape his wife provided they were still living together and no separation order had been made by a court. Was her position the same after 1991 as it was previously? One could give other less spectacular instances.

Lord Cormack: I nearly always find myself in almost total agreement with the noble Lord, but surely the one constant throughout all these changes is that the relationship has been between a man and a woman.

Lord Elystan-Morgan: That is absolutely true. That is the assumption made in the *Book of Common Prayer*, which, as I understand it—I am a Welsh Presbyterian—says that there are three justifications for marriage. The first is the procreation of children, the second is the avoidance of the temptations of fornication and adultery, and the third is that there should be a lifelong relationship based on love, affection and respect. The first justification has been dealt with very properly by the noble Lord, Lord Phillips of Sudbury. Many people who are young and capable of procreating children now get married on the understanding that there will be no children in their relationship. Does one say that their union is less than a union of marriage? On the third point, about the creation of a lifelong union based on love, affection, respect and mutual dedication, is there a fundamental difference between that and the institution of marriage, as we say now? Nothing that I have said can prove the matter one way or the other. However, I make the obvious point that marriage is not an immutable institution. It has become elongated and greatly changed over the years, and will be changed again. Is it not possible to accommodate within that change the term "marriage" for people of the same sex?

I make one last point with regard to union. The noble Lord, Lord Hylton, said that there was a union of Scotland, England and Wales. It was never a union in relation to Wales, as I am the noble Lord, Lord Elis-Thomas, will agree. The preface to the Act of Union says the country, dominion and principality of Wales is now and always has been annexed, incorporated and included. It was a rape—certainly not a union.

Lord Lester of Herne Hill: My Lords, I was not at the Second Reading debate but I have read the 90 speeches since then. I am glad I was not there because I would have added even more to the length of the debates. I declare an interest: I am neither a believing Christian nor a believing Jew, and that no doubt colours the way in which I approach these matters. Many of those who have spoken already come from a strong religious tradition, which I fully respect, and which drives many of their views. As the noble and learned Lord, Lord Brown, has said, the main purpose of the Bill is to enable same-sex couples to marry, either in a civil ceremony or, provided that the religious organisation concerned is in agreement, on religious premises with the marriage being solemnised through a religious ceremony.

[Lord Lester of Herne Hill]

I promise to speak only once in relation to Amendments 7, 8, 9, 34 and 46. All are based on the idea that there is something called "traditional marriage", defined as the union of one man and one woman for life to the exclusion of all others. What they mean by "traditional marriage"—as the noble Lord, Lord Elystan-Morgan, indicated in referring to the *Book of Common Prayer*—is a form of marriage that is biblically ordained in the Judeo-Christian tradition, which is a theistic tradition, although it does not represent the thinking of many Christians or Jews or many of those of no religious belief who are not affronted by the notion of same-sex marriage. Under the Bill, Christian churches, Orthodox Jews, Sikhs and Muslims are well protected from the risk of liability. However, that does not satisfy the movers of these amendments, who seek to write into the statute book a lesser status for same-sex marriage than for opposite-sex marriage by calling it "civil union" or some other term.

4 pm

Lord Gordon of Strathblane: Will the noble Lord, on reconsideration, delete "lower status" and just say "different status"?

Lord Lester of Herne Hill: No, I will not, because I think all noble Lords in this Chamber regard marriage as the crowning of our relationships. As a man who has been married for 41 years, I certainly do, as do many gay people who are religious, or not religious but who regard marriage as the highest status they can aspire to. Therefore if you call it something less, such as civil partnership or civil union, it has a lesser status—not just a different status but a lesser one.

Baroness Butler-Sloss: Will the noble Lord at some stage address the amendment of the noble and learned Lord, Lord Mackay of Clashfern? It is difficult to believe that his proposal for "marriage (same-sex couples)" could import a lower standard, because it includes the word "marriage".

Lord Lester of Herne Hill: I may not be able to do that because I still have to deal with these amendments, so I will reflect on that.

Baroness Butler-Sloss: It is in the same group of amendments.

Lord Lester of Herne Hill: I will do my best. As the noble Lord, Lord Elystan-Morgan, has said, concepts of marriage have not been static in England or elsewhere. During the past three centuries, Parliament has made changes to the status of marriage. What was once traditional and discriminatory is no longer enshrined in English marriage law. The Bill is a further step in removing unjustifiable discrimination, not against Catholics, Protestant dissenters or Jews, but against homosexuals.

I think my noble friend Lady Williams will concede that gay and lesbian couples are just as able as heterosexual couples to love each other in long, enduring relationships. They are just as able to bring up children in the way good parents do, in lifelong relationships. Some noble Lords will have personal experience of their children in gay and lesbian relationships doing precisely that.

Traditionally, the law governing the registration of marriages was piecemeal, restrictive and discriminatory, beginning with the Act of Uniformity 1662 and Lord Hardwicke's Marriage Act 1753, which abolished common-law marriages. In the 19th century, Parliament created exceptions, one by one, to that discrimination. Most recently, exceptions were made under the Places of Worship Registration Act 1855, not only for Protestant and Jewish dissenters but for other denominations and bodies, theistic and non-theistic, including Buddhists, Jains and Muslims, whose premises are registered for religious worship and the solemnisation of marriages.

Under Scots law, as the noble and learned Lord, Lord Mackay, knows well, marriages by cohabitation and repute could be contracted in Scotland until as recently as 2006. They were still regarded as marriages, even though they were irregular. A traditional marriage could also include a marriage between first cousins, an arranged marriage or a strange thing called a levirate marriage.

Until the Civil Partnership Act 2004, loving gay and lesbian couples could not get legal recognition for their enduring relationship. Now, they may do so. The Act has worked very well, even though it was strongly opposed at the time. However, even though the Civil Partnerships Act gives them equivalent rights and duties to those of married couples, it forbids them from marrying and the words "civil union" add nothing to the notion of civil partnership. That is why it is a lesser concept.

A year before the Civil Partnership Act became law, there was an important case—which many of your Lordships will have heard of—Goodridge v Department of Public Health, in which the chief justice of the Supreme Judicial Court of Massachusetts, Margaret Marshall, presided. That court upheld the right to gay and lesbian marriage, rejecting the argument that some of your Lordships have made today and elsewhere, that civil union or civil partnership was good enough. The chief justice explained why, on grounds of due process and equal protection, the State did not have a rational basis for denying same-sex couples marriage. A majority of that court agreed that same-sex couples must not be assigned second-class status, which is what I suggest would be accomplished if any of these amendments were accepted.

The other place has formed a similar view about the need for same-sex couples to marry, as have the Government. I know of no judgment of our courts or of the European Court of Justice that suggests the need for amendments of this character. They would suffer from the serious vice of encouraging a belief in a need for a second-class status for same-sex couples to be enshrined in English law. If the House divides now or hereafter, I will have to vote against any of them.

Lord Phillips of Sudbury: Perhaps my noble friend might refer back to what the noble and learned Baroness, Lady Butler-Sloss, asked him, which was whether he objects to Amendment 46, in the name of the noble Lord, Lord Armstrong of Ilminster, which would give

the term "matrimony" to a marriage between a man and a woman but would allow marriage to same-sex couples.

Lord Lester of Herne Hill: I have already explained my position, which is the same as the judgment I just referred to: that when it comes to marriage, gay and lesbian couples are entitled to total equality to that of opposite-sex couples.

Lord Black of Brentwood: My Lords, I strongly support what the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said. He crystallised exactly what the debate about this group of amendments is about. The rationale behind this Bill, the philosophy that underpins it, is the concept of equality of marriage. Without wishing to go over the same old ground that to a large degree we went over at Second Reading, the point is that gay people simply want the right to share in the same institutions, not the same institutions that are qualified in some way or another. With due respect to those who say that there is not much in it, there is a great deal in a name and it is much more than a matter of nomenclature, which I think is the phrase the noble Lord, Lord Phillips of Sudbury, referred to.

Words such as "union" and "espousal" will themselves turn rapidly into divisive terms. If I fill out one of those forms at a bank or somewhere else and they say: "Are you married?", and I have to say: "No, I am espoused", I shall feel in exactly the same state I was in under the existing law of civil partnerships. Therefore we do not want simply to replace one second-division label with another. I think that the noble Lord, Lord Phillips, was the first to raise the issue of esteem. I have to tell noble Lords that the issue of esteem and the use of the word "marriage", unqualified by anything else, are inextricably linked.

I spoke in the debate two weeks ago. Other noble Lords talked about the postbags that they had had since then. I have had a very substantial postbag—more so than when I have talked here on other matters—from people who looked at the House and thought very well of our proceedings. A number of people wrote to say that we gave them the courage to come out. That is a remarkable thing. However, this amendment flies in the face of all that. It is a wolf of an amendment in sheep's clothing. It strikes at the heart of the Bill and would go against the entire philosophy on which it is rightly based, which is full, unqualified equality for gay people.

Baroness Richardson of Calow: My Lords, it is my understanding that what same-sex couples are asking for is not permission from the state to enter into loving, committed, lifelong relationships but the recognition by the state that the relationships they have entered into, or will enter into, are equally valid in bringing stability to society and in being a right and proper place for the upbringing of the children they take into their families. Therefore, anything other than marriage, which we have all said is the bedrock of our society and should be the basis for the ongoing upbringing of children, will not do.

Lord Dobbs: My Lords, I feel deeply unhappy to be divided on this matter from so many of my traditional friends on these Benches, but divided I am. Many of these amendments seem to rely on an understanding of the word "marriage". In many of them we get down to defining the term. A "traditional marriage" is said to be,

"the voluntary union of one man and one woman for life, to the exclusion of all others".

That is stated in several of the amendments that we are discussing. We need to look at definition to see what it means.

I will start with,

"to the exclusion of all others".

Surely the bar is set too high for most mortals, including even the clergy and—dare I say it?—royal princes. The failure to keep to such a high trajectory does not destroy the meaning of marriage, and should not destroy the purpose of the Bill.

We are told that traditional marriage should be for life. Again, sadly, this is not so. We do our best. We promise and intend to be married for ever, but divorce is no longer a matter of public shame, although I hope it is a matter of much private regret.

Therefore, all that seems to be left of the definition is that marriage should be between a man and a woman. Traditionally that has been indisputably true. How could it have been otherwise? Until very recently, homosexuality was punished by the full force of the law: incarceration, a criminal record, chemical castration in many cases, and almost total social exclusion. Of course marriage traditionally was between a man and a woman.

However, the definition does not hold water. There is no satisfactory definition in the amendments of traditional marriage. Going back in time, we find that marriage was about inheritance, power, social standing and securing property rights. Those with no power or little social standing did it to make it easier to have sex—let us be honest. It is only in our lifetimes that marriage has been broadly based on love and any sense of equality between a man and a woman. Even today, there are still many exceptions to that rule.

Marriage has always changed its foundations. It evolves and will continue to do so. I have considerable sympathy for many of the values that lie behind the amendments. For instance, we have all suffered for too long from the intolerance exemplified in political correctness. However, with the greatest respect to many of my colleagues, we cannot base a piece of legislation on a concept of traditional marriage that has no enforceable meaning.

4.15 pm

Lord Mawhinney: My Lords, Amendment 34 is down in my name and that of my noble friend Lord Edmiston. I should like to convey his apologies for not being here today and although the words will be mine, the spirit will be ours.

When I spoke at Second Reading I think I was fairly clear. No one was confused. I was not in favour of this Bill. I had the pleasure of speaking immediately after my noble friend Lord Dobbs, and I am happy to do so again. I will come back in a few moments to something he said. I was not in favour of it because, as I pointed out, I had grown up in a home and environment

[Lord Mawhinney]
where both Christian and Conservative principles and values had dominated. That was my view and I voted against the Bill receiving a Second Reading. However, I have been in this place long enough to know that when both Houses have spoken with such overwhelming majorities, we have got to address that issue. We then have the right to turn to how we can, if possible, make the legislation better.

I would like to say to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, that I think he did some of us a slight injustice. We are not trying to rerun Second Reading and the concepts behind it by tabling these sorts of amendments. There is a difference between traditional marriage—as it has been referred to—and same-sex marriage, which the Government recognise in Schedule 4, Part 2 and Part 3 of the Bill. The word "marriage" is used to cover both. The noble and learned Lord, Lord Brown, may be interested to know that I did not attach my name to the amendment of the noble Lord, Lord Hylton, and my noble friend Lord Cormack precisely because I thought that, having been as outspoken as I was at Second Reading, I would be accused of trying to undermine the principle of the Bill in some other devious way. That is why I did not attach my name to that amendment although I support it.

My amendment and that of my noble friend Lord Edmiston addresses a separate point. We have spent more than an hour talking about the substance of marriage, and in some cases rehearsing Second Reading, but in reality—in biological reality if nothing else—there are differences between a marriage of a man and a woman and a marriage of two men or two women. I am staying well clear of the symbolism and the aspirations. I am simply stating a fact. My noble friend Lord Dobbs said that we must address the political correctness which has concerned and dominated us for too long. I want to agree with him but in a different context. When this House and the other place have passed legislation around religious hate crimes, racial hate crimes and the like, once the well-meaning, carefully written legislation was subjected to general use, those whose sense of political correctness exceeded that of most of us in this Chamber got to work. People, employees and workers, particularly in the public sector, were accused of all sorts of things in the name of that legislation and in many cases it took them months and a fortune to prove that what they were accused of was not in accordance with the law of the land. Their reputations never totally recovered. I foresee that possibility arising out of this legislation.

Your Lordships will notice that I have not addressed the substance of marriage and I have not tried to define it. I say to my noble friend the Minister that I would like the Bill to state that for the general public who are not involved in all this deep theological and, if I may say so, legal analysis, it is all right to say—

Baroness Turner of Camden: My Lords—

Lord Mawhinney: I commend the noble Baroness for her enthusiasm. I will give way in just a moment. I would like the ordinary men and women of this country to be able to say, "It is legally all right; I am not involved in hatred of any sort if I talk about a traditional marriage between a man and a woman or if I talk about a same-sex marriage between two men or two women". The Bill needs to reassure people that they can state what is factually the case and not have their jobs or reputations put at risk because somebody interprets this legislation in the way that race and religious hatred legislation has been interpreted thus far.

Lord Elton: My Lords, my noble friend will have heard the exception taken by a number of our noble friends and others to the term "traditional marriage". The term "same-sex marriage" immediately identifies what the difference is. However, there are two well known terms in the history of the Church of England which do not carry any such connotations, each of which I think might appeal especially to the predilections of the two confronted parties—that is, "ancient" and "modern". I do not know whether he would consider changing his proposed two terms at a later stage; I just put that in his mind.

Lord Mawhinney: I think not, because "ancient" and "modern" carry with them designations which are likely to complicate an already pretty complicated set of circumstances. I am just a simple Belfast boy and "traditional" and "same sex" seem to me to be a fair reflection. However, in the same spirit as that shown by the noble Lord, Lord Hylton, and my noble friend Lord Cormack, if somebody can find a better way to put in the Bill simple phrases that ordinary people can use to protect themselves against being charged with some sort of hatred, I would be very happy to consider that.

Lord Lester of Herne Hill: Is the noble Lord aware that the Government have tabled an amendment to deal with his precise point about free speech to make it clear that criticising same-sex marriage or otherwise will not in any way constitute a criminal offence? That is clearly spelt out in a later amendment.

Lord Mawhinney: My Lords, I am grateful to the noble Lord for his intervention. He knows, perhaps better than most in the House, that I have a fairly strong commitment to freedom of expression. That commitment to freedom of expression and the Government's commitment to freedom of expression have been there for years. However, that has not stopped people being accused of hate crimes, race crimes and religious crimes. I do not believe that simply using the term "freedom of expression", or repeating it, will be any more effective than it has been over the past 30 years. Something simple needs to be put in the Bill that everybody can understand and behind which everybody, whatever their view of the issue, can take refuge, if necessary.

Lord Alli: My Lords, the noble Baroness, Lady Turner, wished to speak but could not get up fast enough.

Baroness Turner of Camden: I thank the noble Lord. I wanted to make a very brief intervention to bring your Lordships back to the discussion of Amendment 1 in the name of the noble Lord, Lord

Hylton. It seems to me that that amendment cuts at the very heart of the Bill, for which we have already voted. Clause 1(1) states:

"Marriage of same sex couples is lawful".

In other words, we are talking about the basis of the Bill that we have discussed and was voted for by a very large majority in both Houses. The amendment seeks to replace "marriage" with "union", which then makes something quite different from what the Bill is all about. In my view, it is not an amendment at all, because a union of same-sex couples, as I understand it, is lawful anyway.

What we are talking about here is legislation for same-sex marriage, and amending that sentence in Clause 1(1) as proposed cuts at the very root of the legislation. That cannot be acceptable. If it were pressed, I certainly would not vote for "marriage" to be replaced by some other word. In fact, I cannot think of a word that would be at all suitable, because marriage is what we are talking about—marriage between same-sex couples, which we have already agreed in principle with a very large vote at Second Reading. I certainly do not want to repeat a Second Reading speech, although one could say quite a lot about traditional marriage because that also has been referred to in the debate. As far as I am concerned, the wording that was before us as concerns traditional marriage is very much based on a religious outlook, which I respect but do not share; and certainly it has a provision for a kind of opposition to divorce, which I do not share. Of course, I imagine that very many people in this House at some time have been in a divorce court and therefore would not qualify under the traditional marriage position outlined in some of the amendments before this House.

The main point that I want to make is that I do not see how Amendment 1, in the name of the noble Lord, Lord Hylton, can possibly be accepted because it cuts at the very root of this Bill, for which we have already voted. We have had our Second Reading debate and have already voted in this House and in the other House with a very large majority, so I do not see how that can possibly be an acceptable amendment.

Baroness Shackleton of Belgravia: My Lords, I would like to explain why I am against this group of amendments and why I support this Bill. I first declare an interest as a practising solicitor specialising in family matters, as a trustee of the Marriage Foundation—although I speak in a personal capacity and not on behalf of it—and as a person who has had only a civil marriage ceremony. A cynic may think that I am in favour of this Bill because it opens up another avenue of possible work for me, but the reason that I support it is precisely because I believe the reverse to be true.

Civil partnerships became legal in 2005. Seven years later, I am now dealing with a wave of cases for their dissolution, although I stress that they are no more prone to dissolution than marriages. I ask myself: would these partnerships have stood a greater chance of success had the parties been able to be married? If this could happen, I believe that there would certainly be no adverse consequences, and there may possibly be some positive ones.

The civil partnerships to which I refer often involve children of the union. It is, of course, the children who are the innocent victims of the breakdown of a partnership, however that partnership is described. It is my belief that every possible measure should be taken by this country to support commitment to stable relationships. Their breakdown and the fall-out for all concerned, financial and emotional, must be addressed because that is the real threat to the very fabric of our society.

4.30 pm

The law in relation to breakdown of marriage has evolved fast during the 30 or so years during which I have been in practice. For example, when I started, prenuptial contracts were of little or no value. It was considered repugnant to public policy to contemplate the breakdown of a contract that is meant to be for life. A few years ago, the Supreme Court decided that there had to be very good reasons not to hold a man or woman to their bargain regulating the terms of the demise of their marriage, just as in any other contract—thereby, in effect, substantially upholding such contracts.

Marriage is clearly not for life. That is illustrated by the status of second marriages. Nobody questions the validity of the second marriage of a heterosexual couple, yet a homosexual marriage is not entitled even to a first chance. What would Humpty Dumpty call a second marriage? Would he call it a "union" or a "second attempt"? It is fanciful to think that if marriage is for life a second marriage should be given status, when a homosexual marriage is not given a chance.

Religious institutions should not be forced or coerced to perform rituals that are not within their beliefs, and the Bill is clear on this point. My husband and I do not share a common faith and were therefore joined in a civil service, like many others. No one questions the validity of our marriage.

I have listened to many of the arguments for and against allowing the Bill to proceed, but when I hear the pleas of those who wish to sign up to the commitment of marriage it is impossible to see why an obstacle should be put in their way and the description of a union as marriage should be permitted to apply only to heterosexual couples, particularly given the status of the institution enjoyed by them. Everything should be done to support the commitment that two people wish to make to each other. To do otherwise is discrimination, pure and simple.

The consequence of the Bill not proceeding—and that is what the amendments before us would effect—would be this country being behind others in this area. Same-sex couples will have to go abroad to get married and there will be all sorts of complications as to the status in this country of such foreign marriages. We should embrace anything that encourages commitments to lasting, stable and loving partnerships, however they are described. Their demise and resulting fallout is causing serious problems for our society, and that is where our focus should be, not on the label given to their inception.

In summary, anything that has or could encourage the commitment of partners to each other, for their children, for life and for society in general, should be applauded. I am therefore in favour of the Bill.

Lord Goodhart: My Lords, I strongly support the speech of the noble Baroness, Lady Shackleton, and will be very brief.

I remember going to a wedding of a couple of men shortly after the Civil Partnership Act came into effect in 2005. It was regarded by most of us at the party following that event, including by myself, as a form of marriage, and was referred to as such on that occasion. I cannot remember any words such as "partnership" or "union" for that relationship when it was discussed. The natural description of the joining of a couple, whether of the same sex or different sexes, is surely "marriage". That is the appropriate word in the Bill.

I conclude by mentioning the word "matrimony", which has been referred to already and appears in the Bill. It is a word that means "mothership" and adopts the Latin word "mater". The use to which "matrimony" has been put in the Bill cannot apply.

Lord Higgins: My Lords, two themes have run through the debate. On one there is almost universal agreement that we must seek to achieve equality. We also have to recognise that there are differences between the two forms of marriage. Having said that—and I am sorry that I do not carry the noble Lord, Lord Alli, with me—it seems to me that we need effectively to recognise both the need for equality and the point that I have just made. I led from the Front Bench on the Civil Partnership Bill, which was a great step forward. None the less, it is perhaps unfortunate that its terminology did not recognise the aspect of equality, and it has certainly not been recognised by the country as a whole. What we need, therefore, is some recognition that there are two forms of marriage. If we do that, marriage will appear on both sides of the equation, representing equality. As suggested in Amendment 34, we need to have traditional marriage on the one hand, and same-sex marriage on the other. If we do that, we can achieve both of the objectives we seek, and reconcile the differences which have otherwise been apparent in the debate. One hopes that both the gay community and the community as a whole will recognise the status of these two forms of marriage as equal. I see no reason why this can not be done.

Baroness Noakes: My Lords, normally I agree with everything my noble friend Lord Higgins says. I am in profound disagreement with him today. He has emphasised that he believes that marriages between same-sex couples and heterosexual couples are different. There are all kinds of marriages that are different: marriages between divorced people; marriages with and without children; death-bed marriages. However, we do not find different terms for those. Noble Lords need to ask themselves serious questions about why they wish to continue to emphasise sexual orientation in the names that they give certain statuses. By perpetuating giving a different name to marriage in the context of gay and lesbian people, we are wishing to continue to regard them as different from us. Inclusion is what this Bill is about, and what we should be about in society generally, because that is what will make us a stronger society.

Lord Singh of Wimbledon: My Lords, the legislation itself refers to two different types of marriage. It is there in how it is written. I am concerned that the attempt to find some common ground between deep divisions is being interpreted as some sort of wrecking amendment. The idea of union is fine; it says everything. I cannot see any difference. The English language is very rich in giving precision to meaning, but sometimes it is not precise enough. We do not want to make it less precise. For example, the Indian languages Hindi and Punjabi have different words for "uncle" and "aunt" depending on which side of the couple they come from, the mother's or the father's. These words give precision so that you know what you are talking about. Here, if you use the words "union" and "marriage", that is fine; we know what we are talking about. There is nothing to suggest that one is less equal than the other, which would be totally wrong.

Lord Carlile of Berriew: My Lords, without wishing to prolong this debate, perhaps I may try to say a brief word on behalf of children. Many gay relationships—civil partnerships—have children within them. If anybody believes that within a gay relationship it is simple to create a family, they should think again and talk to some of those families. For both gay women and, perhaps more particularly, for gay men, having children by adoption is a most formidable task and one that is scrutinised with great care. What we are talking about here is not just the equality of the married couple or the partners to that relationship, but of their children as well. I would urge upon your Lordships that we should enable those parents to say to their children, "We are married", and above all we should enable those children, when they are asked about the relationship of their parents, to say, "My parents are married", not "My parents are espoused" or "My parents are unionised"—

Noble Lords: Oh!

Lord Carlile of Berriew: I thought that might draw a guffaw from the Labour side of the House; they know the dangers of it. Instead of that or any other constructed euphemism, those children should be able to say, "My parents are married", just as other children can.

Lord Mackay of Clashfern: My Lords, I have tabled Amendment 2 in this group. I was led to put this amendment down in an attempt to analyse what the differences are on this Bill. They are quite deep in this House, in the other place and in the country. I thought that something could possibly be done to try to bridge the divide.

The claim made by the proposers of the Bill is that whatever happens, the word "marriage" should be at the forefront of its title. Anything less takes away to some extent from that, although very worthy words have been proposed. When one looks at the debate here and in the other place, and reads the letters we have had—I thank the people who have sent many letters to me; I cannot possibly answer them all in view of my commitment to this—one can see that there is a feeling among many people in this country that same-sex marriage on the one hand and opposite-sex marriage on the other are different, and in a number of ways. They may have much in common and yet have distinctions.

I believe that the attempt to deal with this sort of thing in the descriptions given in the myth busters document that was published along with the Bill did not really look at the main objection that people have, which is the fact that, over many centuries, marriage has signified a relationship between the opposite sexes. That is the fundamental point which a lot of people have grasped and held on to, in a way that is difficult for them to accommodate in any other context. When the myth busters got going, they used a technique which I remember being described by the great advocate Sir Milner Holland to the effect that if you cannot answer a point, the best thing to do is to set up a cockshy as close to the point as possible, knock it down with a great flurry and then pass on. That, in effect, is what has happened. The myth buster talks about the myth of having no development in marriage over the years. Anyone who has listened to this debate or read the volume to which the noble Lord, Lord Pannick, referred at Second Reading will know that there have been many developments in marriage over the years. The idea that there have been none is not the foundation of the argument at all; rather, it is that the fundamental distinction is between a marriage where the relationship is between people of opposite sexes and what is proposed in this Bill.

What I think might be of use in dealing with that is to recognise within the nomenclature of the Bill that there are two distinct provisions, one relating to same-sex marriage and the other to opposite-sex marriage. I did not put down the opposite-sex marriage amendment today because I saw that these other amendments about traditional marriage and so on had been tabled. There is reference to opposite-sex marriage in Clause 11, alongside same-sex marriage. Ultimately, it does not make any difference to the provisions. However, it does signify that the distinction between the two is understood by the legislature and that the title "marriage" is given to what the proponents of the Bill want, at the same time as recognising that those distinctions exist.

4.45 pm

Reference has been made by my noble friend to children. One of the greatest matters to be concerned about these days is the way in which the abuse of our children has reached extraordinary lengths over quite long periods, with the authorities seemingly unable to extricate them from it. It is very distressing. It has nothing whatever to do with this Bill, but it has to do with the fact that we must think carefully about children. I feel particularly distressed because I had a part in the Children Act which, in a sense, is the foundation of the system whereby the state takes care of children. As far as I understand it, most of these abused children have been in the care system—I find this particularly difficult to take.

The provisions concerning children in this Bill need to be looked at. Part 2 of Schedule 4 says:

"Section 11 does not extend the common law presumption that a child born to a woman during her marriage is also the child of her husband … Accordingly, where a child is born to a woman during her marriage to another woman, that presumption is of no relevance to the question of who the child's parents are".

That seems to leave the position of the child very much in limbo. The idea that there is no difference at all between the two is not borne out by that kind of provision. We need to think about this as well the other matters that have been spoken about.

While I am on the subject, paragraph 3(2) of the same schedule says:

"Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this section".

As your Lordships may imagine, a child born of a woman who is a partner in a same-sex relationship is in a somewhat difficult position if it has been born by natural processes. The position of children in this area needs carefully to be considered.

When my right honourable friend the Secretary of State introduced this Bill in the House of Commons, she recognised the deep divisions over it. The best solution I can suggest for dealing with these divisions is to hope that Parliament might show that, in passing the Bill, it appreciates the distinction between same-sex and opposite-sex marriage, but that it has decided to produce a Bill which gives to same-sex couples the rights that belong to opposite-sex couples, subject to the modifications that the Bill makes to accommodate the distinction between the two.

The Archbishop of York: My Lords, I apologise for not being here in your Lordships' House at Second Reading. I thank noble Lords for their greetings on that occasion, when I was recovering from surgery. I am on the mend, although I am not quite there yet. I want to thank especially the noble Baroness, Lady Royall of Blaisdon, for the generous compliments in her speech.

I suggest that this legislation is an exercise in ideological redefinition. The amendments before us today are designed to limit this ideological damage. I will speak to the one amendment that probably does it better than the others. The legislation does not address the concrete disadvantages from which same-sex couples still suffer. It is a matter of deep personal regret and sorrow to me that homosexual people are still diminished, which is anathema to me and to the Primates of the Anglican Communion. In the 2005 Dromantine communiqué, we said that the diminishing of homosexual people is anathema to the Christian faith. However, it still happens, which is a deep regret for me. I want to tell them that I am sorry.

The great difference between this legislation and the reform that introduced civil partnerships is that the latter remedied certain concrete difficulties and disadvantages. What injustice would be remedied by some civil partnerships becoming marriages? That argument of remedying injustices does not seem to carry much weight; the argument lies somewhere else. Ministers of the Crown have argued that the legislation extends to an excluded minority a concrete privilege currently enjoyed by the majority. What is that privilege? The privileges that accompany marriage have already been extended to same-sex couples through civil partnership legislation. However, since marriage has been defined in law and practice as a relationship between a man and woman, marriage, as so defined, cannot in law be extended to same-sex couples.

The draft legislation presupposes an account of marriage that makes the gender of the partners incidental

[The Archbishop of York]
to the institution. This, to me, is a novelty. It does not correspond to marriage as it has been known in British law and society. This is not an extension of something that already exists but the creation of a new institution, under the aegis of existing marriage law, which is in fact quite different from it. We are somewhat ill prepared midwives at the birth of a new social institution. Why not give it a new name?

The interests served by the legislation before us are, I suggest, ideological and aimed at changing the way people think: hence the amendments before us today are rightly geared towards protecting individual freedoms in the face of a radically new ideology. The church shares, in the best traditions of this House, a passion for justice and a deep concern for the particular needs of minorities. These concerns have been met in the provisions of the civil partnership legislation. However, today, the question turns on two other interests of the church: first, an interest in the truthful description of anything; and, secondly, an interest in defending responsible practices of government against the sophistic abuse of language.

It matters that we recognise this as a new social institution. As a Christian, I would argue that being a man or a woman is not incidental to the human relations a person may engage in, but formative of them. In Christian understanding, the meaning of human sexual difference is in the good gift of God in creation. The maleness and femaleness of the human race are given to us. It is where we are placed, in common with the whole human race in every generation. Our role is to be thankful for it and to understand how it helps us to live the human lives that we are given. This task of appreciating our sexual difference weighs equally on married and unmarried, on gay and straight, and on children and adults—on all who have the gift of being human. Christians, in common with Jews and Muslims, understand marriage as essentially representative of this good gift of sexual difference. This understanding flows from an undivided and unbroken tradition that has sought to define the unity of the human race, uniting nations, religions, cultural traditions and periods of history.

In describing marriage as bound up constitutively and generatively with male-female relations, we describe a good form of life for which we can be unreservedly thankful. As with any aspect of creation, our interpretation of marriage is not final. Reality is deeper than its interpretation; there is always more to be learnt. Our thinking may be shaped by artists, working in whatever form, who represent to us some fragment of reality to be recognised. It will be shaped also by scientists, who model complex interactions and observations in formulae that render them intelligible. It may also be shaped by theologians, teaching us to thematise that which artists and scientists have shown within the larger picture of the goodness of God.

The unamended legislation uses the term "marriage" to describe a new entity. For me this entity is worthy in itself, but it is not equivalent to marriage as hitherto described. I have argued that this is not an area for state intervention. The work of government does not lie in teaching us how to interpret and think about reality. Yet we are here. The trouble with this undifferentiated use of the term "marriage" is that it will create confusion on the one hand, and erode freedom of conscience on the other. The amendment of the noble and learned Lord, Lord Mackay, seeks to remedy this. It calls both same-sex marriage and opposite-sex marriage "marriage".

In contrast, the legislation to create civil partnerships was, for me, a proper exercise in formal terms of the authority of government. That legislation was precise in its use of language. It recognised the intrinsic difference between the loving, life-long commitment of same-sex couples and the loving, life-long commitment of male and female couples in marriage. I respectfully submit that those who sought to extend the scope of civil partnerships beyond same-sex couples would have made the legislation lack legal clarity. Its intention would have been blurred, if not thwarted. Those who resisted the extension of civil partnerships beyond same-sex couples were right, because it would have blurred the entire conversation and the entire discussion.

Without some clearer classification, as suggested in the amendment of the noble and learned Lord, Lord Mackay, we introduce a degree of ambiguity that is not common in law. This cannot help anyone, because Clause 11 still refers to "opposite sex". We must be very careful about how we arrive at an answer. Responsible government is government under law. A responsible Government must prevent, as far as they can, the judgment that the law is an ass. I believe that fracturing the law of marriage into two alternative concepts of marriage inevitably inflicts damage of very serious proportions on English law, weakening the authority of the law as a whole. This damage can be lessened by the very honest amendment of the noble and learned Lord, Lord Mackay. This amendment seeks clarity and makes an important distinction. If it is accepted, as I sincerely hope it will be, it will go some way towards preserving the integrity of the law. I support the amendment, and I hope the House will have the same view.

Baroness Howarth of Breckland: If that was the definition, would the Church of England be prepared to marry couples in church? The great difficulty with civil partnership marriages for Christians—those who love the Lord deeply—is that there is no religious content. From the speeches just made, would the Church of England change its position if the amendment of the noble and learned Lord, Lord Mackay, was agreed?

The Archbishop of York: I wish I was speaking on behalf of the Church of England. I am not. I am part of it. The noble Baroness knows as well as I do that decisions about liturgy and constitutions are not the privilege of bishops but of the General Synod of the Church of England. This matter will need to be discussed. Incidentally, I am one of those who has gone on record as saying that had civil partnerships been given enough space, the church would not have escaped the possibility of a conversation. What do you do with people in same-sex relationships that are committed, loving and Christian? Would you rather bless a sheep and a tree, and not them? However, that is a big question, to which we are going to come. I am afraid

that now is not the moment. We are dealing with the legislation as we have it. I am trying to make it slightly easier to work out what that difference is. Give me time, and one day I may come back and speak on this.

5 pm

Lord Grenfell: My Lords, I will be extremely brief. I am not sure whether I prefer the amendment set down by the noble Lords, Lord Hylton and Lord Cormack, or the one set down by the noble and learned Lord, Lord Mackay, but I believe that either of them would help bridge the divide. Therefore, I am generally in favour of both of them and would be happy with either.

The only point I want to make is to refer back to something that the noble Lord, Lord Carlile, said about children. I think that he rather oversimplified the matter. If a same-sex couple says to its children, "Yes, we are married", and those children have had what I would call the benefit of religious education and say, "But we have been told that marriage is between a man and a woman", this seems divisive and it would be very difficult to square the circle with them on that.

Baroness Butler-Sloss: My Lords, I, too, am a trustee of the Marriage Foundation, which I should say is totally neutral on this subject. In any case, I am speaking personally.

To pick up a point made by the noble Baroness, Lady Williams, about children, when I was a family judge I tried cases where I placed children with gay couples, male or female. I had the utmost confidence that those children would be extremely well brought up. Nothing that we are discussing today, or indeed in this Bill, leads me to believe that whatever a same-sex couple's relationship is called would have anything to do with the excellent way in which very many children are brought up by lesbian and homosexual couples. That is my own personal experience, sitting as a judge.

I did not speak at Second Reading; I thought that 90 speakers were enough. Like others, I have received more than 100 letters which my secretary has so far replied to, and many more e-mails. It might interest the House to know that 98% were opposed to this Bill, but the 2% in favour were also extremely persuasive. Listening to the earlier speakers, it seems clear to me that the word "union" will not be treated by those seeking marriage as the equivalent of "marriage", for the reasons that have already been given. Since it is clear that this Bill is going through, it is time for us to try to find the best way forward.

Those who support the Bill are—to use the colloquialism—hooked on the word "marriage". That we have to accept, but the Government need to recognise the strength of feeling of those who are opposed to the use of the word "marriage" simpliciter as recognising the marriage of couples of the same sex. We must find a middle way. I strongly support the amendment in the name of the noble and learned Lord, Lord Mackay of Clashfern, because this House urgently needs to seek reconciliation and find a compromise, as the noble Lord, Lord Phillips of Sudbury, said earlier. Somehow we have to allow the word "marriage" and somehow we have to distinguish between different sorts of marriage.

As the noble and learned Lord, Lord Mackay of Clashfern, has pointed out—and I aim to say in later amendments to this Bill—this is a question of equality but it is not a question of uniformity. You cannot have uniformity in this Bill together with what you get in the marriage of opposite-sex couples. One only has to look at Part 4 of the Bill, as the noble and learned Lord, Lord Mackay of Clashfern, has done, to see that there are differences. There is nothing wrong with differences in equality. As the most reverend Primate the Archbishop of Canterbury said at Second Reading, there is a danger of equating equality and uniformity in this Bill.

I cannot see how Amendment 2 can be objectionable to people. The "marriage" word is used and those who are in any marriage are equal, but the amendment recognises that there are differences. You cannot say that marriage for same-sex couples has in any way a lower status than marriage for heterosexual couples has. For goodness' sake, at the end of the day we are legislators, if I might respectfully remind the House, legislating for what people on the ground will actually be doing. As the noble Baroness, Lady Shackleton, pointed out, there are all sorts of marriages: those who wish to marry; those who are already married—I have to confess that I have been married for very nearly 55 years, and to the same man; and marriages for the second or third time. We have to recognise this, but we also have to recognise that there is a difference, and although the noble Baroness, Lady Noakes, talked about different sorts of marriage, the different sorts of marriage that she mentioned were actually between male and female, because in those days they could be nothing else; they were all male-female.

This amendment would be a compromise in an otherwise deeply divisive Bill. I have to say to those who have been talking about the children, particularly the noble Lord, Lord Carlile, that perhaps most important of all—

Baroness Thornton: I should like to ask the noble and learned Baroness a question. I have wanted to ask this of other members of your Lordships' House who were speaking about the matter of calling a same-sex marriage a same-sex marriage rather than distinguishing it from what people are calling a traditional marriage. What is the noble and learned Baroness's view about the fact that anyone who has a same-sex marriage would have to identify their sexuality by definition? Why should they have to do that?

Baroness Butler-Sloss: You have to recognise the truth of it. The most reverend Primate pointed out the importance of truth. It is different. We have to look at some stage, as the noble and learned Lord, Lord Mackay, pointed out, at how we deal with the children of a couple who cannot have their own children as a couple.

Baroness Thornton: I beg the noble and learned Baroness's pardon, but in other parts of our legislation—in our equalities law—we protect people from having to declare their sexuality, because we think that that is the right thing to do. It is not a question of the truth or not the truth.

Baroness Butler-Sloss: The declaration of sexuality would be relevant only at the moment of marriage. It would not be relevant to everybody else who meets them or knows it. They will be married. Perhaps the most important point made by the noble Lord, Lord Carlile, was about children. If we have marriage and same-sex marriage, so far as the children are concerned, it is marriage. They will say, "My parents are married". It seems to me that the noble and learned Lord, Lord Mackay of Clashfern—

Lord Lester of Herne Hill: I apologise to the noble and learned Baroness, but I never answered her question when I was on my feet. She asked what I thought of Amendment 2. What I do not understand, either in Amendment 2 or in the speeches in support of it, is why it is necessary. The Bill begins by saying in Clause 1(1):

"Marriage of same sex couples is lawful".

Subsection (2) refers to:

"The marriage of a same sex couple".

We do not need to have sarcastic remarks about Lewis Carroll and Humpty Dumpty. The words could not be clearer. I do not understand why one needs to add anything. The Bill is about the marriage of same-sex couples and nothing else.

Baroness Butler-Sloss: I am grateful to the noble Lord for being prepared to answer the question that I asked him some considerable time ago. The House needs to recognise the deep division that exists both in this House and in the country. From the quantity of e-mails and letters that I have received, I know that there are a number of people out there who are bitterly upset, bitterly distressed and angry at what has happened with this Bill. I support the noble and learned Lord, Lord Mackay of Clashfern, because the amendment is a compromise—it is an attempt at reconciliation. I do not support the word "union" for the very sensible reasons that have been given. I think that there has to be the word "marriage"—I am, with regret, converted to that now—but I believe that we have to seek a middle way. If we do not, there will be many people out there listening who will be even more upset than people in this House.

Lord Mackay of Clashfern: I should like to answer the question that was not put while I was speaking. The provisions in the Bill for same-sex and opposite-sex couples are different, and therefore it is only right that a distinction should be recognised in the Bill for that purpose. That would not make one any less lawful than the other or anything of that sort, but it would distinguish between the provisions that apply to same-sex couples and those that apply to opposite-sex couples. Nobody can deny that these provisions are different in the Bill.

So far as the noble Baroness, Lady Thornton, is concerned, there is no necessity to declare one's sexuality in relation to same-sex marriage. As I pointed out at Second Reading—and I am sure that the noble Baroness listened carefully—there is no question of needing to be gay to engage in a same-sex marriage. Platonic relationships between people of the same sex would perfectly suit the Bill as it stands.

Viscount Astor: My Lords, it seems to me that we are trying to find a form of words that does not increase the level of discrimination. The amendment in the name of my noble and learned friend Lord Mackay offers that and I shall be most interested to hear what my noble friend on the Front Bench has to say about it. It seems to me that it could provide a way forward without producing further discrimination. I believe that if we added the words "traditional marriage" to the Bill, we would be going down entirely the wrong route. What is the definition of "traditional marriage"? How do we describe it? Is it when the bride wears white? Is it a traditional marriage when the bride goes up the aisle with two children whom she has already had out of wedlock? We would be going down a road that, as legislators, we should not follow, and I believe that it would be a grave mistake. We should find a form of words that both sides can live with.

Lord Dear: My Lords, Amendment 9 in this group is in my name and I should like to speak to it now. I have a great deal of sympathy with what the noble and learned Baroness, Lady Butler-Sloss, said. She really focused, as did the most reverend Primate the Archbishop of York, on the blurring of the wording before us in the Bill.

There has been some comment about the difference between equality and sameness, and we touched on that at Second Reading. What we have heard today has, very largely, been two alternative points of view. One is that out of civil partnership might have arisen something which itself would grow into the dignification of something similar to marriage, and the other is a fusion—which is what the Bill is really talking about—of two completely different strands into the one nomenclature of marriage. It is that point that I wanted to mention in introducing Amendment 9 and to offer a way forward—a compromise to where we are now.

The Government say that the Bill is about ensuring equality, fairness and respect for same-sex couples who wish to have their relationship recognised in marriage, and I agree with that. I hope the Government will also accept that there also needs to be equality, fairness and respect for those who hold a different opinion. Much has been said about protecting churches and individual clergy from being forced to officiate at same-sex marriages. I believe I am right in saying that there is nearly universal agreement in your Lordships' House on the important principle of protecting religious liberty in that regard.

5.15 pm

Indeed, the Bill includes provisions that the matrimonial laws of the Church of England will be largely unaffected. In other words, the church law of marriage will remain in place. This is especially important because the Church of England has a unique privilege as the established church and a special common-law duty to provide services of marriage to people in parishes throughout the land. I know that the church is grateful for the steps taken by the Government in that regard. Time will tell whether those protections will stand the evitable challenges of the UK and European courts. Some of us are not altogether optimistic in that regard. Be that as it may, the Government's intention is that the canon law of the Church of England remains intact.

The principle underlying this protection is one of freedom and liberty. That is a good and right principle that has widespread support in your Lordships' House and in the country at large. That being the case, should we not also apply it to the non-established churches, to places of worship of a non-Christian faith and to couples who wish to enter into a marriage as traditionally defined? Under the Bill, a couple wishing to marry according to the current legal definition of marriage can technically do so only in a Church of England church. If betrothed couples wish to marry in a nonconformist church, a non-Christian place of worship or in a civil setting, they will be forced to use the new—let us call it gender-neutral—definition of marriage. For people of faith, deep questions of conscience arise, especially as that new definition of marriage will be the one used in the service of worship. This is causing deep hurt and offence.

We have already heard at least two references in your Lordships' House today to the volume of letters and e-mails. I am something of a lightning conductor in this issue because of the amendment I moved at Second Reading, and my count is more than 1,000 letters and e-mails. My percentage count is exactly same as that of the noble and learned Baroness, Lady Butler-Sloss, with 98% against the Bill and 2% for it. I place no great emphasis on that other than to say that there is very deep concern out there and outside the Westminster village. For many people, many churches and those of other faiths, the Bill fundamentally alters the meaning of marriage.

I accept that churches are unlikely for the time being to be forced to marry people of the same sex. However, outside the Church of England they will be forced to marry people according to the new definition, which is what I want to focus on now. That will be the only option available to them. Churches, the non-Christian faiths and the couples themselves are being forced to publicly declare that their relationship equates to a new, gender-neutral definition. For many people—perhaps that 98% I mentioned—that is absolutely not what they want. It contradicts their most deeply held religious or philosophical beliefs. They want to enter into a marriage that accords to their own understanding of marriage and their most deeply held beliefs. That perhaps is not an unreasonable expectation.

All marriage ceremonies, however held, must include a declaration by each of the parties that there is no lawful impediment to marriage and that each consents to marry the other. Every couple who marry currently do so in the knowledge that they are entering an institution that is a voluntary union for life of one man and one woman to the exclusion of all others. It may be said that some people are free to attach their own meanings to their own marriages and can use whatever additional words or promises they want, but that is missing the point. The key element of marriage is that the couple are making a public declaration that they are married. That requires a public declaration of what marriage is, and we have heard a great deal about that this afternoon in your Lordships' House.

Under the Bill, the definition changes so that marriage will be a gender-neutral institution. That is not what many couples want or believe about marriage. They should have the option of publicly declaring that their marriage is in accordance with the current law, which is consistent with their faith or beliefs. My amendment addresses this problem in a very simple, reasonable and non-destructive way. For marriages outside the Church of England, it introduces an optional form of words for the solemnisation of a marriage, which reflects the current legal definition of marriage—that is, the definition that is currently understood. I emphasise that this will apply only to couples who want to take that option.

This is about giving people a choice and respecting their different beliefs. It is a permissive measure. It does not affect the legalisation of same-sex marriage in any way; it does not take away Clause 1 of the Bill. It simply respects those who disagree by giving them the option to register a definition of marriage that reflects their beliefs—which are universally respected throughout the world, and, if I may say so, throughout history. With this amendment, non-established churches and those of other faiths at least have the option to offer couples a declaration of marriage that is acceptable to their beliefs and publicly recognised. It will be a significant help to those faith groups. Put simply, without this amendment couples who have a traditional view of marriage have three options. They can get married in the Church of England, not get married at all or get married in a ceremony where the declaration of marriage does not reflect their beliefs.

I will conclude by quoting again from the paper that I mentioned both in my opening remarks at Second Reading and when I wound up, when I talked about some research that had been carried out in Argentina. Noble Lords may remember that I indicated that Argentina was, to my knowledge, the last country to follow pretty well exactly the same steps that we took in legislating, and that two years on it is now in a position to measure the results. The results are huge in terms of unintended consequences. I will read from the very last paragraph of a paper by Dr Ursula Basset, which touches on much of what we have heard about the public view and getting uniformity of view and acceptability to this legislation. Dr Basset says:

> "Argentina is moving toward uniformity. Previously, we had two brothers: Homonormativity and Heteronormativity. They both desired the "marriage word". Homonormativity won, and redefined marriage to adapt it to its needs. The new definition and its consequences were imposed on the whole of society. Heteronormativity and its peculiarities were abolished as a rule, and Heteronormativity lived as an expatriate in its own land without any visible juridical recognition in society".

The prose is a bit purple, but we can understand what it is saying. As two competing viewpoints jostle for a place in this nest that we are calling marriage, I contend that it is very important that there is a willing acceptance by the majority outside of what we are legislating about. I confidently commend Amendment 9 to noble Lords as one way forward to get that acceptance.

Lord Alli: My Lords, I rise to speak against Amendment 1. I will also touch on Amendments 2, 9, 33, 34, 46 and 57.

The clear purpose of the Bill is to allow same-sex couples to marry. These amendments seek, in one way or another, to create two classes of marriage, which is exactly what the Bill is avoiding. This occurs in the amendment of the noble Lords, Lord Hylton and

[Lord Alli]

Lord Cormack, which replaces "marriage" with "union"; and in the amendment of the noble and learned Lord, Lord Mackay of Clashfern, by adding "marriage (same sex couples)". Let me say to the noble and learned Lord that he did not do his cause justice by linking the abuse of children to a speech about same-sex marriage. Many of us found that absolutely offensive.

Lord Mackay of Clashfern: Let me make it absolutely clear that it had nothing to do with that. It is important—to me anyway—that children are considered. That is what I wanted to be considered. I do not link it to same-sex marriage at all. I never did and I do not think that anything I said could reasonably be so construed.

Lord Alli: The noble and learned Lord should not have said it then. The amendment of the noble Lord, Lord Dear, and those of the noble Lords, Lord Edmiston and Lord Mawhinney, and the noble and right reverend Lord, Lord Carey, have opted for the term "traditional marriage". In fact the noble Lord, Lord Dear, and the noble and right reverend Lord, Lord Carey, want a separate register too.

Lord Carey of Clifton: Perhaps I may interrupt. I withdrew my name from that amendment, even though I fully support my noble friend Lord Dear in what he has said. I was a teller when we had the debate and it was clear to me that, almost by three to one, we as a House declared our unanimity with the House of Commons. Therefore this debate is not about going over old ground again, but about finding a way forward to meet the deep discord and anger in the country. Many people are very worried about this Bill. How can we go forward together and find some unanimity of language? That is why the noble and learned Lord, Lord Mackay, is suggesting that amendment.

Lord Alli: I thank the noble and right reverend Lord for that intervention. I had heard that he had withdrawn his name from the amendment. I think he described it as mischievous and dangerous and I very much agree with that, too. The noble Lord, Lord Armstrong of Ilminster, wants to use the term "matrimonial marriage" for opposite sex-marriage. All these amendments are cut from the same cloth with the same purpose: to create inequality in the use of the term marriage between same-sex couples and opposite-sex couples. I agree with the noble Lord, Lord Black of Brentwood, that these amendments are wolves in sheep's clothing, designed to preserve marriage and the use of the term exclusively for opposite-sex couples, with the exception of the amendment of the noble Lord, Lord Dear, which seeks to introduce a new concept of traditional marriage.

Lord Cormack: I apologise for interrupting and I am grateful to the noble Lord for giving way. I appeal to him to accept that many people in this country are deeply troubled. Many wish to see a true equality and true equality is based on difference. Can the noble Lord not concede that it would be a good idea to find a formula that both would give him what he wants and would ease the minds and consciences of countless people outside this Chamber?

Lord Alli: I do not accept the noble Lord's premise. I understand that there is concern outside this Chamber, but the vast majority of people in this country want this measure to go through. Poll after poll, the majority in the other place and, I suspect, the majority here want it. The problem with the noble Lord's suggestion is that it is diametrically opposed to what we wish for in terms of the use of the word marriage.

I am a little confused about what the noble Lord, Lord Dear, has in mind when talking about traditional marriage. Marriage not just predates Christianity, but is found in many different cultures and traditions and, as has been said, in many different forms. As an aside, the noble Lord may be interested to know that in ancient Rome, Emperor Nero was married to a man—a fine tradition, in my view, but perhaps not what the noble Lord had in mind.

5.30 pm

Lord Dear: First, I hope that the noble Lord will clear up the point about whether I am being mischievous. I hope that he will say in the Chamber that I am not. Secondly, subsection (2) of the new clause proposed by Amendment 9 states simply:

"A 'traditional marriage' is one where the basis of the marriage is the voluntary union of one man and one woman for life, to the exclusion of all others".

Lord Alli: My Lords, I think I am right—I hope that the noble and right reverend Lord, Lord Carey, will correct me if I am wrong—that in an e-mail purporting to come from the noble and right reverend Lord, he described his own amendment as mischievous and dangerous. It was not I who used those words.

Attempts to create inequality in the Bill seem to be the sole object of these amendments. To create a separate term or register would be both divisive and unnecessary. I hope that noble Lords will think again and not press their amendments. I suspect that there is no appetite for them in the House.

Lord Elton: Perhaps I may make a point to the noble Lord. The homosexual community has long been a minority in our society and has protested, understandably loudly, at being unfairly treated. He has just pointed out that those opposed to the Bill are now a minority. Could he not extend the same generosity that he expects, and try to reach an accommodation in that direction?

Lord Alli: I will repeat what I said to the noble Lord, Lord Cormack. These two concepts are diametrically opposed. What the noble Lord wishes to happen is completely opposite to what I wish to happen. At some point, when two sets of rights are in conflict, these great Houses of Parliament have to decide which rights are pre-eminent. If there was a course of action that we could find that would satisfy and accommodate everybody, there is nobody in the House, on any side of the argument, who would not work night and day to find it. However, these concepts are opposed. Therefore, our job as a Parliament is to say which is pre-eminent, the first or the second. I suspect that the public and Members of this House—

Lord Lester of Herne Hill: Is that quite right? The amendment of the noble Lord, Lord Dear, states:

"Nothing in this Act takes away the right of a man and woman to enter a traditional marriage".

Nothing in the Bill takes away that right. It is not a question of one right trumping another. The rights of the traditionalists are protected completely under the Bill, and the rights of gay people are also protected.

Lord Alli: Amendment 9, tabled by the noble Lord, Lord Dear, would create a separate register—so there is a difference in the noble Lord's amendment, which would create a new category of marriage. More broadly on the noble Lord's point, I contend that we have to consider the emotional response of the communities involved. The issue cannot be gauged simply by the words in the Act. I argue very strongly that it is not acceptable to have a differentiation in wording or name between different types of marriage. That would be exacerbated outside this Chamber the moment the legislation went through.

Lord Aberdare: My Lords, I had not intended to intervene in this debate, but I will make two brief points. First, I am very uncomfortable with the references we have heard to a new definition of marriage. As I understand it, the aim of the Bill is to enable same-sex couples to share in the existing understanding and status of marriage. My understanding of my marriage is not primarily gender-based; it is based on the fact that I love my wife and wish to stay with her for the rest of my life. That has nothing to do with gender.

Secondly, I would love to find a compromise—I am a compromising sort of person, and I very much welcome the recognition of my noble and learned friend Lady Butler-Sloss that the word "marriage" is essential in whatever we end up with—but I find it extremely hard to imagine any compromise that would not formalise the idea that there are two different forms of marriage. Therefore, I tend to agree with the noble Lord, Lord Alli, that it is either one thing or the other.

Baroness Thornton: My Lords, we have had a long and interesting debate about the definition of marriage and about this group of amendments. I accept fully that noble Lords are, with the best of intentions, trying to find a way through. However, we on these Benches think that the effect of all the amendments in this group would be the same. All, in different ways, seek to enshrine in law a distinction between what is referred to as "traditional marriage" or "matrimonial marriage" and the new, statutory definition of marriage that will be created under the Bill, which encompasses the union of both opposite-sex and same-sex couples. Whether those who tabled the amendments intended to or not, they were in effect making two classes of marriage. Trying to find different definitions—and in some cases, I fear, jealously guarding the word "marriage" for heterosexual couples—suggests that one form of marriage is inferior to another and that flies in the face of the Bill.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, was quite right in his remarks, as were other noble Lords, including the noble Lords, Lord Dobbs and Lord Black, the noble Baroness, Lady Richardson, my noble friend Lady Turner, the noble Baroness, Lady Shackleton, in her excellent speech, the noble Baroness, Lady Noakes, and the noble Lord, Lord Carlile. They all appreciated that while those who tabled the amendments have a strong personal belief about marriage, in some cases rooted in their religious faith, their amendments would undermine the purpose of the Bill.

It is important to make a distinction between something that has the effect of undermining a belief or an idea and something that undermines an individual's ability to hold such a belief. I find it difficult to believe that, when the Bill becomes an Act and same-sex marriages are a routine matter, as they will be, the noble Lords who have been so nervous today will feel that something important or precious has been removed from their faith or their strong belief in marriage.

Article 9 of the Convention on Human Rights clearly enshrines an individual's right to freedom of thought, conscience and religion. We must be absolutely clear in our protection of these rights. The Bill seeks to do that. The Bill does not in any way undermine those rights for individuals in relation to their belief about the appropriate nature of marriage. As the noble Baroness, Lady Richardson, said, its purpose is to provide for the state to recognise equally the relationships of couples, regardless of whether they are between members of the same sex or of opposite sexes, who wish to make a loving and lifelong commitment to each other.

By inserting a distinction between same-sex and opposite-sex marriage back into statute, whether by describing one as a "union", as Amendment 1 would do, or as matrimonial marriage requiring special privileges, as Amendments 46 and 57 do, or by setting up a separate register, we would undermine the purpose of the Act, which is to remove the distinction in law between same-sex and opposite-sex relationships. Therefore, we on these Benches have no sympathy with, and do not support, any of the amendments in this group. I ask noble Lords not to be seduced by what I regard as the lethal combination of the noble and learned Lord, Lord Mackay of Clashfern, and the most reverend Primate the Archbishop of York. The way they described what they wish to achieve was seductive, but it would have the same effect on the Bill.

Lord Mawhinney: I think that the noble Baroness suggested that my amendment was designed to undermine the Bill, although I explicitly made clear that it was not. What would she think about giving ordinary members of the public the assurance that they can use certain phrases, by putting them in the Bill, to protect themselves against undue political correctness? My amendment has nothing to do with the substance that she has addressed so far in her speech.

Baroness Thornton: I think that noble Lords' concerns about free speech will be addressed at a later stage in Committee, in the next group of amendments but one. I am certainly happy to address those concerns. This group of amendments is about the substance and purpose of this Bill. The Government have addressed the freedom of speech issues; indeed, they are covered in this legislation and in the legislation that is already in existence.

Baroness Stowell of Beeston: My Lords, I am very grateful to all noble Lords. I think more than 30 noble Lords have contributed to this debate on the first group of amendments. We have covered quite a lot of ground and I hope noble Lords will forgive me if I start by reminding the House about the purpose of this Bill. All the amendments in this group go to the heart of the Bill. I acknowledge the point that my noble friend has just made and I will address his specific amendment and others in turn in a moment. The Bill, in part, is about safeguarding the future of the vital institution of marriage by making sure it reflects the modern and inclusive society that this generation of your Lordships' House has helped create, and which younger generations value and want to see extended.

What we are looking for here is the acceptance of gay men and lesbian women for who they are. That means accepting their relationships on the same terms as we accept all relationships. I hope noble Lords will forgive me if I refer back to a couple of points I made at Second Reading. Clearly, I will not go over all the points I made then. The arrival of civil partnerships had a profound effect on how we, as a society, look at and consider gay couples. Civil partnerships allowed us to see that gay men and lesbian women want to be together for exactly the same reasons as straight couples. I know some noble Lords usually refer to the inability of gay couples to procreate as a way of saying that there must be a difference there because there is a physical difference. However, as other noble Lords have said today and in other debates, that is not a fair distinction. There are couples of the opposite sex for whom procreation is not an option. The longer George Clooney waits to pop the question, the less likely it is that that might be an option for me. If he were ever to extend his hand in marriage to me, I would not want noble Lords to diminish my union with him on the basis that procreation was not a possibility.

We understand that gay couples take their union—I use that word in the broadest sense, rather than specifically in response to the noble Lord, Lord Hylton—as seriously as a man and a woman who want to get married. That is why we have become accepting of them and, for many of us, why we are so comfortable with the idea of gay couples marrying just like the rest of us. I know many noble Lords have said today that there is a minority—some describe it as a majority—outside this House, and indeed there are some inside this House, who do not feel so comfortable. Of course I understand that. However, the evidence shows that the majority of people are quite content for marriage to be extended to gay couples. It is worth reminding ourselves of the speech that my noble friend Lord Norton of Louth made towards the end of Second Reading, when he went through all the various evidence out there. He made the very striking point that among the younger generation there is very high support for and acceptance of gay marriage.

It is also worth reminding ourselves that we can see that gay men and women do not want to change marriage. They just want to be part of something that they, too, believe is important to our society. In terms of the current legislation and civil partnerships, if someone asks a gay man or a lesbian woman whether they are married, to be really accurate they have to say, "Sort of". They are not legally married, yet they want to be able to say yes. As my noble friend Lord Black made clear, as did the noble Lord, Lord Carlile, this is very important.

5.45 pm

The most reverend Primate the Archbishop of York outlined very powerfully his belief in marriage. I welcome him back to your Lordships' House. In response to him and to all noble Lords, it is important to say that it is vital that religious faiths remain free to practise in accordance with their doctrines. If, for them, that means that marriage is between a man and a woman, that is their fundamental right and the Bill does not change that. It is vital that people can believe that marriage should be between a man and a woman and be able to say that that is what they believe. Again, the Bill allows that, but in allowing gay men and lesbian couples to be married in civil ceremonies or by those religious faiths who choose to, the Government are clear that it is not right to distinguish between their status as married from that of marriages between a man and a woman. All of these amendments would create a distinction, a different tier or a separate institution, and that is contrary to what this Bill seeks to achieve.

I turn first to Amendment 1 in the names of the noble Lord, Lord Hylton, and my noble friend Lord Cormack. This has been commented on by several noble Lords. It goes to the heart of the Government's policy intention in the Bill. It amends the first word in the first line so that a new institution of "union" would be created for same-sex couples. We disagree with that on principle but I note that it has attracted limited support from around the House. Amendment 2, in the name of my noble and learned friend Lord Mackay of Clashfern, while apparently less stark, has a similar intention of creating a subdivision of marriage by referring to "marriage (same-sex couples)" as a separate concept. My noble and learned friend argued that this distinction is necessary because until now marriage has been between a man and a woman only. My noble friend Lord Dobbs made the important point that the reason why marriage has been able to be only between a man and a woman until now is that the law has not allowed otherwise and because of the way in which we have considered gay people. I will return to my noble friend's other amendments on the effect of terms in law because that comes a bit later.

We do not agree that extending marriage to same-sex couples requires a separate distinction or institution for them. There is only one institution of marriage. There is no middle way in this matter. We cannot bridge this divide—we can only remove it. We do not want to construct a new institution for same-sex couples, even a new institution that uses the word "marriage". It would still be a difference for same-sex couples, and that is exactly what this Government are trying to avoid and to change through this Bill.

Lord Higgins: A curious aspect of this debate is that it is assumed that if there is a distinction between two possible definitions, one is necessarily inferior to the

other, and that comes out very clearly. Would it meet her point if there was also an amendment which said the status of both forms of marriage is equal?

Baroness Stowell of Beeston: If anybody wished to table an amendment and your Lordships wanted to debate it, I would be happy to consider that debate and respond to it. However, the short answer is that it would not be acceptable because we want only one institution of marriage. That is what we are seeking to achieve. We do not want to distinguish between opposite-sex couples and same-sex couples.

Lord Mackay of Clashfern: Before my noble friend moves on from that point, am I not right that different terms are applied to same-sex and opposite-sex marriage at different points in the Bill?

Baroness Stowell of Beeston: I think my noble and learned friend referred to this point in an earlier intervention. I will probably cover it a little later, but I think he is referring to Clause 11(1), which states:

"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".

That does not introduce a distinction between two different kinds of marriage.

As I understood the noble Lord, Lord Dear, to say, Amendment 9 in his name is intended to define the marriage of a man and a woman as a traditional marriage, and have that marriage registered as such by the Registrar General in a separate register. Traditional marriage of the type he is putting forward could be formed only by opposite-sex couples. Therefore, this amendment would create an unwelcome distinction in the institution of marriage. As I stated at Second Reading, the introduction of same-sex marriage does not redefine any existing or future marriage of a man and a woman. It is not necessary to protect that status.

Lord Dear: Does the noble Baroness agree that what I propose is, in very simple terms, a purely permissive provision that would retain the new legal definition of marriage as introduced by the Bill? It goes very much with the Government's line on this and does not seek to change it at all. It would simply set up within that new definition the possibility of the couple getting married declaring their marriage in a form which is acceptable to them and having that registered in a register—a side register, if you like—that the registrar can keep. As I say, the provision would work permissively within the Bill and not upset it at all, but would satisfy the 98%, shall we say, who want the comfort of staying with what they understand to be traditional marriage.

Baroness Stowell of Beeston: Although I understand perfectly what the noble Lord is saying, the amendment would still create that separation and distinction that somehow one group is different from another and, therefore, we have to keep them apart. That is what we are trying to avoid. That is what we do not want to do.

Amendments 33 and 34 give us an opportunity to discuss—

Lord Lester of Herne Hill: I am grateful to the Minister for giving way. Will she ask her advisers why the separate but equal doctrine that is being propounded in some parts of the House was struck down by the American Supreme Court in Brown v Board of Education as being inherently discriminatory?

Baroness Stowell of Beeston: I shall certainly seek advice on that, but I have a feeling that my noble friend would be able to help me answer the question he has posed. I will certainly endeavour to respond to that point while I remain on my feet.

Amendments 33 and 34 give us an opportunity to discuss Clause 11. It may be helpful if I explain briefly what Clause 11 does. It is a significant clause to ensure that existing and future legislation in England and Wales will be interpreted so that all references to marriage and related terms will be read as applying equally to same-sex married couples unless specifically provided otherwise. This is right and necessary to ensure that all married couples are treated generally in the same way. The clause also gives effect to Schedule 3, which makes further provision for the interpretation of references to marriage in both new and existing legislation in England and Wales. It also gives effect to Schedule 4, which sets out particular instances where the effect of Clause 11 would give the wrong result.

I turn to Amendment 33—

Lord Mawhinney: My Lords, I am grateful to my noble friend. I understand that she just wants marriage without any bells or whistles—just marriage. Will those people who are not politicians or lawyers, and who may use the phrase "same-sex marriage" or "traditional marriage", now be exposed to the charge of committing a hate crime?

Baroness Stowell of Beeston: Absolutely not. I was going to come on to respond briefly to the points that my noble friend raised. However, I am happy to make clear now that I will move an amendment to make it absolutely clear that that is not the case—not that it would have been anyway, but I am happy to clarify that. Furthermore, nothing in the Bill prevents anybody using any kind of terminology they choose to use in the course of their conversations, whether in public or private. The Government seek to ensure that we do not introduce distinctive terms into this legislation which separate out different people. That is the key difference.

Amendment 33 in the name of my noble and learned friend Lord Mackay states that Clause 11 should be:

"Subject to the later provisions of this Act".

However, as I said, Clause 11 gives effect to Schedule 4, paragraph 27(2)(a) of which makes Clause 11 subject to contrary provision made by,

"the other provisions of this Act".

That achieves the effect that my noble and learned friend's amendment appears to seek and so renders it unnecessary. My noble and learned friend also referred to the presumption of parenthood and to adultery and raised important points about both those matters. We shall discuss later amendments on these issues so it is probably more efficient for me to come back to those at the appropriate time.

[Baroness Stowell of Beeston]

As I have just said, we believe that Amendment 34 in the name of my noble friend Lord Mawhinney is unnecessary. Although we reject any designation that would create two tiers of marriage because there is only one form of marriage, Clause 11 does nothing to prevent anybody using any terms, including "traditional marriage" or "same-sex marriage", if they choose to do so. As I have described, the clause interprets terms related to marriage for legal purposes; it does not prevent individuals or others making reference to, or supporting, traditional marriage. It is worth referring to the powerful intervention by my noble friend Lady Noakes on difference and the fact that there is a lot of difference in marriages, as other noble Lords have said. Some married people have no children, some stay married for life and others divorce. We do not apply different labels to those kinds of marriages and that is not something that we want to do in the Bill.

Baroness Cumberlege: My Lords, I am very interested in what my noble friend said about people being able to say what they want without fearing retribution, as it were. I should like to bring to the noble Baroness's attention the case of Adrian Smith, the housing officer who was demoted by a housing authority for expressing the view, in his own time and on his personal Facebook page, that same-sex marriage was an equality too far; and to that of Brian Ross, the police chaplain who was forced out of his job for stating his opposition to the same-sex marriage proposals. I could go on. Can my noble friend tell me where there are safeguards in the Bill to prevent that happening?

6 pm

Baroness Stowell of Beeston: There are safeguards in the Bill as the Equality Act makes it clear that it is possible for people to express their religious or other beliefs in a manner that is absolutely of their choosing as long as that is done without inciting hatred or is not expressed in the workplace in a way that might damage an employer's reputation. However, given that we shall come to a large group of amendments on this issue, and there is quite a lot that I can say at that point which I think will reassure my noble friend, I hope she will allow me to respond to that issue in more detail on that later group of amendments. I think that would be the best thing for me to do.

The amendments tabled by the noble Lord, Lord Armstrong of Ilminster, proposed that marriages for opposite-sex couples be classified as "matrimonial" marriages—again creating, I would argue, separate institutions for marriage of opposite-sex and same-sex couples. Others have commented on that word "matrimonial", which does not seem to have attracted a great deal of support around the House. For us, again, as a matter of principle, that is something that we would be unable to accept. I know that the noble Lord is genuinely concerned that the current law on marriage might alter as it applies to opposite-sex couples when this Bill comes into force, but I can assure him that this is not the case.

The Government do not believe that any new legal status or subdivision for marriage is either necessary or right. There is one legal institution of marriage in England and Wales, which, through this Bill, all couples will be able to join by either a religious or a civil ceremony. The existence of marriage for same-sex couples does not alter the marriage of opposite-sex couples. Nothing in this Bill affects the marriage of opposite-sex couples in any way. Regrettably, these amendments would deny same-sex couples the fairness that this Bill is designed to achieve. I therefore ask the noble Lords not to press their amendments.

I repeat to noble Lords concerned about freedom of expression and freedom of speech matters that this Bill most clearly protects freedom of speech and freedom of expression.

The Archbishop of York: My Lords, first of all, I thank noble Lords for wishing me well in my recovery and on being back in the House. To answer the noble and learned Lord, Lord Mackay, on the question of whether even in the Bill itself some distinction is drawn between same-sex marriage and opposite-sex marriage, I would say that a distinction clearly is made in Schedule 4, Part 3, on the divorce and annulment of marriage. It states under the heading "Divorce":

> "Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this section",

but when it comes to annulment, that does not happen, so already there is an acknowledgment of some kind of distinction between the two types of marriage. I do not think it is right to say that there is no distinction.

Furthermore, although Clause 11 says that marriage is being extended, the particular definition of marriage and the way in which the Church of England has perceived it and teaches it are also very different, so I am not so sure that you can deny that even in the Bill there are some distinctions.

Baroness Stowell of Beeston: The most reverend Primate referred to divorce and annulment. We are not changing the definition of "annulment" because it is an historical definition that is linked to procreation. As I said at Second Reading and again today, clearly there is a distinction between same-sex couples and opposite-sex couples because procreation is not available to same-sex couples. We are not seeking to change the definition of existing marriage law and how it applies to opposite-sex couples. We think it is perfectly proper for that distinction to remain as it is and not be changed in order to apply to same-sex couples, because that would render it meaningless.

The Archbishop of York: What about adultery?

Baroness Stowell of Beeston: Again, amendments on adultery are coming up. I do not know whether we will get to them today. I am really looking forward to that debate. It is going to be great. I urge noble Lords to come back on it. We should be selling tickets for it. I will be able to cover that issue in detail at that time.

Baroness Berridge: Will my noble friend the Minister clarify the position on annulment? This matter appeared in a letter written to Peers. My understanding of annulment is that it is not connected to procreation. You can have an annulment of a marriage even if you get married at 65. It is not directly related to procreation.

Baroness Stowell of Beeston: If my noble friend will forgive me, although I responded to the most reverend Primate on this topic, this topic is quite a point of detail and we will be debating it later at great length, so rather than trying to flick through my briefing folder now to find specific answers, when we have that debate I will be absolutely prepared and armed to respond to her at that time.

Lord Stoddart of Swindon: On that point, in the case of a heterosexual marriage, annulment depends on consummation, not procreation. In those circumstances, since that will not apply to same-sex couples, there is no equality in this Bill.

Baroness Stowell of Beeston: The noble Lord has done me a great service because he reminds me that I was wrong in the connection that I made to procreation. That is why it would be much safer if we debated this matter when I have the right speaking notes in front of me. I am grateful to the noble Lord.

I can, however, respond to the question from my noble friend Lord Lester. This was a US Supreme Court case that ended the bussing of children to segregated schools in the USA. I am wary of making a direct read-across, but my noble friend makes a point that is very worthy of consideration: that separate but equal can be a cloak of inequality.

I think I have covered all the points raised in the debate, so I ask the noble Lords whose amendments we have been discussing not to press them.

Lord Hylton: My Lords, I am honoured and pleased that my amendment should have paved the way for such a profound, important and long-lasting debate. I think that very many of us have been doing our best to find a common ground for honourable, long-term relations between couples of whatever kind. I hope that the Government accept that point. For my part, I have come to the view that other amendments in this group, and indeed in the fourth group on the Marshalled List, point the way better than mine to the ways in which we can continue to seek improvements to the Bill both in Committee and in the later stages. I therefore beg leave to withdraw Amendment 1.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3 had been withdrawn from the Marshalled List.

Amendment 4

Moved by ***Lord Cormack***

4: Clause 1, page 2, line 3, at end insert—

"(c) a priest of the Roman Catholic Church in England or Wales."

Lord Cormack: My Lords, this is a very different, and rather more limited, amendment, but I think it has some importance. I had tabled it really as a probing amendment to try to get a clear answer from my noble friend who will be responding as to why clergy within the definition of the Bill are limited to clergy of the Church of England and the Church in Wales. Of course, one understands this in the case of the Church of England; it is the established church of the land. Welsh disestablishment happened a long time ago. It seems to me that there is one church in this country that deserves to be mentioned in the same clause: the Roman Catholic Church. I know very well that there are clear and honourable differences of opinion within the three churches. We heard eloquent speeches both today and on Second Reading from the noble Baroness, Lady Richardson, to indicate that she, as a former president of the Methodist Conference, takes a line that is clearly at variance with the official line of the Church of England and the Roman Catholic Church.

Baroness Richardson of Calow: Perhaps I may also remind your Lordships that it is not the line that my church is taking at the moment.

Lord Cormack: I am grateful for that clarification, although I know quite a number of free churches ministers of different denominations who would certainly line up behind the noble Baroness. However, if she or anyone else wished to table a further amendment to include the clergy of the free churches, I would raise no objection, but the Roman Catholic Church has made its position clear and unambiguous. That deserves recognition, and the priests of the Roman Catholic Church deserve the same degree of protection that is rightly being accorded to priests of the established church. It is in that spirit that I briefly commend the amendment to the Committee and hope that it will at least elicit some support. I beg to move.

Baroness Royall of Blaisdon: My Lords, the amendment is an unnecessary and potentially confusing addition, because it would, as the noble Lord said, add Roman Catholic priests to the list of persons exempt from the common-law duty to marry parishioners under Clause 1(5). As he also said, the common-law duty extends only to members of the Church of England and to Wales clergy, not the Roman Catholic Church. It is not a question of not wanting to offer protection to the Roman Catholic Church, it is just that it is not necessary to do this against challenge on the basis of any such duty.

Priests of the Roman Catholic Church are already protected in Clause 2, as are clergy of all other religious organisations that may decide whether to opt into performing same-sex marriage. Clause 2 is absolutely clear. It states:

"A person may not be compelled to … undertake an opt-in activity, or … refrain from undertaking an opt-out activity … to conduct a relevant marriage … to be present at, carry out, or otherwise participate in, a relevant marriage, or … to consent to a relevant marriage being conducted".

The clause makes specific provisions for individuals, other than registrars, to be able to refuse to perform or participate in performing a same-sex marriage. This will allow priests, ordinaries, altar servers, organists and many others to refuse to participate in such a service, even if their governing authority has decided to opt into same-sex marriage. That is clear and the provisions in the Bill are sufficient to allow the Catholic Church to not opt into same-sex marriage with full confidence of protection under the law.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I thank my noble friend Lord Cormack for moving the amendment. As he indicated, it is a probing amendment, and I hope that from both the response of the noble Baroness, Lady Royall, and what I am about to say that he will be reassured that there is good reason why clergy of the Church of England and the Church in Wales are identified separately in the Bill.

As my noble friend indicated, the amendment would make plain that no duty of the Roman Catholic clergy to marry couples is extended by the Bill to same-sex couples. I am grateful for the opportunity to explain the position. In respect of this amendment, whatever his duties in the Catholic Church or under Roman Catholic canon law are, a priest of the Roman Catholic Church is under no legal duty according to English law to marry anyone. If a couple of some other faith, or who are for example simply not members of his congregation, come to him, he does not have to marry them.

However, there is a common-law duty to marry parishioners, which applies to the clergy of the Church of England and the Church in Wales. That duty arose because of the establishment of the Church of England and the previous establishment of the Church in Wales. The purpose of Clause 1(4) and (5) is to ensure that this duty does not extend to the marriage of same-sex couples.

However, given that no other religions are or have been established in England and Wales, no common-law duty arose in respect of the clergy of other religious organisations. It is therefore not necessary to have a provision in the Bill ensuring that such a duty is not extended to the marriage of same-sex couples. All other religious organisations are entirely free to decide who they wish to marry according to their rites.

Therefore, Roman Catholic clergy, along with ministers of other religious organisations, are fully protected under Clause 2. The amendment would therefore achieve no change in the law but could produce confusion and doubt as to whether the clergy of the Roman Catholic Church might be under a legal duty to marry opposite-sex couples when, in fact, they are not.

I hope that that straightforward and simple explanation satisfies my noble friend. However, it has been important and worth while for him to have moved the amendment to provide an opportunity for that explanation to be given.

Lord Cormack: My Lords, I am grateful to my noble friend and the noble Baroness, Lady Royall. I have a number of Roman Catholic friends who have been somewhat concerned, and I am grateful that all this is now on the record. I am only too glad to beg leave to withdraw the amendment.

Amendment 4 withdrawn.

6.15 pm

Amendment 5

Moved by ***Lord Mackay of Clashfern***

5: Clause 1, page 2, line 3, at end insert—

"(6) No person to whom subsection (7) applies may deprive another person of an office or appointment for holding or having publicly expressed the belief that marriage is, or should be, the exclusive union for life of one man and one woman, nor may such a circumstance applying to a candidate for such an office be taken into account as a factor against appointment.

(7) This subsection applies to those making appointments to any public office as defined in section 50(2) of the Equality Act 2010 or any appointment made by a person who is specified in Schedule 19 to that Act or any person exercising a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

(8) A breach of subsection (6) may confer a cause of action at private or public law."

Lord Mackay of Clashfern: My Lords, we heard earlier a number of instances, which I shall not repeat, in which expressing views in relation to same-sex marriage has led to sanctions against people in various walks of life. The amendment is, in effect, intended to avoid any risk of that sort of thing happening in connection with a public office. I beg to move.

Lord Alli: My Lords, I wish to speak to Amendments 5, 7, 8 and 19, government Amendment 53 and Amendment 54. This group of amendments seeks to put into the Bill a series of protections for those who believe that same-sex marriage is wrong, who want to make clear that they believe it is wrong, and who are employed by public authorities or subject to the Equality Act.

Robust provisions in the Bill and that Act already give such protections. Indeed, the Minister made this clear at Second Reading and, if she does not mind, I shall repeat her words. She said:

"It is lawful to express a belief that marriage should be between a man and a woman, and it is lawful to do that whether at work or outside work. That is a belief that is protected under the religion or belief provisions of the Equality Act 2010, and penalising someone because of such a belief would be unlawful discrimination under that Act".—[*Official Report*, 4/6/13; col. 1104.]

The Minister and the law cannot have been any clearer. In addition, as promised, the Government have brought forward—unnecessarily in my view—reassuring language in Amendment 53 regarding freedom of speech. As regards Amendment 37, which was tabled by the right reverend Prelate the Bishop of Leicester, and Amendment 56 of the noble Lord, Lord Dear, the Government are, in Amendment 53, giving the noble Lords all that they ask for but in more inclusive language. I hope that the right reverend Prelate, who is not in his place, will accept that and move on.

Given that the law is clear and the Government have strengthened the language on free speech, what are Amendments 37 and 56 for? I have a sneaking suspicion that their impact, like many others tabled throughout the Bill, will not be helpful but raise alarm with the public and insert inflammatory language to fix a mischief that never really existed. I accept that that is probably not intended by those who tabled those amendments. However, I call it the "Section 28" effect. What do I mean by that? The last time that such an impact was felt was after the introduction of Section 28 of the Local Government Act 1988. The inflammatory text damaged the reputations of the party opposite and this House. We have come a long way since then. I ask the Committee and the Government that where

there is no mischief that they can identify please do not seek to remedy it, as is the case with these amendments dealing with public authority employees expressing their opinions on marriage. Please be wary of those offering helpful solutions, as some of us have had to live with the terrible consequences of those tactics as a result of Section 28.

Lord Waddington: My Lords, first, I apologise to the noble Lord, Lord Alli, and others on the other side of the House. My hearing aid, or my hearing, or both, gave way last time and I could not hear a word that was said. I was very fortunate to have a prompter near me. I do not think that anything I say now will provoke a large number of interventions but if that happens, I am now in better shape to deal with them.

The amendment deals with discrimination against someone because he expresses the view that marriage is the union of a man and a woman. I want to take this opportunity to mention something which has been very much on my mind. This sort of discrimination may become prevalent because it has got about the place that even before the Bill has become law, it is plain wrong to express support for traditional marriage. I hope others were as concerned as I was to read how the Law Society and the Queen Elizabeth II Conference Centre cancelled conferences to be held on their premises by Christian Concern to make the case for traditional marriage, with a very distinguished body of speakers. Each of those bodies had the nerve to say in its notification of cancellation that the nature of the event was,

"contrary to our diversity policy, espousing as it does an ethos which is opposed to same-sex marriage".

It never seems to have occurred to the writers of those letters that they were quite deliberately interfering with the right of free speech in a country where free speech is greatly treasured as the hallmark of a free society. I hope that a clear message goes out from the Government today that the behaviour of those bodies was clearly unacceptable. We must safeguard free speech, whatever we do tonight.

Baroness Berridge: My Lords, I wish to speak briefly to Amendment 54, which is in my name, and, obviously, to government Amendment 53. Much has been said in your Lordships' House of the need to preserve free speech but, as I outlined in my Second Reading speech, the role of the state goes beyond that. To ensure free speech, there has to be an encouragement and a protection of dissent in the public space. I am grateful to my noble friend the Minister for bringing forward Amendment 53, which was promised in the other place on Report, and was a concern outlined in the recent report of the Joint Committee on Human Rights that was published last Friday. I am a member of that committee, and there were very divergent opinions on the principle of the Bill, but we managed to come up with a report of the whole committee about the concerns that remain about the Bill.

I am grateful that the Government have brought forward this amendment to deal with some of the concerns around free speech. It is particularly important when on our statute book there are crimes that can be committed, with the force of criminal law being brought to bear on them, when there is hate speech with a particular mens rea of intending to stir up hatred against, for instance, somebody on the grounds of sexual orientation. I draw attention to what the noble and learned Baroness, Lady Butler-Sloss, outlined: this is a necessary safeguard when we look at what people on the ground are actually doing. Members of the other place have already referred to an incident a few weeks ago, when the police were called to a heated exchange around the matters that we are considering. We have to bear in mind that the effect of this legislation, and the potential effect on free speech, has to be policed on our streets by ordinary police constables. Amendment 53 ensures that they have clear guidance around what is and is not a criminal offence. It specifically states the caveat that it is not just about stating your belief that marriage is between one man and one woman. It is allowing that criticism to take place and thereby not breaching criminal law once the criticism is made. That dissent in the public space is to be welcomed.

In my speech at Second Reading I drew attention to the exchanges that took place between David Lammy MP and David Burrowes MP on these issues. One of the things that are becoming very difficult in speaking on this issue is the analogy, which was the cause of the dispute in the other place, around sexual orientation, same-sex marriage and racism. I am surprised to see the nature of the exchanges we are having today. If that is what ends up taking place in this debating Chamber, what will be happening on our streets when passions get inflamed around this issue? I welcome the Government's amendment and believe that it brings in an important safeguard.

Lord Dear: I shall speak to Amendments 7 and 8, which stand in my name in this grouping. I ask noble Lords to consider the words which case law has held to be paramount in this, that beliefs must be,

"worthy of respect in a democratic society and not incompatible with human dignity".

They are words protected by the European Convention on Human Rights, and they cover both religious and philosophical beliefs. There are a clutch of cases which I could quote here, but I will refer briefly to only two of them.

The first is Grainger plc & Others v Nicholson in 2009. The court held that strong philosophical belief about climate change, for example, affected how the claimant lived. It went beyond mere opinion. It was setting out that opinion is one thing, which is not protected by the law, but that serious beliefs which stand above that should be so protected. That case really became the bedrock of this particular set of cases. In a 2005 case in the House of Lords, Regina v Secretary of State for Education and Employment and others ex parte Williamson, the noble and learned Baroness, Lady Hale, said that:

"A free and plural society must expect to tolerate all sorts of views which many, even most, find completely unacceptable".

Agreeing with that judgment, the noble and learned Lord, Lord Walker, in accepting pacifism, vegetarianism, and teetotalism as beliefs, went on to say that they are not just religious beliefs,

[LORD DEAR]

"but equally … may be based on ethical convictions which are not religious but humanist".

I galloped through that just to say that the words,

"worthy of respect in a democratic society",

have a solid bedrock in both European law and the law of this country.

The reason for tabling these two amendments is to focus on the fact that the Government have repeatedly insisted that this legislation before us will not penalise those who believe that marriage is only between a man and a woman. As the noble Baroness, Lady Cumberlege, has already said, the obvious case to cite at that juncture is that of Adrian Smith and the housing trust. That has been mentioned several times in previous debates on this subject. I will not go into it again but that case, and others, indicate the fragility of the position of those who seek to express a firmly held view, without any intent of causing any disruption beyond—

Baroness Barker: I wonder if the noble Lord, Lord Dear, would care to acknowledge that Adrian Smith actually won his case. The reason why he did not win substantial damages was because he did not take the case within the time limit. But he did win his case.

Lord Dear: Adrian Smith won his case under contract law. He was awarded only £98 for loss of earnings. I understand that he was advised by his lawyers that he would not have succeeded on a religious or belief discrimination claim.

Having mentioned the Adrian Smith case and the fragility which I think most would accept is there at present, my Amendments 7 and 8 are paving amendments, as much as anything, for Amendments 10, 12 and 14, which also stand in my name. They are put forward to your Lordships for consideration as alternatives, to put the Government's assurances on a statutory footing. The amendments expressly state that,

"marriage was the union of one man and one woman",

as a belief, and here I quote again,

"worthy of respect in a democratic society".

As I say, that is the key test used by the European Court of Human Rights. The amendments go on to say "that no person" holding that belief "should suffer any detriment", and ensure an ongoing recognition that there are different views on the issue and that the many who hold to a long-standing definition of marriage should not be disadvantaged.

Briefly, Amendment 7 requires that:

"Any person, in exercising functions under or in consequence of this Act",

should have regard to the principle of not causing detriment to those who believe in "traditional marriage". That would put, as an example, the Secretary of State under an obligation to have regard to this principle when making orders under the Act. It would apply to anyone involved in the registration of marriages, including staff handling applications from churches.

Amendment 8, as an alternative, tightens the focus down to:

"A public authority, or any person exercising a public function",

having regard to the same principle. That would apply to public sector employers, including housing trusts, which might treat employees unfairly because of their beliefs about marriage. The amendment would also extend to all that is done, for example, by Ministers of the Crown, the National Health Service, local authorities, schools, police forces and so on. Individuals in all walks of life would be protected, from doctors to road sweepers, from nurses to government advisers, and from teachers to police officers.

6.30 pm

Baroness Thornton: Is the noble Lord aware that the Equality Act 2010 does all of this? I recommend that he reads the guidance that accompanies that Act. The legislation received cross-party support in this House. It is a carefully balanced Act that already offers all the protections that the noble Lord mentioned.

Lord Dear: The point I would make is that the Equality Act is shot through—I am sorry, I shall retract that. The Equality Act attracts a mass of legislation in which actions are taken against individuals who are said to be in breach of the Act. These amendments will put into statutory form the words,

"worthy of respect in a democratic society".

I suggest that they will cap off a large number of those actions. Putting it in simple terms, the Equality Act is not proving to be as watertight as it was first imagined to be.

Lord Elton: My Lords, am I not right in thinking that the case that was brought to the attention of the Committee a few moments ago by my noble friend Lady Cumberlege should have been protected by the Equality Act? However, that Act failed to provide any protection.

Baroness Turner of Camden: My Lords, perhaps I may say a word about Amendment 8 because I have some doubts about it. The first line of the proposed new clause states:

"A public authority, or any person exercising a public function, shall have regard to the following".

That is followed by a list to which he should have regard. What does "shall have regard" mean? Does he have any enforcement powers? For example, could he so construct his activities that he was, in fact, forcing on people who did not want to receive it the belief in subsections (1)(b) and (1)(c), which state,

"that belief in traditional marriage is a belief worthy of respect",

and,

"that no person should suffer any detriment because of their belief'"?

As far as I am concerned, people can believe what they like. What I object to is an intention to impose those beliefs on people who do not accept them. I certainly would not be happy to accept that, because in subsection (1)(a) there is a provision about marriage being,

"the union of one man and one woman … to the exclusion of all others ('traditional marriage')".

As I said before on the previous amendment we discussed, what about the position of people who divorce? A lot of people in this country get married, go through a divorce and then, perhaps, marry again. Is their second

marriage traditional or not traditional? There are a number of questions raised by the wording here which make the proposed clause quite unacceptable, particularly to those who hold a fairly secular view so far as marriage is concerned. The wording is not really acceptable because, in my view, it could lead to the position where those who hold these beliefs could, in their capacity as public officials, seek to impose them on people who do not hold them at all.

Lord Dear: Perhaps I may respond to that. I refer the noble Baroness to the judgment in the case of Williamson. I shall quote rather more extensively from what the noble and learned Baroness, Lady Hale, said:

"Many would believe it to be wrong even if it was proven to work. Both are essentially moral beliefs, although they may be underpinned with other beliefs about what works best in bringing up children. Both are entitled to respect. A free and plural society must expect to tolerate all sorts of views which many, even most, find completely unacceptable".

I rest my case.

Lord Cormack: My Lords, perhaps I may ask my noble friend a specific question, which has already been referred to by my noble friend Lady Cumberlege. A number of us received a letter from a clergyman of the Church of Scotland who, not in his official duties as a chaplain to the police but in, I believe, his blog, referred to his own personal belief in marriage as being the union of a man and a woman. He was subsequently dismissed from his post as a chaplain. What I want to know is this: are the provisions that the Government are putting forward in this Bill sufficient to prevent that sort of unseemly episode happening in the future?

Baroness Butler-Sloss: My Lords, when we are looking at a Bill which has the intention of increasing respect for and giving rights to a minority, it is equally important to look at another minority who will be unable, from their personal conviction, to accept the validity of the consequences of this Bill. The Equality Act has its defects. I strongly supported it, particularly all those elements in relation to gay rights, and I would do that again here. I would take that right to the stake because while I do not agree with marriage, I certainly agree with equal rights.

What I am concerned about—I expressed the same concern during the passage of the Equality Bill—is the right of other people who are in minorities to express a view that is unpopular with many other people, particularly with other minorities. We are now in a new dimension in that we are going to have same-sex marriage. Whatever it is called, it will be marriage. However, there will be people out there who cannot take it. This Bill should recognise that situation, and however great the Labour Opposition think their Equality Act is, it does not necessarily cover every aspect of what we are concerned with today; that is, those who cannot tolerate marriage for same-sex couples. Even if it may be partially covered by the Equality Act, it would be highly wise to have something in this Bill that covers this issue.

I agree with the noble Baroness, Lady Turner, that these amendments may not offer the right wording, but we are in Committee. Surely we could produce, by Report, something that provides some degree of support for other minority groups.

Lord Anderson of Swansea: My Lords, my noble friend Lady Thornton speaking from the Front Bench and my noble friend Lord Alli have argued, no doubt persuasively in their view, that the current protections are adequate: the Equality Act is in place. However, in my judgment that contention is belied, first, by the fact that a number of leading counsel take a contrary view and say that the protections are not adequate, and, secondly, by the fact of some of the cases, some of which have already been cited. We will come to the registrar later, as well as the chaplain to the police and other such cases. It would be helpful if we could have a response from the Minister that these cases would in fact have received protection under government Amendment 53 and any other protections which the Government may seek to provide.

My own starting point is clear: as a House, we should seek to protect minorities from what is, sometimes, the tyranny of the majority. We can refer to the wonderful literature on this, such as by Mill and de Tocqueville. I would recommend all colleagues to read and re-read what they say about the tyranny of the majority. Surely, part of our duty is to ensure—so far as we are able—that minorities are protected. In this case, we seek to protect and to give dignity and equal rights to a minority in our country. I would hope that those in this minority would also see the importance of giving protection to another minority—those who think highly of traditional marriage as defined.

Lord Alli: My Lords, I know something about minority. However, I am a little confused because, in this amendment, the noble Lord claims to be in the minority; in the previous amendment he claimed to be in the majority. You cannot have it both ways.

Lord Anderson of Swansea: My noble friend is playing on words somewhat. At Second Reading there was much contention as to what the majority opinion in this country was. In my judgment, the Government carried out a fairly spurious, bogus consultation where they chose to ignore a petition containing a very large majority which, had it been added, would have shown a majority against the Bill. One chooses one's public opinion poll. My noble friend may choose one particular poll; I may choose another, both of which bolster our respective opinions. The point I am making is that my view of traditional marriage—which is not just Christian marriage, but that of a number of other confessions—is something worthy. It should be protected, and those who espouse it should achieve protections. That is important even if, say, 46 % of respondents to the latest poll oppose this Bill. I do not know what overall public opinion is.

I would challenge the Government to test that opinion. I shall move an amendment later which suggests that, if the Government are so confident that this represents majority opinion, they should hold a referendum, given their record in other areas, such as the relatively trivial transference of sometimes quite minimal provisions to the European Union. This may

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not be relevant to this particular clause but, even if the views which I and many other colleagues espouse are in the minority—and there is some uncertainty about that—that minority deserves to be protected. Those who have been a clamant minority and who have won support during the passage of this Bill, should also be conscious of the protection of other minorities, if that is what we are.

In answer to the contention of my noble friend that the protections are adequate, let him look at some of the cases that have been brought. It is sad that there are many zealots on both sides of the argument—zealots who seek to use the law to the full for their own purposes. There are many ordinary, decent folk who find that they are the subject of litigation. Not only are they in an agony of uncertainty in the intervening period before their case comes to court, but it is also a very expensive matter. With very limited resources, they may find that they are up against very well-padded groups. That is the reality of these matters. Whatever the legislative provisions, people on both sides will push at the borders. I would urge my noble friend, consistent with the views which he and I generally espouse in respect of minorities, to look carefully to see that the tide has not run so far in one direction that there is indeed a tyranny—in this case, the tyranny of a minority.

I refer specifically to Amendment 19. I know this is not a view that my noble friend has espoused, but the leader of the Liberal Democrats, the Deputy Prime Minister, has called people like me "bigots". I resent that because there are many people on our side of the argument of all stripes—lawyers, academics, atheists, those of all religions, straight people, gay people—we are not bigots. We are people who happen to hold a traditional view of marriage. I have not heard that the leader of the Liberal Democrats has withdrawn that assertion. I hope that he will. I have not taken it out of context. It means that he has applied a label to many of us which we thoroughly resent.

6.45 pm

In looking particularly at Amendment 19, I would focus my comments on the considerable number of people for whom marriage is a central component of their religious belief. It is first necessary for me to validate the assumption on which that amendment rests. I do so not for the purpose of conversion; of seeking to persuade noble Lords to embrace the theology—in my case a Christian one—but to demonstrate the centrality of marriage to religious belief and thus the need for faith-based views of marriage to be respected and protected as part of our respect for religious liberty. It may well be that, both in this House and outside, Christian perspective from which I speak is now in a minority.

I was saddened to see a recent leading article in *The Economist*: *The World in 2013*, entitled "Christianity at Bay" which predicted that secularists are increasingly gaining ground over mainstream Christianity. This is part of that same tradition and we should be wary of throwing out what we have inherited from our forefathers in terms of the underlying morality which underpins so much of the law of this country.

Such a view which suggests that marriage is just a ceremony contains, in my view, an element of religious illiteracy. For many, marriage is a core part of their faith. Genesis, chapter 2, verse 24, says:

"For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh".

In Matthew, chapter 19, verse 5, Jesus affirms the same, word for word.

I can go further as to the centrality of marriage, as traditionally understood, to the Christian faith. In years gone by, it would not have been necessary to have spelt out the importance of that. I challenge the Minister to say whether the amendment which he will be proposing covers judgments such as that in the case of Lillian Ladele. She was the Christian registrar who was effectively told by her employer, Islington Council, that she must either act in violation of her faith or lose her job as a registrar. The noble Baroness, Lady Cumberlege has an important Amendment 16, which covers this. Ms Ladele's objection was based on her view of marriage which, according to the judgment, was not a core part of her religion.

"Islington's requirement in no way prevented her from worshipping as she wished".

The idea that you can compel someone to act in contravention of their faith regarding marriage, and yet at the same time suggest that you are respecting their freedom to worship as they wish is, in my judgment, based on a complete misunderstanding of the centrality of marriage to Christian theology. I hope that some of the bishops will make the same point.

In the belated area of concern on free speech, the Government's factsheet on the Bill states:

"The Government is committed to freedom of expression and is clear that being able to follow your faith openly is a vital freedom which the Government will protect. … Everyone is entitled to express their view about same sex marriage – at work or elsewhere".

That is a very welcome assurance. However, unless there are strong protections in the Bill, that will be rather vacuous and of no meaning. Far from there being assurance, there is actually a piece of legislation that threatens to put many employees with a religious conviction in a very difficult position. Section 149 of the Equality Act makes provision for the public sector equality duty, which requires public authorities to,

"remove or minimise disadvantages suffered by persons who share a relevant protected characteristic",

and to,

"take steps to meet the needs of persons",

from protected groups. It also requires them to,

"encourage persons who share a relevant protected characteristic to participate in public life".

All that is worthy in itself. However, I am sure my noble friend will acknowledge the extent to which that has been abused by certain zealots and that one of the protected characteristics is sexual orientation. My noble friend will no doubt have seen the views of Aidan O'Neill QC, which I will not reiterate here.

This is not a theoretical proposition. The Reverend Brian Ross was dismissed as a police chaplain because he disagreed with gay marriage on his personal internet blog. Strathclyde police argued that he could hold his beliefs in private but that publicly expressing them

would be a breach of its equality and diversity policy. Setting out his experience in writing for the Public Bill Committee in another place, he said,

"Just before the summer, a particular senior officer in one of the Divisions read my personal blog … and objected to my expressed support for traditional marriage as, it was claimed, it went against the force's equality and diversity policies. I was summoned to a meeting, the end result of which has been that my services have been dispensed with!".

Such is the quality of the protections provided under the Equality Act. This case happened before any legislation had been put on the statute book. Strathclyde police, to give the force the right to reply, said that he could not express his views in public. A spokeswoman said:

"Whilst the force wholly respects the Rev Ross's and, indeed any employees' personally held political and religious beliefs, such views cannot be expressed publicly if representing the force, as it is by law an apolitical organisation with firmly embedded policies which embrace diversity and equality".

That is the same argument put forward by the Law Society in denying a platform to those who support traditional marriage.

Finally, in this context, it is surely absolutely essential that our legislation dealing with that other protected characteristic for which public bodies should also have regard—religion or belief—spells out that, in the words of Amendment 19,

"the protected characteristic of religion or belief may include the belief that marriage should only be between a man and a woman".

The Ross saga, and the indignity faced by that one individual who expressed his views, would have been less likely in England and Wales with Amendment 19. I urge the Minister, in replying, to say whether she is confident that the amendment that she will move adequately protects such people and that there will be no recurrence of such outrages in future.

Baroness Butler-Sloss: I will make a very brief response to the noble Lord, Lord Alli, who I think had possibly not finished speaking, to just elucidate what was meant by a minority. Once the Bill is law, I have no doubt that the majority will accept it. However, there will be a minority who will not accept it, and it is that minority that needs protection.

I have to say that I slightly resent that the noble Lord, Lord Alli, talked about a minority being a majority and the majority a minority. Within majorities, there are minorities, even of the same group. Some will accept it and others will not. It is the ones who will not accept it who actually need protection; much as the gay community has needed protection in the past but has not received it.

Lord Singh of Wimbledon: My Lords, I rise to speak to Amendment 19, which is in my name and is part of this group of amendments. In many ways, what I will say will mirror some of the things said by the noble Lord, Lord Anderson. The Equality Act 2010 is meant to protect against discrimination on the grounds of religion and belief. However, anyone who has read about the cases that have come to court will know that it has not always, to date, protected people with strong religious beliefs about marriage.

It is not easy to stand up for your beliefs against the might of arrogant and sometimes ignorant authority. It is not easy to risk your career prospects and your family's livelihood. I know—I have been there. Lack of clarity in the law adds to the difficulty. Those with traditional views bringing discrimination claims under the religion or belief strand, usually after being mistreated for a long time, have found that their beliefs on sexual ethics were not covered. Amendment 19 would put beyond doubt that belief in traditional marriage falls under the religion or belief strand. It would not guarantee that every claim brought to court would succeed but would simply confirm that the belief is capable of being protected under the Equality Act.

Millions of people in this country passionately believe that marriage is an exclusive relationship between a man and a woman and cannot be anything else. Some believe this for religious reasons and others for non-religious reasons. Thankfully, we live in a democracy, where people are not forced to behave as if they believe something just because the law asserts it. We should all obey the laws of the land but we should also have the freedom to express our views about the fairness of those laws, particularly where they refer to dramatic social change.

When it comes to the issue of same-sex marriage, there is a real risk that people will be coerced to go along with the redefinition of marriage because there is a lack of respect and tolerance for diverse views on the matter. Other noble Lords have referred to the rather unfortunate moment in January when a draft speech issued by the office of the Deputy Prime Minister referred to people who disagreed with the Marriage (Same Sex Couples) Bill as "bigots". He sought to make amends for the statement by saying:

"My views on this issue are no secret, but I respect the fact that some people feel differently to me about marriage".

That was quite generous of him but it does not alter the fact that he refers to those who differed from him as bigots. The Deputy Prime Minister is not the only one to use such trenchant terms about those who oppose this legislation. Many of us have received similar abuse for defending traditional marriage.

The Government say in their fact sheet on the Bill that they are committed to freedom of speech and that they,

"have always been absolutely clear that being able to follow your faith openly is a vital freedom that we"—

the Government—

"will protect. Everyone is entitled to express their view about same-sex marriage, at work or elsewhere".

That is a noble and good sentiment and one that we want carried into law and protected. Everyone should be entitled to hold and express their views about this important and sensitive issue without fear of punishment. We find strong support for traditional marriage among politicians of all stripes, lawyers, academics and workers from all walks of life in the private and public sectors. We find it among atheists and people of all religions, among heterosexuals and gay people. It would be sad if such opinions were muffled or silenced by a lack of clarity in the law. Not to respect and protect their ability to hold and express their beliefs about marriage would result in a tyrannical situation where there was only one acceptable view, with those with other views pushed out or mistreated. Public space must be left for those millions of people. There have already been many occasions when people who try to speak out

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publicly in support of traditional marriage suffer for it, even while the current law is still in place. We can be sure that unless measures are taken it will get worse if this Bill becomes law.

7 pm

We should take steps to reverse the tide, here and now in this Bill. We should make sure that mainstream traditional views are properly respected and protected. Most ordinary people respect the belief that marriage is between a man and a woman. This is hardly surprising. It is what the law of the land currently states, and has stated for centuries. It is the definition of marriage that predates both church and state. It is the definition of marriage in many of our different religions. It is the definition that dominates the globe. Of the 193 United Nations member states, only 14 recognise same-sex weddings. In the 35 American states which have put it to the popular vote in the past decade or so, 31 out of 35 voted to keep marriage as it is. Here in the UK polls vary between 60% support for same-sex marriage and 70% opposition to it, and they go up and down. This shows two things. First, in polling the answer depends on the questions asked. Secondly, we must agree that redefining marriage is controversial to say the least, with millions of people on either side of the issue.

Clarity in the law would help heal a clearly divided and fractured society. There is divided opinion in this House and divided opinion throughout the country. It is not a settled question; there is no consensus. Therefore, we must ensure that those whose beliefs about marriage no longer prevail are protected by the law. There is plenty of evidence of the need for explicit statutory protection. Run a quick search through Google and you will see astonishing name-calling and abuse directed at people who simply support the Marriage Act 1949.

Noble Lords might say that this is just name-calling, but history shows that name-calling often leads to violent and threatening behaviour, and worse. People who disdain those who support traditional marriage as tantamount to racists are more likely to think that they can take the moral high ground over them, and take action and do whatever they wish. They are in a position of power over such people.

We do not need to speculate; it is already happening. We heard today about the housing manager demoted by his public sector employer for describing same-sex marriage as "an equality too far". We heard about the police chaplain who was dismissed from his voluntary post for a moderately expressed blog upholding orthodox Christian teaching on marriage. We heard about the Strathclyde police who argued that the Reverend Ross could hold his beliefs in private, but not in public. We should not be deterred from saying what we need to say in public. Strathclyde police responded to the publicity surrounding the case by saying that the Reverend Ross could not express his views in public. It is not right that we have to hide those views away. We should be able openly to debate and state what we—

Baroness Thornton: Would the noble Lord care to tell the House what he thinks is a reasonable limit to the view that that gentleman should express? For example, if one substituted the word "black", would that view then be reasonable? The policeman is publicly expressing his feelings about something. What does the noble Lord think is a reasonable way to do that? What would he think if, for example, he had used "black" instead of "same-sex marriage"? It seems to me that there must be a limit to what our public servants can express and cannot express. I would be interested to know from the noble Lord where he thinks that limit sits.

Lord Singh of Wimbledon: I am happy to answer that point. Any freedom of speech should be open. It should be there, but it should not be the freedom to denigrate anyone. That is the boundary. You can express an opinion, but if you denigrate other people that is wrong.

Lord Cormack: Surely the noble Lord will agree that all the clergyman in question sought to do was enunciate orthodox Christian beliefs. That is not in any way analogous to making racist comments.

Lord Singh of Wimbledon: I thank the noble Lord for that intervention. That is absolutely true. As a Sikh, expressing my beliefs in public should not subject me to harassment in any way. Clearly, some people have a problem respecting the beliefs of those who believe in traditional marriage. Rather than equality law protecting—

Lord Alli: Perhaps the noble Lord can help me understand. The Government's amendment tries to address this issue. Does the noble Lord find the amendment deficient? I am trying to understand which part of the Government's amendment does not deal with the issues he raises.

Lord Singh of Wimbledon: The amendment is not as clear as it should be. I want it to be very precise in protecting these sorts of abuses. We will come to discuss that more fully, but I personally believe that it is right and proper to air concerns at this stage.

Lord Lester of Herne Hill: Does the noble Lord know that under the Human Rights Act 1998 every part of this Bill must be construed, read and given effect in conformity with the European Convention on Human Rights? The convention fully protects freedom of religion, conscience, belief and expression. Does he also know that the noble Lord, Lord Waddington, had a great victory in this House in writing in free speech guarantees when we debated incitement to religious hatred? Therefore, so far as the law is concerned, there is no lack of clarity. It is not a question of majorities or minorities, and nor is it a question of opinion polls. Every individual is fully entitled to free speech, including the expression of views that I would deplore. I stand to be corrected if I am wrong, but I gather that Mr Clegg did not himself put out that highly obnoxious statement. It was put out by others and was withdrawn as soon as he saw it.

Lord Singh of Wimbledon: I thank the noble Lord for that intervention. I will not go too far into the Deputy Prime Minister's views, because he then went on to say that everyone knows his views. That was a

little ambiguous, and did not clarify things. It is true that many of the laws of the land in theory protect us all. In reality, those laws are not very clear. The more clarification that can be brought, the better, because many ordinary people suffer. Many ignorant people abuse those laws, or are ignorant of those laws and harass people. The more clarity we can have, the better.

To give another example, when housing associations and publicly owned venues such as the Queen Elizabeth II Conference Centre deal with people with traditional beliefs about marriage, they should treat them with respect. Yet they were excluded. If they do not treat such people with respect, they should be open to legal challenge for discrimination. When police, schools and hospitals are dealing with staff and service users, their approach to equality should include respecting those with mainstream views.

We should amend this Bill to ensure that people who, in good conscience and without a trace of malice, believe that marriage can be only between two people of opposite sexes are not disadvantaged for those beliefs, which may become minority beliefs, as has been said. They should still be allowed to have those beliefs. Amendment 19 is necessary to safeguard freedom of both belief and speech.

Lord Lester of Herne Hill: My Lords, to amplify briefly what I said before, Amendment 19 is completely unnecessary because the part of the Equality Act that it is seeking to amend defines protected characteristics in order to deal with discrimination, harassment and victimisation. In relation to those protected characteristics, it is clear beyond argument that if A is treated worse than B because of his or her opinions about sexuality, sex, marriage, communism, Sikhism, Judaism or anything under the sun, they are fully protected by the amendment that the noble Lord, Lord Waddington, made to the criminal law, and by the Human Rights Act and Articles 9 and 10 of the European Convention on Human Rights.

I am sorry that the noble Lord thinks that a Bill designed to prevent people becoming victims of unfair treatment is creating victims of unfair treatment. The fact that idiots in the public sector or private sector misunderstand it is no reason for us to have to amend this Bill to deal with such idiots. With respect, the state of the law is plain and obvious. It does not require this amendment. Were this amendment to be accepted, it would muddle up the entire concept of the Equality Act, which we took so long to get right.

Lord Singh of Wimbledon: If I may briefly respond to that, it is true that the law covers a lot of things. It does not combat ignorance. The law provides equality for Sikhs, Muslims and everyone else. When an outrage by an Islamic fundamentalist takes place, very often the target is a Sikh gurdwara or a Sikh individual. You cannot combat ignorance in that way. The more clarity we put into the law and the more determination we put into upholding the law, the better it will be for everyone.

Baroness Barker: My Lords, I will address Amendment 8 in particular. At Second Reading, I said that my early life was spent in a place where religious discrimination was the norm. It is something that I managed to grow out of—after a very long time—and which I find absolutely abhorrent. I also explained at Second Reading why, like the noble Lord, Lord Alli, I know what it is like to suffer abuse because of one's sexuality. It is never so dispiriting as when those two things are combined. Some of the most homophobic material that is sent to me is in the name of churches. I find that more depressing than anything else.

I was raised in a religious household and I will defend the rights of people to hold religious points of view and minority points of view. I will defend their right to preach things that I find unacceptable and disheartening. I cannot tell your Lordships how dispiriting it is to listen to some preachers and to understand from their preaching how little they think of their fellow human beings, but it is absolutely their right to do that. But it is not their right to do that and to inflame hatred and violence at the same time.

I suspect that not many of your Lordships go to Gay Pride marches but I do, occasionally. Every time I go to Brighton and have a wonderful time, there is a point when we walk up the street and there is a particular religious organisation there; its members have picked that day to come and make known their opposition to gay people. The police are there protecting them because they are exercising their right to do so.

The point at which I absolutely and fundamentally part company with the noble Lord, Lord Dear, is in his Amendment 8. He is a citizen and I am a citizen. We pay our taxes. When it comes to the exercise of public services, we should have exactly the same rights provided that we are both living within the law. I simply cannot accept the statement in the amendment that the private views of public servants should enable them to treat people differently.

Finally, something that I started to do many years ago, and still do as a private discipline, is that when I listen to or am asked to advance an argument on behalf of one minority, I run through the same argument in the name of another, completely different minority. I find it a very helpful way of getting to a universal understanding of what it means to be a human being and to treat other people with dignity. It is a discipline that I recommend to all.

7.15 pm

Lord Stoddart of Swindon: My Lords, it is absolutely necessary that some of these amendments should be on the Marshalled List. They have been discussed at length today and will be discussed further. But the fact remains that there is a perception that people will be restrained from expressing their views about marriage as a result of this Bill. The correspondence that I and many others have received show that there is a very considerable concern that people will be denied the freedom to criticise same-sex marriage when this Bill goes through—I say "when this Bill goes through" because it quite clearly will go through. Therefore, it is right and proper that this House should ensure that there are proper provisions to ensure free speech. There have been instances where free speech has been guaranteed by Ministers but not carried out by people in other walks of life and other areas of employment.

[Lord Stoddart of Swindon]

People are also concerned at the speed with which this Bill was introduced and is being rushed through Parliament. They feel that there has been insufficient public discussion of this very important Bill, which alters parts of our constitution, and that it is being rushed through and their views are not being properly taken into account. After all, we must recognise that the percentage of gay couples is 1.5% and therefore 98.5% of the population has to be taken into consideration as well. If people disagree with this Bill, they must be able to express their opposition after the Bill has been passed without fear of being dismissed or otherwise harmed by their employers or having a policeman knock at the door because they have made some off-the-cuff remark.

Baroness Thornton: My Lords, we have had another interesting and informative discussion.

I wonder how much confusion there is about the fact that when we disagree with each other, that is okay; that it is okay to disagree with each other quite vehemently; and that it is all right to express those vehement disagreements. Our view on these Benches is that the law recognises that that is exactly right. It took me back to the passage of the Equality Act 2010, when the interventions of the noble Lord, Lord Lester, made precisely the point that needed to be made about the protections that existed. Those protections do exist. The fact that they are tested from time to time, and that people on both sides do silly things with them from time to time, does not mean that they are not valid protections; they are very valid protections indeed.

We believe—and the Commons agreed in its debates—that there is no need for additional protection under the Equality Act 2010. It is not necessary. There is already protection for people's religious beliefs in law, which encompasses views about marriage. It would also be invidious, because it would make the only specific belief that has protection under this part of the Equality Act one that defines marriage as being between a man and a woman. I will return to that.

It is worth saying that Amendment 19 would make a particular viewpoint on marriage, which could be held by people with or without religious beliefs, the only belief that was expressly protected from discrimination on the grounds of religion or belief, elevating it above any other belief. This could have exactly the opposite effect to that intended by the noble Lord, Lord Singh, since a person who believes that the definition of marriage as being between a man and a woman is wrong would also be protected. Therefore, it may do exactly what the noble Lord does not want it to do.

As I said during the debate, the Equality Act 2010 is a carefully considered piece of legislation, which balances the rights of one protected group against those of another. Sexual orientation and religion or belief are both protected characteristics under the Equality Act, meaning that it is illegal to discriminate against someone on the grounds of their sexual orientation or their religion.

The Equality Act already takes care to provide protections for the beliefs of those with a religious faith, including on issues of sexual orientation and marriage. For example, guidance accompanying the Equality Bill, states:

> "In the case of Ministers of Religion and other jobs which exist to promote and represent religion, the Bill recognises that a church may need to impose requirements regarding sexual orientation, sex, marriage and civil partnership or gender reassignment if it is necessary to comply with its teachings or the strongly held beliefs of its followers".

It is completely clear that the law already exists to protect those views and their expression. Religion and belief are protected characteristics under the Act. It means that we cannot be discriminated against for holding or expressing those beliefs. On these Benches, we did not think that the government amendment was necessary, as my noble friend Lord Alli mentioned, but we understand that the Government are acting in good faith on a commitment made by a Minister in another place. Therefore, we accept that the Government are bringing the amendment forward with the best of intentions and that it certainly does no harm. If it gives people peace of mind, that is only to be welcomed.

I will not go through the rest of the amendments because I suspect the Minister will do that extremely well—and it is nearly dinner time.

Baroness Stowell of Beeston: My Lords, I am grateful to all noble Lords who have spoken in this very important and helpful debate. May I say first that I am grateful to the noble Lord, Lord Alli, for repeating what I said at Second Reading? The Bill absolutely makes it lawful, and continues to make it lawful, for people to believe that marriage should be only between a man and a woman. It is their right to express that belief and the Bill does nothing to change that. I am also grateful to the noble Baroness, Lady Thornton, and my noble friend Lord Lester for what they said about the Equality Act protecting people who have a range of religions beliefs but in this context hold the belief that marriage should be between a man and a woman and are free to express that belief. It is important that I continue to make that clear.

I also recognise, however, that people are looking for reassurance and want to know that it is perfectly legitimate to continue to hold the beliefs that they have always held, and that they will not be in any way disadvantaged because of these beliefs—or, indeed, that it would be unfair for people to criticise them in any way, although clearly it is free for anybody to express an opinion that is contrary to that view.

As the noble Baroness, Lady Thornton, mentioned, the Government are bringing forward an amendment to the Public Order Act. I will speak to that in a little more detail when I take the amendments in turn. We felt that it was important for us to do this as we recognised the need for assurance and because it was possible to make that amendment to the Public Order Act without causing any detriment to anybody. We really do understand that people are looking to us for assurance.

The amendments have clearly enabled us to explore issues of conscience in relation to the Bill, and it is right that we should do so. Let me start with Amendment 5, which was moved by my noble and

learned friend Lord Mackay of Clashfern. He seeks to explore how the Bill could impact on those seeking appointment to a public office—such as appointment to the board of a non-departmental body. The amendment seems to be based on the premise that, should the Bill be enacted, anyone expressing a belief that marriage should only be between a man and a woman might somehow be excluded from appointment to public offices.

I can reassure noble Lords that this is certainly not the case. This Bill is not about forcing people of faith to change their religious views, practices or teachings about marriage. The belief that marriage should be between a man and a woman is, and will continue to be, mainstream and entirely lawful. Indeed, the Bill explicitly makes clear that such a belief is legitimate and mainstream through the specific protections it provides to ensure that religious organisations and their representatives who do not want to participate in same-sex marriage ceremonies cannot be compelled to do so.

Public appointees, like anyone else, are and will remain free to express their religious or philosophical beliefs as long as this does not affect their ability to do their job.

Lord Anderson of Swansea: The noble Baroness is making a very important point. She will know that concern has been expressed about the conduct of various authorities in the past—certain councils, certain police authorities and so on. What assurance can she give the House, in the spirit of the assurances that she is now giving, that adequate guidance will be given to these authorities so that we do not have a repetition of how poor individuals have been pilloried in the past?

Baroness Stowell of Beeston: I am about to come to the specific examples that have been raised. I hope I will also give the noble Lord some comfort by saying that we are working with the Equality and Human Rights Commission to review its guidance and ensure that revised guidance is issued. It is also looking at its statutory codes in this area. I accept, as has been pointed out by noble Lords in this debate, that we need to make sure that public bodies in particular—although not just public bodies—are clear that it remains absolutely lawful for somebody to express their belief in this way. We want to make sure that that is clear to them. The Equality Act 2010 provides express prohibition against discrimination because of religion or belief. This includes a religious or philosophical belief that marriage should only only between a man and a woman. This protection applies in relation to public appointments and to employees.

I move on to Amendments 7 and 8, tabled by the noble Lord, Lord Dear. I am grateful for his explanation although, on the face of it, the scope of these amendments is not entirely clear. However, it would certainly include a range of public authorities and religious organisations, and would potentially extend to commercial service providers. Like the noble Lord's amendment in the earlier group, these amendments would effectively create two tiers of marriage—a point made, I think, by the noble Baroness, Lady Turner—with marriages of same-sex couples on a lower tier. That would undermine the fundamental purpose of the Bill, which, as I made clear in earlier debates, is to extend the single institution of marriage to same-sex couples.

Of course, there are circumstances in which individuals need strong and effective protection in order for religious freedom to be safeguarded. For example, a clergyman should not be compelled to solemnise the religious marriage of a same-sex couple against his conscience. We all agree about that, and the Bill provides that protection through the explicit protections already contained in the quadruple lock.

7.30 pm

However, Amendments 7 and 8 have a much wider effect. Amendment 7 would apply to anyone exercising a function under or in consequence of this Bill, and Amendment 8 would apply in the same terms to all public authorities and those exercising public functions. Therefore, these amendments would, for example, allow a housing officer to decide who should be housed based on his or her belief. It would be quite wrong to refuse, on the basis of a personal belief, however strongly and sincerely held, to house a same-sex married couple or a couple where one of the partners was divorced and remarried. Public servants should not be able to pick and choose to which members of the public they will provide their services. However, to be clear, a housing officer, for example—

Lord Dear: I am grateful to the Minister for giving way. I specifically did not say that. My amendment, if adopted, would certainly not lead to the sort of conduct whereby a housing manager could decide that he did not much like single-sex marriages and therefore would not allocate a house. That was quite specifically not what I had in mind. It was that the housing manager should not be punished or be at detriment for holding those views when he stood back and said, "I don't want to get involved in this. Somebody else should make this allocation". That is the point I was making.

Lord Brown of Eaton-under-Heywood: Before the Minister answers that, I should like to be clear on whether the noble Lord, Lord Dear, is suggesting that it is open to a registrar who objects to same-sex marriages to desist from performing a same-sex marriage.

Baroness Stowell of Beeston: I am grateful to the noble Lord, Lord Dear, for his intervention but I disagree that it is legitimate for, say, a housing officer to withhold his services or, rather, to withdraw participation in an aspect of his job on the basis of his religious beliefs, although he is absolutely within his rights to express his religious beliefs at work. In an earlier debate, the noble Lord and others, including my noble friend Lady Cumberlege, raised the case of Adrian Smith. We must not lose sight of the fact that, as my noble friend Lady Barker made clear, Adrian Smith won his case. I absolutely understand the point made by noble Lords that it is regrettable that people sometimes have to go through that process in order for the law to be made clear, and I wish that that never happened. However, I am grateful that the law exists, so that somebody with a strong case that they are being unlawfully discriminated against can be successful in bringing a case, as illustrated by that example.

[Baroness Stowell of Beeston]

In this area, it is also worth referring to another example—raised, I think, by the noble Lord, Lord Dear, but certainly by others—concerning the Reverend Brian Ross, who was a volunteer police chaplain for Strathclyde police. It is difficult to comment on an individual case without knowing the full facts but the religious protections in the Bill make it clear that belief that marriage should be between only a man and a woman is legitimate and mainstream.

The amendments of the noble Lord, Lord Dear, also appear to have the effect of elevating the belief that marriage should be between only a man and a woman over all other religious or philosophical beliefs which people hold and which are deserving of equal respect under the law. A belief that marriage should be between a man and a woman is undoubtedly worthy of respect in a democratic society. As such, it is already protected under the religion or belief protections in the Equality Act 2010 and under Article 9 of the European Convention on Human Rights. It is therefore unlawful to discriminate against someone simply because they hold this belief.

The determination of whether there has been unlawful discrimination under the Equality Act is always a matter of balance, depending on the facts of the case. The noble Lord's Amendments 7 and 8 would, I believe, disrupt that balance. An employer must be able to insist that employees carry out their work in a reasonable and professional manner. If, for example, a chauffeur for a commercial car hire company arrived at a wedding and decided that he would not drive the couple because they were of the same sex, that would amount to unlawful discrimination and would leave the employer open to a claim on that basis. It would also affect the employer's business. It is right that the employer should be able to take action against the employee in those circumstances. However, Amendment 7 would prevent the employer doing so and therefore I believe that it goes too far.

Baroness Cumberlege: I am very interested that my noble friend has touched on the commercial world. Can she comment on the Christian organisation that had its conference at the Queen Elizabeth II Conference Centre banned with less than a day's notice because the organisation's support for traditional marriage was deemed to contravene the centre's diversity policy?

Baroness Stowell of Beeston: Yes, my Lords. I would have come to that once we reached a later amendment. My noble friend Lord Waddington also raised that as an example but I shall deal with it here. Unfortunately, I understand that these cases are the subject of ongoing litigation, so it would not be appropriate for me to comment on them. However, the Equality Act protects against discrimination because of religion or belief in the provision of services. I regret that I cannot comment on that specific point but, again, I stress that the law is clear in this area.

Lord Elton: I am sorry but I am not sure that I follow the noble Baroness. The law is clear that this should not have happened. Is that right or in what respect is it clear?

Baroness Stowell of Beeston: I am afraid that it is not possible for me to respond directly to that question because the case is still live and subject to litigation. I hope that my noble friend will forgive me.

Amendment 8 in the name of the noble Lord, Lord Dear, seems to be aimed at addressing concerns aired here and in the other place that public authorities might overreact to expressions of belief in traditional marriage. This was raised by the noble Lord, Lord Anderson. Not only would the amendment require public authorities to treat people fairly but it would impose a specific duty in respect of this one belief, which could result in the marriage of same-sex couples being placed on a lower tier or being considered as somehow not of the same status as marriage of opposite-sex couples.

Together, Amendments 7 and 8 would allow the owner of a hotel approved for the solemnisation of marriages to refuse to host marriages of same-sex couples, and the registration authorities and even the courts would have to allow him to do so. We believe that that would be both confusing and wrong.

Amendment 9 would also require those exercising public functions to consider a particular belief about marriage, regardless of the function being exercised. This would be overburdensome and unnecessary. How would this be relevant for a person exercising parking or traffic enforcement functions or a person exercising functions relating to rubbish collection?

Another difficulty arising from both these amendments is that, by focusing on protecting a particular belief about marriage, they could cast doubt about the protection afforded to people who hold similar views on other issues, such as civil partnerships or same-sex relationships generally. Such a focus could suggest that such views were not protected by the Equality Act. The point there is basically that, if we are specific about this but not specific about other things, arguably we are then putting other beliefs in doubt.

We believe that the proper way to consider issues of protection of conscience in relation to people who exercise functions connected to marriage is to do so in each particular context: civil registration, employment, religious organisations and so on. That is what we have done. We will shortly debate the amendment from my noble friend Lady Cumberlege, which would introduce a conscience clause for civil registrars.

In the preparation of the Bill and during the debates here and in the other place, we have listened to concerns about whether the protections could be strengthened. One thing that we have done is to amend the Bill to provide additional protection for employed chaplains—for example, hospital or university chaplains—who do not wish to carry out or participate in the religious marriage ceremony of a same-sex couple.

Amendment 19 from the noble Lord, Lord Singh, seeks to amend the religion or belief provisions in the Equality Act to make explicit that a belief that marriage should be between a man and a woman is included within it. I am pleased to reassure the noble Lord that there is no need to change the Equality Act in the terms set out in the amendment. Amending the protected characteristic of religion or belief by specifying a particular belief about marriage would cast doubt, as

I have just said, on other religious or philosophical beliefs that are also protected by the Equality Act, and could therefore lead to confusion about how the protected characteristic of religion or belief is generally protected.

Moving to Amendments 53 and 54, Amendment 53 is a government amendment, similar to one debated in the other place in Committee and on Report. The Government gave a commitment on Report in the other place that we would come back with our own amendment, and I am happy to do so now. This amendment is intended simply to put beyond doubt that the Public Order Act 1986 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, which remains a perfectly legitimate view. It is appropriate to make this amendment because there is already a similar provision in Section 29JA of that Act concerning discussions about sexual conduct or practices. The current wording of Section 29JA would not however cover discussion of same-sex marriage, and that is why we are making the amendment. It is conceivable that some people might be in doubt as to whether discussions of same-sex marriage were to be treated differently from discussions of sexual conduct and practices, in so far as those two topics are linked. For example, my noble friend Lady Barker referred to the demonstration in Brighton by a church on the day of the Gay Pride march. If the church wanted to demonstrate against same-sex marriage, it would be perfectly lawful. This amendment makes that clear. However, let me at the same time be absolutely clear and reassure the House that this amendment does not allow hate speech. If the manner in which something is expressed is threatening and intended to stir up hatred, that would still be an offence. The amendment refers to the content of what is said, not the manner in which it is said. It makes clear that that subject matter is a legitimate one for discussion and it is right to do that only because there is an existing provision covering discussion of sexual conduct or practices.

I turn briefly to Amendment 54 in the name of my noble friend Lady Berridge.

Lord Dear: Before the noble Baroness leaves the Public Order Act 1986, will she clarify that that Act relies on the definition of a public place within it and that it is therefore applicable only to the criminal law and not the civil law?

Baroness Stowell of Beeston: Yes, I can confirm that it relates only to criminal law.

Returning to Amendment 54 from my noble friend Lady Berridge—

Lord Lester of Herne Hill: Can my noble friend confirm, so far as the civil law is concerned, that what I said about the Human Rights Act, freedom of speech and freedom of religion applies equally to the civil law?

Baroness Stowell of Beeston: Absolutely. I am grateful to my noble friend for making that clear and glad to confirm that he is right.

I cannot accept Amendment 54 because the drafting could give the impression that the law is not to be applied even-handedly, which I know is not what my noble friend intended. It also goes further than we believe is necessary. I hope she will agree with me that our own amendment meets the need.

I therefore ask my noble and learned friend Lord Mackay of Clashfern to consider withdrawing his amendment.

Lord Singh of Wimbledon: Earlier the noble Baroness mentioned that if a chauffeur turns up at a wedding and will not take part any more because he finds that the people involved are gay, then the employer has some legitimate grounds for disciplining them. Suppose that same person had expressed a view, within the confines of his employment, that he thought gay marriage was wrong and was then asked to go on this particular trip, what would be the view then?

7.45 pm

Baroness Stowell of Beeston: The chauffeur would be entirely legitimate in expressing the view, whether at work or outside work, that marriage should be only between a man and a woman. However, as I said to the noble Lord, Lord Dear, in the context of the example of a housing officer, it would not be legitimate for the chauffeur to withhold or withdraw from his employment, in terms of what he is paid to do, on the basis of that belief. His employer should be able to pursue that in a way he felt appropriate because he had employed that person to chauffeur people in accordance with the way in which such services are offered commercially.

Lord Singh of Wimbledon: I am sorry but the point I am making is: if the employer had deliberately asked that person to do something, knowing it was against his conscience, what would be the view?

Baroness Stowell of Beeston: He may have only one driver. It may be a very small firm and the only driver available is that driver. It is not possible for us to legislate. The employer might turn around and say that he has a team of people and that he is quite happy with that arrangement. Outside a public authority, I cannot give the noble Lord a definitive response to the kind of scenario that he is painting. It is absolutely clear that it would be legitimate for that person to express their view, but not for them to say that, because they hold that view, they therefore do not have to do what they are employed to do. I hope that is clear for the noble Lord.

Lord Anderson of Swansea: Would it be legitimate for an employer to dismiss from employment as a chauffeur someone who had expressly told him at the time of employment that he was not prepared to convey people at a same-sex marriage?

Baroness Stowell of Beeston: We are now getting into so many different hypothetical scenarios—

Lord Lester of Herne Hill: Before the Minister answers that question, I wonder if I can give some free advice. The answer to that question is fact-sensitive. It all depends on the terms of engagement. There are cases that uphold freedom of conscience in certain situations but no one can give a categorical answer

[Lord Lester of Herne Hill]
without knowing the facts of the particular case. There are plenty of former judges here to nod their disagreement if what I have just said is wrong.

Baroness Stowell of Beeston: I think I will take my noble friend's free legal advice and refer the noble Lord, Lord Anderson, to it. On that basis, I hope that I will be able to convince my noble and learned friend, who is also a very experienced lawyer, to withdraw his amendment.

Lord Mackay of Clashfern: My Lords, I have been waiting for some time to intervene to prevent my noble friend having to answer all these questions but the priorities of the House required me to give effect to those who wanted to speak. We have had a very full debate and I thank my noble friend for the very detailed answers she has given on all the issues that have been raised. I am sure we will want to read very carefully what has been said. In the mean time, I am extremely happy to withdraw my amendment.

Amendment 5 withdrawn.

House resumed. Committee to begin again not before 8.50 pm.

Iran: Election

Statement

7.49 pm

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Lords, with the permission of the House, I will repeat the Answer to an Urgent Question asked in the other place. The Answer is as follows.

"I congratulate the people of Iran on their participation in Friday's elections, and Dr Rouhani on the result. He made some positive remarks during his election campaign about the need to improve economic and political conditions for the Iranian people and to resolve the nuclear issue. The Iranian people will no doubt look to their new president to make good on these promises.

The United Kingdom's policy on Iran has been consistent under this Government and the last. We share international concern, documented by the International Atomic Energy Agency, that Iran's nuclear programme is not for purely peaceful purposes. We deplore Iran's failure to co-operate fully with the IAEA, to uphold its responsibilities under the Nuclear Non-Proliferation Treaty and to meet the demands placed on it by UN Security Council resolutions.

The Government hope that following Dr Rouhani's election Iran will take up the opportunity of a new relationship with the international community by making every effort to reach a negotiated settlement on the nuclear issue. If Iran is prepared to make that choice, we are ready to respond in good faith. Our commitment to a peaceful diplomatic settlement of this dispute is sincere.

I urge Iran to engage seriously with the E3+3 and urgently to take concrete steps to address international concerns. Iran should not doubt our resolve to prevent nuclear proliferation in the Middle East, and to increase the pressure through international sanctions should its leaders choose not to take this path".

7.51 pm

Baroness Royall of Blaisdon: My Lords, I am grateful to the Minister for repeating the Answer given in another place. The results of the Iranian presidential election are encouraging and we welcome any effort by the new president to promote greater engagement with the West. It is right that together we embrace this window of opportunity for progress, including, of course, on the nuclear issue. However, does the Minister agree that it is necessary for the Government to pursue a sort of twin-track approach; that is to say, positive engagement alongside continued and co-ordinated pressure on the Iranian Government? Has the noble Baroness or her right honourable friend the Foreign Secretary had an opportunity to discuss the result of the election with my noble friend Lady Ashton and to discuss progress?

7.52 pm

Baroness Warsi: I thank the noble Baroness for her questions. The election of Dr Hassan Rouhani is an opportunity for Iran to be set on a different course. We welcome the fact that this provides an opportunity. The noble Baroness will be aware that the noble Baroness, Lady Ashton, has been leading the E3+3 talks. The Foreign Secretary is in constant touch with the noble Baroness on these issues. I am not sure whether they have specifically spoken after the election. The noble Baroness will be aware that Dr Rouhani takes his position on 5 August. That will be an important moment for him to signal whether he will put into action what he has said he will. However, I agree that we are sincere in our engagement with the E3+3 process and we absolutely believe that a negotiated settlement is the way forward.

7.53 pm

Lord Hannay of Chiswick: My Lords, does the Minister agree that it would be a bit unwise if we were too effusive about the outcome of this election but that nevertheless we should all say that we welcome that such a high proportion of the Iranian electorate turned out to vote, and that they voted for a candidate who was not the one recommended to them originally by the supreme leader? I have two questions. First, can the Minister confirm what I thought I heard that any willingness by Iran to resume the discussions with the E3+3 would be met by a warm welcome and would be unconditional—that no new conditions would be set for that? Secondly, do the Government feel that it would be helpful if the US Administration made it clear that they would be prepared to talk directly to the Iranians in addition to the E3+3 negotiations, if that was the wish of the new Government in Iran?

Baroness Warsi: It would be wrong for me to speculate as to what offer may be made by the Iranians and how the US would respond in relation to that. However, I can assure the noble Lord that the E3+3 negotiations have been held in an open and frank manner. A

number of matters are on the table. I am not sure what the current conditions are in relation to those negotiations so I cannot answer his question directly in relation to whether any further conditions will be set before further discussions take place. However, I welcome, with the noble Lord, that over 70% of the Iranian public took part in these elections, that Dr Rouhani was elected with over 50% of the vote, and that he described his win as a victory over extremism and unethical behaviour. This is a moment when Iran could choose an alternative course.

Lord Judd: My Lords, does the noble Baroness agree that while it would be naive to suppose that the issues still outstanding are not grave and serious, it would be very unfortunate if, in these early days of the new political reality in Iran, we were to give the impression that we were from the outset still negative? Is it not very important to be able to demonstrate a willingness to respond and to give credibility to the new leadership? Does she also agree that if he is trying to change gear on the crucial nuclear issue it makes it all the more important that the existing nuclear powers take seriously—transparently and demonstrably seriously—their commitment within the non-proliferation treaty to reduce their own stocks and nuclear capabilities?

Baroness Warsi: I take the point made by the noble Lord. Of course we have to be positive about what could potentially flow from these election results. However, we must also remember that more than 600 candidates were disqualified during this process, of which 30 were women. We have to see this election in the context of the background against which it was held. Of course, it is right for us to respond positively to any further movements by the Iranians. That is why I said that this is a moment when Iran can choose an alternative course of action. However, there are still serious negotiations and questions on the table, and it is important for Iran seriously to engage with those E3+3 negotiations.

Lord Marlesford: My Lords, is it not a matter almost for rejoicing that the Iranian people seem to have elected as their president someone who has indicated that he is at least prepared to open windows on the outside world? Should we not do everything to encourage him and the new Government, when they take office, to open the doors as well? Perhaps, following the wise words of the noble Lord, Lord Hannay, this may be an opportunity for the United States to renew the approach that was made so splendidly some years ago by President Obama in his Cairo speech. Given the way in which the flawed—and much protested—election of Mr Ahmadinejad to the presidency was carried out last time, surely the lesson in this is that it is a great deal better to allow countries to sort out their own problems in their own way rather than wading in with either threats or unwise or unsustainable interventions?

Baroness Warsi: I can assure the noble Lord that on this matter we certainly do not intend to wade in with threats. However, I think he will accept that there are serious issues in relation to the proliferation of nuclear weapons by Iran. Those are matters that need to be discussed and Iran needs seriously to engage with them. Of course, there are also issues in relation to the human rights situation in Iran and concerns in relation to its current role in Syria. Therefore, while this is of course an opportunity, we need to be cautious about how optimistic we are.

Viscount Waverley: My Lords, what advice do the Government extend either to encourage or allow engagement with differing sectors or institutions in Iran? I ask this because yesterday I launched as creator and producer a 30 minute internet-based production in Farsi under the banner of www.parliamentrevealed.org, with the assistance of the Hansard Society, which sets out to explain how and why the United Kingdom Parliament operates in the way that it does.

Baroness Warsi: That was great plug for what the noble Viscount does. "Parliament Revealed" is an incredibly important programme. I have seen first-hand its impact in central Asia and it is certainly to be welcomed. If other countries can take advantage of that, we would support it. We can certainly say about Dr Hassan Rouhani, who has studied in the United Kingdom, that it will not be the unfamiliarity of how our system operates that will stop us from moving forwards.

Lord Anderson of Swansea: My Lords, the power structure in Iran is very complex. The Revolutionary Guards remain in place and, as we have seen in Syria, the supreme leader is still there. We should not expect any abrupt changes. However, do we leave the initiative entirely with the new president when he is inaugurated in August? What initiatives are we thinking of at that time to try to normalise relations? Should we not, with our allies, consider carefully the level of representation at the inauguration of the new president?

Baroness Warsi: The noble Lord is right in relation to the supreme leader's position. He will be aware that Dr Rouhani has been one of the supreme leader's personal representatives on Iran's Supreme National Security Council for many years. We look forward to his actions when he is sworn in as president and whether he will show that he is willing and able to resolve Iran's most pressing problems, including the international community's concerns about the nuclear issue. As for whether we will step up our engagement, the noble Lord will be aware that, following the attack on our embassy in November 2011, we reduced our diplomatic relations to the lowest level, although we still have arrangements in place in each other's capitals that allow communications between the UK and Iran. He may be aware that the Swedes and Omanis assist us in allowing those communications to take place. We must be assured, first and foremost, that our staff are secure and safe and that our mission will be allowed to carry out the full range of embassy functions before we can consider how we would step up this relationship.

Lord Maginnis of Drumglass: My Lords—

Lord Wallace of Saltaire: It is 10 minutes for a UQ, I am afraid, and we are out of time.

Town and Country Planning (Temporary Stop Notice) (England) (Revocation) Regulations 2013

Motion to Regret

8.02 pm

Moved by ***Lord Avebury***

That this House regrets that the Town and Country Planning (Temporary Stop Notice) (England) (Revocation) Regulations 2013, laid before the House on 12 April, will have a negative impact on vulnerable Traveller families.

Lord Avebury: My Lords, this order removes the restriction from the Town and Country Planning Act 1990 on a local authority's powers to serve a temporary stop notice in respect of caravans which are used by the occupants as their main residence, where there is a suspected breach of planning control. Hitherto, a local authority could issue a TSN in these circumstances only if it considered that the risk of harm to a compelling public interest arising from stationing the caravan on the land in question was so serious that it outweighed any benefit to the occupier of the caravan of stationing the caravan there for the period of a TSN.

The Government say that unauthorised caravans can often cause immediate and significant impact on the local area and that this is no longer to be weighed against the interests of the occupiers. The order equalises the planning authority's powers in regard to caravans used as a person's main residence with other types of development. That is the point. Parliament has rightly in the past made a distinction between a caravan which is somebody's home and all other types of development. There is a huge difference between stopping ordinary breaches of planning control and depriving a family of their home, with devastating consequences for their future. Not only do they become homeless, but their access to education, health and other public services is seriously prejudiced.

The Community Law Partnership deals with a great many planning cases on behalf of Gypsies and Travellers and in its response to the consultation, it said that the untrammelled use of TSNs would lead to breaches of Articles 6, 8 and 14 and the first protocol of the European Convention on Human Rights. Article 6 deals with the right to a fair hearing and there is, of course, no appeal against a TSN. Article 8 covers the right to respect for private and family life, which is obviously impaired when a person or family is evicted. If councils provide a five-year rolling supply of land with planning permission for Traveller sites—as required by 31 March this year under the CLG's Planning Policy for Traveller Sites—and if they refrain from using these powers until those sites are provided, a great deal of unnecessary human suffering would be avoided. It would also avoid the additional public spending which is incurred in dealing with the health, social and educational problems caused by the notices.

Not a single local authority has implemented PPTS, three months after the Government's deadline. Essex, for example, expects only to complete the preparatory assessment of need demanded by the policy six months hence; and no authority has identified the required five-year supply of deliverable sites. That word "deliverable" means that they should be,

"available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years".

I would be grateful if the Minister would explain why this information, which is so crucial to the success of the Government's strategy for Gypsies and Travellers, is not collected centrally. When a delegation from the Gypsy APPG asked Brandon Lewis, the junior Minister at the CLG, this question last Tuesday, he said that it would be a top-down approach, contrary to the philosophy of this Government. He added that it was up to local planning inspectors to deal with the failure of councils to comply with the PPGS as they saw fit.

I ask my noble friend if that means widespread rejection of local plans and random granting of appeals against refusing planning applications by Travellers? For the last 50 years we have said that the problem of unauthorised sites arises from the failure of the political system to provide adequate accommodation for Gypsies and Travellers. Governments have generally agreed that accommodation is a key factor, not only in dealing with unauthorised sites, but also in tackling the appalling educational, health and other social disadvantage suffered by Gypsy and Traveller families. Yet they have ducked the responsibility of ensuring that these problems, affecting 0.02% of the population, are resolutely addressed. On the contrary, their priority has been to make life harder for those who have nowhere to live, as this order will inevitably do.

That brings me to the prohibition of discrimination in Article 14 of the ECHR, taken together with Protocol 1, Article 1. This entitles a person to the peaceful enjoyment of his possessions. This combination calls into question the difference in treatment between Gypsies and Travellers, who may be deprived of their homes without notice or right of appeal, and gorgias—that means non-Gypsies—who are protected against this treatment by Section 171F (1)(a) of the 1990 Act. The JCHR has drawn attention to the risk of breaching these ECHR provisions, as well as those of Article 2 (1)(a) and Article 5 (b) (3) of the Convention on the Elimination of All Forms of Racial Discrimination.

In some cases, the use of a TSN may be contrary to the public sector equality duty, particularly to the requirements in Section 149 of the Equality Act, to:

"Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it".

There may also be cases where, because of our adherence to the Convention on the Rights of the Child, the use of the TSN may be unlawful because it would not be in the best interests of a child. Under the Health and Social Care Act, too, the Secretary of State must have regard to health inequalities in exercising his functions. Will my noble friend explain how he can do that if Gypsies, who are already at the bottom end of the scale in morbidity and mortality, are harried from pillar to post, unable to seek the medical attention that they may need?

The Explanatory Memorandum says that the Government intend to produce guidance to assist councils in taking into account human rights and inequalities considerations and balancing those considerations against the impact of the unauthorised development on the local area. However, the guidance is likely to be so general as to be useless in enabling the council to decide whether it is safe to issue a TSN. It will hardly venture into the dangerous territory of predicting how the courts will deal with a particular set of circumstances.

Councils may be aware in general terms of the need to take account of human rights and equalities considerations in deciding whether to issue a TSN, as the consultation showed. However, the Explanatory Memorandum envisages the possibility that they may use these powers inappropriately and may then be challenged by judicial review. However, since the order has been published, legal aid for such cases has been withdrawn. Do the Government really believe that Traveller litigants in person are likely to launch judicial review proceedings?

Almost certainly, the families targeted by a TSN will end up back on the roadside, with all the disastrous consequences for their access to healthcare, education and other public services that are well known from evictions such as Dale Farm in 2011. The public expenditure costs downstream are likely to be enormous. This no doubt explains why the Government make no effort to quantify them.

Forty per cent of respondents to the consultation felt that the impact of the changes on caravan occupiers would be unacceptable—as it certainly would be when they have nowhere else to go. The government response to the consultation on the Taylor review of planning practice guidance was published in May. Will the Minister confirm that the guidance on the use of TSNs will be part of the new guidance suite that will be published before the Summer Recess? Will the guidance say that councils should use TSNs only once they have a five-year deliverable supply of sites in place? If it will not, these regulations put the cart before the horse. The draconian power to make people homeless should be invoked only after a local deficit of sites has been eliminated.

Baroness Whitaker: My Lords, when on 13 February this year the Department for Communities and Local Government concluded its consultation on the proposal to change the temporary stop notice system and, in effect, leave it up to local planning authorities to determine whether it is right to evict families from unauthorised caravan sites irrespective of the availability of other sites, special circumstances of health and education, or any kind of disproportionate impact, more than 40% of responses stated that the impact on Gypsies and Travellers would be unacceptable. However, six weeks or so later, on 29 March, just before the Easter bank holiday, the Secretary of State, Mr Pickles, announced that he would go ahead with measures that he unveiled just two weeks later. His precipitous move means that there will now be a complete absence of any need to consider, let alone provide, an alternative legal site if a family, even in great need, perhaps with an oxygen machine or with a heavily pregnant mother, is evicted from an unlawful site.

Noble Lords will know that unlawful sites happen because far too few councils have made a proper assessment of site need, let alone made new council sites or approved private ones. Therefore those families—not a large number—who have been obliged to stop on unauthorised ground will be even more disadvantaged, sometimes dangerously so. Nor, if the Ministry of Justice's proposals go ahead, will judicial review be as available as in the past.

Is this warfare between communities necessary? Is it essential that in addition to enforcement notices, injunctions and direct action, councils should be able, without any corresponding duty to provide or allow the small number of sites required, to remove whole families into a further progression of illegal stopping, and enduring a lack of facilities such as mains drainage, piped water and rubbish removal, which will further deny their children education and their sick people healthcare?

It is not as if there are not examples of much better practice. The successful pilot of the negotiated stopping system in Leeds is one of the best. Everyone took part: the council, the police, the local Traveller support group, Gypsy and Traveller families themselves and local businesses. Leeds City Council estimates that it has saved more than £100,000 so far by avoiding eviction and clean-up costs—a far cry from the millions of pounds spent in the Dale Farm disaster. It also says that access to healthcare, education and training has significantly improved for the roadside families concerned. Your Lordships will well understand the benefit of that for community cohesion and for the prospects of employment and, in some cases, life itself.

Councils need to be encouraged through the legal framework to behave like this, not discouraged. How will the Government achieve improvements? I am reminded of Mahatma Gandhi's famous answer to the question of what he thought of English civilisation. He said, "It would be a good idea". A good start would be to drop these regulations.

8.15 pm

Lord Beecham: My Lords, I begin by congratulating the noble Lord, Lord Avebury, on tabling this Motion, and my noble friend Lady Whitaker. They are two Members of the House who have devoted considerable time and energy to the problems of this particularly vulnerable community, and it is appropriate that we should hear from them tonight.

This is another indication of the penchant of the Secretary of State for selective indignation. For example, council tax rises are not permissible even if they are around 2%—less than the rate of inflation. However, council house rent increases can be twice the rate of inflation. Indeed, that is something that the Government do not just acquiesce in but insist on. When it comes to caravans, which can be unsightly and cause potential problems, the Government will produce regulations of this kind to facilitate their removal. On the other hand, when private houses stand empty, councils cannot acquire them or take any steps in relation to them unless they have been empty for two years, despite a very severe housing shortage.

[Lord Beecham]

Different standards appear to be applied to different issues, according to what would appear to attract more popular support. However, I am pleased to note that at least the junior Minister has a sense of irony. Mr Lewis has been quoted by the noble Lord, Lord Avebury, as saying that government action to force councils to do what they ought to be doing in providing places would be a top-down approach, contrary to the Government's policy. There will be mirth in every town hall in the country at the suggestion that this Government's policy on local government is not one that can be described as being top down. When the Secretary of State tells councils that they ought to be collecting refuse weekly rather than fortnightly, not to mention pronouncing a range of other instructions and wishes which are then backed by the Government's financial distribution, it is a little much for the Government to rely on their so-called localism as a defence for orders of this kind.

Looking at the consultation documentation, I was struck by some of the phraseology used. In the summary they provide, the Government refer to:

"The availability of appropriate alternative sites for caravans used as main residences will be a factor"—

a factor—

"in determining whether it would be appropriate to use Temporary Stop Notices to stop such unauthorised development".

What are the other factors that would be involved in determining whether it would be appropriate? Factors for and factors against are not indicated at all in the consultation. The document goes on:

"Revoking Statutory Instrument 2005/206 to give councils greater freedom to determine whether to use Temporary Stop Notices may therefore encourage councils to identify land for sites to meet their traveller needs".

That is a complete non-sequitur, in any event, but "may" is hardly a strong word to use in this context, given the implications for individuals and families—and, in particular, the impact on children.

In addition, the policy context—which the Government quote—refers, as the noble Lord has done, to the fact that,

"councils should set targets for traveller site provision based on robust evidence, including identification of sites for five years and forecasting ahead where possible to 15 years … provision".

It goes on:

"If a council cannot demonstrate an up-to-date five year supply from 27 March 2013, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission".

As the noble Lord has pointed out, a five-year supply of land is not the same as a supply of serviced sites. Indeed it is very unlikely that simply indicating at this stage that there is a five-year supply will carry any implication that there are service sites available. In any event, councils do not seem to be providing indications that there is a five-year supply of land, let alone of particular developments which would facilitate the use of such sites by Travellers.

The consultation also refers to the penalty for non-compliance with a temporary stop notice. This has not yet been referred to tonight, but it is interesting that there is,

"a fine of up to £20,000 on a summary conviction, or an unlimited fine on indictment",

and that:

"There is no right of appeal against the service of a Temporary Stop Notice",

although, as the noble Lord and my noble friend have pointed out, this,

"may be subject to judicial review".

The question again arises—I am the third person to mention it, so perhaps the Minister would be kind enough to clarify the situation—as to whether legal aid for judicial review will be available or not. It seems unlikely that it would be available. In that case, my noble friend and the noble Lord are right to question whether the reference to judicial review offers any route at all for people faced with this notice to have access to justice and to have their case heard.

The consultation, which was fairly brief, has given results to which both previous speakers have referred. The Government's document confirming the changes repeats that,

"where authorities cannot demonstrate that they have identified a five-year supply of suitable sites then this will be a significant material consideration in the determination of temporary planning permission".

What other considerations would be material in the determination of a temporary planning permission? Will it not be the authority serving the notice which will determine whether planning permission is to be granted or not? If that is the case, surely the odds are significantly stacked against the people who receive the notice.

Statutory instrument 2005/206 restricted the use of notices by preventing them from issued where the caravan was a main residence,

"unless there is a risk of harm to a compelling public interest that is so serious as to outweigh any benefit to the occupier of the caravan".

That seems a sensible and balanced approach to this issue. It is one that the Government are clearly cavalierly discarding. Of course, the Government genuflect briefly in the direction of the European Convention on Human Rights, saying:

"It will still be for local authorities to balance the impacts of using their enforcement powers against individuals … against wider impacts on the local area".

That, again, is not much consolation on the significant issue which the noble Lord has raised.

The document goes on to state:

"The government's aim … is to secure more authorised traveller sites in appropriate locations, to address historic under provision and meet future supply needs".

That is a fine statement, but where is the evidence that anything is actually happening to fulfil that objective, which was announced in March 2012? What progress has been made? What steps have the Government taken to see that progress is being made, or are they simply relying on their policy without making any effort to see that it is being implemented? What financial assistance, if any, is available to local authorities to meet that obligation?

The noble Lord asked about the guidance which the Government say will be produced in line with their guidance review process. I do not understand that phrase, but perhaps the Minister will explain it. I am not aware—this may be my fault—of any government

guidance review process. Is that a general process or is it specific to this particular case? The document states that the guidance is supposed to support local councils to assess the various matters referred to, including,

"the impact on equalities and human rights".

However, we are at the point when the statutory instrument will become effective. Where is the guidance, when will it be issued and what will it say?

The Government are using this statutory instrument to deal with what is not a huge problem in terms of the total numbers. The numbers of unauthorised caravan sites have declined, as the consultation document shows. They draw an interesting comparison in relation to the suggestion that there is unequal treatment of different kinds of development by saying that,

"regulations prevent local authorities from using Temporary Stop Notices against unauthorised development of buildings which are being used as a dwellinghouse".

That, of course, will remain the case. Councils cannot use a temporary stop notice for that, but can in relation to a caravan. They ignore the distinction that while a caravan is immediately a home once occupied, a house under construction is not a home until it has been completed and subsequently occupied. That is sophistry. It is a significant breach of planning law to build something which cannot be stopped in the way that the temporary use of a site by a caravan occupier would be.

This policy could bear very hard on a relatively small but vulnerable group of people, where there is no real evidence that it is necessary. Where is the evidence that there is a significant problem here? The justification for the measure is, to put it mildly, thin and little thought is given to the consequences for those people who will be moved on—to where, no one can say in the absence of alternative serviced sites. The question also arises of the potential costs of the measure. If people are evicted from a site, it may well be the case, particularly if they have children, that a cost will fall on other areas of a local authority—for example, on children's services departments, which may have to take children into care if they are not capable of being suitably housed. That does not seem to have entered into the equation at all.

This is a Motion to express regret. I do not imagine that the noble Lord will seek a vote on it, but it is right that we should discuss it and that the Government should look again at the implications of what they are doing. It is particularly right that they should listen to the advice of two such distinguished Members of this House as the noble Lord and my noble friend, and take action to assist local councils in meeting the need for properly serviced accommodation, suitable for occupation by this quite small group, without recourse to the draconian measures which they are now implementing in this statutory instrument.

8.30 pm

Lord Ahmad of Wimbledon: My Lords, first, I thank my noble friend for securing this debate. Like other noble Lords who have participated in it, I, too, acknowledge his great commitment in furthering understanding of, and tackling and highlighting, some of the issues faced by the Traveller community in particular. I also thank other noble Lords, the noble Baroness, Lady Whitaker, and, of course, the noble Lord, Lord Beecham, for their contributions. Both they and my noble friend have raised valuable and thought-provoking comments. However, unlike my noble friend, I do not believe that there is a case to regret this change. Indeed, I welcome it as part of empowering local councils to take effective action against unauthorised sites.

The noble Lord, Lord Beecham, talked about a recent meeting, to which my noble friend also referred, with Brandon Lewis, who is now charged within the department with taking forward the agenda for Travellers. I would say, in defence of my honourable friend, that he has taken to this particular task with great aplomb. He has met with the APPG and is in listening mode, as the noble Lord, Lord Beecham, pointed out.

Just as an aside, the noble Lord, Lord Beecham, mentioned my right honourable friend the Secretary of State, Mr Eric Pickles, talking about approaches to local government. This underlines our Government's commitment to localism. I, for one, as a former local councillor, actually welcome his intervention on matters such as ensuring that councils take up the good practice of weekly bin collections. Certainly in my 10 years in local government, including my time as cabinet member for the environment, I never found the idea of fortnightly collections resonated with any part of the borough and, indeed, boroughs across London either. However, if that is the case in the noble Lord's area, I stand corrected.

I will set out from the beginning that the Government are totally committed, I assure my noble friend, to respecting the rights of Gypsies and Travellers, improving socio-economic outcomes and indeed reducing prejudice, which does exist. I encountered this at first hand in my own ward in local government. The Traveller site in Merton was actually in my ward, which itself could be regarded as a very prosperous part of the borough. Nevertheless, it was an eye-opener for me. I visited the site, which was a permanent site, and I worked with the local Traveller community there. I totally hear the points made and I think it is important for government at local level to ensure that there is correct representation for Travellers, because quite often they are not aware of the avenues open to them to make appropriate representations. It is incumbent on us, through our localism approach, to ensure that councils create those avenues and ensure that they are made fully available to all Traveller communities.

As we all know, the majority of Travellers abide by the law and planning procedures. It is only a small minority that may at times seek to set up on an unauthorised site, and that does, unfortunately, damage the reputation of the wider community. However, I highlight also the work undertaken thus far at the DCLG. For example, in April 2012, the ministerial working group looking into Gypsies and Travellers published a progress report, which included 28 commitments from across government to help outcomes for Gypsies and Travellers. These included promoting the improved health outcomes for Gypsies and Travellers within the structures of the National Health Service and encouraging authorised sites that have the backing of the local community.

[Lord Ahmad of Wimbledon]
Indeed, £60 million has been made available through the Traveller pitch funding and the new homes bonus. I sought an update on progress in this regard and, by 2015, as part of this scheme, we are seeking to have in place 628 new pitches and 415 refurbished pitches across the country. Another recommendation of the ministerial working group was preventing hate crime, increasing the reporting of incidents and challenging the attitudes that underpin it.

In terms of specific progress, in education, for example, the Department for Education has already recruited virtual head teachers in three areas—Kent, Bradford and Cambridgeshire. In health, the Department of Health's commitments mainly concern improving the evidence base on Gypsy and Traveller health and using the reformed health system to improve the commissioning of health services from April. The new legal duties as regards health inequalities will be a key lever to improve access to and outcomes from health services. Gypsies and Travellers are one of the priority groups on which their inclusion health programme is focusing.

The commitments made by the Home Office come out of the cross-government hate crime action plan, published in March 2012. This plan is currently being reviewed in order to assess progress and respond to new and emerging issues. Of course, I encourage all noble Lords—as they do; and I am sure that my noble friend will—regularly to ensure that progress is made on these initiatives and to hold the Government to account, as is right. In the Ministry of Justice, another department that I represent from the Dispatch Box, the National Offender Management Service, has started to collect statistics on Gypsy and Traveller prisoners, which, over the long term, will demonstrate outcomes. I am glad that I have been joined by my noble friend from the DWP because that department's commitment to include Gypsies and Travellers in its internal monitoring systems will be met with the introduction of universal credit.

These ambitions are also enshrined in our planning policy for Traveller sites. This sets out up front that the Government's overarching aim is to ensure,

"fair and equal treatment for travellers, in a way that facilitates the traditional nomadic way of life of travellers while respecting the interests of"

the community at large. As is the case with all communities, our planning policy asks local councils to plan to meet their objectively assessed needs for development in a way that is consistent with planning policy as a whole. Our policy promotes private-site provision and requires councils to identify and update a five-year supply of deliverable sites, and consider them against needs, as part of their local plan. Legislation requires that local plans take account of this policy. From March this year, where a local planning authority cannot demonstrate an up-to-date supply of sites, that should be a significant consideration in any planning application for temporary permission.

I can therefore reassure my noble friend that we as a Government have been absolutely clear that authorised site provision is key in planning effectively for travellers. When we look at issues such as health and education, some of the unauthorised sites are often not located in a way that is reflective of the needs of the local community and the needs of the Traveller community in terms of the provision of local services. In turn, sufficient, well planned and well managed sites are important in improving educational, health and integration outcomes for travellers.

In support of this, we have provided £60 million Traveller-pitch funding through the Homes and Communities Agency to provide for new and improved sites. Similarly we are working closely with the Planning Inspectorate and Planning Advisory Service to promote high-quality plans, including in respect of travellers. We are also seeing good progress towards local plan adoption, given that seven out of 10 local councils have already published their plans.

However, let me turn to matters related to enforcement against unauthorised Traveller sites, which caused my noble to raise this debate and to which he referred. While recent figures show that the number of unauthorised caravans has fallen—a point made by the noble Lord, Lord Beecham; only 14% are now on unauthorised land—the Government continue to hear about the problems associated with unauthorised traveller sites and with long drawn-out and costly enforcement and eviction proceedings. Unauthorised development related to caravan sites often happens very quickly because caravans are mobile. Unauthorised provision is by definition inappropriate provision that often raises public health and safety concerns for those living on those sites, as well as for the surrounding community. Our policy makes clear that local councils should seek to reduce the number of unauthorised sites and make enforcement more effective. Intentional abuse of the planning system by a small minority of travellers who set up unauthorised developments leads to tension, undermines community cohesion and damages the integrity of the planning system.

To ensure the legitimacy of the planning system, we have already introduced stronger enforcement measures through the Localism Act 2011 to enable local councils to deal robustly and effectively with retrospective and misleading planning applications in relation to all forms of development. Removing limitations on the use of temporary stop notices will further empower local councils to take appropriate enforcement action locally. As with other enforcement powers, temporary stop notices can have immediate effect. In most cases, the previous regulations prohibited local councils from using temporary stop notices against caravans used as a main residence. The new regulations simply remove this restriction and enable the local planning authority itself to determine whether the use of temporary stop notices is a proportionate response to the breach of planning control and safeguard valuable local areas.

The noble Baroness, Lady Whitaker, also highlighted specific cases and issues. It is down to the local authority to use these powers. I am confident that local authorities consider individual cases before they make a judgment call on whether to proceed. The change will encourage Gypsies and Travellers to apply for planning permission through proper channels, enabling full consideration of individual proposals, and result in better quality and more appropriate site provision for Gypsies and Travellers. I assure my noble friend that in exercising

these powers, the local councils as a public authority must have regard to its duties and responsibilities under the Equality Act 2010 and the Human Rights Act 1998, including to facilitate "the gypsy way of life" with regard to the Traveller community. In particular, they will need to consider whether taking such action could simply lead to displacing the occupants onto the roadside or onto other unauthorised sites which could potentially be less suitable. Again, I reiterate the point that local authorities acting responsibly within their legal requirements and obligations should make the decision which is right for the Traveller community and right for the community as a whole.

Perhaps I may pick a few other specific questions which were raised during the debate. My noble friend raised the issue on the guidance on temporary stop notices, a point also made by the noble Lord, Lord Beecham, in relation to legal aid. We confirm that the guidance on the use of temporary stop notices will be published in the summer, as part of the wider review of planning guidance. On the issue of no right of appeal against temporary stop notices, and also whether issues of legal aid are being tackled, temporary stop notices expire, as has been acknowledged during the debate, after a period of 28 days. Local councils will have to consider their duties under the equalities and human rights legislation in determining whether the use of a temporary stop notice is appropriate. In some cases, compensation may be claimed where temporary stop notices are served inappropriately.

I can also assure noble Lords that the Government's proposed reforms to legal aid and judicial review are designed to ensure that those who can afford to pay, do so, to ensure that legal aid is not funding cases which lack merit, or which are better dealt with outside the court, and to target the unmeritorious cases which congest the courts and cause delays. Nothing in the Government's reforms will prevent those who have arguable claims from having their claims heard. Indeed, the whole reforms are intended to protect the most vulnerable in society.

This is an important issue. I can assure my noble friend and all noble Lords that the Government are fully committed to consider our responsibility, and the responsibility of local authorities, to the Traveller community. I hope this debate has helped somewhat to illustrate an understanding of the Government's approach to this issue. I also hope it has reassured my noble friend that we share the same objectives in terms of improving outcomes for the Traveller community. The Government's reforms have struck a careful balance between meeting the needs of the Traveller community while—and this is an important point as anyone who has served in local government will know—in considering and balancing the rights and merits of the Traveller community, it is also important to do so in the interest of the wider community as a whole. This particular measure will assist in ensuring that the planning system applies fairly and equally to all.

Lord Avebury: My Lords, in the few minutes that remain, I thank my noble friend the Minister warmly for his comprehensive reply to the points that have been raised in this debate; the noble Baroness, Lady Whitaker, whose invaluable work on Gypsies and Travellers is applauded by everybody; and the noble Lord, Lord Beecham, for the most important questions that he asked. We did get answer on guidance; I understand from the Minister that it will appear before the Summer Recess. When the package of guidance on PPTS appears as promised, it will be part of that suite.

I am still very concerned that the victims, if I may put it that way, of temporary stop notices will have no right of appeal or a mechanism by which they can challenge the use of such notices. My noble friend rather avoided the questions about legal aid which both I and the noble Lord, Lord Beecham, put to him. However, since the order was first published, the fresh group of cancellations of legal aid affects this matter as well as many other important issues. The victim of a temporary stop notice will have no right of appeal or redress whatever and, as the noble Lord, Lord Beecham, said, he will face a huge fine if he fails to comply.

My noble friend also did not answer the question we put to him about the failure of the Department for Communities and Local Government to publish any statistics on progress towards the obligation on local authorities to provide by 31 March this year a five-year deliverable supply of land for caravan sites. We are now almost at the end of June, and as I have said, not a single authority has actually done this. My noble friend did not challenge that statement, not because he is unaware of the situation on the ground, but because DCLG does not bother to collect the statistics. I have to say that although I am grateful to my noble friend for setting out what the Government are doing in other areas, such as NOMS collecting statistics on offenders and the DWP collecting them on universal credit, that demolishes the argument put to me by Brandon Lewis that the department does not wish to collect statistics on the performance of local authorities in providing planning permissions because it would be a top-down approach.

On the amount of money that is available, a question also asked by the noble Lord, Lord Beecham, we applaud the £60 million that has been allocated by the Government for new sites and refurbishment. As I understood my noble friend, that was planned to produce 628 new pitches and 400 refurbished pitches by 2015. While my noble friend obviously cannot do it this evening, I hope that he will be able to tell me on another occasion how much of that money has been spent. Of the £60 million that has been allocated to local authorities and social housing agencies, has a single site been identified? If so, has planning permission been granted and what progress has been made towards the achievement that the £60 million is intended to produce?

8.45 pm

Lord Ahmad of Wimbledon: Perhaps I may assure my noble friend and other noble Lords that I shall write in that regard after the debate.

Lord Avebury: That will be very helpful, and I am sure that the noble Baroness, Lady Whitaker, and the noble Lord, Lord Beecham, would also like to be informed about what is being done with the £60 million. I could have asked about what is to happen after 2015

[LORD AVEBURY]
because although the money will provide that number of pitches, it will not by any means cure the problem of unauthorised sites. As my noble friend said, the position has been improving, but it is not fully resolved. The reason people camp on unauthorised sites is not because they want to abuse the planning system, but because there is simply nowhere else they can go. I must say that until we have the properly delivered programme of sites which the Government set out in their policy on PPTS, we will still have a long way to go. In the mean time, I beg leave to withdraw the Motion.

Baroness Stowell of Beeston: My Lords, I am sure that the noble Lord could expand his views for a couple of minutes more.

Lord Avebury: If the noble Baroness wishes, there are some other questions that cropped up during the course of the debate on which it would be useful to have a few words. The noble Lord, Lord Beecham, asked what other considerations would be taken into account in deciding whether temporary planning permissions should be granted. I am also interested in that question. I can see that when a caravan is parked on a totally unsuitable site such as a playing field, urgent action needs to be taken. If a caravan is parked on the green belt, that might also be a factor to be taken into consideration.

I wonder if my noble friend the Minister has considered the suggestion made by Councillor Ric Pallister of South Somerset District Council. He has suggested that, where it is necessary to remove a person from a totally unauthorised and inappropriate site such as a playing field, a temporary permission might be granted on another piece of land, which is not unsuitable, for a period of 28 days. That would enable the persons in receipt of the temporary stop notice to draw breath and look around for whatever alternative accommodation might be available. It would be helpful if the Minister could think about that. I am not asking for a reply now but, perhaps, when he writes to us, he could cover that point as well.

I beg leave to withdraw the Motion.

Motion withdrawn.

Marriage (Same Sex Couples) Bill

Committee (1st Day) (Continued)

8.50 pm

Amendment 6

Moved by ***Lord Martin of Springburn***

6: Clause 1, page 2, line 3, at end insert—

"(6) Within three months of the passing of this Act the Secretary of State must, by order or regulations, create a statutory list of religious bodies owning or controlling premises who notify him that they do not wish to be eligible to undertake an opt-in activity for the purposes of section 2.

(7) Any body listed in the statutory list created by subsection (6) may not undertake an opt-in activity for the purposes of section 2.

(8) The Secretary of State must, by order or regulations, amend the statutory list in subsection (6) if any body notifies him that they wish to be included or removed."

Lord Martin of Springburn: My Lords, I note that the noble Lord, Lord Morrow, is not here but I understand that the amendment is the property of the House and that I am entitled to move it. I seek some information from the Minister on this issue.

The amendment says that, within three months of the passing of this Act, the Secretary of State must make an order or regulations,

"to create a statutory list of religious bodies owning or controlling premises".

It is the controlling of premises about which I am interested in getting some information from the Minister.

I was interested in what the noble and learned Lord, Lord Wallace, had to say about Church of England clergy. It occurred to me that this legislation may be re-enacted north of the border and I wonder how this will affect Church of Scotland ministers. As the Minister knows, there is a Church of Scotland church in Pont Street—I believe it is called St Columba's. There is also the Crown Court Church in Covent Garden, where Scottish Members are always welcomed at the beginning of each new Parliament for what, north of the border, we call a kirkin. It would be interesting if it means that there is an established churches' ruling down here which will not apply to Church of Scotland ministers but the legislation that comes in north of the border is slightly different. How might that apply to Church of Scotland ministers who are practising in London or in other parts of the country? I shall leave the noble and learned Lord to ponder on that. I do not need an answer right away.

Where this amendment caught my eye was on the controlling of premises. I, of all people, never believe everything that is in the newspapers. In fact, I once advised a younger Member to check even the date on a newspaper and to use some other means to make sure that it was accurate. However, it has been recorded in at least two newspapers that I know of that government Ministers have approached the authorities of this House with regard to the Chapel of St Mary Undercroft, which some of us know affectionately as St Stephen's Crypt. The story in the newspapers suggested that, in order to give equality to same-sex marriages, the crypt could perhaps be turned into a prayer room rather than being a place of worship controlled by the Church of England.

First, I would point out to the noble and learned Lord and other noble Lords that I am not in the business of trying to scupper or put blockages in the way of legislation that has come from the other House and been approved by this House. However, I am entitled to ask questions. Those who wish to be married in that church can get a full marriage only if they are members of the Church of England and are seeking to have a Church of England priest to marry them. If a member of the Catholic Church wishes to get married in the crypt, a small service has to take place further up the road at Westminster Cathedral and then a fuller service can take place in the crypt. It is said that this is about giving everybody equality, but equality is not practised currently and I am not seeking that equality. My point in raising this is that the Church of England has full authority in that little church, for which we all have great affection. I understand that it is a peculiar,

a Church of England term which means that the monarch can have some say in the matter. If am wrong in these things, I am sure I will be corrected.

I ask the Minister because I do not have full regard for what is printed in the press. That is why I am on my feet tonight. If there is any feeling that changes should be made for that little crypt of St Stephen's, then it should be the membership of this House and the Members of the other place who make inquiries about this matter, not Ministers, who are often quick when it suits them to say, "Well, we are the Executive and there are matters for the House and for the membership of both Houses". I would take a very dim view if a Minister had gone to anyone who has any authority over St Mary Undercroft without consulting me or anyone else through those who represent us here—perhaps the Lord Speaker or the Chairman of Committees.

This throws up another matter, on which I may be less qualified to speak. The legislation says that the Church of England shall be exempt. If anyone in government is able to change the place of worship of the Church of England here in the Palace of Westminster, they would be able to do so in any other place of worship within the Church of England. As a Catholic, I wanted a Catholic marriage in a Catholic church when I married 45 years ago. I do not deny anybody the right to argue with a lot of this legislation. However, same-sex couples feel that as Christians there is no reason why they should not be able not only to get married within the rites of the Church of England, and indeed the Catholic Church, but also to take advantage of the fact that they would then be able to get married in the church itself, rather than a hotel or anywhere else.

It is not the right of government to make approaches. If those articles are correct the approaches were made before Second Reading in the other place. To me, that is wrong. If it is true, then Ministers or a Minister have overstepped themselves. If it is not true, then when he replies the Minister can put my mind at ease. I beg to move.

9 pm

Lord Alli: By adding a new layer to the process the amendment in the name of the noble Lord, Lord Morrow, has managed to find another ingenious way to thwart any religious organisation that wishes to opt in. I am not sure what purpose it serves except to give additional strength to those who oppose opting in, even when religious organisations have given consent.

This gives me the opportunity to ask the Minister whether he might look into an issue raised with me regarding shared religious premises. The example given to me is that of a building that is primarily used by a religious organisation, but rented out once a week to another religious organisation. There is a worry that, under the current drafting of the Bill, if the first organisation applies to conduct same-sex marriages in that building then the tenant could object, preventing their being able to register the building. I wonder whether the noble and learned Lord might look at this and let me know whether that is the correct interpretation. I do not need an answer today. I am happy for the noble and learned Lord to write to clarify the situation.

Baroness Royall of Blaisdon: My Lords, I appreciate that this is a probing amendment, but it has thrown up some interesting questions from the noble Lord, Lord Martin of Springburn. I believe that the proposal in the amendment would be an unnecessary additional hurdle for religious organisations. The legal protections in the Bill relating to the opt-in process, combined with the protections under the Equality Act 2010, are in our view perfectly sufficient to protect religious organisations that decide not to opt in to same-sex marriage from legal challenge.

I suggest that the process Amendment 6 proposes would have the effect of interfering in the internal governing processes of religious organisations. It would allow governing authorities to bind future authorities' decision-making abilities by placing additional barriers in the way of their taking a decision to opt in to same-sex marriage in the future. I am also concerned that such a system could stifle the ability of a religious organisation to respond to the changing nature of its religious community. In addition, we believe it to be unnecessary in the light of the legal protections afforded by the opt-in system in the Bill as well as by the existing legal framework.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I am grateful to the noble Lord, Lord Martin of Springburn, for giving us an opportunity to debate the substance of this amendment as well as the specific points he raised. I substantially agree with the point made by the noble Lady, Baroness Royall. I even suggest that this would be an additional bureaucratic burden. We believe that the provision is not necessary. There is no need for any religious group to take any action whatever if it does not wish to solemnise the marriages of same-sex couples. Unless a group takes the positive step of opting in, it will not be able to solemnise the marriages of same-sex couples.

I take this opportunity to make it absolutely clear that there is no requirement in the Bill to opt in. That is the position in the Bill as currently drafted. If there was a list it could lead to some confusion if, for some reason, a religious organisation did not apply to be recognised on it. Therefore, not only is it not necessary, it could have unintended and undesirable side-effects.

In answer to the noble Lord, Lord Alli, the position with regard to shared buildings is that the requirement for all religious organisations formally sharing a building to consent to registering that building for the marriage of same-sex couples is a vital protection. It allows religious organisations to choose to conduct same-sex marriages and helps to protect those that do not wish to do so. We are giving religious organisations the option of consenting to the registration without having to agree to conduct marriages themselves. This provides a way in which each organisation can respect the beliefs of the other. The Bill is not only about choosing to conduct same-sex marriages but about protecting religious freedom. We are seeking to ensure that the protections provided by the giving of consent in the main opt-in also apply to organisations that happen to share their buildings.

I am not sure that that fully addresses the point but the basic structure is that if there is a sharing arrangement—and there is statute for church buildings

[Lord Wallace of Tankerness]
to be shared—and one religious organisation decides not to opt in and does not consent to the registration of the building for same-sex marriages, same-sex marriages could not take place there. Alternatively, the religious organisation could consent to the building being used for same-sex marriages although it would not itself permit same-sex marriages. But I will look carefully at what the noble Lord, Lord Alli, said and if he feels that I have not addressed the point, I will certainly write to him.

The noble Lord, Lord Martin, raised two very interesting issues. My understanding is that the position with regard to marriages in the Church of Scotland—it is not just St Columba's, Pont Street and Crown Court in Covent Garden; there are Church of Scotland congregations in places such as Corby, I think—is that marriages solemnised by the Church of Scotland in England and Wales are under the law of England and Wales and accordingly the procedures set out in the Bill regarding the opting-in by religious organisations would apply to the Church of Scotland. That would ultimately be a matter, I suspect, for the General Assembly of the Church of Scotland. Obviously, what happens with legislation north of the border is a matter for the Scottish Government. I understand that they plan to publish a Bill relatively soon. Of course, there is a difference between marriage in Scotland and in England: in Scotland it is a licensing of those who perform marriage as opposed to the place of marriage being of crucial importance with regard to religious organisations, as in England.

That takes us on to the question of St Mary Undercroft in the Palace of Westminster. The noble Lord, Lord Martin, said that his understanding was that a marriage there could be solemnised only by the rites of the Church of England and by a Church of England priest. That is certainly my understanding. I had a colleague who wished to be married by a Church of Scotland minister there and had to have a civil ceremony beforehand and then have a blessing by a Church of Scotland minister—so much for humanism. It would not be possible under this Bill for the marriage of a same-sex couple to take place in St Mary Undercroft using the rites of the Church of England. The marriage of same-sex couples according to the rites of the Church of England can take place only when the General Synod of the Church of England and Parliament pass the appropriate measure; it would be a matter for them. The Chapel could not be used for the marriage of a same-sex couple in accordance with other religious rites unless it had first been approved as a place of worship and then registered for the solemnisation of same-sex marriages with the consent of the relevant authorities.

What may have triggered what the noble Lord read in the newspapers is that this matter was raised in debates in the House of Commons and the Parliamentary Under-Secretary of State at the Ministry of Justice, Helen Grant, made a commitment to consider the matter in Committee. Officials made contact with the Office of the Lord Great Chamberlain to clarify the position on this issue. It is clear that the use of the Chapel is not a matter for the Government but for the Church of England and the House authorities.

Lord Martin of Springburn: I thank the noble and learned Lord. That clarifies the matter. So once again the papers have got it wrong and the true story is that clarification was sought from the Lord Great Chamberlain and the case is perhaps as I stated it, but no Minister has made any approach to seek to get the Crypt—as we call it—turned into a prayer room rather than a church.

Lord Wallace of Tankerness: The position is as I understand the noble Lord to have described it: to my knowledge and that of my noble friend, no Minister has made an approach of the kind the noble Lord describes. As I indicated, the issue having been raised in Committee, the Minister Helen Grant undertook to consider it. Officials approached the Office of the Lord Great Chamberlain—possibly not the Lord Great Chamberlain himself—to seek clarification, and the position on the use or non-use of St Mary Undercroft is as I have set out. I hope that gives clarity.

Lord Martin of Springburn: My Lords, I withdraw the amendment.

Amendment 6 withdrawn.

Clause 1 agreed.

Amendments 7 to 9 not moved.

Clause 2 : Marriage according to religious rites: no compulsion to solemnize etc

Amendment 10

Moved by ***Lord Dear***

10: Clause 2, page 2, line 13, at end insert "or
( ) to express agreement with a relevant marriage,"

Lord Dear: My Lords, I rise briefly to deal with Amendments 10, 12 and 14. I said when I spoke to Amendments 7 and 8 that they were paving amendments. In many ways they lead on to what the three amendments in this group now seek to deal with.

I listened very carefully to what the noble Baroness, Lady Barker, said when she spoke to Amendments 7 and 8. I have a great deal of sympathy with her. She might be surprised to know just how much common ground there is between us and be reassured by that comment.

Amendments 10, 12, and 14 are concerned with freedom of speech. The Bill seeks to protect the civil liberties of those who do not want to participate in religious same-sex marriages, stating that they cannot be compelled to do so or be punished for not doing so. Equality laws, we have heard today, will be amended so that, for example, a church minister who refuses to conduct a same-sex marriage will not breach the goods and services provisions of the Equality Act of 2010. However, the Bill's existing safeguards do not deal with speech; they deal only with conduct. The evidence is overwhelming that it is the verbal expression of beliefs about marriage that tends to get people into trouble.

I was reminded to go back to the period just before Christmas, when I successfully introduced an amendment to remove the word "insulting" from Section 5 of the

Public Order Act 1986, quite rightly leaving threatening and abusive conduct in place. Therefore, the expression of a mere view, even though some found it insulting, was not an offence in the criminal law under that section. I quoted very heavily then from the judgment of Lord Justice Sedley in the case of Redmond-Bate v Director of Public Prosecutions. The words that he used were very similar to those used by the noble and learned Baroness, Lady Hale, in the Williams case—a judgment I have already referred to; I will not go over that ground again.

Apart from the small amendment to the law on inciting homophobic hatred—Amendment 53, which we dealt with just before the dinner break and which applies, as we know, only to the criminal law—the Government, as far as I can see, have declined to address the problem of speech. Amendments 10, 12 and 14 add protection for freedom of speech, so that no person would be compelled to express agreement with same-sex marriage or be punished for expressing their disagreement to it.

I give three quick examples of what I have in mind here. Under Amendment 10, church staff who explain the church's view to a same-sex couple who apply for a wedding cannot be sued. Under Amendment 12, employees can disagree with same-sex marriage without risk of being punished by their employers. Under Amendment 14, churches and religious organisations that refuse to endorse a same-sex wedding cannot be sued under the Equality Act for discrimination.

I think it is self-evident. I will not take up the time of the House any more, other than to give one quote from the Joint Committee on Human Rights, which said, in commenting on this general area of the law, that,

"we have heard arguments on both sides as to whether religious organisations and individual ministers may suffer some form of detriment as a result of their position on same sex marriage in a number of contexts which fall outside the scope of the Bill's current protections. We note the concern that the Bill may create a number of legal uncertainties, which may only be resolved through litigation with its attendant costs".

My Amendments 10, 12 and 14 seek to plug some of those gaps. I beg to move.

9.15 pm

Baroness Thornton: My Lords, these amendments are very similar to those we debated before the dinner break and, in a way, similar to the ones that we will be debating next concerning registrars and public servants. Our view is that the equality legislation—and freedom of thought, speech and belief protected by that legislation—covers these points. I can see why the noble Lord may wish to probe that, and I am sure that the Minister has more than adequate answers to it, but we do not think that the amendments are necessary.

Baroness Stowell of Beeston: The amendments of the noble Lord, Lord Dear, provide an opportunity for me again to make clear what is allowed under the law in terms of belief and expression of belief. I do not accept his argument that the law deals only with conduct and not with freedom of speech, because it explicitly does. People are clearly able to express themselves, to hold religious beliefs and express those beliefs, and to do so freely. Nothing in the Bill restricts anyone's right to express a view on marriage or anything else.

As I said before, I understand that some people are uneasy about the impact of the important change that we are making in the Bill by extending marriage to same-sex couples, but they really have nothing to fear. The law is clear. I understand that there is concern out there but it is my job here to respond to that and to say as clearly as I can that in law there really is nothing to fear. The Equality Act 2010 works in a balanced way to ensure that reasonable discussion of any topic is not restricted. The law comes into play only if someone is subjected to a detriment or is harassed because of a protected characteristic.

The noble Lord's amendments would provide that a person other than a registrar, superintendent registrar or the Registrar General may not be compelled to express agreement with a religious marriage ceremony of a same-sex couple. Nothing in the Bill or elsewhere requires anyone to express support for marriage of same-sex couples, nor is there anything that prohibits disagreement with same-sex marriage. Nothing requires religious ministers or teachers—if that is what the noble Lord has in mind—or anyone else to express agreement with religious marriage ceremonies of same-sex couples. Religious ministers are free to preach about their views of marriage and those of their faith, and teaching must be factual and appropriate, but that does not involve teachers having to say they believe things that they do not believe.

Expressing disagreement with something is not in itself harassment or discrimination under the Equality Act. Under that Act, it is how people are treated that matters. Accepting this amendment would risk creating doubt as to whether other topics of conversation, such as views on civil partnerships or homosexual relationships generally, need similar protection.

As we have already discussed, we have amended the Public Order Act. I covered that in great detail in previous debates and I shall not go over it again. I can only conclude by saying that the amendments are unnecessary and potentially damaging to the balanced way in which the Equality Act protects people from discrimination and harassment. For those reasons, I cannot accept the amendments. I hope that I have been able to give the noble Lord the assurance that he is looking for and that he feels able to withdraw the amendment.

Lord Dear: Does the Minister think that the law is so adequate that these words are irrelevant or does she think that the words should not be incorporated in the Act at all?

Baroness Stowell of Beeston: I think it is both. They are not necessary and by being specific in this way, as I tried to explain, we create doubt about people expressing other views that are not spelt out. Once we become specific, arguably we remove people's protection to say other things that they are legitimately able to, because the law does not out spell out specifically that they are protected in doing so. There is a potential risk there with the amendments as well.

Lord Dear: My Lords, I am partly confused and certainly not in agreement with what I think I heard the Minister saying. I feel that we have already heard that the Equality Act has been shot through a number of times as being inadequate. A number of cases have been cited. Clearly, the freedoms it set out to offer have not always been available and for the first time—

Lord Lester of Herne Hill: I am sorry to interrupt the noble Lord but I strongly object to what he has just said. There is no evidence that the Equality Act has been shot through with anything or has failed to work properly. I have already said in a previous short speech that the Human Rights Act solves the problem but he does not seem to have followed what I said, so I will say it again. The Human Rights Act says that all legislation, old and new, must, if it is possible to do so, be construed compatibly with the convention rights. Those rights include freedom of conscience, religion and belief and freedom of expression. If we wanted to get into a real muddle, we would start writing stuff into this Bill which then has to be read down by the courts. The best thing to do is to go for legal certainty and my view is that the law is quite certain on that.

Lord Dear: Of course, I defer to the noble Lord's view on this but nevertheless we have heard of a number of cases in your Lordships' House tonight where people have expressed a view and been sued for it. I do not in that sense move away altogether from the point I am trying to make. There are people out there who are now very concerned about opening their mouths and saying anything at all, for fear of being dubbed homophobic. There will certainly be more if this Bill comes into law in its present form. Although I am more than happy to withdraw my amendment at this stage, I will seek return to it on Report and may very well seek to divide the House.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Baroness Cumberlege***

11: Clause 2, page 3, leave out lines 21 and 22

Baroness Cumberlege: My Lords, I will also speak to Amendment 16. The Bill as drafted does not allow registrars to refuse to conduct civil same-sex marriages on the grounds that they have a conscientious objection to doing so. I am very grateful to the right reverend Prelate the Bishop of Leicester for putting his name to these amendments. Sadly, he is not here this evening but he is represented by the right reverend Prelate the Bishop of Hereford, who I am delighted to have supporting this clause. The proposed new clause in Amendment 16 will allow registrars to conscientiously object in limited circumstances. It will also ensure that all same-sex couples who wish to marry will be able to do so. There is only one reference to registrars in the Bill. It states that for the purposes of Clause 2(4)(b),

"'person' … does not include a registrar, a superintendent registrar or the Registrar General".

This means that registrars will not be afforded the protection from compulsion that religious individuals have in relation to same-sex marriages in the religious context.

It is unclear to me why the drafters chose to mention registrars in a clause that deals only with marriages according to religious rites, termed relevant marriages within the clause, and not in a separate clause that deals with civil same-sex marriages. I find this particularly surprising given the recent decision of the European Court of Human Rights in Eweida and Others v United Kingdom. The noble Lord, Lord Anderson, mentioned it earlier. Miss Ladele was a registrar with a conscientious objection to performing civil partnerships. She was subjected to disciplinary proceedings because of her religious beliefs. Following the Ladele case, and, I have to say, the Government's huge expense and the following media circus, one would have expected a more explicit reference to registrars in a clause dealing with registrars as a whole, not a small reference in a clause dedicated to marriages according to religious rites.

The absence of protection for registrars in the civil context contrasts markedly with the protection from compulsion that is given to the clergy or others within religious organisations. Why should the religious rights of the individual take precedence only in the context of religious marriages? Both the minister conducting the religious marriage and the registrar conducting the marriage in a register office carry out the same public function: both conduct legally recognised marriage ceremonies. Indeed, the Minister responsible for the Bill in the House of Commons said,

"Marriage is, in my view, a single institution that can be entered into either in a civil ceremony or in accordance with religious rites or usages".—[*Official Report*, Commons, 26/2/13; col. 186.]

Our amendment and proposed new clause will permit all registrars, civil and religious, to exercise their right to freedom of conscience and religion while ensuring that same-sex couples are able to access civil or religious marriage ceremonies.

A conscientious objection clause such as the one we propose is not unprecedented. It will not have a detrimental effect on the Bill. Section 4 of the Abortion Act 1967, for example, allows for individuals with a conscientious objection to abstain from participating in abortions. Section 38 of the Human Fertilisation and Embryology Act 1990 allows any person to object to participation in the treatment and development of human embryos. Schedule 2(3) of the National Health Service regulations allows medical staff to refrain from providing contraceptive services—my noble friend Lord McColl knows more about this than I do. Under the Motor-Cycle Crash-Helmets (Religious Exemption) Act 1976, Sikhs do not have to wear helmets, while atheist teachers are not required to conduct collective services or to teach religious education.

These are just a few examples of conscientious objection clauses that already exist. The Government have provided no good reason for distinguishing between the individuals in those contexts and registrars in the same-sex marriage context. The Minister, in his response to the Public Bill Committee, said it is because "they are different". That is not a satisfactory answer. Like registrars, all medical professionals and teachers provide a service and perform a public function. Why, then, should registrars be treated differently? Teachers perform different functions to medical professionals, and medical

professionals perform a different function to research scientists experimenting with human embryos. Why does it matter that they are different? What justifies this difference in treatment?

Subsection (1) of our proposed new clause draws partly in its phrasing on the conscientious objection clause in the Abortion Act, as does the requirement in subsection (3) that the,

"objection must be based on a sincerely held religious or other belief".

Subsection (4), also like the Abortion Act, places the,

"burden of proof … on the person claiming to rely on it".

Therefore, only individuals with a genuine, sincerely held religious or other belief may refuse to conduct same-sex marriages, and only if they can prove that their refusal is based on genuinely held religious or other beliefs. That is not an easy test to satisfy.

A conscientious objection clause in this area would not be completely unprecedented, either. While the Civil Partnership Act 2004 does not have an explicit conscientious objection clause, it does not require all registrars to be designated civil partnership registrars. The legislation simply requires registration authorities to ensure that there is a sufficient number of civil partnership registrars for the area. Across the United Kingdom, registrars' beliefs have been accommodated by local authorities, allowing those with sincerely held religious objections not to be designated as civil partnership registrars. By doing this, local authorities protect both the rights of same-sex couples and registrars.

9.30 pm

Ladele—a case mentioned earlier by the noble Lord, Lord Anderson of Swansea—was the exception. Miss Ladele's local authority forced her to choose between her job and her faith. By doing so, it sparked an unnecessary controversy that has been extensively reported in the press and appealed all the way up to the European Court of Human Rights. Forcing Miss Ladele to make this difficult decision was unnecessary, because the local authority had enough registrars to cope with the demand for civil partnerships. Her conscientious objection had not prevented any couple entering a civil partnership. Her opposition was not known to the public or any service users until she was dismissed. Moreover, she did not use her belief as a platform from which to make a political point.

The case and the controversy could have been avoided if her local authority had taken the same approach as many others across the UK and allowed her to continue in her employment without conducting civil partnerships. Our amendment would merely legislate for and endorse the approach that has already been adopted by both sensible and tolerant authorities who were prepared to live and let live. Without our new clause, that sensible result will not be achievable in the context of same-sex marriages, because all registrars will automatically be required to conduct same-sex marriages without any further action, such as designation, having to be taken. By placing this clause in the Bill, we will prevent further cases like Ladele.

Baroness Thornton: The noble Baroness keeps referring to the case of Miss Ladele but has failed to inform the House that that lady lost her case all the way up to the European Court. In other words, our equalities legislation was held to be true right up to the European Court.

Baroness Cumberlege: My Lords, my point was that it never needed to have come to court.

Our new clause would produce largely the same result as the Civil Partnership Act, because subsection (2) would not allow individuals to exercise a conscientious objection if doing so would result in same-sex couples being unable to access marriage ceremonies. If sufficient numbers of registrars are not available in any district, a registrar with a conscientious objection would come under a duty to conduct same-sex marriages. Therefore, no same-sex couple would be prevented from marrying by reason of this amendment. This tackles the Minister's concern that religious individuals might apply for positions as registrars in order to conscientiously object and prevent same-sex couples getting married—although this is unlikely. Our new clause would prevent this, because the registration authority would be able to compel such individuals to conduct the marriages if another registrar is unable to do so.

Not only is our new clause practical and consistent with precedents set in this area, it is necessary. There are currently a number of registrars who wholeheartedly embrace civil partnerships but, by reason of their religious or other beliefs, do not believe that marriage should be extended to same-sex couples. There are also some registrars who, following the Civil Partnership Act, were accommodated by their local authorities and who believe that only opposite-sex couples can marry. Without this new clause there will inevitably be legal disputes in the future, which the Government surely wish to avoid.

During the Public Bill Committee, the honourable Member for Bristol West said:

"There is plenty of time, given that they work in local government, for them to think through the implications of Parliament changing this law and … to apply for redeployment elsewhere in the public service: in the library service, or somewhere else where they have to serve the customers fairly and equally".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 26/2/13; col. 226.]

In other words, tough luck: if registrars do not want to perform same-sex marriages, they should go and find employment elsewhere. That cannot be right. Why should a person who until now has perfectly performed all the functions asked of him or her be forced to resign over this crucial matter of conscience, especially given that such a function was never envisaged as part of their role when they were initially employed? It would be unfair to expect them to do so.

Baroness Thornton: Will the noble Baroness inform the House whether a proposed new clause would open the door to registrars conscientiously objecting to other things such as mixed-race marriages? Where would the noble Baroness draw the line?

Baroness Cumberlege: My Lords, this debate is about same-sex marriages. That is what I am addressing. Surely we should not force people into such an impossible position.

Baroness Thornton: It is a legitimate question. If the amendment were agreed, would the noble Baroness be opening the door to other conscientious objections—for example, to mixed-race marriages?

Baroness Cumberlege: My Lords, this Bill is not about mixed-race marriages but about same-sex marriages. That is what I am addressing.

Lord Martin of Springburn: Does the noble Baroness know of any religious faith that would object to a mixed-race marriage?

Baroness Cumberlege: No, my Lords, I do not know of any. I have just had little more to say before I finish. Our proposed new clause will promote rather than hinder tolerance, because individuals will be more likely to live in harmony, even if their thoughts and beliefs are entirely contradictory. Harmony, broad-mindedness and tolerance are more likely to be achieved if both those who do and those who do not believe that same-sex marriages should be available feel that their beliefs are equally valued and protected.

In conclusion, our proposed new clause strikes a sensible balance between the rights of those wishing to get married and the rights of those with conscientious objections to conducting same-sex marriages. It will allow individuals conscientiously to object only in certain limited circumstances. It will not allow anyone with a conscientious objection to communicate that objection to anyone wishing to get married at a register office. It will not allow any registrar to make their beliefs publicly known through their work. It will allow registrars quietly to refrain from conducting same-sex marriages only where there are enough other registrars to cover demand. Surely this is a better approach.

Earlier this evening, the noble and learned Baroness, Lady Butler-Sloss, talked about a middle way. I agree with her. This House encourages tolerance. Our amendment would protect the rights of individuals with conscientious objections, and also allow same-sex couples to get married. To me, that is the middle way. I urge the Minister—

Lord Alli: I have a question for the noble Baroness. If I understand her proposed new clause correctly, at the beginning there is a conscientious objection subsection. There is also an obligation on public authorities to provide registrars. The proposed clause then states that if there are not enough registrars in the area, the conscience exemption is dropped and the registrar will have to perform the marriage regardless. That is the worst of both worlds. There is the illusion of a conscience exemption, but if there are not enough registrars, the poor person about whom the noble Baroness spoke will have to perform the marriage in any case. Perhaps the noble Baroness will tell me if I got that right or whether she has a different interpretation.

Baroness Cumberlege: The noble Lord, Lord Alli, got it absolutely right. I will draw my remarks to a conclusion.

Lord Carlile of Berriew: I apologise for intervening at this late stage of my noble friend's speech, but I would like to be clear about the consequences of what she is saying. Does she propose that a registrar who is opposed on conscientious grounds to divorce should have the right to refuse to marry people who are entering into a second marriage after divorce?

Baroness Cumberlege: No, my Lords, I am not going into divorce. I am trying to keep my proposed amendment quite narrow. I am trying to find a middle way, a way that allows registrars to have a conscientious objection because they are not bit parts in this exercise—they are intrinsic to it. I think they should have that right, just as doctors, teachers and everybody else that I have mentioned do. I also understand, having been in local government and knowing how registrars work, the issue of having to work out the workforce that is required to carry out these functions. I am saying that if a registrar is trying to exercise a conscience clause—the clause that we are here trying to give that person—but there is a shortage of registrars within that area, I am afraid that he or she would be compelled to do it.

The Lord Speaker (Baroness D'Souza): My Lords, if this amendment is agreed to I cannot call Amendment 11A by reason of pre-emption.

Lord McColl of Dulwich: My Lords, I support Amendment 16 of the noble Baroness, Lady Cumberlege, and I do so very much as a doctor. In another place at Report, the Minister, Mr Hugh Robertson, rejected the suggestion that space should be made for registrars with a conscientious objection to officiating at same-sex marriage ceremonies. This will mean that once the Bill is passed, those registrars will be confronted with the choice of either acting in violation of their conscience or losing their livelihood and vocation. The Minister said:

> "I do not believe it is appropriate or right to allow marriage registrars to opt out of conducting same-sex marriages either permanently or on a transitional basis. Like it or not, they are public servants who should carry out the will of Parliament, and allowing exemptions according to conscience in my view"—

said the Minister—

"sets a difficult precedent".—[*Official Report,* Commons, 20/5/13; cols. 963-64.]

I have to say to that Minister, like it or not, that there are already precedents in this country to accommodate the consciences of public servants who are paid by the taxpayer, as the noble Baroness has already said. Quite rightly, the conscientious objections of doctors who are public servants and paid for by the taxpayer are respected so that they do not have to perform abortions if this violates their consciences. This has been operative since 1967. No one ever told me as a doctor that I must choose between being willing to act in violation of my conscience to perform an abortion or being sacked and losing my livelihood and vocation. I was always rather thankful for that arrangement.

Moreover it is not just public servant doctors whose consciences are protected. Teachers have the same kind of protection and for much longer. Quite rightly, the law makes space for atheist teachers so that they do not have to lead school assemblies or teach religious education. We do not tell atheist teachers that they must either be willing to lead a religious assembly or lose their livelihood or vocation. That again would be deeply illiberal.

It seems to me that the Minister, certainly in another place, has a problem. There is no new precedent in the excellent amendment of the noble Baroness, Lady Cumberlege. It is simply a continuation and reaffirmation of the very important liberal, democratic principle that we allow mainstream conscientious objections of public servants.

The other point that the Minister made during Report in another place was that the Government had received no representations from the national panel for registration asking for conscientious objections. Moreover, the panel has sent noble Lords a briefing ahead of today's debate which repeats that very point. I have to say I find it deeply disturbing that a body, which is, I presume, supposed to represent the interests of all registrars should be content to affirm the passage of legislation that will effectively say to registrars with a conscientious objection, "Choose between either being willing to violate your conscience or lose your job". If it is supposed to represent the interests of all registrars, it does not seem to be doing a very good job. This has been underlined by paragraph 25 of the European Court of Human Rights judgment in the Ladele case, which states:

"Some other United Kingdom local authorities"—

that is, other than Islington, where Miss Ladele worked—

"took a different approach, and allowed registrars with a sincerely held religious objection to the formation of civil partnerships to opt out of designation as civil partnership registrars".

Exactly the same point was made by paragraph 23 of the Employment Appeal Tribunal document on the same case. These other authorities found it necessary to make these accommodations with respect to officiating at civil partnership ceremonies only because there is a widespread conscientious objection problem, which obviously applies equally to same-sex marriage, about which the national panel appears to be unaware.

9.45 pm

Moreover, on 14 February, Mark Jones, the solicitor for Lillian Ladele, gave evidence to the Commons committee and made it plain that he was aware of a number of registrars who had major concerns about the implication of the change in the law. We also know it is a big issue because of the Lillian Ladele case itself. The courts found against her because they were asked to interpret a law that did not explicitly provide a conscience exemption. It did, however, provide scope for an exemption in practice because registrars are separately designated marriage registrars and civil partnership registrars. The reason why Ladele got into difficulty was because her employer insisted that all registrars were designated as both marriage and civil partnership registrars. If marriage is redefined, there will be absolutely no chance of protection for registrars without Amendment 16 because there will not be a separate different-sex marriage and same-sex marriage designation—there will just be a marriage designation.

If the Government were to reject Amendment 16, in order to be logically consistent they would have to end the practice of making space for atheist teachers and doctors whose consciences do not permit them to perform abortions. That would be unthinkably illiberal and so, too, would it be for us not to pass Amendment 16. I strongly commend this amendment to the Committee and urge the Government to support it.

The Lord Bishop of Hereford: My Lords, I also support the amendments in the name of the noble Baroness, Lady Cumberlege. As she said, the right reverend Prelate the Bishop of Leicester, regrets not being able to be here this evening. As the noble Baroness made very clear, and as the noble Lord, Lord McColl, made clearer still, the amendment we are considering is a natural development of other legislation, other exemptions and other conscience clauses, and provides protection that I, along with others, think would be helpful and an improvement to the Bill.

The noble Baroness, Lady Cumberlege, said that the absence of protection for registrars in the civil context contrasts markedly with the protection from compulsion that is given to the clergy or others within religious organisations. This protection has the potential to generate conflict between religious individuals and religious organisations, which will always be resolved in favour of individuals because the Bill will accord the religious freedom of individuals greater weight than the institutional autonomy of religious organisations.

The Bill effectively makes it impossible for religious organisations that have opted in to providing same-sex marriage to compel their members to conduct the ceremonies. If this conscientious objection clause was broader and protected individuals in circumstances where the state is involved, the interference would be justified. The fact that this protection applies only within religious organisations and interferes only with the inner workings of religious organisations seems to me unreasonable. Therefore, the interference cannot be justified. It is to that effect that I was very grateful that both the noble Baroness and the noble Lord, Lord McColl, made reference to five examples—if I was counting correctly—of exemptions already in law. Conscience clauses exist, as we have heard, in the Abortion Act, for doctors; in the Human Fertilisation and Embryology Act; in National Health Service contracts; in the law on motorcycle crash helmets; and for atheist teachers.

Only last week, there was a report from the Joint Committee on Human Rights, which was addressing the legal scrutiny of this Bill. It included the following comments:

"We have heard significant arguments about whether existing employment and equality law provisions provide sufficient protection for employees who may wish to manifest their belief about same-sex marriage in the workplace. We note the particular concern for the position of teachers and civil registrars. Although we do not come to a final conclusion on whether additional protections are required, in part due to the complexity of the issues involved and the divergence of opinion upon them in the evidence we have received and in other material which we have considered during our scrutiny of this Bill".

It went on to say that,

"we recommend that the Government reconsider these issues with a view to bringing forward amendments in the House of Lords to put in place transitional arrangements which deal with these concerns for those in post as registrars at the time any legislation is passed".

I would be very grateful to hear the Minister's comments on this recommendation.

[The Lord Bishop of Hereford]

Reference has been made already by the noble Lord, Lord McColl, to the national panel for registration. Quite a few of us will have received a briefing about that, which includes two paragraphs about a conscience clause. The first says:

"We are strongly opposed to any 'conscience clauses' enabling Registrars to 'opt out' of marrying same sex couples. We consulted widely within the LRS"—

the local registration service—

"during the consultation on equal marriage and we want to assure you that no member of the LRS has called for a conscience clause".

Again, I would be very grateful if the Minister would let us know how that consultation was held, how many people were consulted and what proportion responded. I wonder whether some of those who might have wished to respond in another context or in another survey might have felt disinclined to do so because there is no conscience clause at the moment and because they did not therefore want, as some might put it, to put their head above the parapet.

In the second paragraph, the advice from the National Panel for Registration was:

"Registrars are local authority employees and are expected to carry out all the function that their role covers. At present this includes delivering civil partnership ceremonies. We do not believe that delivering equal marriage ceremonies will be any different. Allowing some Registrars to opt out of civil marriage for same sex couples would be discriminatory and cause serious administrative difficulties in delivering services".

I have to say that that paragraph puzzles me in two regards. The first is when it states:

"We do not believe that delivering equal marriage ceremonies will be any different".

That makes me wonder what we are all doing today and what this Bill is about if the panel is correct. Secondly, I am puzzled because, on the one hand, the panel is saying that it is not aware of any registrars wanting a conscience clause, yet, on the other, it is saying that if there were to be a conscience clause it would,

"cause serious administrative difficulties in delivering services".

Yet, in areas where there are only a few registrars or even, as the panel might think, none, it is hard to see quite how it would be so difficult to deliver the services. That is rather contradictory.

I shall also quote the evidence given to the Commons Public Bill Committee on 14 February. Among the witnesses was the Dean of St Albans, the Very Reverend Jeffrey John. Jim Shannon asked him:

"Do you feel that registrars should have equal protection?".

The reply of the Dean of St Albans was:

"I would not be against that, personally, I have to say. I think it would be sensible if local councils and so on made individual provision for registrars who seriously find that a difficulty, rather than simply sacking them. I would want to treat that on a humane, ad hominem basis".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 14/2/13; col. 151.]

I am delighted to agree with him on those points. That is another reason why I hope your Lordships will agree to ask the Minister to respond warmly and positively to the amendments in the name of the noble Baroness, Lady Cumberlege.

Perhaps I may also refer to Amendment 53 and simply say how much I appreciated the Government making matters expressly clearer on that issue and going a long way in the direction that I and a number of others in this Committee would wish, for clarity's sake. I hope that over this issue we will have a conscience clause and be able to establish a category. Even if the registrars are correct, there may not be many people in it. What is at issue is the category itself and protection for people, even if it is only a few people. We need to protect them and this seems to be the right way of doing it.

Baroness Butler-Sloss: My Lords, I have some hesitation in following the three very able speakers, with all of whom I have previously entirely agreed on almost every subject. However, there is a difficulty here. There should be a distinction between those who are in post now and those who will be post. The transitional arrangements suggested by the human rights committee seem to be the right way forward and an appropriate compromise.

We have to recognise that one of the major jobs of a marriage registrar is to marry people, whereas, for doctors, abortion would not be a major part of their work. For atheist teachers and so on, it is not so difficult to come to arrangements. However, it is a particularly difficult situation if a new marriage registrar says, "I come in on terms whereby I am not prepared to do part of my job", particularly in areas where there may not be many of them. However, there is a wholly different argument for those registrars who are already in post. The amendments we are considering have gone too far but the Government ought to look at some form of protection for registrars who are currently in post and who joined their local government service at a time when the idea of same-sex marriage was pie in the sky. I urge the Government to provide for a halfway, compromise situation that would meet what was specifically needed here.

10 pm

Lord Anderson of Swansea: My Lords, I hope that the Government will listen to the points that have been made and recognise that there is a real problem here. The Government can, after all, be magnanimous. They have had substantial majorities in favour of the Bill, both in the other place and here. Now they can listen to the clear case for the protection of those who will be adversely affected if this Bill, as no doubt it will, becomes law. I hope also that the Opposition will recognise our proud tradition, over the centuries and beyond, of trying to support radicals; those who are against the wind, those who have a legitimate conscientious objection.

I do not agree with my noble friend on the Front Bench who was trying to reduce to absurdity the idea of where we draw the line, of what happens if someone objects to mixed-race marriage. There was not an objection. Even in apartheid South Africa, if one were white one could find a church in which to marry a black woman, or the other way round. It is rather like asking what would happen if a registrar objected to marrying someone with ginger hair. Of course, one can raise an objection of that sort and try to draw a

silly distinction, but there must surely be a point where reasonable people accept that there is a substantial body of opinion which is in favour of traditional marriage, and if it is at all possible, as in the terms of the amendment, one should seek to accommodate it.

The noble Baroness, Lady Cumberlege, should be congratulated on the balanced and tolerant way in which she moved her amendment. The good sense of the people should be accommodated because there is not only the problem which the noble and learned Baroness, Lady Butler-Sloss, mentioned: that the contract of an existing registrar will have been altered by statute to their detriment. This will not have been part of their original terms and contract of employment, so they would stand being faced with the awful choice of either going against their conscience or losing their job. Surely there should at least be some transitional arrangements to allow for this. Furthermore, looking at this in a practical way, one asks how many people are likely to be affected by this. What will the demand be for same-sex marriages? The evidence from other jurisdictions is that demand will be relatively small. I concede that the evidence points to the fact that there was a more substantial demand in the initial stages, because of the pent-up demand from those who wished, for example, to transfer from civil arrangements to a full marriage position; but afterwards, there was a relatively small number.

If it is the case—I think it is very likely to be the case—that only a small number will wish to enter into a same-sex marriage, then that is surely manageable and should be managed by reasonable accommodations and by good will on the part of the Government and those who seek to legislate. I am not even sure of the concession made by the noble Baroness that someone might be compelled to officiate if there is not someone actually available within Islington or wherever. If it is likely to be the case that only a small number are going to be affected, in larger jurisdictions there will be more than one registrar in any event, and it is surely not beyond the wit of an accommodating and understanding local authority to make arrangements with an adjoining local authority. In so many other areas of competence, local authorities co-operate.

I fear that there is a whiff in the Government of "The juggernaut moves on. We shall insist that these people conform, jump to attention, do what we say they will do, or they will properly be dismissed". There surely must be a more tolerant attitude, as we have had over the years, to people who have an established objection of conscience. Certainly, over the years my party has recognised that the establishment has always railed against those who AJP Taylor called troublemakers, because troublemakers lead to progress. We have always respected those who stand against the wind of public opinion or of legislation of this nature. If we have reasonable good will and magnanimity, we will seek to accommodate that small minority of people rather than say, "You must conform or else", or otherwise seek to reduce to absurdity their own position.

My own judgment is that we can find the good will that dealt with the sort of problems we faced in the previous century when there was a majoritarian approach. The Liberal Democrat approach was rather to encourage politicians to introduce laws that, yes, were mandated by the majority, but with sensitivity to minorities where there might be negative or unfortunate effects. When it became apparent that a law designed for and supported by the majority—this one is perhaps supported by the majority but it is designed for a minority—might have negative effects, the answer was not to abandon the law or put the minority outside its scope, which could negatively impinge upon it, but to provide different treatment under the law.

One saw the same authoritarian approach with the then Government's attitude towards the adoption agencies of the Roman Catholic church. With a degree of good will, they could have been accommodated. The Catholic agencies could have referred same-sex couples who wished to adopt to other agencies that would help them, but no, the authoritarian bandwagon rolled on and the effect was negative in respect of children. Many of the agencies were forced to close. People may have felt better inside at that, but the unfortunate losers were the children who had been cared for extremely well by those Roman Catholic agencies.

The truth is that a law designed for a majority, or in this case a minority, can have perverse and unintended consequences for minorities. Similarly, a law designed for one minority can have perverse and unintended consequences for other minorities. In my judgment, with good will, they should and can be provided with appropriate accommodations. The simple effect of this legislation will be that if you are a registrar, you are religious or your identity is such that you cannot in all conscience officiate at a same-sex marriage without acting in violation of that identity, you have an awful choice to make. You can either officiate and act in violation of your identity and your conscience or you can lose your livelihood. Surely that goes against all the traditions of this country when an easy way out can be found.

The fact is that many employed by public authorities have their consciences respected. Examples have been given—I will not go over them again—of atheist teachers. The noble Lord, Lord McColl, cited an example from his own experience of doctors and abortion. If we pass this Bill unamended, the effect of it will be that every registrar with a sincerely held objection to same-sex marriage must either act in violation of their identity and be willing to officiate at such marriages or lose their vocation. That is the blunt choice. I end by saying that it would be a frightening and illiberal Britain which would force them to do such a thing. Just as we make space for atheist teachers and for doctors and nurses, surely we should make space for registrars.

Of course the job of registrars is to officiate at marriages, but I would submit that the number of same-sex marriages is likely to be very small indeed. I recall that during the Committee stage in another place, the Minister was asked the following by Tim Loughton MP:

> "Why is that the principle that a surgeon who has strong Catholic views is allowed to pick and choose whether to perform abortions or other surgery, if the same principle cannot be applied to a Catholic registrar with strong views, allowing them to pick and choose whether to perform that other public service? What is so essentially different that we protect one but not the other?—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 26/2/13; col. 234.]

[Lord Anderson of Swansea]
The Minister responded by saying that they are different functions: one is an abortion; the other is a same-sex marriage. That is hardly an adequate answer. Surely there is an inconsistency in the Government's position—in both cases public servants perform a public function for which the public pay. Merely saying that they are different functions is inadequate. Registrars should have their conscience accepted as well.

Those of us who were brought up just after the Second World War recall the statements attributed to some of the awful chairmen of conscientious objectors tribunals. Imagine them saying to a young man who, on conscientious grounds, did not wish to go to war, "you cannot pick and choose". I think of Crito and Plato in this context—you cannot pick and choose. This has shades of some of those awful chairmen of tribunals. I hope that this House, consistent with its traditions of individual liberty and freedom of conscience, will support this worthwhile amendment.

Lord Alli: My Lords, I understand that it might seem unfair to the right reverend Prelate, or to the noble Baroness, Lady Cumberlege, that registrars who do not approve of gay marriage should have their jobs put at risk. However, it is their refusal to do their job, not their religious belief, that creates the issue.

However, I was rather taken by the intervention of the noble and learned Baroness, Lady Butler-Sloss, and I think it does us credit to look at some of those transitional arrangements to see what can be done. I also agree with the noble Baroness, Lady Barker, that this House has at its core the belief that every citizen in this country has a right—regardless of creed, colour, background, religion or sexual orientation, to have equal access to the services that we pay for. It is something that we debated at great length during the passage of the Equality Act (Sexual Orientation) Regulations 2007. As a House, we put beyond doubt that no one should be denied equal access to services simply because of the way they were born. This provision flies in the face of that principle.

To the noble Lord, Lord Anderson of Swansea, I say that it cannot be right, equally, for public servants to pick and choose which laws they will and will not implement. That is a recipe for chaos. I think my noble friend on the Front Bench was saying that this would open the door to allow Hindus, for example, to refuse to marry people who marry outside the caste. It would also open the door for Catholic registrars to have the right to refuse to marry divorcees. It would give registrars the delegated powers of this House and of the other place. That is not something that we should permit, no matter how tempting the case.

The other uncomfortable feeling I have is the notion that simply having a strong religious belief against gay marriage entitles you to be exempt from the law, but that having the opposite and equally strong religious conviction does not. The right reverend Prelate knows that the church was very happy to ensure that the provisions of this Bill could come into force only when religious organisations, such as their own, decided they should. There is no conscience clause there: no individual priest or cleric who is a registrar is allowed to opt in, no matter how strong their conscientious belief that same-sex marriage should be allowed to be performed in religious settings. If a conscience clause is so desirable, I make this offer to the right reverend Prelates the Bishop of Hereford and the Bishop of Leicester. If you are prepared to accept a conscience clause on this side, help me to craft a conscience clause for the clerics and priests in the Church of England who wish to opt in to registrar marriages. You have got your lock: attacking ours is not, in my view, a clever move.

10.15 pm

The Lord Bishop of Hereford: I do not think that the initiative for the quadruple lock came first from the Churches. Rather, it was an offer made to us because of our concerns about the legislation and appeals to Europe. Those were the concerns that lay behind that.

Lord Alli: I will repeat my offer. I am really happy to work with the right reverend Prelate the Bishop of Hereford, or the right reverend Prelate the Bishop of Leicester. If a conscientious clause to allow registrars to opt out in civil marriage is so important, I will work with him to craft a similar clause to allow registrars in the Church of England to opt in. Conscience is not a one-way street. It goes both ways. If you want to opt out, we must come back and question why we cannot opt in. It is about more than just one conscience. We all have a conscience and mine tells me that this amendment is wrong in principle.

Lord Brown of Eaton-under-Heywood: My Lords, I, too, confess to having some sympathy with the amendment, particularly as diluted by the noble and learned Baroness, Lady Butler-Sloss. However, I hasten to add, I do not have enough sympathy actually to support it. It would represent the thin end of a dangerous wedge and set a troubling precedent. I recognise of course that there are some limited exceptions to the obligations on doctors and certain others but I think that, without exception, they relate to cases where there is some physical relationship between the person being exempted from a public duty and somebody else.

The closer analogy is perhaps with incumbent judges. It has never been suggested that judges should be free on grounds of conscientious objection to take certain cases. Proposed subsection (3) in the amendment refers to "religious or other belief". Suppose that a judge strongly objects to indeterminate sentences, whole-life tariffs, automatic sentences, rules such as "two, three strikes and you're out" or, in days past, to divorcing people. Catholic judges were from time to time, as the noble and learned Baroness will confirm, obliged to pronounce in divorce cases. Indeed, those of us who sat here as Law Lords, and then across the square as Supreme Court judges, routinely as part of our duties sat on Privy Council appeals. From time to time we would be confronted with final appeals, often from the Caribbean, in capital cases. Is it suggested that it would have been open to a member of the court to decline to take such a case on the grounds of a religious or other strongly held belief?

Very simply, public servants should almost without exception—save in these physical relationship cases—serve the public according to the law as democratically

enacted. They should not seek to shed what they regard as their less palatable duties on to long-suffering colleagues.

Lord Anderson of Swansea: Am I correct in saying that it is not a question of a judge declining to sit on a particular case? If a judge had a particularly well founded objection in principle, and that was well known, it is likely that the case would not in fact be allocated to him.

Lord Brown of Eaton-under-Heywood: I do not believe that to be so.

Lord Mackay of Clashfern: I am not so sure about that. Those who arranged the judicial calendar did have some regard to questions of that sort when there were a number of judges to be allocated.

I want to draw attention to the facts found in the Ladele case about certain local authorities. It was found practical, in some local authorities, to respect the conscientious objection of particular registrars. If it is possible to do that and still provide the service, it seems to me that the provisions of the European Convention on Human Rights apply in respect to religious belief. As I understand it, people's religious beliefs are to be given effect except when they conflict with the rights and obligations of others. Where a local authority was able to make that kind of adjustment it was perfectly reasonable for it to do so, and that is what it did. I think this clause as proposed is intended to do that.

I agree that it may be wise to restrict it to those who are already registrars, as the changes to the law affect their situation. However, the idea that it should be ruled out altogether because you could object on other grounds strikes me as not a particularly attractive argument. I remember having a discussion about this very sort of thing with the noble Baronesses on the Front Bench when the Equality Act 2010 was a Bill. I did not get any further with them then than I am likely to now.

Baroness Barker: My Lords, I listened to this debate with great care. It is one of the most important we have had. It was very telling that the noble Baroness, Lady Cumberlege, refused to consider the application to other groups of the principle that she invites us to accept. I thought that was very, very telling. Going back to the points I made earlier today, I defend the right of religious organisations not to like gay people, and to treat gay people differently. I defend their right to do that. I do not defend the right of individual public servants to determine the level of service given to a member of the public according to their private views.

I listened to the noble Lord, Lord Dear, talking about his earlier amendment, which had a similar effect. He talked about a situation in which public servants remove themselves and walk away. How would you feel, as a member of the public turning up for a service that you and everybody else are supposed to be allowed to have, if the person behind the desk walks away? How would you like that to happen to you on one of the most important days of your life? Would you like to have a really important ceremony in your family officiated by somebody who quite plainly does not like you?

Lord Anderson of Swansea: Surely there is not likely to be any situation in which a couple go to a registrar who is seated at a desk and that registrar walks away from them. The position is clear. The authority would know in advance who is coming, and there would be no insult to the individual couple because a registrar there would have no objection in conscience. There is no way in which an individual couple could be injured in the way the noble Baroness describes.

Lord Dear: If I may respond, that situation is really an exercise of emotion rather than fact. The likelihood of a registrar suddenly seeing a gay couple in front of them and turning on his or her heel and walking away is so fanciful as to be almost ludicrous. I would expect to find that people signal their objection before the likelihood occurs. A registrar in this position would signal that, from a matter of conscience, they cannot conduct that marriage. They would make that known to whoever runs that office and somebody else would be in place. I certainly do not envisage—and I certainly would never support—a registrar turning on their heel on the wedding day, walking off and leaving the vestry or the registry office completely open. That is not within my frame of reference at all.

Baroness Barker: But you are left with the possibility. What happens in a rural area where there are not that many registrars and a lot of people of a particular religious belief who do not agree with this?

Lord Dear: With the greatest respect, we are trying to get to the facts in all these debates. If I may say so, the noble Baroness is painting a picture that is so unlikely to happen as to be almost irrelevant.

Baroness Barker: But which is none the less possible.

Baroness Cumberlege: I live in a rural area and I looked into this. In rural areas particularly, registrars work in teams. It is like a team ministry in the church: a number of registrars serve several different registry offices. That is certainly what happens in my area.

Baroness Barker: None the less, I return to the point: the noble Baroness wishes to put in legislation the potential for some of our citizens to be treated as second-class. That, I am afraid, is not acceptable. In this House we sit and debate whether legislation should be introduced partially, in stages or whatever; we decide what the law is, what is fair and what all our citizens have the right to expect. Why should this be different?

Baroness O'Loan: My Lords, can the noble Baroness explain what in this amendment makes her think that the scenario that she painted could happen? As I read the amendment, it is very clear in saying that there will be a registrar—if there is a registrar who does not wish to conduct the marriage, another registrar will be provided, but there will be a registrar. It would help if the noble Baroness could explain why she thinks that would not help.

Baroness Barker: Because the potential exists for that to happen. To go back to some recent examples, what if, prior to the implementation of this, a local authority could see this coming and proceeded to employ a lot of people who had an objection to performing this kind of ceremony? I just do not like that we are going to set down in law the fact that some of our citizens will be treated differently in the public space. I accept that they will be treated differently in the religious setting, but in terms of public services that is wrong.

Baroness Berridge: My Lords, it is clear from all these debates and amendments that the feelings on either side are incredibly deeply held. As a member of the Joint Committee on Human Rights, I can tell your Lordships that we were trying to put forward proposals that were proportionate, reasonable and—in my view; obviously I am not speaking on behalf of other members of the committee—sought to strike some kind of balance. The proposal that has been put forward is limited and reasonable.

I have been sent the same e-mail about the governing body of registrars, saying that there was not a problem, so I specifically asked Members of the other place if they had received representations. The Member for Bermondsey, Mr Simon Hughes, said he had received letters from individual registrars asking him to make some provision in the Bill. Obviously no member of the committee is going to put forward a proposal that is not based on some form of evidence, so there were those concerns.

Secondly, I have read many papers during my time on that committee but I recall reading that in Holland—one of the most liberal societies in continental Europe—they have made some provision for freedom of conscience among their registrars. So I ask my noble friend the Minister, when considering the proposal, to look at what Holland has done to try to balance these rights.

10.30 pm

Lord Browne of Belmont: My Lords, I am pleased to support Amendment 16, in the name of the noble Baroness, Lady Cumberlege. As a former teacher, I am well aware that for many years the law has respected the conscientious objection rights of atheist teachers, who are not required to officiate at religious assemblies or to teach RE if they do not wish to do so. This respect for conscience in the workplace is despite the fact that, first, teachers are public servants, paid for by the taxpayer, and secondly, that religious assemblies and RE are public services. I have to say that this is absolutely right. Imagine living in a country, the laws of which were such that they would say to atheist teachers, "You must be willing to officiate at a religious assembly or lose your job and your livelihood". That would be totally wrong.

The truth is that if the Marriage (Same Sex Couples) Bill is introduced unamended, far from creating the difficult precedent that the Minister in the other place suggests, we would be departing from an important liberal democratic precedent that makes it plain that there is space for different people, with different beliefs and identities, to be employed in the public sector.

I am well aware of the national registration panel's briefing, which we have heard about this evening. In response, I should like to make two points. First, it does not seem very well connected to registrars. It is clear from the judgment in the Ladele case that there are a number of local authorities that make use of the fact that they do not have to designate all registrars as both marriage and civil partnership registrars precisely because conscientious objection is a concern for at least some registrars. I find it very strange that the panel seems unaware of, or is at least unwilling to acknowledge, this practice.

It is very important to remember that when, in 2005, your Lordships' House scrutinised what was then the Civil Partnership Bill, the flexibility arising from the dual designation system was apparent and an expectation of reasonable accommodation in practice was expressed by the Labour Minister at the time, which was in sharp contrast to the Conservative Minister today. On 13 July 2005, the late Earl Ferrers said to the then Minister, the noble and learned Baroness, Lady Scotland:

> "Is the noble Baroness saying that, although we must have tolerance, understanding and everything like that given the fact that other people have views different from ours, a registrar who holds certain beliefs, feels that they cannot carry out that part of their duty and says so will not be threatened with dismissal? As I understand it, they can be, for not doing their work. That is just as intolerable and non-understanding as the other way round".

To this, the noble and learned Baroness, Lady Scotland, said

> "There are the Employment Equality (Religion or Belief) Regulations, which should preserve the opportunity for those who work to adhere to those religious beliefs. When many public functions are performed, there are a number of people of different beliefs, orientation and structures who can fill the place … Those who manage such situations sensibly if there is a conscientious genuine belief usually make alternative practical arrangements so that there is not embarrassment for the people who come forward for the service, and so that there is not the struggle of conscience for the person who legitimately wants to carry out a good job. Usually, both can be accommodated. In terms of delivery of a service in accordance with the law, public authorities must be able to make provision to enable the law of this land to be enforced".—[*Official Report*, 13/7/05; col.1154.]

Secondly, I am disturbed that the panel brushes aside the hugely important issue of conscientious objection on the basis of administrative complexity. This is a very small price to pay for upholding our liberal democratic traditions. The noble and learned Baroness, Lady Scotland, did not take this view of reasonable accommodation and although Islington Council deliberately choose not to with respect to Lillian Ladele, the fact that other local authorities have satisfactorily provided reasonable accommodation suggests to me that it is eminently possible.

The marriage Bill before us today, however, presents a much worse threat to freedom of conscience than the Civil Partnership Act. The truth is that, although there was nothing in the Civil Partnership Act to stop local authorities like Islington insisting that all registrars were designated as both marriage and civil partnership registrars, the fact that local authorities do not have to do this means that there is potential for adopting a more enlightened approach. This has clearly happened in some areas, as the noble and learned Baroness, Lady Scotland, rather suggested it should. There will,

however, be no scope for this in relation to the marriage Bill because people will continue to be designated simply as marriage registrars. There will not be an option of being designated as a different-sex marriage registrar or a same-sex marriage registrar. In effect, the line adopted by Islington, with no potential for reasonable accommodation, will be extended right across the board.

The national panel for registrars may not be bothered about conscience but I believe that we, as part of the Parliament of a leading liberal democracy, have a duty to be bothered. I submit that the marriage Bill would be dangerously illiberal without Amendment 16, and I commend it to the Committee.

Baroness Noakes: My Lords, I shall be brief because I am sure that we want to hear from the Front Benches fairly soon. I have been slightly disturbed by this debate, in part because one of the precedents that has been used to support this conscience objection is abortion. To try to equate the conscience provisions allowed in respect of abortion with those that might be put in place for civil marriage is to compare chalk and cheese. It is very inappropriate to try to do that.

The Lord Bishop of Hereford: I am sorry to interrupt the noble Baroness and take up more time but I do not think that any of us is equating. The point we are making is that legislation already exists for conscience on principle and religious belief. That is the point. There is no equating.

Baroness Noakes: I completely understand that but the examples given are relatively few. One of them is abortion and it is very different from same-sex marriage, which concerns two people who love each other wishing to formalise their relationship. We cannot compare that with the circumstances that led to the law allowing conscience objections in relation to abortion.

Similarly, we are not talking about teachers dealing with the law of the land. Teachers have been given a conscience opt-out in relation to something that is not the law of the land. If the Bill is passed, as I hope it will be, it will become the law of the land and same-sex marriage will become part of the law of the land, and public servants should, in general, be required to comply with the law of the land.

I understand what the noble and learned Baroness, Lady Butler-Sloss, and my noble friend Lady Berridge said in relation to the Joint Committee on Human Rights—there might be a need for transitional provisions—but I cannot see that there is a need for the provision put forward by my noble friend Lady Cumberlege. I am not sure that a transitional provision is needed. It will depend on whether a number of people are genuinely affected by this, and I do not think that we have conclusive evidence of that. We have heard that in the past some local authorities have made arrangements on a transitional basis with those who have had problems in applying the law in relation to civil partnerships, but it may well be that we can achieve any transitional issues that arise through9usb non-legislative means. Putting something in the Bill would seem to elevate the fact of same-sex marriage to something way beyond where it needs to be, when it is, as I said, simply about two people who want to formalise their relationship in accordance with the law of the land.

Lord Carlile of Berriew: My Lords, I have listened to this debate with some concern because we have heard references to conscience in a space in which conscience may not belong at all. We have heard about shades of grey in this debate; this evening, we have had shades of brown. I strongly agreed with the noble and learned Lord, Lord Brown of Eaton-under-Heywood, when he referred to the judiciary. What occurs in these situations? Things may have changed a little since the noble and learned Lord, Lord Mackay of Clashfern, was Lord Chancellor. Perhaps in those days county court judges in Welshpool, Caernarfon or Lambeth were able to pick and choose their way through cases they liked or did not like. However, if I may respectfully say so, the reality is that a judge is a very senior form of public official who hears the case that is presented before him by an often hard-pressed and unsympathetic listing officer. It is form of appointment, as a doctor's appointment might be.

Equally, if somebody wishes to enter into a civil marriage, what qualifications are needed? They have to establish that they are 16 or over, free to marry and not closely related. There is no issue of conscience involved in that. Then they have to make a convenient appointment to attend before the registrar who, like a judge hearing a case, happens to be on duty on that day. They have to produce some documents—it is a bit like opening a bank account—including their passports, birth certificates and a utility bill or bank statement. Once the appointment has been made with those documents, they attend and there is no liturgy whatever. They are required to exchange promises if they are marrying, but there is no set form. Of course, the registrar helps out if required but they can write their own promises and exchange them quickly and informally. Where is the conscience aspect of this? The registrar is simply a public official providing the statutory facility to enter on a register the names of two people who wish to be married. That is the beginning and end of it. It could not be more different from going to see a vicar, priest, rabbi or imam to seek a marriage founded on a religious belief.

I have huge respect for my noble friend Lady Cumberlege and it is with great regret that I disagree with her so profoundly. However, on this subject, I think we are allowing this debate to trespass into an area in which it does not belong. I urge your Lordships to reject this amendment accordingly.

Lord Elton: My Lords, it is trespassing very close on bedtime too, so I will not take much of your Lordships' time. I have an amendment in this group which I think your Lordships have forgotten. It is very short and I will try to be the same myself. I start by picking up what the noble Lord has just said. You make an appointment before you go to see the registrar. You do not walk in the front door and say, "I would like now to be married. This is my happy day". Therefore the scenario the noble Baroness painted could not occur.

Baroness Brinton: That is not true.

Lord Elton: Heads are being shaken all around. I would like to hear.

Baroness Brinton: I apologise for intervening. It is quite possible not be married by the registrar who you see in the previous meeting. It also quite possible for people to have names that do not distinguish their gender.

Lord Elton: The registrar they meet will be able to distinguish their gender and he will put that into the machine and the right people will be there.

Baroness Brinton: Why?

Lord Elton: That is what the amendment would provide, which is what we are talking about. Let us not spend too long on this. I have an amendment which simply gives an exemption to the registrar and the superintendent registrar but leaves the service under the control of somebody who is committed to both sorts of marriage, which seems to me is absolutely essential.

There were objections about this opening the door to all sorts of things. The noble Baroness, Lady Thornton, suggested objections to mixed-race marriages. I think that her Amendment 16 lacks a definition. It should define acceptable grounds for religious and conscientious objection. It could be a referral to marriages carried out under the appropriate clause of the Bill. That would close that door and restrict it entirely to this. One does not have to be an enemy of the Bill to see merit in what my noble friend proposes. There is merit in protecting the consciences of people who do a good public service and who, like other people in public services, should be allowed to do it within the limits of their conscientious beliefs.

If we are coming to compromise the noble and learned Baroness, Lady Butler-Sloss, has put her finger on it, as has the Joint Select Committee, and there should be an exemption—I think it is called grandfathering—for people already in post before this Bill becomes an Act. I have said my piece. My noble friend is in the right area but it needs to be focused.

10.45 pm

Baroness Thornton: My Lords, the noble Lord, Lord Elton, is of course right. It is time we moved on and went home.

Amendments 11 and 11A remove registrars' exemption from the list of individuals who may not be compelled to perform same-sex marriage, meaning that the registrars would have the right to refuse to solemnise same-sex marriage. Amendment 16 provides for registrars to refuse to perform or be involved in performing same-sex marriage on the ground of sincerely held belief. However, it places a corollary duty on the registration authority to provide a sufficient number of registrars to perform marriages of same-sex and opposite-sex couples.

I agree very strongly with my noble friend Lord Alli, the noble and learned Lord, Lord Brown, and the noble Baroness, Lady Barker, who got it just about right. I find it strange that noble Lords are rubbishing the public statement from the national panel for registration because they do not like it. The national panel is a national association of registrars which said that it consulted during the consultation on equal marriage among its members and has given us its legitimate view, for which I am very grateful, as it is very helpful. Noble Lords should hear what that statement says, which is that the national panel is not asking for a conscience clause on the conduct of equal marriage.

I am also slightly puzzled about the evidence from the Joint Committee on Human Rights, which I read over the weekend. For once the committee is very ambiguous about its thoughts on this. Some noble Lords who have spoken today are also on the committee and clearly have very strongly held views. I respectfully suggest that if the committee wants to be more decisive, it needs to go back and have another look at this. I am not sure that the views that it has taken so far have helped the House. If it has reached that position, we need to look at its evidence and see it for what it is—an ambiguous report.

This amendment goes against the principle that we upheld consistently—and voted for—when we were in Government that public services should be delivered in accordance with the laws passed by Parliament and without discrimination. Freedom of belief is a hallmark of democracy and individuals should be able reasonably to express views that relate to same-sex marriage in a professional manner. Public services should also be delivered in a non-discriminatory way.

Registrars provide a public service, implementing the marriage laws as passed by Parliament. Registrars have never previously been given an opt-out on things like performing civil partnerships or remarrying divorced couples—even on the grounds of profoundly held religious belief. Registrars are public servants and it is right that they have a duty to dispense their responsibilities and to deliver services without discrimination. The recent case of Ladele at the European court—a registrar who wanted an opt-out from performing same-sex civil partnerships—shows that in this respect UK domestic law stands up to the challenge under European law. The court found that Mrs Ladele could be required by her employer to register civil partnerships. Performing same-sex civil marriage ceremonies should be no different.

On Amendment 16, I am very pleased that the noble Lord, Lord Elton, seems to recognise that the risks I drew to the attention of the House are legitimate. Notwithstanding that the noble Lord, Lord Martin, and my noble friend Lord Anderson disagreed with me, surely it is our job to test legislation and the amendments to legislation to see whether they pose risks or have unintended consequences. It is very clear that this amendment could open the door to the conscientious objection of registrars to performing civil marriages on a range of issues beyond the gender of the parties, involving, for example, the remarrying of divorced couples or interfaith relationships. We believe that this is an unacceptable risk.

Maria Miller has written that the locks in the Bill specifically exclude,

"registrars and superintendent registrars, making clear that these public servants will have to be ready to take part in marriages of same sex couples. We need to ensure that we strike the right balance between an individual's right to express their religious

beliefs at work and the rights of people not to be discriminated against because of sexual orientation, and we think that the Bill properly draws that balance. The recent case at Strasbourg of Ladele ... showed that in this respect, UK domestic law stands up to challenge under the Convention".

The Secretary of State is right and we should not accept these amendments.

Lord Wallace of Tankerness: My Lords, I start by thanking my noble friend Lady Cumberlege for introducing this amendment, which has certainly given rise to a good debate. There are clearly some strongly held views on both sides and some powerful arguments too. I have listened carefully but it is important that I set out and clarify the Government's position. The noble Baroness, Lady Thornton, has just quoted the Secretary of State, so it may not come as a huge surprise but it is important to give the reasons why we take that view. As the noble Baroness indicated, it is a view that was argued on behalf of the United Kingdom in the European Court of Human Rights in the Ladele case, and the court found that our law at present regarding civil partnerships falls within what is legitimate under the European Convention on Human Rights.

Marriage registrars are public officials performing statutory duties on behalf of the state. We believe that it is an important principle that they should perform their duties in accordance with the law, as decided by Parliament, and without discrimination. I noted—I hope reasonably accurately—what the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said: that public servants should, with very limited exceptions, serve the public according to the law as democratically decided. That is fundamentally the Government's position. If this Bill is passed, the marriage of same-sex couples will be lawful in England and Wales, so marriage registrars must perform their duties in relation to the solemnisation of marriages between both opposite and same-sex couples, without discrimination.

I paid attention to the parallels made with areas such as abortion and conscientious objection in religious education, which were powerfully and sincerely argued. However, it is too simplistic to draw a parallel between a conscientious objection regarding a doctor not performing an abortion and one where a registrar seeks conscientious objection not to perform a same-sex marriage. They are not comparable. For some people with a very strong religious conviction the right to life is paramount and in such circumstances, the argument that the state should not require them to act against their conscience is highly persuasive. I do not think that anyone would reasonably say that same-sex marriage can be seen in the same terms. That was picked up by the noble and learned Baroness, Lady Butler-Sloss, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and my noble friend Lady Noakes.

The most significant difference in terms of the Abortion Act exception is that medical staff do not discriminate on the basis of their patient's personal characteristics. They do not pick and choose which patients to treat on that basis; for example, on the basis of a particular person's race or religion. The exception being sought for registrars does precisely that, on the basis of the couple's sexual orientation. Moreover, for medical staff who object to taking part in abortions that is only a small part of their daily duties, but for a registrar conducting marriage ceremonies, conducting marriage ceremonies is at the heart of what they do.

Reference was also made, not least by the noble Lord, Lord Browne of Belmont, to teachers. I understand that the exception there is not framed as a conscience clause, as such. The provision relating to the ability of teachers to opt out of teaching RE is set out in Sections 59 and 58 of the School Standards and Framework Act 1998. These specify that if you teach at a non-faith maintained school, you are not required to teach RE and cannot suffer any detriment because of that refusal. If you teach at a foundation or voluntary-controlled faith school and are not a reserved teacher, you are not required to teach RE, and, again, cannot suffer any detriment because of that refusal. If you teach at a voluntary-aided faith school, refusal to teach RE in accordance with the religious tenets of the school might well affect your remuneration or promotion, or you might not be employed in the first place. Unless a teacher is specifically appointed to teach religious education they cannot be compelled to do so, regardless of whether they are an atheist or not. Therefore, while I hear the arguments and understand where they are coming from, the parallels are not particularly helpful in dealing with what we are discussing.

The Government are clear that in extending marriage to same-sex couples, the Bill should protect and promote religious freedom. That is why, as we heard again today, it contains a quadruple lock of religious protections. However, the functions performed by marriage registrars are civil in nature. This is also the case in relation to their functions when they have a role in religious marriage ceremonies, such as taking notice of marriages, issuing certificates and being present in cases where there is no authorised person. I am grateful to my noble friend Lord Carlile of Berriew for describing what can happen when making an appointment, and later with the ceremony. Some would say that the example given by my noble friend Lady Barker would be unlikely, because by that stage people would know what was about to happen. Nevertheless, it could still be the case that someone would turn up for their initial appointment and suddenly finds themselves met by someone who refuses to see them and take their details. The personal hurt that that could cause should not be underestimated.

Lord Elton: My Lords, the protection extends to conducting the marriage, not preparing for it.

Lord Wallace of Tankerness: My Lords, following that logic, surely a conscientious objection must be as much to facilitating a marriage as performing it—otherwise, it puts into question what the nature of the conscientious objection is.

As public officials, marriage registrars must perform their duties for all members of the public, without discrimination on grounds of sexual orientation or any other matter. They should not be able to pick and choose which members of the public they provide their services to. Amendment 16 refers to,

"consent to the taking place of, a relevant marriage ceremony to which he has a conscientious objection … The conscientious objection must be based on a sincerely held religious or other belief".

[Lord Wallace of Tankerness]

The noble Lord, Lord Alli, and my noble friend Lord Carlile of Berriew picked up on the point that that could include the marriage of divorcees. No doubt the right reverend Prelate will correct me if I am wrong, but certainly until relatively recently it was the position of the Church of England that it would not marry divorcees. Therefore, in many cases divorcees who could not marry had little choice but to go to a registrar. If the registrar adopted the same religious view as that taken by the Church of England and sought exemption through conscientious objection, it would beg the question of how the couple could ever find someone to marry them unless perhaps they found a non-Church of England church that would be willing to do so. The door is open to that kind of religious and conscientious objection. It is not a reasonable position that a public official should refuse to provide a service to a member of the public.

The right reverent Prelate the Bishop of Hereford and my noble friend Lady Berridge referred to the fact that the JCHR had reported on this. I rather share the view of the noble Baroness, Lady Thornton, that the position is slightly mixed. This is not a criticism, because clearly the committee heard difficult, competing evidence, and no doubt competing views such as those heard by the Committee this evening. Of course, the Government will give a considered response to the JCHR. It is a very tight timescale, but we would aim to do so before Report. I hope we can do that.

The Government are confident that the Equality Act 2010 provides the right balance between protecting the right of freedom of expression and the right to manifest one's belief, alongside the need to protect the rights of others. As was said on a number of occasions in this debate, the European Court of Human Rights, in the Ladele case, supported this view. I will not go over all the details; they were well rehearsed. The United Kingdom refuted the case put by Ms Ladele when she went to the European Court of Human Rights. We argued that our law strikes the right balance between an employee's right to express their religious beliefs at work and the rights of people not to be discriminated against because of sexual orientation. We believed our law was compatible with the convention and that the Court of Appeal made the right decision under domestic law and the convention, given the particular circumstances of the case. As has been noted, the Court of Human Rights generally upheld that view and noted that the court generally allows national authorities a wide margin of appreciation when it comes to striking a balance between competing convention rights. It held that the national authorities in this case, the local authority employer and the domestic courts, did not exceed that margin of appreciation available to them.

11 pm

We recognise the concern that a marriage registrar who held a belief that marriage should be only between a man and a woman could find him or herself in a difficult position once marriage is extended to same-sex couples. Much has been said, too, in the debate about the national panel for registration, which represents the local registration service across England and Wales at a national level. Reference has also been made to the briefing that has been provided. In a letter to the Secretary of State as recently as 7 June, 10 days ago, the head of registration, coroner's services and lead manager for cultural services, Jacquie Bugeja—I hope I do not do a disservice to her name—said:

> "Secondly we have concerns that during the Bill's passage there may have been repeated attempts to insert a conscience clause to enable registrars to opt out of marrying same-sex couples. As you are aware registrars are local authority employees and are expected to carry out all the functions that their role covers. At present this includes delivering civil partnership ceremonies. We do not believe that delivering equal marriage ceremonies will be any different and we strongly oppose the idea of such a conscience clause. Allowing some registrars to opt out of civil marriage for same-sex couples would be discriminatory and would cause administrative difficulties in delivering services. We consulted widely within the LRS during the consultation on equal marriage and we want to ensure you are aware that no member of the LRS has called for a conscience clause".

I am happy to put this letter in the Library so that other noble Lords can see it.

I think the noble Lord, Lord Browne of Belmont, queried the position taken by the national registration panel and the right reverend the Prelate the Bishop of Hereford asked what evidence we had of the consultation, which it undertook itself—it was not the Government's consultation. It had discussions within the service both during and since the public consultation on equal marriage. As a national representative body for registrars, I believe we have to accept its assessment of the view of its members.

Marriage registrars are public officials performing statutory functions on behalf of the state. Conducting marriage ceremonies is clearly part of their functions. It would not be right to allow them to discriminate by providing their services to some individuals but not to others—I recognise the comments that have been made—not even on a matter of conscience. I have no doubt we will return to this on Report, but in the mean time I ask my noble friend to withdraw her amendment.

Baroness Cumberlege: My Lords, I would like to start by thanking all noble Lords who have taken part in this debate. I would particularly like to thank the right reverend Prelate the Bishop of Hereford. I thought it was very interesting how he introduced the House of Lords and Commons Joint Committee on Human Rights and I would like to thank my noble friend Lady Berridge for also commenting on that, especially as she was part of that particular committee.

I want to be brief but I just want to raise the issue that the noble and learned Baroness, Lady Butler-Sloss, mentioned. I do not want to be ungracious. I think there really is a very, very difficult position in terms of transitional arrangements and I hope that the Government will choose to address that. I do not think that it goes far enough. Talk to a number of these registrars and they are very committed people who see themselves as having a vocation. To try and stop young people who want to enter into this field in the future would be a great disservice. I hope that in thinking about their careers in the future, we will introduce this conscience clause because I think it might be necessary in terms of recruitment.

The noble Lord, Lord Anderson, mentioned small numbers and practicalities and I thank him very much for his support. I endorse again what my noble and learned friend Lord Mackay of Clashfern said about the approach already adopted by sensible and tolerant local authorities which allow those who hold objections to be accommodated. We are asking that the same should apply in the case we are discussing. We are not asking for a change in that but that that situation should continue in the future.

I say to the noble Lord, Lord Alli, that we are not refusing any couple same-sex marriages. We are trying to accommodate them as well as looking after the interests of registrars, many of whom I know would benefit from a conscience clause. I say to the noble Lord, Lord Browne of Belmont, that it was very interesting to hear about teachers and the situations they face. I do not agree with my noble friend on the Front Bench about doctors. Many doctors, particularly surgeons, choose which operations they want to perform. Not only do they do that, but many doctors also have a right to refuse to give contraceptive advice, so I think there is a parallel issue there.

My noble friend Lord Elton wants a stronger definition of what constitutes acceptable grounds for conscientious objection. Proposed new subsection (4) of our Amendment 16 places the burden of proof of conscientious objection

"on the person claiming to rely on it".

Therefore, only individuals with a genuine and

"sincerely held religious or other belief"

may refuse to conduct same-sex marriages, and may do so only if they can prove that their objection is based on genuinely held religious or other beliefs. That is not an easy test to satisfy but I very much want to accommodate my noble friend and see whether we can go further on this.

Finally, I thank my noble and learned friend Lord Wallace of Tankerness for his summing up. Of course, I am very disappointed with it but I was interested in what he said about the national panel for registration. I have found it extremely difficult to get hold of the panel. When I rang it up, the staff said that they were too busy and discontinued the line. When I rang later, they said that the person I needed to talk to was not there. The panel does not have a website. It is extremely hard to find out with whom it consulted and how many people it represents. There is a paucity of knowledge which no doubt we will build up when we come to Report. I will read *Hansard* very carefully but I will certainly consider the possibility of bringing back this amendment, or, I hope, a much more perfected one, on Report. I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendments 11A and 12 not moved.

House resumed.

House adjourned at 11.08 pm.

Grand Committee

Monday, 17 June 2013.

Local Audit and Accountability Bill [HL]

Committee (1st Day)

3.30 pm

The Deputy Chairman of Committees (Baroness Fookes): My Lords, I remind the Committee that, if there is a Division in the House, this Committee must adjourn immediately and resume after 10 minutes.

Clause 1 : Abolition of existing audit regime

Amendment 1

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

1: Clause 1, page 2, line 2, at end insert—

"(6) Before this section is commenced, the Secretary of State shall, by regulations, put into effect arrangements which will enable capacity for a national procurement of external audit to be available if required."

Lord McKenzie of Luton: My Lords, at the start of our proceedings, for the record I should declare that I am a member of the Institute of Chartered Accountants in England and Wales, although I am not sure it is an interest.

In moving Amendment 1, I shall speak also to Amendment 13. Amendment 1 focuses on the desirability of retaining capacity for national or central procurement of auditor appointments in future, in addition to the arrangements for smaller authorities. The amendment requires the actual arrangements to be in place, but not necessarily activated before the Audit Commission is abolished. We have tabled a further amendment, which we can debate on Wednesday, which is a more enabling and flexible approach, adapting the proposition in the Bill for smaller authorities. As we are in Grand Committee, we will, obviously, not be voting on these amendments, but they give us the opportunity for a serious debate on one of the central issues arising from this Bill.

By the time the key provisions of this Bill come into force, it is to be expected that all of the audit contracts for principal local bodies will be undertaken by private sector firms under arrangements entered into with the Audit Commission. This will comprise some 800 principal authorities, including local authorities, NHS bodies, police authorities, national parks authorities, et cetera. Perhaps the Minister might arrange for us to have a comprehensive list at some stage. These arrangements run through and cover audits for periods to March 2017. The contracts—I believe that there are 10 of them—can be extended through to periods to March 2020 at the discretion of CLG, but decisions to extend would effectively have to be taken by the beginning of the year 2016-17 if an EU-compliant procurement process is to be undertaken. If these contracts are not extended under the Bill, the local public bodies would go their own way and make their separate appointments, although there is flexibility for authorities to jointly procure, together with other bodies.

It seems very clear that procuring centrally on this basis is driven by significant savings in audit fees; 40% is the quoted figure, which I understand is accepted by the Government. These benefits can be extended should contracts be extended. This is a very substantial saving to local government, in particular at a time when budgets are under the severest pressure and likely to remain so as a result of the spending review.

Noble Lords will have seen the outcome of some modelling undertaken by the Audit Commission for the LGA, which looked at six potential procurement options ranging from local choice to central procurement. It summarised the outcome in its briefing to us; indeed, that briefing showed that of the six choices, from local choice through to central procurement, the central procurement was clearly the least-cost option. The conclusion reached was that central procurement could save the public purse some £200 million over five years.

We should not overlook the fact that along with central procurement comes the management of the contracts and, in particular, the arrangements concerning auditors selling other services to their audit clients. Perhaps the Minister will tell us what safeguards will be in place when local appointments hold sway. How will it be assured that such practices will not impede independence requirements? We hear that appointment of local auditors is part of the localism agenda and that local bodies should be able to choose auditors who better suit their needs. However, this seems largely to overlook the fact that audit is, quite properly, a heavily regulated activity. Who can act, supervision of the firms, a code of audit practice and the accounting requirements are, and will continue to be, set nationally. Those matters are not, by and large, optional, nor should they be. What will happen to audit fees when there is local procurement depends on a number of factors and will be made more complicated by the fact that local procurement is invariably a few years distant.

We can see the Government's perspective on this at paragraph 103 of the impact assessment. It states:

"While local bodies may not realise the whole of this saving"—

that is, the 40% achieved on outsourcing and central procurement—

"when they procure their auditors themselves, there should be plenty of scope to negotiate fees well below … the 2009/10 [levels]".

That means that the Government think that audit fees will rise as a result of local procurement.

Clearly, much depends on how the audit market develops over the next few years. The outsourcing by the commission did not do much to widen participation levels in the local authority and health sectors. The outsourcing of the in-house commission practice went to only seven firms—most to the big four plus Grant Thornton. Research shows that market concentration in audit services leads to higher audit fees. There is a credible argument that individual procurement would act against market concentration but the major providers in the market are large, economically powerful entities with resources to invest to tackle new opportunities.

[Lord McKenzie of Luton]
One of the risks is that the larger authorities will fare well in this because they will be more attractive clients to the big firms. Smaller authorities will in practice have less choice, may be junior partners in joint appointments, or may miss out on the services of the larger firms or be unable to afford them.

The market will be affected by developments in the EU and, quite possibly, by the deliberations of the UK competition authorities to which the big four have been referred. Procurement could be more costly. Given that those principal bodies are likely to award contracts for five years, it is estimated that more than 90% of them will have to follow EU procurement rules, and EU thresholds will apply to the total value of the contract awarded. For audit work this is €130,000. Pricing will be affected by other factors, especially as the commission will no longer be providing cover for limitation of auditor liability.

The Government will doubtless say that authorities can group together, as indeed they can, but there is no clear framework to support this. Indeed, there is no explanation, for example, of what happens if there is joint provision but a conflict develops between one of the authorities and the firm involved.

It is clear that there is great uncertainty about how the local procurement plans will work out, and that is why it must make sense to retain the option to undertake central procurement should the Government's assessment be unduly optimistic. We have not been prescriptive about how that capacity might be provided—there are clearly a number of options—but it would be imprudent not to keep the opportunity in reserve.

Amendment 13 is a very narrow amendment. Clause 4 sets out the general requirements for audit and yet refers to the accounts of a relevant authority and the imperative for them to be audited in accordance with the provisions of the Bill. The clause requires the auditor to have been appointed by the particular authority in question. However, if the auditor for the relevant authority has been appointed by the Audit Commission under a contract which may not expire until 2017 or even 2020, these provisions would not seem to apply. I wonder whether that is the intention. The new regulatory regime is due to commence, as I understand it, in 2015-16. What will be the situation if there is a joint appointment or a framework agreement is operated? How can that requirement be met? I beg to move.

Lord Smith of Leigh: My Lords, I first declare my interest. I am leader of Wigan Council and the chairman of the Greater Manchester Combined Authority—which I notice is covered in Schedule 2. I am also a vice-president of the LGA. I apologise to noble Lords for missing the Second Reading. Unfortunately it clashed with the annual meeting of my council. As I am the executive leader of the council and had to choose which meeting to go to, I think that I probably made the right choice.

I want to speak in support of my colleague Lord McKenzie of Luton and particularly to expand on what he rather dismissively described as his Amendment 13, which removes those three little words. What puzzles me is that the Government are—I believe rightly—encouraging a lot of joint working with local authorities to deliver lots of services, in many cases allowing joint appointments for senior officers, particularly for smaller authorities. As we know, in many cases it is a financial necessity to do this. As we have discovered in Greater Manchester, which is working on the community budgets pilot, joint working is essential if we are to deliver the Government's agenda of reforming public services. We are working with 10 authorities in Greater Manchester. The three boroughs in London and so on are also good examples of places working very closely together. However, if joint work is going on, where is the audit taking place? The sensible thing would be to have a joint audit—to have someone who can audit all of the activity in a simple and straightforward way.

Given my noble friend's knowledge of the accountancy profession he addressed the power of large audit firms and the way in which that might operate unfairly in the market. One way of reducing that power would be to allow local authorities to procure jointly. That would give them greater power in the market, enable them to get larger contracts and—one hopes, with the economies of scale—help them to get reductions in fees. I think that Amendment 13 is important and I hope the Minister responds to it.

Lord Palmer of Childs Hill: My Lords, I also must declare that I am a member of the Institute of Chartered Accountants in England and Wales. I am also chairman of a local authority audit committee at the London Borough of Barnet, and am a councillor in that borough. I also thank the Local Government Association for its very informative description of the various options available. I have been quite nervous about centralising the acquisition of external auditors. I feel that the role of the internal audits tends not to be recognised by external auditors who, from my research, seem to do a lot of substantive work which in many ways shows that they are not relying on the work in internal audit that the local authorities are paying for. That is what is happening at the moment.

As much as I would like there to be local acquisition of external auditors, I am happy to go along with making this option available. I believe that the way that the centralised body performs will depend on how the local authorities react and whether they are getting a good deal. I also believe that the wording in the amendment is right. The danger of not permitting this centralised option is that local authorities, and the auditors themselves, will cherry pick the audits they want, and that the local authorities will cherry pick the auditors they want. That arrangement could be too cosy. This issue arises and has become imperative because of the ending of the Audit Commission. We are examining what can be done due to that change in circumstances. The comment about taking out only one or two words was absolutely right. Without removing the word "authority", Amendment 1 will not carry the same weight. From our Benches I support both amendments in this group.

3.45 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, I thank the noble Lord, Lord McKenzie, for introducing these two amendments which fire the

opening shots on this aspect of the Bill. As he said, Amendment 1 would require the Secretary of State to make arrangements to enable the national procurement of external audit before the closure of the Audit Commission. The Bill currently requires local bodies to appoint their own auditor. The intention behind the amendment is clearly to create the potential for bodies to have their auditor appointed on their behalf by a national body, which effectively would be mandatory.

Amendment 13 would support such arrangements by allowing a body to have its accounts audited by an auditor appointed on its behalf. At present the Bill requires a body to have its accounts audited by an auditor appointed by the body itself. I hope that I have interpreted correctly the points in the amendments.

It is argued that local authorities and local bodies are best placed to put in place whatever arrangements suit them locally for their auditing. Many local authorities have already welcomed the opportunity to appoint their own auditor. For example, during pre-legislative scrutiny, the two local authorities that gave evidence to the committee both signalled that they were happy to appoint their own auditor, and the chief executive of a foundation trust said that appointing its own auditors had resulted in a 50% reduction in fees.

I am not unsympathetic to the intention behind these amendments—which I understand to be to secure the lowest audit fees for local bodies by encouraging large-scale collective procurement of audit. The Government recognise the benefits of bulk buying and the Bill already allows local bodies, if they wish, to come together to procure jointly. It does not say how many local authorities or local bodies there should be or limit them, but it allows them. It says that local bodies must be able to choose what arrangements suit them. We do not think that it is up to central government to dictate to local authorities how they should go about appointing their auditor, regardless of whether they do it singly or come together jointly. We believe that we should be careful that provision for national procurement—if that is the way it is going, and the LGA seems to hope that it is—does not limit local choice and that we do not recreate the Audit Commission in another guise. We are saying that the options must remain. Local authorities should have the option to join the national scheme if they wish to do so. If they do not so wish, they have the option to appoint their own auditors or to join up with an external authority.

It has been made clear that there is some appetite for developing this national procurement arrangement. If such arrangements for this national procurement maintained choice for local bodies—which is effectively what I have said—and allowed them to take part or appoint locally then we would be willing consider the scope for allowing it under the Bill. It would therefore be not mandatory but permissive. If we are to consider such a change, it is important that we have further details on how the proposed scheme will work and an assurance on the commitment to ensuring that such arrangements are effective.

The noble Lord, Lord McKenzie, raised the matter of the savings that have come from the current national scheme, which was created by the Audit Commission some time ago. Even though the £400 million savings may not be achievable under this, we still see very substantial savings coming from local procurement and, indeed, even from a limited central procurement.

As result of what I have said and what has been said I am happy to take this matter away for now, and not to come to any decisions or put my foot down very firmly, but we must talk more clearly to the Local Government Association and any other interested organisation to see what arrangements they may want to put in hand so that we can see if there is any room for the optional scheme in what they are proposing. I hope that we might be able to get that into place. I emphasise that we will not and cannot agree to a mandatory scheme.

The noble Lord, Lord Smith, agreed—I hope that I am right in saying this—that joint contracting works perfectly well in other fields of local government. There seems to be no reason why it should not work in this one. I understand that the way that it works may be affected by the size and number of people who join in, so we would also want to discuss how one estimates how many people would like to join such a scheme before it is implemented.

The noble Lord, Lord McKenzie, asked what safeguards there are around the provision of the non-audit work by the appointed auditor. The Financial Reporting Council's ethical standards already require auditors to identify and address conflicts of interest associated with the acceptance of non-audit work. Auditor panels also have a role in adjusting non-auditor work under the accounting code of practice. Local authorities are required to disclose additional payments to the auditors.

The noble Lord, Lord Palmer, was interested in the independence of the auditor. We are clear that the auditors will be subject to the Financial Reporting Council's standards. These require audit firms to have robust systems and processes in place for ensuring the objectivity and independence of audit and addressing any issues on the non-audit work. We are also putting in place robust protections around the appointment and removal of auditors, and local bodies will need to consider advice from an independent auditor panel or audit committee before making their appointment. We will not deal with that in today's amendments but I am sure that we will discuss it later. Finally, the Bill specifies circumstances where a person may not act as a local auditor on grounds of lack of independence.

I hope that I have covered the points that have been raised. The noble Lord, Lord McKenzie, also mentioned the auditor fees. We realise that the savings may not be quite as great as they are currently but we expect them to be there. With those reassurances and the offer to have further discussions with the Local Government Association—discussions which I believe are ongoing—I hope that the noble Lord is willing to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am most grateful to the Minister for that offer to take this away for further engagement, and for her response. It is a good place to start in our deliberations. I am also grateful to my noble friend Lord Smith for his support, and to the noble Lord, Lord Palmer. A key point for the Minister was that there must be an option for

[Lord McKenzie of Luton]
people to continue to choose locally if that is what they want. A better term in all of this might be "central procurement" rather than "national procurement". We have another amendment coming up on Wednesday. If we had got it down in time we would have grouped it with this one. It provides a more flexible approach and will, I hope, add to the debate as well.

Just two points: the noble Baroness said that local authorities should be able to choose the arrangements which suit them locally. I just reflect that in the private sector, if companies are looking around for auditors to suit them, it can sometimes ring alarm bells, because it is not always a good sign. It is a bit like shopping for counsel's opinion—you shop until you get the one that you want—although I do not think that that was the intention. I think that you can distinguish audit services from many other types of services because it is properly regulated nationally because it is an assurance regime—in the private sector, for shareholders; in the public sector, for the public. That distinguishes it from other services which local bodies may want to procure.

I revert to Amendment 13, because I am not sure that I made my point clearly enough on that. Clause 4(1) states:

"The accounts of a relevant authority for a financial year must be audited … in accordance with this Act, and … by an auditor appointed by that authority in accordance with this Act".

My point was that there will be a period, will there not, where the auditor might have been appointed by the Audit Commission under the outsourcing and bulk contracts that were in place, once the new regulatory regime under the Bill is also in place? There may be transitional provisions which cover all that, but that was the point of challenging that wording. I do not know whether the noble Baroness wants to respond to that before I formally withdraw the amendment, but I give her the opportunity to do so.

Baroness Hanham: Certainly on the first point, in what I said about local authorities doing what suits them, I was very clear that that is the choice of whether, if it is possible, they join a central scheme, or whether they appoint their auditors jointly or on their own. I was not referring to them popping around to decide who they were going to have. That raises an issue which I did not deal with, which is the question of the number of auditors and audit firms that could take up those jobs. At Second Reading, I said that, yes, we know that the four are there. When this was being considered, there were at least another three expressing an interest and we expected there to be more. We will come to the point about CIPFA and the requirements. Probably, and hopefully, other auditors who may be more local will be able to meet them.

The noble Lord asked what happens when the Audit Commission goes and the auditors and the contract are still there. The due point will come into force later. I think that we may come to that later.

Lord McKenzie of Luton: I am again grateful to the noble Baroness. Perhaps she might reflect on that last point and we could deal with it by correspondence, because I am not sure that it has been dealt with.

It is right to say that the process of outsourcing by the commission has helped to diversify the market a bit but, frankly, not very much. We know the history with the big four: how dominant they can be and the resources that they can throw at opportunities which small or even quite substantial medium-sized firms cannot do. That is a debate for another day. Accordingly, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Debate on whether Clause 1 should stand part of the Bill.

Lord Christopher: My Lords, I have a lot of paperwork here and I will try to go through it without more repetition than necessary. Like most of us here, I think, I need to declare an interest, as I did on Second Reading. I spent six years on the Audit Commission. I emphasise that I am not seeking to save my old school or some historic regiment. I am seeking to secure an organisation which has a remarkable record of achievement in saving local government money and improving cost-effective working in local government and elsewhere.

4 pm

I was astonished when I read the Bill because much of it seems to have very little relevance to the present situation that the country and indeed local government face. In my view, it is inevitable that over the years the Bill will do more harm than good. There has already been significant pre-emption of the Bill, which to some degree could be argued leaves us with a fait accompli. The Government have underwritten the pension scheme—I do not know whether that has been particularly well reported, nor do I think that there are any great anxieties about it, but it is a fact; were there to be a big change, the risk could be considerable—and the Audit Commission's staff have been significantly reduced. They have almost gone; only 70 out of 2,000 are left. That has been done at a cost so far of £45.8 million, and that may well increase. The current running costs of the commission are £7.2 million, and that is to manage £86 million of local public audit market.

The Minister spoke as though the decentralisation of audit were an end in itself and that it would produce results that would make everyone happy and local people would be overjoyed. However, providing for audit is not all that the Audit Commission does. There are eight separate tasks, including the appointment of auditors, that the Audit Commission carries out over the course of the year. Those are important tasks whose loss will certainly reduce work on cost-effectiveness. The gaps are considerable, and I do not believe that those tasks will survive. Either they will be done by someone else, and it is not clear who that will be, or they will be lost, and that is a very serious thing to happen at a time of serious economy.

In my judgment, it is not a matter of fees. There is as much risk of higher fees as there is of lower fees, and I will come back to that again in the context of what could conceivably be done by other firms. It is surprising that the number of additional firms coming

in that the Minister was able to quote is so small; it is tiny in relation to the totality of audit work that has to be done. Central appointment is opposed not only by me but by the Local Government Association, and now we have a plea for provision to be made if some local authority prefers to go through such an organisation. It is not clear to me that that could be sensibly carried out by anyone else but the Audit Commission, which has the experience.

As my noble friend Lord McKenzie has indicated, contracts are now out for pretty well every local authority. The first audits that local government will appoint will be for the period 2017-18, after the next election. These can be extended by three years, which takes us to 2020—two general elections ahead. As my noble friend has pointed out, local authorities not only have to negotiate a contract but, in many cases, will be caught by the European requirements for open contracts. At the moment only 168 of the principal bodies, 20%, have annual fees for 2013-14 above the commission's value, which is a contract for the whole, not per annum. If you are on a five-year contract, it is five years and it adds up. The present threshold is £113,057. If there is a change, probably something like 93%, 769, will be above the threshold.

We are not proposing to transfer a simple task to local authorities. We are not going to just pick up the phone and say, "Hello, Harry, you're an accountant: will you do our audit?". It will be an important, time-consuming and not inexpensive task. What incentive is there for any significant number of accountancy firms to incur the costs and trouble of recruiting further auditors and training them when there will not be any work for them until 2020? It does not make any sense. There is no sense whatever in planning for something that will happen that many years ahead and when we have no idea what the economic climate may be. To extend the contracts which exist by three years is essential. I do not see the point in throwing away £130 million in that event when nothing else much will happen for all those years.

Yesterday, there was a letter in the *Observer*, signed by Sir Merrick Cockell, the chairman of the Local Government Association, his vice-chairmen, who include both a Lib-Dem and a Labour vice-chairman, and 146 others. It primarily was about the prospects of further cuts in local government expenditure. They say that by 2015 they will have incurred 33% cuts and can take any more only by removing particular services. To do something of this nature instead of applying the minds of the Audit Commission to seeing how this can be done in the way of cuts cost-effectively seems to me to be sheer folly.

The Commons Public Accounts Committee—I think it was last month—pointed to dozens of local authorities on the brink of financial collapse. The Bill will not help any of that and we really need to think again. This is in the context of an urgent need for local government to develop its financial management. A very different economic climate lies ahead. The position after 2015 will not mirror the second-half of the 20th century or the first two decades of this century. I sense that in this country there is a feeling that, when we are all clear of our overindebtedness, all will be well again. I do not think it is possible for that to happen. Therefore, there has to be a major change in many areas of endeavour. That perhaps is for another debate. What should not be in dispute is that local government, as well as central government, are not alone by any means to have to be able to do more with less in the face of the serious continuing growth of inescapable demands.

Financial management will be essential, and not just the financial management of officials, who will have to convince politicians that what they are recommending should happen. We have to look beyond these things for what will last and what will serve the position. That will have to be apart from professional financial management, which should become part of the Audit Commission's fresh mission; namely, it should ensure that this happens.

I find it difficult to understand why local authorities say that they would have fewer studies. That seems to be perfectly reasonable to suggest. They want a number—I think it is six—but I would not want to see anything like that locked into a Bill. We must not overlook what the Audit Commission has done since 1996. In its value-for-money studies it identified just over £1 billion of fraud and error. Who is going to do that? The Government have not told us who is going to do that. That is big money.

I have looked at three studies. In 2010 it found £1 billion of savings in the police services; £400 million in the buying of equipment and services—this is an important point for governments departments working together under whatever rules exist; and £200 million in the Fire Service without compromising safety. I have notes on two other studies which together could have saved more than £400 million over the course of 2008-12. If we have not got the Audit Commission, I do not know who will find these savings and act with this in the forefront of their minds. I strongly believe that the Bill clearly endangers all this. In no way will locally appointed and locally accountable auditors be able to provide it.

Local auditors will not be able to do it. They will need to have regard to common standards, local variations, triangular evidence and to identify inconsistencies. I could go on. It is nonsense to proceed and toss all this away. I am not clear what it is for. The only thing that jumps out of the Bill is that it wants to give local authorities the freedom to do what they wish. I can find nothing in the Bill which says, "We are going to have better local government and better decisions than we had before". The greatest service this House can give, in my view, is to tell local authorities that we will add to, not subtract from, the Audit Commission's capacity to assist in financial management.

I will leave it there. I do not see any benefits whatever for proceeding with this Bill. Clause 1 is at its heart and without it most of the Bill would fall.

Lord Shipley: My Lords, I declare my vice-presidency of the Local Government Association.

I have listened very carefully to what the noble Lord, Lord Christopher, has said and I share some of his concerns about risk. These will have to be addressed in the passage of the Bill and afterwards. However, I

[LORD SHIPLEY]
am fully behind the broad approach that the Government have taken. It is the right decision to abolish the Audit Commission, and there are a number of reasons why I believe that.

I was a board member of One North East, the RDA, and a member of its audit committee for a number of years. I could never understand why my council was being audited by the Audit Commission ultimately and why the development agency, a government department, was audited by the National Audit Office. I always felt that there was scope for savings to be made in the way that audit was managed.

There is inevitably risk in any change but, if asked the question, "Do I think there is a need for two nationally based auditors auditing the public sector?", the answer is no, you can do with one. However, there has to be a number of provisions to ensure that the independence of audit and the functions undertaken by the Audit Commission are protected as far as is needed.

When the Audit Commission was set up, I was very positive. I said at Second Reading that it did good work in financial audit and carried out good value-for-money studies. I said that it suffered from mission creep and a target-based, tick-box culture, in which it set both its own programme of work and its own fees base. I could never understand why it was that they were allowed to do this. I am therefore quite attracted by the idea of having an independent local audit committee which is actually charged with overseeing some of these matters.

4.15 pm

As I also said on Second Reading, I have had a concern that the Audit Commission was extremely good at identifying problems but not quite so good at explaining to local authorities what the solutions to those ought to be or what actions they should undertake to deliver solutions. I gave as an example health inequalities, but there could be others.

If the Audit Commission is abolished, how do we ensure that the independence from a public-interest point of view is maintained? I want to address the second part of my contribution on this amendment to the public interest as opposed to the interest directly of councils, of government or of anybody else. What is it that the general public would expect? The first thing is that there has to be a clear role for the National Audit Office. There will be up to six thematic reviews a year. That seems to me to be about right; if others are needed, the rules can undoubtedly be changed. It is important, in the context of local auditing, that value-for-money studies continue, and important that councils learn from each other. However, I am not sure that you need an audit commission to do that. That there should be a clear role for the National Audit Office in overseeing and underpinning the audit function across local authorities seems to me to be well set out in the Bill.

However, there is another risk, which the noble Lord, Lord Christopher, is quite right to have pointed out, and that is the risk that the Audit Commission was perceived to be an independent body which could stand apart from local authorities. That is a vital principle that needs to be maintained. The public interest needs audit to be an independent activity, and independent in each local authority, from any kind of party-political control. I happily support the Government's view that there should be a majority of independent members and an independent chair. I am motivated in saying that by the fact that I do not believe that any audit committee should be controlled by the majority party in a council. Single-party control is what we simply must avoid. I want to see a competitive system for the appointment of auditors. Allowing all the business to go to the big four audit companies plus one or two other slightly smaller ones seems unhelpful in terms of competition and in driving down costs in the long term. Therefore, encouraging regionally based and locally based audit companies to tender for work seems the right thing to do.

Underpinning all this—that function of independence—a local audit committee needs to be seen by the general public to be independent of the offices and the councillors of that local authority and most certainly not under party-political control. I also think that you need an audit committee that is independent enough to ensure that there is a regular change of auditor as well and that it is not something that is simply voted through. It should not be that, after five years, you simply repeat the arrangements so that the same auditor carries on with effectively the same people and the same approach that was undertaken in the previous five years. I would want to encourage increasing competition and regular change of auditors.

Overall, however, I believe that the concerns of the noble Lord, Lord Christopher, can be addressed by the National Audit Office and the localisation of the independence of the audit structure. With those two things, I believe that the objectives that have been set can be delivered.

Lord Beecham: I certainly have a great deal of sympathy with the opposition to Clause 1 standing part expressed by my noble friend. As he himself conceded at the beginning, however, it is probably too late for that course to be taken. The Audit Commission is in an analogous condition to the famous parrot in the Monty Python sketch: it is in fact, to all intents and purposes, now an ex-commission. That is something, in my view, to be lamented, for many of the reasons that the noble Lord gave.

It is interesting to read the evidence given to the ad hoc Draft Local Audit Bill Committee, which considered these matters in great detail. My attention was particularly caught by the answer to a question raised by a Liberal Democrat MP, Mr Ian Swales, who is the MP for Redcar for the time being. He asked witnesses:

"Are you satisfied that, in this public interest area and so on, your organisations"—

three firms of accountants were represented—

"will have the mechanisms to do the kind of commentary and assessment that the Audit Commission is doing now?".

The reply was given by Sarah Howard, who is a partner in the firm of Grant Thornton, which is not quite one of the big four firms, but nearly. She said:

"That is a really important point. Fragmentation and co-ordination are themes that have come through the various evidence sessions. How can we ensure that in the draft Bill? There does appear to be

a gap there; that is a risk. One of the benefits of some form of national or regional procurement body is that it could fulfil some of those other functions and help address some of the other risks".

That was interesting.

What was even more compelling was the evidence given by the noble Lord, Lord Heseltine, who, of course, created the Audit Commission in the first place. I am going to quote a number of his observations. He was asked by the chair of the committee, my right honourable friend Margaret Hodge:

"What are the key aspects that you will be looking at to ensure that the rationale for its creation, which probably has not changed, is maintained in the new arrangements?"—

that is to say, the creation of the Audit Commission. He replied succinctly:

"Independence of appointment to a central body, probity and value for money".

Asked to comment on the feeling that it would be rather difficult to see how he will ensure the proper comparison across authorities and therefore be able to start getting a handle on value for money, he replied:

"I think your question answers itself. You have got to have a system that systemises the process of comparing value for money and like-for-like services. This is not the private sector, there is a vast range of different and complex services. There is no common means of evaluation and if you want to make comparisons authority by authority, you have to prescribe the information that you want to collect, and that can only be done centrally".

The question was put:

"So in your view, the Audit Commission has not necessarily outlived its effectiveness?"

He answered:

"I have not seen any argument to suggest it has".

He was asked again:

"Are you saying, essentially, that independence is necessarily compromised in cases where councils appoint their own auditors?"

He said:

"There is a pressure to get reappointed, and the language cannot avoid the word 'compliance'. You do not want to get a reputation for being difficult".

This is a matter to which I would like to return later as we discuss the Bill—the requirement that on a review of audit arrangements, after every five years it should not be possible to reappoint the existing auditor. I think that is consistent with the approach of the noble Lord, Lord Heseltine. However, he went on to say, and to foreshadow in a sense, the words of my noble friend:

"The work that the Audit Commission did in value-for-money studies created massive economies, and benefits therefore, simply by turning a spotlight on what you could achieve in a well-run authority. It has elevated the practice of the best to a standard that others could copy".

That was a fairly persuasive argument.

However, other matters also arose in the course of his session. One of which is a matter that I have touched on in the Second Reading debate. The chair asked:

"Finally, the Department of Health has so far not put forward proposals as to how it is going to ensure accountability and allow us to follow the taxpayers' pound in this new landscape".

He was asked whether he had any thoughts about that. He said he did not know quite what was happening, but when asked whether it would be satisfactory, he said:

"As you describe it, of course not, but the way you describe it may not be the way the Government would describe it".

It would be interesting to know how the Government would describe it. It seems to me that as with policing, health would be outside the remit of the new arrangements. There would be separate audit arrangements that would not be across sectoral reporting on value for money, which one might have expected.

As my noble friend has pointed out, there have been substantial savings generated by the Audit Commission from its value-for-money studies covering health and local government in particular. Indeed, the noble Lord, Lord Heseltine, having referred to those said:

"It would be interesting to know what the Audit Commission thought they had saved on their value-for-money services over an equivalent period".

That is to say, the period in which the Government calculate £160 million will be saved, which will, in fact, be several years. My noble friend has already quoted a figure many times more than the amount that the present commission has identified.

At Second Reading, I voiced concern about the split, which is now to be institutionalised, between health and local government at the very time when the Care Bill is intended to bring considerable necessary integration in that key area of public social policy. It cannot make sense for that to happen between the two sectors. Even within the health sector, there are to be not two sets of auditors, as the noble Lord, Lord Shipley, said, but several, because clinical commissioning groups—there may be more than one in a given area—will have their own auditors. In addition, trusts will have their own auditors. In addition to that, somebody—presumably, the National Audit Office—will be auditing the National Commissioning Board, which has direct responsibility for, among other things, the commissioning of primary care and other elements of health provision. So there will be a range of auditors in the field of health when you would have thought that they should be brought together.

It is not only in the field of health that there is a need to look across different sectors. In local economies and arrangements for city deals, for example, or combined authorities, you could have a series of auditors reporting locally instead of having that overview. That is without mentioning community budgets, the new name for total place, where you should be looking at the pooling of public spending in an area across a range of national and local government services. How is that to be catered for? How are they to be evaluated? It is not simply a question of seeing that money is properly spent in terms of propriety; it is a question of effectiveness. After all, that is precisely the point that the move, slow though it may be, towards getting that cross-sectoral investment and pruning of budgets to achieve commonly agreed ends between a range of different partners. How is that to be evaluated in the new landscape?

[Lord Beecham]

I do not sense that the National Audit Office will have the resources to conduct all that alongside its manifold other obligations on mainline government expenditure. I understand that it is possible for the National Audit Office effectively to ask for more money through its parent body. I believe that there is a committee chaired by Sir Edward Leigh in the House of Commons which oversees that process. I am told that if it says that it needs more money, it will get it. That may be the case. It would be perhaps the only case in government where that would apply, and it would be welcome. One wonders whether in fact that outcome would be achieved.

There are very serious questions about whether the new arrangements will achieve what ought to be achieved in terms of a comprehensive overview of what is happening, of illustrating what can be achieved and what authorities and other partners—I repeat that the police and health are among others—should be doing to avoid cost-shunting to share benefits and, for that matter, basic overheads, back-office services and the like and, in particular, to achieve agreed outcomes for a given area. I do not see how that will be delivered under these arrangements. I think that it will be more difficult to deliver, as my noble friend has rightly pointed out. If there were a half chance of my noble friend's Motion being delivered, I should be very much inclined to vote for it, but I fear that that is unlikely. Of course, it cannot happen in this Committee in any event, but it is unlikely to happen in the House when we reach Report. However, the issues will not go away. The danger is that we will see a decline in the sharing of information and the promotion of good practice across the board, which has been one of the more signal achievements of the commission.

Having said that, I share some of the reservations expressed by others. I shared them when I was in a position to do so as chairman of the Local Government Association. By the way, I should declare my interest as a vice-president of the association, as a serving member of Newcastle City Council and as a member of its independently chaired audit committee.

However, for all those reservations, the commission has in general done a good job and it is unfortunate that it is already falling off the perch and will shortly be interred without an adequate replacement having been devised.

4.30 pm

Lord McKenzie of Luton: My Lords, my noble friend Lord Christopher's opposition to this clause standing part was delivered in a very knowledgeable and passionate way and with some understandable logic underpinning it. However, the Audit Commission would maintain that it has already been significantly changed from its prior status. Its in-house audit practice has been privatised and the commission's routine inspection and annual inspection of local government has ceased, as has its work on comprehensive area assessment. It has already incurred significant redundancy costs, partly funded by CLG, and offices have been closed with early termination costs incurred. The NAO is already picking up the task of value-for-money studies.

The Audit Commission of today is not the same as the Audit Commission of three years ago, and we have heard from my noble friends Lord Christopher and Lord Beecham about some of the splendid and effective work that it used to do. It would be difficult to put it back together again in anything like its original form. To that extent, the Bill has been rather pre-empted. The challenge for us in considering the Bill before we sign it off is to scrutinise the proposed new framework to evaluate whether its proposals are fit for purpose, can deliver an effective regime and build on what was good about the Audit Commission, and some of our amendments seek to do this. That process of scrutiny should particularly pursue the line just outlined by my noble friend Lord Beecham to see how joined-up we can be in an era when we are at risk of fragmenting arrangements.

My noble friend Lord Christopher is right that a significant part of the commission's work has been the commissioning and provision of local audit services. As he said, the need for further commissioning generally, other than dealing with changes in the existing contracts, will not arise until 2017. My noble friend made a very telling point: if the contracts are extended until 2020, what is the incentive for those audit firms that do not have contracts at the moment to invest in something that may not come to pass until seven years hence?

In a subsequent amendment, we explore what is involved in the ongoing management of these audit contracts. This raises the question of why the commission could not be retained at least to see these through to finalisation. Part of our task in scrutinising the Bill is to understand whether the regulation of local audit and the respective roles of the Financial Reporting Council, the professional accounting bodies and the NAO are fit for purpose. The Government may pray in aid the savings that have accrued from the closing of the Audit Commission, but the reality is that those savings have been measured against the 2009-10 baseline. As the Audit Commission has pointed out to the CLG, those savings had already been secured, and the annual costs under the future regime broadly equate to the annual costs of the commission in its current form. This is without taking account of the added ease with which it could facilitate the future central procurement of audit contracts. We are aware that the commission has submitted details to this effect to CLG, particularly in a letter dated 23 May 2013. Perhaps we can understand from the Minister how the department proposes to respond to that.

My noble friend's Motion invites us to consider keeping the Audit Commission in its slimmed-down form, at least until the end date of the current centrally procured contracts. What work have the Government undertaken to specifically examine the option of the Audit Commission continuing until 2017, rather than designating another entity to manage those audit contracts? What assessment has been undertaken?

It is noted that there will be no central body for grant certification relating to grants and subsidies from government departments. The Government say that this will be undertaken through tripartite arrangements and other forms of certification. Will the Minister expand a little on precisely what is envisaged in that

regard? Reference is made to the wind-down of certification for housing benefit, but of course housing benefit will run for some time after 2015, for no other reason than the delays in the introduction of universal credit, which will not come fully into being until 2017 or 2018. So precisely what will happen to housing benefit certification after 2015?

The problem is that we are where we are with the Audit Commission. Had we been able to have this debate two years ago, we could have prevented what has happened to that organisation. Our task now is to make sure that what is in the Bill to pick up the fragments from the Audit Commission is made fit for purpose.

Baroness Hanham: My Lords, the debate initiated by the noble Lord, Lord Christopher, has, in many respects, touched on future amendments that are coming up for further discussion. I appreciate that what he is trying to do is to see whether he can reverse what is being done. However, the noble Lords, Lord Beecham and Lord McKenzie, have recognised that we are very far down the line now and that it is not possible, nor do the Government want, to reinvent the Audit Commission and the existing audit regime.

The Government's believe that the Audit Commission presided over a regime that was unnecessarily centrist and bureaucratic. As the noble Lord, Lord Shipley, pointed out, it indulged in mission creep during its existence. It consequently had little incentive to reduce its costs. Its overall approach encouraged relevant authorities to focus more on the views of the Audit Commission and less on those of local people. The noble Lord, Lord Beecham, pointed out that substantial savings have already been achieved by lifting the burden of top-down regulation from local bodies. The savings were achieved, too, by putting the audit operation into the private sector. We want to make these savings secure and ensure that a central government body cannot again grow to dominate local government, and so the Audit Commission will cease to exist.

I shall briefly go through some of what the clause deals with. Clause 1 repeals the Audit Commission Act 1998, under which the commission currently operates, and it introduces Schedule 1, which makes provision for such matters as the transfer of property, the preparation of final accounts and various consequential repeals and revocations. There are amendments tabled on all those matters, which I think that we will come to quite soon. The clause lays the foundations for a new localist audit regime that hands powers and responsibilities to local bodies. Other parts of the Bill make arrangements for a robust framework that maintains a high quality of audit and transfers necessary functions to other suitably qualified and well respected institutions, such as the National Audit Office and the Financial Reporting Council.

Local bodies are capable of appointing their own auditors, as charities, companies and foundation trusts already do, and, by and large, they have welcomed the opportunity to do so. Putting local bodies in charge of procuring their own auditors will create greater transparency as they will have greater control over how much they pay for their audit services. They will not have to fund the Audit Commission's overheads and pay for its other activities and, as a result, there will be greater incentives to keep costs down.

We have made good use of the time since the Government first announced their intention to abolish the Audit Commission in August 2010. We began our reforms to the local audit and inspection framework by ending comprehensive area assessment, freeing local authorities from £25 million in compliance costs. I am not sure that anybody was very troubled by the loss of the comprehensive area assessment.In addition, the decision to outsource the Audit Commission's in-house audit practice has saved local bodies 40% in their audit fees. We touched on this in my reply to the last amendment. We have developed the proposals in the Bill with key partners and have consulted extensively; there has been proper consultation on this matter.

Schedule 1 to the Bill makes further provisions in relation to the abolition of the Audit Commission. Part 1 sets out the arrangements and, in particular, provides for the Secretary of State to make one or more schemes to transfer the Audit Commission's property rights and liabilities. We are working closely with partners to assess the options for where the existing audit contracts will transfer after the Audit Commission closes. We will set out details of the arrangements to transfer management of the audit contracts in the transfer scheme outlined in Schedule 1.

Paragraph 1(1) enables the Secretary of State to make one or more schemes to transfer the property rights and liabilities to a person or persons specified in the scheme. Sub-paragraph (2) sets out the items that may be transferred under such a scheme. Sub-paragraph (3) states that such a scheme or schemes may make consequential, supplementary, incidental or transitional provisions.

Paragraph 2 allows for the number of Audit Commission board members to be reduced. Upon closure of the Audit Commission, the Secretary of State must prepare a final statement of accounts for the last financial year of the commission. The Secretary of State must also prepare a final annual report for winding up. Finally, paragraph 5 provides for the Secretary of State to make payments in respect of the Audit Commission pension scheme.

The noble Lord, Lord Christopher, raised the question of the pension scheme. This has been underwritten by the Government and is in pretty good shape. It is 104% fully funded at the moment. There is a clear understanding that should some disaster overtake it in future, the Government will pick up the bill; one way or another, the pension scheme is well accounted for.

Closing down the commission is part of an overall programme of reform that will save the public over £1.2 billion over 10 years. We are able to do that because of the reduction of the commission. Retaining the commission would leave open the possibility that it could build itself back up again to the size that it reached in 2009-10. That is when the Audit Commission ceased to be operable in its current form, which was another point raised.

The noble Lords, Lord Christopher and Lord Beecham, asked what will happen with the demise of the commission leaving no single body to take

[Baroness Hanham]
responsibility for supervising and co-ordinating local audit. The local auditors who will undertake the audits within a national framework will be overseen by the Financial Reporting Council and professional accountancy bodies and accorded the code of audit practice and guidance to be developed by the National Audit Office. So they will be regulated and controlled. Also government departments are, through the accounting officer, accountable to Parliament for the money voted to their departments. Where this money is distributed to others, as it will be under the grant system, it will need to be demonstrated that appropriate accountability is in place.

The noble Lord, Lord Christopher, asked what is going to happen about the value for money studies. The National Audit Office has the ability within the Bill to increase the work that it does. The expectation is that it might undertake about six more national studies to those that it is undertaking at the moment. It will be able to choose what it does and, provided that it is working within existing legislation, it will be able to look at what is going on, either across the piece of local authorities or in individual authorities.

On the fragmentation of the new regime and the quality of audit, government departments are accountable to Parliament through the accounting officer. That is the other helpful addition to ensuring that the new regime is well set up.

4.45 pm

The noble Lord, Lord Beecham, asked about the five years. His question was not why we are asking for 10 or five years but why five years was not the absolute limit for auditors to continue. The requirement is that they make a new appointment at least every five years, in which case they will have to go out to further tender. They cannot just reappoint the auditors that are there but will have to go out through a new process. If within that process it was adjudged that the audit firm that was being used was the best, they would be entitled to appoint it again. We think that five years is the right time initially but it must be protected. We must make sure that it is not continued if that is not what should be done.

A number of other questions were raised. The noble Lord, Lord Beecham, talked about the health service sector. May I duck that today? I know that we are going to come to it later on in the Bill. It is very relevant. The auditing of accounts such as community budgets across public bodies is definitely germane to what we are talking about today. The expectation is that auditors who are auditing public bodies will come together to co-operate to ensure that they understand what is being done.

The noble Lord, Lord Christopher, also raised the question of the amount of money that had been saved by the Audit Commission in terms of fraud and error. It is certainly true that there is fraud and error and it is vital that local government and local authorities ensure that there is no fraud in their own accounts and their own way of delivering those accounts. I know that there is more than the local government fraud initiative. There are strong local government fraud policies and processes which are beginning to identify pretty sharply the amount of money that is being lost. With that and the national fraud initiative, for which we are currently about to find a home, the issue will be well addressed.

My noble friend Lord Shipley raised a number of questions, which again I think will come up in the course of the rest of our discussions. I agree totally with him that where there is a local audit panel, it has to be seen to be independent. Under the Bill it will be because, although it does not have to be big, it has to have a majority of independent members on it. As the noble Lord says, it is desirable for the audit committee not to be comprised of only one party, and that is what one would hope and expect in local government where there is more than one party. Again, if the local audit committee were to try to turn itself into an audit panel to recommend new auditors, it would have to create a situation where it had a majority of independent members. We will come back to that because it is an issue that will come up as we go ahead. If I have not replied to every question, I am sure that I will have an opportunity to do so as we proceed.

Lord McKenzie of Luton: Would the Minister just deal with the issue of certification? The various references in the impact assessment and other papers that we have are a bit cryptic about how that is meant to proceed. We are particularly interested in knowing how it is going to work in respect of housing benefit for so long as housing benefit is in existence.

Baroness Hanham: Yes, the noble Lord asked that question. At the moment, we are working with the relevant departments, particularly with the Department for Work and Pensions, to ensure that there are proper arrangements in place to consider the matter as part of the transitional arrangements. So work is being done and it has not been overlooked. Again, this is something that we can return to.

Lord McKenzie of Luton: I am sorry, but may I pursue one further point on the consideration of continuing with the Audit Commission in its current slimmed-down form, the question of mission creep, and so on, until the contracts come to an end? Indeed, if that were done, it would pretty much align with what is currently expected to be the final phase for housing benefit and the introduction of universal credit.

Baroness Hanham: My Lords, there will be the interim body of the Audit Commission as it winds down, or a separate body, to oversee the contracts so that they are not left unsupervised on their own.

Lord Christopher: My Lords, it was suggested that we needed to encourage competition. The Chancellor has not been successful in persuading and encouraging business to spend the billions, if not trillions, that they have. People will invest only if there is a profit at the end of the road. It was not an accident that 70% of the redundant staff of the Audit Commission went to

the firms that have contracts; they did not go anywhere else. I do not know where else they may have gone—they are scattered around.

This is just a pipedream, it seems to me. It has not really been explained by anybody why there are so few firms to which the Audit Commission gives contracts. There are two tests. One is fitness to do the job, which is not an easy one. The second is what they want to charge—and there are nearly as many who are not given contracts because they want to charge much more. It is a pipedream to imagine that any significant number of audits is going to be done more cheaply than they are currently done.

It may be unfair to refer to this but, even so, I refer to today's *Telegraph*. It is not fair to the Minister to start quoting a paper which I am sure that she never reads. The Government have received a report from Ernst & Young, from which I shall quote the headlines. The report says that the suggestion would save £1 billion, which is a lot of money. The headline is that,

"Energy bills 'could fall' if Big Six were whittled down to Big Four … Fewer suppliers would lead to more competition in the industry, Ernst & Young tells ministers".

That is not comparing like with like in the job, but this confirms a great deal of the evidence which the Audit Commission itself received on the truth of the fact that competition comes only from a lot of suppliers. It does not, of course.

Lastly, will the Minister be a little clearer on what resources are going to be available in the National Audit Office? She may say that she cannot tell us until the end of the month, but I take it with a great big pinch of salt that they have the resources to fill the gaps that this Bill will produce.

Clause 1 agreed.

Schedule 1 : Abolition of Audit Commission: supplementary provision

Amendment 2

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

2: Schedule 1, page 32, line 14, at end insert—

"(2A) A scheme must include arrangements for the effective future management of the pension scheme, taking account of the Crown guarantee for pension liabilities."

Lord McKenzie of Luton: My Lords, I think that we have covered this in some measure. I have a series of probing amendments to understand just a little more about the scheme and what is intended. Amendment 2 concerns the pension scheme. In the impact assessment, the commission set out that there is a Crown guarantee in respect of the scheme's liability—we have just heard about that—which avoids the potential early crystallisation of long-term liabilities of the scheme. It is suggested that this would enable the scheme to be run on as a closed funded scheme in future. However, it suggests that this is just one of the options considered. Perhaps the Minister could outline what others are on the table.

The impact assessment explains that CLG has sought key protections and influence over the scheme to work with the trustees to minimise liabilities and/or manage them in line with the department's method of financial planning and priorities. Will the Minister say more about this, including the extent to which the trustees of the scheme are being enjoined to minimise liabilities or manage them in line with CLG's, not the members', wider financial planning and priorities? I should also be grateful if the Minister could let us know how the Crown guarantee in these circumstances features, if at all, in public expenditure figures.

Baroness Hanham: My Lords, we touched on this briefly in the previous discussion, but I agree with the noble Lord that the Government need to ensure that there are proper arrangements for the future management of the pension scheme. That goes without saying. It is particularly important, as he notes, in the context of the Crown guarantee that my department is given. In exchange for providing the Crown guarantee, the Government negotiated a number of amendments to the scheme rules that protect the interests of the Government as guarantor. These include, for example, a requirement for the trustees to consult my department on the scheme investment strategy; to consult on the appointment and removal of trustees; and to seek consent to any increases in member benefits above existing entitlements. Departmental officials now also sit on the scheme's investments sub-committee.

The guarantee itself is an important part of protecting the accrued rights of members of the scheme. It provides that if it were ever unable to meet payments to members, the Government would make payments to the scheme to enable it to meet those obligations. I think it was in reference to that that the noble Lord was asking where the money would come from. That would have to be built in to the department's future liabilities, but we certainly do not see that as a possibility of the moment. It is optional, and if the scheme were ever to fall below 104% and the draw on it became greater, at that stage that might become a problem.

We expect the cost of the Government to be very limited or even nothing as a result of the fact that it is so well funded at the moment. The arrangements are included within the formal rules governing the scheme, and there is therefore no need for separate specific provisions to be made to the Bill or within a future transfer scheme. I hope that the noble Lord's points have been covered and that he is satisfied with that response.

Lord McKenzie of Luton: I am grateful to the Minister for that. It has provided the sort of information that I was seeking. I understand that, as things currently stand, the scheme is fully and properly funded and therefore there is no call on the guarantee. We are seeking to understand whether the actual existence of the guarantee itself features in any way in public expenditure. I imagine that the answer is probably no if there is no current likelihood of a call on it. However, I would be grateful to understand that a little better. I see that the Box is producing a note, but perhaps the Minister could write if that does not cover it.

Baroness Hanham: My Lords, perhaps I may respond to the noble Lord's question because it will save a letter and give the Committee the answer. I more or less said it correctly but I did not use the correct words. The crime guarantee figure is included in a contingent liability in the department's accounts.

Lord McKenzie of Luton: Thank you. I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

5 pm

Amendment 3

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

3: Schedule 1, page 32, line 14, at end insert—

"(2A) The schemes should have the effect of ensuring that the benefit of any local government retained earnings existing immediately prior to the abolition date accrue to the local government sector."

Lord McKenzie of Luton: My Lords, this is another brief probing amendment which is designed to ascertain what is to happen to any retained earnings of the commission when it finally ceases business—that is, if there are any in 2015. Perhaps the Minister can help with the question. Much will doubtless depend upon the position of the pension fund. If that is fully funded and not drawing on the guarantee, it looks as though there will be reserves. There certainly are at 2012.

The accounts record that the operating income of the commission is overwhelmingly derived from audit fee income from local government and health. These streams have to be kept separate, and the amendments simply require that any final surpluses are used for the benefit of these two sectors. I beg to move.

Baroness Hanham: My Lords, Schedule 1 allows the Government to bring forward a scheme or schemes transferring the Audit Commission's property rights and liabilities. It is the Government's intention to set out details of the arrangements to transfer management of these audit contracts and we are working with partner organisations and others on this matter.

Amendment 3 would require the transfer scheme or schemes to ensure the Audit Commission's local government retained earnings existing immediately prior to its abolition. As the noble Lord said, Amendment 4 requires any retained earnings from health bodies to accrue to and therefore benefit the health sector.

Under the existing framework, the Audit Commission is funded through a top slice on audit fees. This is effectively the difference between income from audited bodies in the form of fees and the amount paid to firms to undertake the work. I understand this to be the source of the retained earnings to which the noble Lord refers. This has been steadily reducing since 2009-10, and we have stated in the impact assessment that was published alongside the Bill—I know the noble Lord has a copy—that such retained earnings at the point of abolition may be needed to cover transitional costs, including those associated with the continuing management of the existing audit contracts.

The effect of these amendments would be to divert the benefit of such retained earnings to the local government and health sectors and, while I am not unsympathetic with that in principle, it is probably not necessary to explicitly prescribe these arrangements within the transfer scheme. If we did so, those retained earnings would be unavailable for transitional costs, even if it were agreed by everyone that they should be used in that way.

One possible use of any surplus might be to benefit the local government and health sectors in the form of reduced fees. However, I agree that this is an issue the Government need to consider further and we will do so. If the noble Lord wishes to come back we might discuss it again at a later stage but, at the moment, I am happy to give him any further information as it arises, if it does, during the course of the Bill. I hope he will be willing to withdraw his amendments in the light of that response.

Lord McKenzie of Luton: My Lords, I am grateful for that response and beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendment 4 not moved.

Amendment 5

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

5: Schedule 1, page 32, line 14, at end insert—

"(2C) A transfer scheme must make effective arrangements for the management of existing audit contracts entered into with the Audit Commission including regular reporting thereon to Parliament."

Lord McKenzie of Luton: My Lords, I shall speak also to Amendment 6. Amendment 5 requires that a transfer scheme must make effective arrangements for the managing of existing audit contracts. These are contracts that are due to expire upon the completion of the 2016-17 audits unless they are extended up to 2020, as we have discussed. It is understood that there could be up to 10 such contracts as well as a few separate contracts relating to smaller bodies. Any successor body would have to manage these contracts after the abolition of the Audit Commission, effectively for a minimum period of about two and a half years.

This is no small matter, as the annual value of these arrangements is understood to be of the order of £85 million. We look to the Minister to share her thoughts on how this is all to be done. Presumably this is not just a case of novating the contracts, because the successor body will have to have some of the commission's existing statutory functions relating to audit. Is it not the case that, in undertaking the management of these contacts, any body will have to set standards of performance, monitor delivery and effect payment but will to be able to exercise some of the statutory powers that reside with the commission, particularly powers relating to the appointment of auditors, the setting of scale fees, making arrangements for the certification of grant claims and returns? It is understood, for example, that the key functions would encompass

specifying the terms of an auditor's appointment; considering and approving, where appropriate, requests from auditors to accept additional non-audit work at audited bodies; specifying standards of performance, including setting target dates for the issuing of opinions; scoping, consulting and specifying the delivery of national mandated work programmes—for example, quality audits or IFRS arrangements reviews at NHS bodies; reviewing requests for new certification work; and a whole list of other things as well.

What is planned for the management of these contracts? There is complexity attached to that management. Does the Minister agree that whoever does this will need to have some of the statutory powers of the commission, with the public accountability that goes with such powers? What does the future hold for the additional audit-related functions undertaken by NHS audit—functions that would include collecting information from auditors; preparing and publishing summaries of the results of audits in the annual auditing and accounts report for the Department of Health accounting officer; co-ordinating requests for information from the NAO in connection with its group auditor role; collecting information directly from auditors and monitoring delivery; agreeing auditor submission requirements with the Department of Health and the NHS Commissioning Board in connection with consolidated accounts to monitor delivery; and providing a range of guidance and advice for auditors and dealing with technical queries from auditors on technical issues to promote consistency. That is just a snapshot of some of the activities that would be required.

Have the Government considered a sector-led approach and what are the implications of this? There is obviously a little time, but the clock is ticking, particularly for the staff in the existing compliance group who have a lot of expertise; where that will reside in the future is of significance, I suggest. I look forward to hearing from the Minister and I beg to move.

Baroness Hanham: My Lords, I assure the noble Lord that it is the Government's intention to ensure that the Audit Commission's existing contracts are well managed—that is something we see as essential—and that auditors will continue to have the necessary means to undertake their role. We agree that the key function will be required to manage contracts for the remainder of their term, but they will particularly require powers to set fees, appoint auditors and certify grants. We are working to ensure that the interim management arrangements will allow functions to be exercised by the relevant body or bodies, and the provisions in the Bill already allow for that to happen.

Schedule 1 enables the Secretary of State to make a scheme or schemes to transfer the property rights and liabilities to the Audit Commission to one or more bodies. The scheme also includes provision for the transfer of employees, if appropriate, under TUPE regulations. We intend to set out details of the arrangements in transfer management of the audit contracts in such a transfer scheme in due course. We are working on this with these organisations, including those that the noble Lord has mentioned, and we are giving consideration to the transfer of current Audit Commission tasks, including the value-for-money profiles. I do not have confirmation of this but I dare say that that also includes the health service relationships as well.

So it would be premature to specify the detailed contents of the transfer scheme at the moment. However, I assure the Committee that this will provide the mechanism for ensuring good management. The noble Lord read out a whole series of things that he thinks we should take into account. If I may, I will say that those are clearly issues that we need to take into account. Once again, I should like to keep the noble Lord in touch with developments as they proceed.

We do not feel that the amendment is necessary; we have pretty good arrangements within the Bill to ensure that we have a proper transfer, and we are working that out at the moment. The amendment is probably not necessary in the light of what has been said, as we can already transfer schemes to include the robust management of existing contracts. I hope that the noble Lord will feel able not to press his amendment.

Lord McKenzie of Luton: I am grateful to the Minister for her reply. I am particularly grateful to her for referring to value-for-money profiles, which I forgot to speak to when I was moving my amendment. To do so briefly, these profiles bring together data about the cost performance and activity of local councils and fire authorities. Using the profiles, it is currently possible to see how an organisation is spending its resources, how the costs and performance of an organisation compare to others', the latest planned budgets, outlier reporting and so on, so this is pretty important information. Ensuring that that is available in future and maintained and updated is, I suggest, something that ought to feature in the scheme.

The Minister said that a draft of the scheme would be available in due course. I wonder if I might tempt fate and ask for something more specific. Is there the prospect that we might see a draft of this during our consideration of the Bill?

Baroness Hanham: Probably not within the terms of our deliberations on this. I am not certain whether it will be available before it goes into the other House, which will be later this year. However, I will keep the noble Lord informed.

Lord McKenzie of Luton: I am grateful for that. I hope that in the other place they will at least have a chance to see something a little more specific about the scheme. Having said that, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Schedule 1 agreed.

Clause 2 : Relevant authorities

Amendment 7

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

7: Clause 2, page 2, line 9, after "regulations" insert ", but only after consultation with such persons as may be affected by any changes,"

Lord McKenzie of Luton: My Lords, I shall speak also to the other two amendments in this group. Perhaps we may start with the most substantive one, Amendment 9. This amendment was prompted by the third report of this Session by the Delegated Powers and Regulatory Reform Committee. It drew attention to Clause 47 of the Bill relating to regulations or orders under Clause 2. Clause 2 enables the Secretary of Statement by affirmative regulations to include someone as a relevant authority and to make provision about how the Bill affects them. This is the case even though the regulations might be a hybrid instrument, although Clause 47 requires it to be treated as not a hybrid. The Delegated Powers Committee makes reference to affording,

"any interests that would normally be afforded protection by the hybrid instruments procedure",

some alternative means of protection. This is what Amendment 9 seeks to do, by requiring the publication of consultation on a draft of the intended regulation. Parliamentary counsel will doubtless be able to devise more appropriate wording, but there is a point that needs to be addressed. Hybridity arises when a provision can affect specific private or local interest in a different manner from the private or local interest of other persons or bodies of the same class. If hybrid, there is a wider process for consideration of an instrument. Let us hope that the Minister will accept the advice of the Delegated Powers Committee on this, or alternatively will justify why Clause 40(7) is deemed necessary. What situation is envisaged that would need this protection?

Amendments 7 and 8 require that any regulations made as a result of powers provided by Clause 2(3) and (5) require prior consultation with those affected by the proposed changes—a minimum activity. I beg to move.

5.15 pm

Baroness Hanham: My Lords, the noble Lord, Lord McKenzie, went in reverse order, but I shall go straight to his Amendments 7 and 8. I am sympathetic to their purpose, which is to ensure that the relevant bodies are consulted before they are added to or taken off the list at Schedule 2. Regulations that may be made to alter the list of authorities in Schedule 2 will also be subject to the affirmative resolution, so Parliament will have an opportunity to scrutinise any alterations and the extent of our engagement with the bodies concerned.

Turning to Amendment 9, the potential for hybrid instruments, I am clear that the Delegated Powers and Regulatory Reform Committee has drawn the attention of the House to Clause 40(7) of this Bill, which provides that regulations under the clause that would normally be considered a hybrid instrument will not be so considered for the purposes of this Bill. We expect that the need to bring forward such regulations will be rare. However, if there were such cases, there will be an especially compelling reason for the Government to consult, and we will address that point when we respond to the Delegated Powers Committee, which will happen as soon as possible. The answer is in draft anyway. The point that the committee has made about consultation is well understood and taken up. We do not think that it is necessary to add further legal requirements for consultation; we believe that they are there already. With those reassurances, I hope that the noble Lord feels able to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I took that reply to be yes to Amendments 7 and 8 with regard to consultation but not to put them in the Bill, and a probable yes to Amendment 9 but the Government will address that issue more formally when they respond to the Delegated Powers and Regulatory Reform Committee. Presumably they will respond favourably to the point that the committee has made. I have not before encountered an issue when something this hybrid must be deemed not to be hybrid for the purposes of regulations. Is this not to a certain extent Alice in Wonderland? I accept that there may be only a few instances when this occurs, but I take the assurance from the Minister that this will be covered in the Government's response to the Delegated Powers Committee and that we will have a chance to see that before we get to Report. On that basis, I beg leave to withdraw.

Amendment 7 withdrawn.

Amendments 8 and 9 not moved.

Clause 2 agreed.

Schedule 2 : Relevant authorities

Amendment 10

Moved by ***Baroness Hanham***

10: Schedule 2, page 38, line 7, leave out "5" and insert "7"

Baroness Hanham: My Lords, Amendment 10 is a minor and technical amendment. It does not affect the intended effect of the Bill. Its purpose is to correct a reference in Schedule 2 so that it refers to Paragraph 7 of Schedule 4 to the Audit Commission Act 1998 rather than to Paragraph 5. Schedule 2 lists the relevant authorities to which the provisions of the Bill apply. Paragraph 29 of the schedule ensures that the Bill covers any bodies that were subject to audit provisions contained in enactments passed before the Audit Commission Act 1998, to which the provisions of the 1998 Act were then applied.

Paragraph 29 refers to Schedule 4 to the 1998 Act, which contains transitional and savings provisions. Paragraph 7 of Schedule 4 to the 1998 Act, rather than Paragraph 5, provided for references in previous enactments to earlier forms of audit, such as district audit, to be read as references to audit under the 1998

Act. Paragraph 29 of Schedule 2 is meant to extend this savings provision so that bodies covered by it will be covered by the Bill when the 1998 Act is repealed. That would be done better by my amendment. I beg to move.

Lord McKenzie of Luton: My Lords, we are happy with the amendment. I would like to tell the Minister that we had spotted our technical error, but that would not be true.

Amendment 10 agreed.

Schedule 2, as amended, agreed.

Clause 3: General requirements for accounts

Amendment 11

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

11: Clause 3, page 2, line 34, at end insert "and show a true and fair view"

Lord McKenzie of Luton: My Lords, I shall speak also to Amendment 16. Amendment 11 amplifies the reference to the statement of accounts that must ensue from adequate accountancy records and adds the requirement that they show a true and fair view. Amendment 16 inserts an equivalent into the general duties of auditors in Clause 19. It requires them to satisfy themselves that the accounts give a true and fair view. That requirement is already included in the duties of auditors of health service bodies under Clause 20.

I am advised that local authorities were previously required by Regulation 10 of the principal regulations to prepare accounts that present fairly the financial position of the authority at the end of the year and its income and expenditure for the year, or a record of receipts and payments that properly presents receipts and payments for the year. Regulation 5 amends the principal regulation so as to require the responsible financial officer of an authority that must prepare an annual statement of accounts to certify that the statement provides a true and fair view from the 2009-10 financial year and in subsequent financial years.

I am advised that the move to a "true and fair view" opinion was based on the fact that from 2007 the code of practice for local authority accounting, issued at that time as a statement of recommended practice following endorsement by the then Accounting Standards Board, was fully compliant with generally UK-accepted accounting principles. The drive to full GAAP compliance was twofold: pressure from the then Accounting Standards Board for Local Authority Accounting to comply with GAAP, and the need for consistency of accounting practice across the public sector engendered by the preparation of whole of government accounts under the Government Resources and Accounts Act 2000.

Following representations to the Audit Commission, the buyer body that drew up the code of practice for local authority accounting, it was agreed that accounts should be prepared to give a true and fair view. As I understand it, that took effect from 2009-10, and it is that which the amendment is intended to address.

Lord Palmer of Childs Hill: I wonder whether it is necessary to have that provision here. By virtue of all the Acts that deal with accounts, they all have to show a true and fair view. We seem to be dotting "i"s and crossing "t"s on this one. I am not sure that the amendment is necessary.

Lord McKenzie of Luton: Will the noble Lord consider Clauses 19 and 20? Clause 19 deals with "General duties of auditors" and Clause 20 with, "General duties of auditors of accounts of health service bodies". The latter includes those words, saying,

"the accounts present a true and fair view, and comply with the requirements of the enactments that apply to them".

That reference is missing from Clause 19 and is not referred to in the earlier clause at all, but somebody deemed it appropriate to put it in Clause 20. I am trying to get some consistency, or to understand why there should be a difference between the two.

Lord Palmer of Childs Hill: My Lords, my only point is that the latter clauses deal with the general duties of auditors but the first deals with the accounts themselves. Whereas auditors must ensure that it is a "true and fair view", in Clauses 19 and 20, it has always been an accepted belief that with accounts prepared and signed off by external auditors—it is the chairman of the audit committee in my authority who signs off the accounts, with the chief executive—it is always a "true and fair view". I have no real problems with it being added, but I just wonder if it is necessary.

Baroness Hanham: My Lords, the noble Lord, Lord Palmer of Childs Hill, raises a question that I hope to answer—that it should not be, and is not, necessary. We can see whether the noble Lord agrees with that at the end of what I have to say.

We intend to require larger relevant authorities to present statements of accounts that are true and fair and for local auditors to give an opinion on whether this is achieved. This requirement is not included in the Bill, but the same outcome is achieved and mirrors the approach currently taken.

Amendments 11 and 16 would put these requirements in the Bill for all relevant authorities, but we are of the view that this is not necessary. Larger relevant authorities are currently required to present accounts that are true and fair, and their auditors are required to give an opinion on whether this is achieved. I assure the noble Lord that it is the Government's intention to continue these requirements. These requirements are currently achieved through the interaction of primary and secondary legislation, the Audit Commission Act 1998 and the Account and Audit (England) Regulations 2011. All relevant authorities must observe proper practices in the preparation of their accounts. The regulations require chief finance officers of larger relevant bodies to certify that the statement of accounts presents a true and fair view of the authority's financial position before these are audited. We intend to mirror this requirement in the regulations to be made under Clause 31, and Parliament retains oversight of these regulations.

[Baroness Hanham]

This approach is less complex than specifying "true and fair" requirements in the Bill, because further amendments would be required to disapply these provisions and include modified provisions for smaller authorities, which, as the Bill makes clear, are not required to ensure that their statement of accounts are true and fair. Instead, they are required to ensure that their accounts "present fairly" or "properly present", which are briefer and more proportionate forms of accounting. It is our view that that the current split between primary and secondary legislation works, and we intend that the interaction of the Bill and regulations under Clause 31 will continue to require larger relevant authorities to ensure that the statement of accounts present as true and fair.

The noble Lord raised the question of health authorities. The Bill does not change the scope of health authorities' audit, or that of principal local government bodies. Auditors of clinical commissioning groups will give additional opinions on whether their expenditure has been spent in accordance with Parliament's intentions. This is necessary because the resources available to health bodies are provided by Parliament. Expenditure by clinical commissioning groups is consolidated into the Department of Health's accounts, and the department must be able to demonstrate to Parliament that all resources have been used in the way that Parliament intended. I hope that, with that explanation, the noble Lord may feel able to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am grateful for that response. I would like to read the record about the explanation for Clause 3. That clause deals with the general requirements for accounts of a relevant authority, not all authorities.

May I revert to that position about the difference in presentation between Clause 19 and 20? There is that very clear reference to "true and fair view" in Clause 20 in respect of health service bodies. Either that implies that there is somehow a different approach or the presentation has simply been chosen to be different in Clause 19. If it is easier to write on that matter, I am happy to accept that. It was the lack of such a reference in Clause 19, my having read Clause 20, that really prompted the inquiry.

5.30 pm

Baroness Hanham: My Lords, I think that I responded to that in my comments just now. This is directly a part of the Department of Health's accounts, so the audit is much more geared that way. However, it would be helpful if I gave the noble Lord the full response on that. I think that I have done so but, in case I have not, I will write to him.

Lord McKenzie of Luton: I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12

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

12: Clause 3, page 3, line 1, leave out paragraph (b)

Lord McKenzie of Luton: My Lords, this is another probing amendment. Clause 3 deals with the general requirements for accounts and sets down the definition of "adequate accounting records". Clause 3(5)(b) enables the Secretary of State by affirmative regulations to enable any requirement in the section not to apply, or to apply with modifications to a relevant authority. The requirement to keep adequate accounting records is fairly fundamental and it is difficult to see the circumstances in which it would be inapplicable. What use is envisaged of these provisions, particularly the Secretary of State's power in relation to accounting records and statements of account in Clause 31?

Baroness Hanham: My Lords, the amendment would remove a regulation-making power to lift or modify the duties imposed by Clause 3 as they apply to particular bodies. Clause 3, as the noble Lord has said, requires relevant authorities other than health service bodies to keep adequate accounting records and prepare an annual statement of accounts. These are fundamental duties, and I can see why the noble Lord might question these powers. Nevertheless, there is a need for them.

Changes in the structure of local bodies may mean that the production of a statement of accounts is unnecessary or that financial accountability would be better served by including the financial transactions of an authority in the statement of another authority. To give an example of this, last year the police authorities were replaced by police and crime commissioners. In November, accountability for police finances was better served by the commissioners producing a single statement for the full year, including the transactions of the police authority. The police authorities were therefore relieved of their duty to produce published accounts for their final months, and the police commissioners thereby took on that responsibility.

I would expect the use of the power to be confined to such situations where there is a strong case that financial accountability would be better served by a modification of the duties in the clause. The accompanying power to modify the financial year has existed in audit legislation for many years but has rarely been used. I hope that that explanation will satisfy the noble Lord and enable him to withdraw his amendment.

Lord Beecham: I want to ask the Minister a question that I should perhaps have raised when speaking to the earlier amendment. The Comptroller and Auditor-General was quite critical of the proposals to take policing out of the Audit Commission framework. Given that the commission is going, to what extent have the Government responded to his concerns about the auditing of police authorities?

Baroness Hanham: My Lords, the police authorities are included in terms of this clause. Does that answer the noble Lord's question? If it does not, perhaps the noble Lord will come back to me.

Lord McKenzie of Luton: My Lords, that was a helpful explanation from the Minister and I am happy to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 12A

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

12A*: Clause 3, page 3, line 5, after "application" insert "(including exemption)"

The Earl of Lytton: My Lords, as this is the first time on which I have spoken in Committee, I should declare my interests, particularly that I am president of the National Association of Local Councils, the parent body of parish and town councils. I am a vice-president-in-waiting of the LGA, if that is the correct term for the particular interregnum that I am in at the moment. I should declare one other interest in that one of my children works as an accountant for one of the big four accountancy firms, but they work on something that I think is called transaction services rather than audit.

I thank the Minister for arranging at short notice last week a meeting, which was extremely helpful in refining some things. I am sorry if, in a sense, I am going over old territory in order to get things on the record. I am also aware that I am in the presence of very great experience, not only of audit but of local government management at senior level. I certainly cannot claim to hold a candle to any of that.

For the purpose of this group, in speaking to Amendment 12A, I shall speak also to Amendments 13A and 13B, and 14A to 14C. My intention is to probe further the Government's intentions. I accept that a sector with 9,500 parishes spending £500 million a year in aggregate requires oversight, and I do not quibble with the coalition's intention to abolish the Audit Commission. However, unlike large charities with many branches, or for that matter small charities with a freestanding existence, this sector is hallmarked by thousands of autonomous and often very small councils, a large number of which are in this first tier of local government and benefit at the moment from economies of scale in procuring their audit and other routine tasks.

If the individual right is equated with an individual duty for a separate audit appointment, that does not sit entirely easily with the general geometry of the sector, especially as around 80% of them have come together voluntarily to form the individual members of the national association. Doing things together non-politically and collaboratively is a large part of how parish and town councils try to operate. I was heartened by the Minister's earlier comments about the freedom of collective and individual audit appointment, although we may need to tease that out a little further to determine precisely how it will work.

A requirement for audit scrutiny of some sort, tailored to the risks and proportional to the gravity of the council undertakings, is common ground. The question is how we enshrine that in legislation and ensure that all those entrusted with public money are held to account to the degree necessary. In nearly every case, parish and town councils are quantifiably different from the scale of principal authorities. At one end of the scale there is a town council with 78,000 electors and a very substantial annual income, but that is not typical of the sector. One of the issues that we sometimes have is that the parish and town council sector is so diverse in terms of the size and complexity of what they do that it makes it very difficult to legislate in a cohesive way for all of them.

The proposal seems to provide for three tiers of regime, if I can call it that: namely, an exemption for those with a turnover of under £25,000, an intermediate stage requiring a limited assurance audit for authorities with a turnover under £6.5 million, and those above that which will face the full audit arrangements. According to my information, all parish and town councils, with one or two exceptions, will fall into the sub-£6.5 million turnover bracket, so we are dealing mainly with the cut-off point between total and partial exemption. So far as I know, 65% will be exempted altogether—they fall under the £25,000 threshold—and that leaves about 3,300 parish and town councils that will be caught. That is not a significant amount, particularly if the sector grows as the localism agenda envisages. That means that at the margin, at the break point, there will be a certain amount of toing and froing in the transition, to which I will refer later.

I flagged up at Second Reading the requirement for an audit panel to have a majority of independent members. What measures does the Minister think will be possible or practical to prevent it becoming the tail that wags the dog in small councils that none the less might have a turnover of more than £25,000? My amendments seek to explore these issues through the device of amending the suite of criteria governing the Secretary of State's jurisdiction.

I was interested by the comment made in the previous group of amendments about a fair representation of the state of accounts. As a simpleton and non-accountant I had taken this for granted, I must admit, but there it is.

The purpose of Amendment 12A is simply to clarify that the Secretary of State may, in considering the application of the requirement, also exempt an authority. It is not clear whether there will be a facility to exempt once it had been caught. This would apply at or around the break point of £25,000. I say this because £25,000 is less than half of the cost of a qualified full-time clerk, which tells us something about what we are dealing with. I am concerned that the bar is set a little too low here, and perhaps that ought to be looked at.

I am mindful of barriers to the progression and growth of parishes, particularly when the threshold represents a significant cost or administrative impediment or is seen to do so. The Secretary of State should be able to develop more sophisticated criteria and not simply apply a numbers threshold by automatic application. I ask the Minister whether that point might be looked at further with a view to seeing whether it really works.

Amendment 13A describes some of the criteria that might apply. The key words here are "onerous or disproportionate", which are intended to be the guiding sentiment. However, I accept that they are relative rather than absolute terms, and for that reason I am not sure that I will not get the answer from the Minister that naturally flows—that the matter is

[The Earl of Lytton]
indeterminate. However, for the same reasons that I mentioned about the tail wagging the dog, I ask the Minister whether anything can be done about that.

Amendment 13B seeks to drill down what we mean by "turnover" and whether it is right to take a single year's figure or, as my amendment suggests, an average. I can think of a situation where one year's figures are skewed by a single, one-off event that could be for reasons wholly unrelated to an authority's normal income, such as a developer contribution towards something or other. It would help to avoid councils flipping in and out of the requirements if we had an average, as my amendment suggests, spread over three years. However, there may be technical objections to this.

Amendment 14A is a paving amendment for Amendment 14B and follows the same principle of the Secretary of State's discretion on amendments. Amendment 14C is consequential in ensuring that any exemption carries through into the consideration of any question of failure to appoint an auditor.

The National Association of Local Councils and the LGA are in agreement that the ability for local councils, where it is appropriate and cost effective, to jointly commission audit services on a national basis makes a good deal of sense.

I understand what the Minister said earlier about this not being, in a sense, a rerun of the Audit Commission. I can recognise that, as the whole idea is to bring in an element of competition and not to have a monocultural approach. However, the potential economies of scale, savings and cost could be significant. It may well be that the Audit Commission itself lacked competition to ameliorate its charges, but that does not avoid the principle of giving value for money for taxpayers. That is all that I have to say on this. I beg to move.

5.45 pm

Lord McKenzie of Luton: My Lords, the noble Lord has raised some important questions with these amendments. My Amendment 14 overlaps a bit with them, so I might as well get it out of the way now. It concerns the rules that govern these various thresholds—the £6.5 million, the £200,000 and the £25,000. This is a boring accounting point, but there is a question about how you actually compute them. Looking at what the income of a parish council might be, for example, there might be a precept, which presumably gets counted in as gross income. However, if there are things like entrance fees, the sale of publications or the letting of premises, do you have to deal with these on a gross or net basis for working out whether the threshold is breached or met? I first focused on this in relation to the £6.5 million threshold, but there seems to be a lot of headway for authorities there so that is unlikely to be great issue. However, if those same rules operate for the lower thresholds, then they could be important.

Baroness Hanham: My Lords, this may take only a little time, partly because the noble Earl, Lord Lytton, and I have had an opportunity to discuss the issues that he has raised today. Actually, I may take a little more time to respond because it is quite important that this is on the record and that people can see where this is going.

I thank the noble Earl not only for the thoughtful contribution that he has made today but for the pragmatic way in which we have discussed the whole issue of having a central or non-central body to do this. The regulations that the Government propose in relation to smaller authorities need to accomplish two things. They need, first, to enable the development of a viable sector-led body to appoint auditors to smaller authorities and, secondly, to set up a proportionate accounting and audit regime for small authorities that minimises the administrative burden while ensuring accountability for the public money that they control.

In relation to the first of those points, I am grateful to the noble Earl for being pragmatic about this, and for listening to what I said earlier about systems such as this being central but not mandatory and giving opportunities for smaller authorities that wish to appoint their own auditors to do so. In reality, though, one is bound to say that for the small authorities it would be a godsend to have a body helping them with it. While we certainly will not change our view about the question of whether this is mandatory, we would expect quite a large number of the small authorities to want to join in. I am pleased to be able to offer the noble Earl the assurances that he seeks that we will bring forward regulations in relation to the sector-led body. I will write to him setting these out and then perhaps we can discuss them further if necessary. The second purpose of the smaller authorities regulations will be to set out proportionate accounting and audit requirements.

I intend to lay a statement of policy intent, which I hope is now in the Library—it should have gone in today—which will share with noble Lords further detail about the proposed audit arrangements for smaller authorities. In this document, the Government confirm their intention to retain the limited assurance form of audit. It will be specified in the code of audit practice, which will be produced following abolition of the Audit Commission by the National Audit Office. As the noble Lord said, limited assurance audit is a lighter-touch form of audit, which is conducted offsite and is proportionate to the small amounts of public money that the smaller authorities control.

The Government also intend to maintain the current accounting requirements for smaller authorities. In addition, they propose to exempt the smallest authorities—those with an annual turnover below £25,000—from the requirement to have external audit. In the command paper published with the draft Bill last year, we said that we would review how this level works, if necessary raising the threshold once the system is up and running. Therefore, it is in mind but how it is working will have to be demonstrated. The exemption will not apply in certain circumstances. For example, where a small authority is newly created or where an authority's auditor issued a public interest report in the previous financial year, authorities exempted from external audit will be required to appoint an auditor to undertake those public interest duties.

With regard to the specific amendments, I think I will turn to Amendment 12A at the end. That is what the noble Earl did and, if I may, I will follow his line. Starting with Amendment 13A, this appears to capture the noble Earl's concerns most fully. The amendment enables the Government, when making the regulations under Clause 5, to have regard to the size of the electorate, the authority's income, and whether the effect of those regulations would be "onerous or disproportionate". The Government's view is that the regulation-making powers in Clause 5 allow us to do that without additional provision.

The Government's purpose in taking those powers is to enable them to make regulations that will set out a proportionate accounting and audit regime for smaller authorities. The proportionality that the Government envisage will be defined in relation to the higher of the authority's gross income and gross expenditure rather than just its income, a point raised by the noble Earl. We do not propose to take into account the size of an authority's electorate because income and expenditure are the most relevant criteria in relation to the primary purpose of audit, which is safeguarding public money. The size of an authority's electorate is not material and members of a large electorate may individually pay a very small precept and vice versa.

I turn to Amendment 12A. One of the purposes of Clause 3 is to specify the financial year for relevant authorities that are not health service bodies. It does that in subsection (4) with reference to 31 March, but subsection (5)(a) gives a power by regulation to change that period either for all authorities or for particular authorities. Subsection (6) allows regulations changed in the financial year to make amendments or modifications to this legislation or provisions made under it in their application to the bodies whose financial years are changed. The main purpose of that power is to allow dates to be changed to such purpose as the preparation and publication of the statement of accounts so that they are consistent with the changed period of the financial year.

I hope that this explanation will provide a useful background to understanding Amendment 12A. The amendment adds the words "including exemption" after the word "application". I find it difficult to see what this adds to the power. If the purpose is to confirm that the financial year can be altered even for a body that is exempt from audit, I am happy to confirm that, but I have to say that the Bill as it stands allows that and the amendment would not do anything more.

Perhaps I may deal with Amendment 14 in the name of the noble Lord, Lord McKenzie, once I have finished with the amendments in the group. Amendments 14A and 14B would enable regulations to exempt or partially exempt a smaller authority from the need to have an auditor panel. The sector-led body for smaller authorities that, as we have already said, we intend to provide for in regulations that are non-mandatory, will in effect assume the functions of the auditor panel. We propose to exempt smaller authorities which have opted into the sector-led body from the requirement to have an auditor panel. By definition, the auditor scrutiny would be undertaken by the sector-led body. We will do that in regulations made under Clause 5 and we do not need to make additional provisions in the Bill.

The exemption will not, however, apply to smaller authorities which opt out of the sector-led body. I suggest that these will need to appoint an auditor panel to advise on the appointment of an auditor, which would ensure that proper scrutiny takes place. We do not expect those auditor panels to be large. The Bill does not set a minimum size, but Treasury and CIPFA guidance on audit committees recommends that they should comprise at least three members, in which case two independent members would be required. To make it easier for the authority to find panel members, we do not intend to preclude suitably experienced individuals from serving on more than one panel. In addition, the Bill allows authorities to share auditor panels if they wish to minimise additional costs of bureaucracy.

Amendment 14C has a similar effect to Amendments 14A and 14B. Clause 12 requires the authority to inform the Secretary of State if there is a failure to appoint an auditor and enables the Secretary of State to direct the authority to appoint the auditor named in the direction or to appoint an auditor on behalf of the authority. The precise effect of the amendment would of course depend on how such regulations were drafted and, in particular, which small authorities they captured.

The Government accept that the smaller authorities' regulations will need to apply modifications to Clause 12 in the case of smaller authorities which opt into the sector-led body. We do not of course envisage that the sector-led body would default on its obligation to appoint auditors. We will not propose to disapply these provisions for smaller authorities which opt out of the sector-led body. As with the noble Earl's other amendments, we do not need to take a separate power to make these modifications in regulations, as they are already allowed under Clause 5.

To conclude, the Government propose to publish draft smaller authorities' regulations in the autumn for consultation. I am sure that the National Association of Local Councils and the Society of Local Council Clerks will continue to work closely with us to help shape those regulations and to ensure that they are fit for purpose for smaller authorities. I hope that with those assurances, the noble Earl is willing to withdraw his amendment.

Before he does so, perhaps I could refer to Amendment 14, tabled by the noble Lord, Lord McKenzie, which will scoop up this part. This amendment would place a duty on the Secretary of State to issue guidance on the definition of gross income and gross expenditure for the purpose of determining whether an authority qualifies as a smaller authority in a financial year.

Gross income and gross expenditure are terms used now in the accounts and audit regulations to define the smaller bodies threshold and no further guidance is given, but I see that with a duty in future being on the relevant bodies to assess their income and expenditure against the threshold, there may be times when guidance on interpreting the terms could be useful. This guidance need not be statutory or issued by the Secretary of

[Baroness Hanham]
State. However, the Secretary of State may issue guidance on this matter if he wishes. In addition, there is provision in subsection (5) to enable the Secretary of State to make regulations to amend Clause 6. This may be used to amend the threshold or to add further conditions and could be used to require smaller authorities to have regard to any such guidance.

However, the noble Lord makes good points and I am happy to take the question of guidance back so that we can have another look at it. If I do not manage to do that by Report, I hope at least that we will have it in writing before Third Reading. I put that marker down now so that there is no argument at Third Reading about whether it is relevant. I hope that, under those circumstances, the noble Lord, Lord McKenzie, may be willing not to press his amendment.

6 pm

The Earl of Lytton: My Lords, I am very grateful to the Minister for her extensive reply and for setting that out for the record. Clearly, these are probing amendments. Picking up on a comment made by the noble Lord, Lord McKenzie, about his Amendment 14 when he said that it raises a boring accountancy point, when my daughter learnt that I was involved with something called the Local Audit and Accountability Bill, she e-mailed me saying, "That's a really nerdy subject", so we have been warned.

I quite accept what the noble Baroness said: that the whole thing is reviewable, particularly in relation to Clause 5. I also take the point about the electorate size not being material, it is about the financial activity that is going on. I hear in particular what she says about the auditor panel not being required where smaller bodies have opted in to the sector-led scheme.

The definition of independent in terms of members of the audit panel still slightly escapes me. I know what it means to me, coming from the sector of your Lordships' House that I do, but I am not sure that I entirely understand what it means here, but we will leave that for another day.

I am extremely grateful to the noble Baroness. As ever, she has answered many of my questions with great courtesy, including telling me that some of them are not strictly relevant because they are unnecessary. I take that in the spirit in which it is intended. I beg leave to withdraw the amendment and shall not be pressing my other amendments in the group.

Lord McKenzie of Luton: I am grateful to the Minister for her response to the point that I raised under this group.

Amendment 12A withdrawn.

Clause 3 agreed.

Clause 4: General requirements for audit

Amendment 13 not moved.

Clause 4 agreed.

Clause 5: Modification of Act in relation to smaller authorities

Amendment 13A not moved.

Clause 5 agreed.

Clause 6: Meaning of "smaller authority"

Amendments 13B and 14 not moved.

Clause 6 agreed.

The Deputy Chairman of Committees (Lord Colwyn): The question is that Clause 7 stand part of the Bill.

Lord McKenzie of Luton: My Lords, if I may, I think that we agreed to draw stumps after Clause 6.

The Deputy Chairman of Committees: We did, my Lords, but in fact I can take us until the end of Clause 12 without need for further debate, I believe.

Lord McKenzie of Luton: We have tabled further amendments to Clause 7 and those beyond it. That was in the agreement.

The Deputy Chairman of Committees: In that case, that concludes the Committee's business for today, so the Grand Committee stands adjourned.

Committee adjourned at 6.03 pm.

Written Statements

Monday 17 June 2013

Armed Forces: Medals

Statement

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Right Honourable Friend, the Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague) has made the following Written Ministerial Statement:

I am pleased to announce that formal approval has been given to a recommendation for an exception to the rules on the acceptance of foreign awards to allow eligible British nationals to accept and wear the Russian Ushakov Medal.

In May 2012 the Russian Government requested permission to award the Ushakov Medal to British veterans of the Arctic Convoys. Under the current rules on the acceptance of foreign awards, permission could not be given for the medal to be accepted as more than five years had passed since the events in question and there had already been British medallic recognition for this service.

Although under these rules permission could not be given for the Ushakov Medal to be accepted, Her Majesty's Government have always been appreciative of the Russian Government's wish to honour these brave men.

In light of that appreciation of this service, a recommendation was therefore made to exceptionally allow the Ushakov Medal to be accepted and worn. President Putin presented the first medals during his visit to London on 16 June 2013.

Applications and eligibility for the Ushakov Medal will be a matter for the Russian authorities.

Child Support (Miscellaneous Amendments) Regulations 2013

Statement

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My honourable friend the Minister for Pensions (Steve Webb MP) has made the following Written Ministerial Statement.

Later today the Government will be publishing its response to the consultation on the Child Support (Miscellaneous Amendments) Regulations 2013 ("the Regulations"). The Regulations make amendments to the Child Support Maintenance Calculation Regulations 2012 ("the 2012 Regulations"), which set out rules on the calculation of child maintenance under the new statutory scheme. The consultation on the Regulations was held between 1 March 2013 and 12 April 2013.

The Government consulted on the following amendments to the 2012 Regulations, which will allow the Secretary of State to: use current income information as the basis of the maintenance calculation where historic information from HMRC cannot be requested or obtained; accept a nil income figure from HMRC in order to calculate child maintenance liability (a simplification measure, as previously a nil income figure would have required action to seek current income information); and to allow previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances.

The aim of the Regulations is to provide a faster, more accurate and transparent process for assessing child maintenance payments.

There were four responses to the consultation, which have been carefully considered. The Government maintains that the proposals outlined in the consultation represent essential preparatory work necessary to allow the new scheme of child support maintenance to be gradually opened to all new applicants.

Other amendments are made by the Regulations, which were not consulted on because they did not represent changes to policy. Amendments to child maintenance regulations have been made in response to legislative changes to Child Benefit. These amendments clarify that parents who elect not to receive Child Benefit payments will be treated in the same way as those that continue to receive the payments. The Regulations also make minor consequential and technical changes to other child maintenance regulations. We intend to lay the Regulations later this month.

I will place a copy of the Government's response to the consultation in the House Library later today.

The Government's response to the consultation will also be available on the GOV.uk website later today at the following address: https://www.gov.uk/government/consultations/the-child-support-miscellaneous-amendments-regulations-2013.

Correction to Lords Oral Answer

Statement

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): With regard to the Oral Answer I gave to the Question tabled by Lord Wigley, *Official Report* 11 June 2013, col. 1509, the Answer makes reference to the UK commitment to achieve at least an 80% cut in "carbon emissions" by 2050. The answer should have referred to "greenhouse gas emissions", not "carbon emissions".

The corrected Answer is as below:

My Lords, I am aware that this spring, for the first time, atmospheric carbon dioxide levels briefly reached 400 parts per million in some parts of the world, compared with pre-industrial levels of approximately 280 parts per million. Domestically, the UK has committed to achieve at least an 80% cut in greenhouse gas emissions by 2050. Internationally, through the UN Framework Convention on Climate Change, the Government are working towards adopting an ambitious and legally binding global deal in 2015, increasing mitigation ambition in the period up to 2020, and continuing to build a climate regime that will ensure that countries' commitments are measurable, transparent and comparable.

EU: Transport Council

Statement

Earl Attlee: My Honourable friend the Parliamentary Under Secretary of State for Transport (Stephen Hammond) has made the following Ministerial Statement.

I attended the final Transport Council of the Irish Presidency in Luxembourg on Monday 10 June.

Transport Council agreed general approaches on five proposals: the interoperability of the rail system; roadworthiness roadside inspection and the associated vehicle registration measure; occurrence reporting in civil aviation and marine equipment.

The Commission had originally proposed that the European Rail Agency should undertake all vehicle authorisations on the Proposal on the interoperability of the rail system (part of the Fourth Railway Package). The Presidency's compromise text discussed in Council took on board the UK's suggestion to give operators the choice to use national safety authorities where rolling stock would only be used domestically. I was therefore able to fully support this proposal.

The Council considered the Proposal for a Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles and a Proposal for a Directive on the registration documents of vehicles (the last two parts of the roadworthiness package—the Council had agreed its position on the proposal to change the periodic testing regime in December 2012). The Council agreed its position on the registration documents without discussion, while the roadside inspection proposal prompted a round table discussion. The most contentious issue was whether to exclude the N1 category of vehicles (vans and smaller lorries not exceeding 3.5 tonnes) from the scope of the proposal. I was able to support the Presidency's text, and in particular the exclusion of N1 vehicles.

I was also able to fully support the general approach on the Proposal on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007. This proposal will update the rules requiring member states to establish reporting systems for aviation safety incidents.

I was able to support the Presidency's text on the Proposal for a Directive on marine equipment, having previously secured concessions, including on the use of delegated acts.

The Presidency reported on the progress that had been achieved in negotiation with the European Parliament on the Proposal for a Regulation establishing the Connecting Europe Facility. The proposal will provide the legal base to give funding support to Trans-European Networks projects. The Presidency hoped the file could be concluded soon.

Under Any Other Business, the Commission reported on the latest developments on the aviation Emissions Trading Scheme in the International Civil Aviation Organisation. I stressed the importance of achieving a positive outcome at the ICAO Assembly in September and the need for the Commission to develop a comprehensive engagement and negotiating strategy.

The Commission also introduced its recently issued proposal to revise the 2004 rules on air passenger rights which it hoped would bring clarity following the ruling of the ECJ in relation to denied boarding, and liabilities for airlines as a result of a number of extraordinary events in aviation since 2010. While welcoming the proposal, I noted that the UK would only be able to accept the regulation if it applied in full to Gibraltar Airport.

The Commission introduced its new proposal on ports. I made the case strongly that there is no need for the proposal. I explained that there were significant new investments already going into ports, and that while transparency for public funding should be generally welcome, for self-financing private ports they should remain subject to normal business accounting rules.

The Commission provided an update on its work on Passenger Ship Safety which looks at measures to improve the safety of passenger ships, especially following the Costa Concordia disaster. The Commission did not currently foresee any legislative proposals, as much of the detail focussed on work that could be done within the International Maritime Organisation (IMO). The Commission said that it considered the IMO the best avenue to secure any changes.

Lithuania will take over the EU Presidency from 1 July, and outlined their transport agenda. They would be seeking an agreement with the European Parliament on all elements of the Roadworthiness package, Occurrence Reporting in Civil Aviation and on the Marine Equipment Directive. They would also finalise agreement with the European Parliament on the European Marine Safety Agency Funding Regulation. For outstanding legislation, Lithuania would advance technical discussions on the Fourth Railway Package and seek a General Approach on Air Passenger Rights.

Finally, I participated in the signing of a comprehensive air services agreement between the EU and Israel.

Northern Ireland: Economy

Statement

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson): My Right Honourable Friend the Secretary of State for Northern Ireland (Theresa Villiers) has made the following Ministerial Statement:

On Friday, my Rt. Hon Friend the Prime Minister and I agreed a package of measures with the First and deputy First Minister of Northern Ireland aimed at rebalancing the Northern Ireland economy and building a shared society. I have placed a copy of this agreement, *Building a Prosperous and United Community*, in the library of the House.

The package is designed to help us move further towards the shared and prosperous Northern Ireland that we all want to see. We have agreed an investment plan that confirms we are on course to deliver the commitment to £18 billion of capital funding by 2017. £300 million investment to support front line projects will be made available through enhanced capital borrowing powers, Government top-ups to PEACE IV and EU Structural Funding.

We have prioritised a range of measures to help boost the private sector and rebalance the Northern Ireland economy.

Continuing Northern Ireland's Assisted Areas Status coverage will enable the Executive to continue with the targeted support for the private sector that has helped to promote over 3,000 new private sector jobs in Northern Ireland in the last three months alone. There will be a new way forward on planning reform and initiatives to drive investment in infrastructure, promote new businesses and boost tourism. Fresh work will take place on Enterprise Zones. We have agreed a potential mechanism for taking forward the devolution of Corporation Tax rates if the Government decides to devolve these powers.

The package includes a commitment to ensure that an annual update is provided to Parliament on progress on the economy and building a shared future for the people of Northern Ireland.

I believe that the package represents a real step forward for Northern Ireland. This agreement reflects the maturing relationship between the Government and Executive and is a symbol of our ambitious vision for Northern Ireland: a genuinely shared society that is fulfilling its economic potential and laying the foundations for peace, stability and prosperity for the future.

Written Answers

Monday 17 June 2013

Alcohol

Question

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government when they expect the Chief Medical Officer's review of safe drinking levels to be completed and published. [HL651]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Chief Medical Officer has appointed two expert groups to review the evidence on alcohol and health risks and on behaviour and guidelines, under the chairmanship respectively of Professor Mark Petticrew and Professor Sally Macintyre. The Chief Medical Officers for England, Scotland, Wales and Northern Ireland will jointly oversee this work. We expect the review of evidence to conclude in January 2014.

The Chief Medical Officers will then decide whether to develop new guidelines, which would take six months. We would expect to consult on any new guidelines.

Apprenticeships

Question

Asked by ***Lord Adonis***

To ask Her Majesty's Government what was the total number of staff employed within The Insolvency Service on 1 May 2013; and how many of them were (1) under the age of 21, (2) apprentices under the age of 21, and (3) apprentices over the age of 21. [HL762]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie): The total number of staff employed within The Insolvency Service on 1st May 2013 (headcount) was 2,001. Of those, two were under the age of 21, and none, either under or over the age of 21, were apprentices.

Asylum Seekers

Questions

Asked by ***Lord Avebury***

To ask Her Majesty's Government how many asylum claims, made on the basis of persecution on grounds of sexual orientation, by people from (1) Ghana, (2) Nigeria, (3) The Gambia, (4) Kenya, (5) Liberia, (6) Malawi, (7) Mali, and (8) Sierra Leone, have been rejected in 2013 so far. [HL682]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The Home Office publishes immigration statistics annually and quarterly. These are available from the Library of the House and can also be found here: https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013.

Published statistics are not disaggregated by the basis for the asylum claim. Consequently the requested information is not available through published statistics. However, since July 2011, the Home Office has flagged cases that include sexual orientation as part of their asylum claim on the Case Information Database (CID).

For the period January to March 2013, a total of 307 cases in respect of the specified nationalities were refused. The reasons for asylum being refused cannot be determined without undertaking a manual search of records. However, no cases refused asylum in 2013 in respect of the above nationalities were flagged as including sexual orientation as a part of their claim.

Please note the following:

1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

2) Figures relate to main applicants only.

Asked by ***Lord Hylton***

To ask Her Majesty's Government what steps they are taking to ensure pregnant asylum applicants and their children receive continuity of maternal health care; and whether they issue guidance about the suitability of relocating, detaining or deporting those people. [HL716]

Lord Taylor of Holbeach: All asylum seekers have access to the United Kingdom's health care system, including maternity services.

Guidance is available to decision makers about the detention and removal of pregnant asylum applicants.

Guidance is issued to cover procedures for providing accommodation to pregnant asylum seekers who become homeless and need to be relocated elsewhere. The guidance aims to ensure that treating clinicians and midwives are notified if it is not possible to accommodate the person in the same area where she has previously been living.

Pregnant women, including asylum seekers, are only detained for immigration reasons in very exceptional circumstances. If they are detained the healthcare teams present in Immigration Removal Centres are required to take all practical steps to obtain relevant health information from previous healthcare providers.

All removals of persons from the United Kingdom which involve a pregnant woman must follow the International Air Transport Association (IATA) guidelines for the carriage of pregnant women.

Asked by ***Lord Hylton***

To ask Her Majesty's Government what measures are in place to ensure that unsuccessful asylum applicants receive appropriate and effective prophylaxis against malaria and other diseases endemic in their countries of origin before deportation. [HL717]

Lord Taylor of Holbeach: When returning individuals to malaria risk countries, the Home Office provides free mosquito nets for children, pregnant women and vulnerable individuals who are unable to make their

own provisions to access medication or mosquito nets. For those that may be particularly vulnerable to infection, consideration is given to providing other inoculations or prophylaxis.

Banking

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government what steps they will take to safeguard United Kingdom interests in connection with proposals from the European Commission that direct supervision of London interest benchmark rates should be transferred to the European Securities and Markets Authority in Paris. [HL673]

The Commercial Secretary to the Treasury (Lord Deighton): The Government recognises the importance of benchmark reform and has been leading the way on this issue through domestic steps relating to LIBOR and in international fora.

A European Commission proposal on Benchmark Reform has not yet been published. If and when a 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.

Banks: Money Laundering

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether any regulatory intervention has been made in response to disclosures about HSBC's involvement in money laundering. [HL672]

The Commercial Secretary to the Treasury (Lord Deighton): US investigations and enforcement action on HSBC focused on their subsidiaries in the US. The Financial Conduct Authority (FCA) has no direct supervisory remit over these HSBC entities.

However, in conjunction with the action taken by the US, the (then) FSA, as lead regulator for the HSBC Group globally, made a number of requirements of HSBC Holdings plc, designed to ensure that all parts of the HSBC Group are compliant with the relevant legal and regulatory requirements across the Group to prevent similar failings occurring in future.

This included requiring a committee of the HSBC Board with a mandate to oversee matters relating to anti-money laundering, sanctions, terrorist financing and proliferation financing; requiring the Group to revise its policies and procedures to ensure that all parts of the HSBC Group are subject to standards equivalent to those required under UK requirements; HSBC employing an independent monitor to oversee the Group's compliance with UK anti-money laundering, sanctions, terrorist financing and proliferation financing requirements and to provide independent reporting to the HSBC Board committee and regulators. HSBC Holdings was also required to appoint a Group Money Laundering Reporting Officer (MLRO), with responsibility for ensuring that systems and controls are in place across the Group.

The FCA is closely monitoring the implementation of these requirements by HSBC.

Burma

Questions

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

To ask Her Majesty's Government whether they have made representations to the government of Burma following reports of the reintroduction of a two-child policy for Rohingya Muslims; and whether they intend to ensure that British organisations do not provide support for the implementation of such policies in Burma. [HL610]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We continue to raise our serious concerns about reports of a reintroduction of a two-child policy for Rohingya communities with the Burmese government, citing the human rights obligations to which the country has signed up. The Minister of State for trade and investment, my noble Friend Lord Green of Hurstpierpoint, made these points in Naypyidaw on 14 June. Our implementing partners in Burma should be under no illusion that their support for the implementation of such a policy would be completely unacceptable to the British Government.

We welcome Aung San Suu Kyi's statement that any enforcement of a two-child policy would be discriminatory and not in line with the upholding of human rights in Burma. We note recent press reports quoting a Burmese presidential spokesman who said that the central government did not announce the Rohingya two-child policy and that they would investigate.

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

To ask Her Majesty's Government whether they intend to take steps to protect religious **minorities, in particular Rohingya Muslims, from the reintroduction of a two-child policy pertaining specifically to those minorities in Burma; and what assessment they have made of such a policy.** [HL611]

Baroness Warsi: According to a Rakhine State government spokesperson, a district order enforcing a two-child limit for families in Northern Rakhine State was re-imposed in mid-May. De facto restrictions on the rights of Rohingya to marry and give birth have been in place since the 1990s or earlier. A specific regulation was first introduced in Northern Rakhine State in 2005, when an additional statement was appended to local marriage certificates prohibiting couples from having more than two children.

The British Government is opposed to any measures which contravene the human rights of any community in Burma. We are raising our serious concerns about this policy with Burmese government ministers in Naypyidaw, citing the government's human rights obligations, and the apparent contradiction between the Rakhine State government's approach and the recommendations of the Rakhine Commission report, which was endorsed by President Thein Sein. During

his visit to Burma on 14 June, the Minister of State for trade and investment, my noble Friend Lord Green of Hurstpierpoint, raised our concerns with the government in Naypyidaw.

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

To ask Her Majesty's Government what assessment they have made of the impact on Rohingya women of the reported reintroduction in Burma of a two-child policy which would specifically apply to the Rohingya Muslim minority. [HL612]

Baroness Warsi: The Government has made no formal assessment of the impact on Rohingya women of the reported two-child policy. However we understand that since at least 2005, children in Northern Rakhine State born to unmarried parents, or to families with more than two children, have been considered 'illegal'. Where discovered, the authorities have placed those children on 'blacklists', denying them the most basic rights. Credible research by non governmental organisations, including Medecins Sans Frontieres has shown that the restrictions on marriage and childbirth in Northern Rakhine State have led to serious health consequences. Pregnant women have resorted to unsafe and illegal abortions, sometimes self-induced, leading to high maternal mortality rates and psycho-social stress.

Our Embassy in Rangoon will continue to raise our human rights concerns with Burmese government ministers, including with respect to the Rohingya minority and a two-child policy. The Minister of State for Trade and Investment, my noble Friend, Lord Green of Hurstpierpoint, made these points to the Burmese government in Naypyidaw on 14 June.

Dogs

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government what was the average response time of police services to dog-related complaints in each local authority in the metropolitan county of Merseyside in each of the last five years. [HL772]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The requested information is not collected by the Home Office.

Dogs: Dangerous Dogs

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government when and how they intend to implement their commitment to extending dog-related offences to attacks that take place on private property. [HL773]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): On 9 May the Government introduced into Parliament the Anti-social Behaviour, Crime and Policing Bill. The Bill had its Second Reading in the House of Commons on 10 June. Clause 98 of the Bill extends the criminal liability for a dog being dangerously out of control to all places, including private property. The Police will be responsible for enforcement of the provisions on dangerous dogs. The Bill is expected to receive Royal Assent next year.

Drones

Question

Asked by ***Baroness Stern***

To ask Her Majesty's Government what assurances they have received that United States bases in the United Kingdom will not be used to operate United States drone strikes in non-declared war zones. [HL625]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The US does not operate Remotely Piloted Aircraft Systems from United States Visiting Force bases in the UK. Therefore, no such assurances are required.

Embryology

Question

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

To ask Her Majesty's Government, further to the Written Answers by Lord Marland on 5 December 2012 (WA 158–9) and Viscount Younger of Leckie on 4 June (WA 164), how the technical interdependencies of pronuclear transfer and somatic cell nuclear transfer were conveyed by the Human Fertilisation and Embryology Authority in its consultation "Medical Frontiers: debating mitochondria replacement" so as to enable a lay audience to understand the relevant techniques. [HL635]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Human Fertilisation and Embryology Authority has advised that it has nothing further to add to the information given in my Written Answer of 3 June 2013 Official Report, col. WA 114.

Equitable Life

Question

Asked by ***Lord Steel of Aikwood***

To ask Her Majesty's Government how the decision to award 22.4 per cent of relative loss as compensation under the Equitable Life Payment Scheme was made; what are the affordability constraints limiting that amount, as noted in letters to those in receipt of compensation; and whether any other government undertakings are subject to such constraints.[HL555]

The Commercial Secretary to the Treasury (Lord Deighton): In her 2008 report, which provides the foundation of the Equitable Life Payment Scheme, the

Parliamentary Ombudsman stated that "It is appropriate to consider the potential impact on the public purse of any payment of compensation."

The 2010 Spending Review announced that up to £1.5 billion would be made available to the Equitable Life Payment Scheme. While the total Relative Losses suffered by this group are in the region of £4 billion, in the context of the constrained state of the public finances and the many competing spending priorities across Government, the Government decided that £1.5 billion was a substantial sum.

The Government also decided that it would cover the losses of With-Profits Annuitants in full as they were the oldest, most vulnerable group. To determine how to distribute the remaining funds, the Government established the Independent Commission on Equitable Life Payments.

The Commission invited views on this matter from interested parties and considered a number of options. Its final recommendation was that the simplest approach was for a 22.4 per cent pro-rata to be applied to payments to non With-Profits Annuitants, with a £10 de minimis for payments. The Government accepted the recommendations and a copy of the Commission's report can be found on the Commission's website[1].

1 http://equitablelifepaymentscheme.independent.gov.uk/resources/final_icelp.htm

EU: Credit and Debit Cards

Questions

To ask Her Majesty's Government what estimate they have made of the costs and benefits for (1) consumers, and (2) small businesses, of holding and using credit and debit cards as a result of the European Commission's green paper Towards an integrated European market for card, internet and mobile payments and of its proposals to regulate interchange rates. [HL646]

To ask Her Majesty's Government whether they have assessed the impact of the European Commission's green paper Towards an integrated European market for card, internet and mobile payments on the development of new products that could be beneficial for consumers, such as contactless payments and mobile payments technology. [HL647]

To ask Her Majesty's Government what analysis they have made of the impact on consumers and small businesses in the United States and Spain of the introduction of interchange regulation on card payments; and what assessment they have made of the potential impact in the United Kingdom of proposals for similar regulation from the European Commission. [HL648]

To ask Her Majesty's Government what evidence they will use in gauging the impact on consumers and small businesses of European Commission proposals to regulate interchange on card payments. [HL649]

To ask Her Majesty's Government what assessment they have made of the impact of interchange regulation on the United Kingdom's e-commerce industry. [HL650]

The Commercial Secretary to the Treasury (Lord Deighton): The European Commission is expected to publish its response to the Green Paper consultation Towards an Integrated European market for card, internet and mobile payments later this summer, together with a legislative proposal to regulate multilateral interchange fees on card payments. The proposal will be accompanied by an impact assessment.

The Government will make its own assessment of the legislative proposal once the proposal is published.

EU: Loans

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether all European Union citizens will be eligible to receive loans under their proposals to guarantee mortgages; and, if so, whether the properties concerned will have to be in the United Kingdom. [HL674]

The Commercial Secretary to the Treasury (Lord Deighton): Budget 2013 announced the Help to Buy: mortgage guarantee. This is a new scheme that will be available from January 2014. HM Treasury is currently working with stakeholders to determine the detailed design of the scheme.

The scheme outline document, published alongside Budget 2013, stated that the properties purchased under the scheme must be in the United Kingdom.

Exporters: Foreign Language Skills

Question

Asked by ***Baroness Coussins***

To ask Her Majesty's Government whether, in the light of the British Chambers of Commerce report Exporting is good for Britain but knowledge gaps and language skills hold back exporters, published on 10 June, they will assess the importance of language learning to Britain's future competitive position. [HL807]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie): Businesses are in the best position to understand what skills are needed in their organisation, including language skills for exporting. The Government's reforms are creating a dynamic and flexible skills system that responds to the changing needs of businesses and individuals through a demand led model. Local Enterprise Partnerships of businesses and civic leaders articulate skills strategies and priorities to drive growth in their area, and, in addition, the Employer Ownership Pilot is giving employers direct control of skills funding and skill solutions. In Higher Education language provision, the Higher Education Funding Council for England announced last month that an additional £3.1 million would support a new programme of activity to encourage more young people of all backgrounds to study languages at university.

UK Trade and Investment provides a subsidised service, available to Small and Medium Enterprises, which helps them to overcome language and cultural barriers in overseas markets. The service encourages companies to translate and localise both their marketing materials and their websites to meet the requirements of their overseas clients. Companies are signposted to organisations that can provide them with assistance selecting providers for translation and language skills.

Food: Beef

Question

Asked by ***Baroness Byford***

To ask Her Majesty's Government whether local authorities continue to collect samples of beef products on sale at retail and catering outlets on behalf of the Food Standards Agency; and, if so, whether the Food Standards Agency is recompensing them for the cost involved. [HL654]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Food Standards Agency is funding local authority sampling for meat speciation by DNA testing as part of the 2013-14 National Coordinated Feed and Food Sampling grants. This will include testing of beef products.

Food: Security and Nutrition

Question

Asked by ***Lord Cameron of Dillington***

To ask Her Majesty's Government whether, as part of the IDA17 negotiations, they will encourage the World Bank to raise the issue of nutrition in discussions with governments, for example in the Country Partnership Strategies, so that enhanced food security and nutrition are integrated alongside traditional economic indicators such as growth of gross domestic product. [HL633]

Baroness Northover: DFID has been working closely with the World Bank and, at the recent Nutrition for Growth event the Bank committed itself almost to triple its expenditure on nutrition to $600m in 2013-14. The Bank Group will also step up technical and analytical support to countries with the greatest prevalence of stunting or underweight children, and add stunting as a new indicator on the Bank Group's Corporate Scorecard.

G8

Question

Asked by ***Lord Eames***

To ask Her Majesty's Government what is their estimate of the cost of security arrangements for the G8 meeting in County Fermanagh; and from what source that expenditure will be met. [HL833]

Lord Wallace of Saltaire: The UK Government is committed to publishing the full costs of the policing and security operation after the Summit once the detail is available.

The costs of the policing and security operation will be shared across a number of government departments.

Gaza

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what discussions they have had with their European partners concerning the case for the United Nations to be able to co-ordinate its humanitarian response with the authorities in Gaza. [HL619]

Baroness Northover: The UN Resident and Humanitarian Coordinator and his team maintain the level of interaction with the de facto authorities in Gaza required in order to provide their assistance. DFID officials regularly discuss UN activity in Gaza with EU partners.

Health: Complementary and Alternative Medicines

Questions

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government how they will ensure the safety of herbal medicines currently entering the United Kingdom; and how they intend to regulate existing practice in that area. [HL638]

To ask Her Majesty's Government when they expect to legislate with respect to the practice of unlicensed herbalists. [HL640]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): With the introduction of Directive 2004/24 /EC and its related traditional herbal medicines registration scheme, all manufactured herbal medicinal products require an appropriate product licence before they can be placed on the market. The requirements of the scheme encompass safety, quality and the provision of patient information.

The Medicines and Healthcare products Regulatory Agency (MHRA) is responsible for enforcing medicines legislation in the United Kingdom. The MHRA will investigate any report of a company making medicinal products without the appropriate authorisation. In addition the MHRA also routinely monitors medicines being offered for sale on the internet. Where appropriate, enforcement action is taken against suppliers who operate outside the legal requirements.

The proposed policy to statutorily regulate herbal practitioners is complex and a number of issues have arisen which the Department is required to work through. An announcement will be made once these matters have been resolved.

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what consultations they have had with universities that have established courses for herbalists about their proposals to establish a statutory register for herbalists. [HL639]

Earl Howe: To date, the department has not specifically consulted with universities or providers of established courses for herbalists about setting up a statutory register for herbal medicine practitioners.

Health: Dental Health

Question

Asked by ***Baroness Gardner of Parkes***

To ask Her Majesty's Government whether they will ask the authorities now responsible for public health to include in their strategy preventative action on dental health, including the re-introduction of dental examinations in schools. [HL775]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We are committed to improving the oral health of school children. Learning has been gained from a number of recent locally based innovative approaches to oral health improvement. Dental public health leads in Public Health England are currently convening a steering group to commence work on a guidance document for local authorities on community based oral health improvement programmes, including those linked to schools. There are no plans to reintroduce school screening checks. In 2006, the National Screening Committee (NSC) advised that the routine dental screening of children in primary schools was ineffective in improving children's oral health. This policy is currently being reviewed as part of the UK NSC's regular review cycle of all policies.

Health: Ophthalmology

Questions

Asked by ***Lord Harrison***

To ask Her Majesty's Government what assessment they have made of decisions by healthcare commissioners that result in a restriction in the provision of cataract surgery. [HL734]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Clinical Commissioning Groups (CCGs) are now responsible for commissioning elective surgical interventions such as cataract surgery, with NHS England providing oversight and support. NHS England has general intervention powers in relation to CCGs, should it be satisfied that a CCG is failing or has failed to discharge any of its functions, or there is a significant risk that it will fail to do so.

NHS England have been clear that restricting access to services on the basis of cost alone is wrong and compromises patient care, and that decisions on treatments should be made by clinicians, based on what is most clinically appropriate for the patient.

Sir Bruce Keogh (NHS Medical Director) is working with the Medical Royal Colleges and others, so that the National Health Service is clear about the evidence base for common types of surgical interventions. The Royal College of Ophthalmologists has been asked to develop guidelines for clinical commissioning of cataract surgery. The National Institute for Health and Care Excellence is also developing a Quality Standard on cataracts, which will be added to the library of NHS Quality Standards. This library will play an important role in helping clinical commissioning improve outcomes and quality of care for patients.

Asked by ***Lord Harrison***

To ask Her Majesty's Government whether they have analysed the cost of minor injuries caused by the poor vision of people on waiting lists for cataract surgery. [HL735]

Earl Howe: This information is not available centrally.

Health: Prescriptions

Questions

Asked by ***The Countess of Mar***

To ask Her Majesty's Government why the patients of dispensing doctor practices in England are unable to nominate their doctor using the Electronic Prescription Service. [HL694]

To ask Her Majesty's Government what steps they took to ensure that the Electronic Prescription Service was procured with appropriate functionality for dispensing practices; and what assessment they have made of the level of functionality provided. [HL695]

To ask Her Majesty's Government when the change notice to enable patients to nominate their dispensing doctor under the Electronic Prescription Service will be implemented. [HL696]

To ask Her Majesty's Government when Release 2 of the Electronic Prescription Service will be fully available to the patients of dispensing practices. [HL697]

To ask Her Majesty's Government what is the estimated cost of the full implementation of Release 2 of the Electronic Prescription Service for dispensing practices; whether that cost forms part of the £260 million fund for e-prescribing and electronic patient records; and, if not, how the cost will be met. [HL698]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Electronic Prescription Service (EPS) is made up of several elements, a central component, a Release 2 compliant prescribing module within a practice system, a Release 2 compliant dispensing module within a dispensers' system and secure connectivity between the elements.

General practitioner (GP) practices and dispensers (pharmacies and appliance contractors), if a patient requests, populate the patient's central record to indicate the patient's nominated dispenser, to where an electronic prescription is sent to be dispensed. Up to three dispensing contractors can be nominated: a community pharmacy, a dispensing appliance contractor or, in the case of eligible dispensing patients, their dispensing GP practice can be indicated. However, only the GP practice should indicate, if the patient requests, that the dispensing doctor is one of the patient's nominated dispensers.

All practice systems now have a Release 2 compliant prescribing module and all but one pharmacy system have a Release 2 compliant dispensing module.

However, currently, only one practice system (Microtest) has provided the functionality to enable the practice to indicate if the patient requests, that the dispensing doctor is one of the patient's nominated dispensers. We understand that NHS England is exploring making this functionality a mandatory requirement for strategic systems under the new GP Systems of Choice (GPSoC) procurement that is currently underway. Subject to this, all EPS Release 2 compliant prescribing systems would be expected to provide this functionality in due course. Further, no EPS Release 2 compliant prescribing system has included a Release 2 compliant dispensing module within its system. If dispensing doctors require this within their system, they will need to negotiate this directly' with their system supplier themselves. Therefore, subject to EPS Release 2 compliant systems enabling nomination of a dispensing system as above, a dispensing doctor could operate EPS on behalf of their dispensing patients by operating a system with a release 2 compliant prescribing module and a pharmacy system with a release 2 compliant dispensing module.

All GP practices are eligible to receive a centrally funded practice system with a Release 2 compliant prescribing module as part of the GPSoC programme. However, information technology (IT) to support a dispensing doctor's dispensing activity is not covered by GPSoC and practices are responsible for any dispensing system or dispensing component within their practice system that they need to provide this dispensing service. Any funding for this would need to be considered as part of the negotiations for the provision of pharmaceutical services by dispensing doctors.

The £260 million fund is to support the deployment of e-prescribing in secondary care. It is not expected to support the deployment of EPS in primary care.

EPS Release 2 is currently deployed to ten percent of GP practices in England. Current projections see EPS Release 2 rolled out to the vast majority of English GP practices by 2017.

House of Lords: Security

Question

Asked by ***Lord Campbell-Savours***

To ask the Chairman of Committees (1) on what date, (2) at what costs, and (3) for what purpose, the Visitor QR Code Scanner and all associated equipment was installed at Peers' Entrance to the House of Lords. [HL722]

The Chairman of Committees (Lord Sewel): The scanner and all associated equipment was installed at Peers' Entrance on 14 May 2013, as part of a trial to improve the reception arrangements for guests at Peers' Entrance and to enhance access security in respect of visitors. The total cost of the project to date is approximately £20,000 (including VAT). As well as the costs relating to the scanner and associated equipment, this figure also includes additional costs, such as those incurred for software and training.

Houses of Parliament: Demonstrations

Question

Asked by ***Lord Goodlad***

To ask the Chairman of Committees what controls exist over the holding of demonstrations in Old Palace Yard, and over the noise generated by such demonstrations; and what steps are taken to minimise disruption to those working in the Palace of Westminster. [HL546]

The Chairman of Committees (Lord Sewel): The Western side of Old Palace Yard is not part of the Parliamentary Estate so it would not be appropriate for me to comment on the enforcement of the law governing demonstrations there, which includes provisions of both primary legislation and local authority byelaws.

The management of demonstrations is a matter for the Metropolitan Police, and operational decisions regarding the noise level are a matter for them. Black Rod works in close contact with the Metropolitan Police on a continual basis to ensure that access to the House is maintained and disruption to its work is minimised.

Housing: Mortgages

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether their proposals for guaranteeing mortgages will include a forecast by the Office for Budget Responsibility of (1) the impact of the scheme on house prices, and (2) the consequences for house prices and borrowers of eventually terminating the scheme; and what methodology will be used to determine a fair premium for the risk. [HL676]

The Commercial Secretary to the Treasury (Lord Deighton): Budget 2013 announced the Help to Buy: mortgage guarantee. This is a new scheme that will be available from January 2014 and HM Treasury is currently working with stakeholders to determine the detailed design of the scheme.

The scheme outline document, published alongside Budget 2013, stated that the fee will be set so that the scheme is self-financing. Lenders will, therefore, need to compensate the Government for expected losses under the scheme, the cost of capital of providing the guarantee and the administrative costs of the scheme.

It is for the Office for Budget Responsibility (OBR) to produce the official economic and fiscal forecasts. These are based on all government policies and take into account the impact of new policies on the economic forecast. The OBR's 'Economic and Fiscal Outlook[1] sets out the key assumptions, conventions and projections underpinning the forecast, including the forecast for house prices. The OBR is expected to scrutinize a costing of the scheme and also set out its updated forecast in due course.

[1] http://budgetresponsibility.independent.gov.uldeconomic-and-fiscal-outlook-march-2013/

Housing: Smoke Alarms

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government whether they will introduce legislation to require residential property landlords to provide and maintain smoke alarms in their properties. [HL730]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): I refer the noble Lord my recent answer of 10 June 2013, *Official Report*, Col. WA215.

Human Trafficking

Questions

Asked by ***Baroness Doocey***

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 22 April (WA 387) which stated that 27.5 per cent of Nigerian children referred to the National Referral Mechanism have received a positive conclusive grounds decision, what is the main reason for a refusal of a conclusive grounds decision; and whether the percentage of Nigerian children receiving a positive conclusive grounds decision is consistent with that of other nationality groups referred to the National Referral Mechanism. [HL509]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): As of 23 May 2013 data from the National Referral Mechanism records 171 potential child victims of trafficking with a declared country of origin of Nigeria referred since April 2009. Of these, 28.7 per cent have received a positive conclusive ground decision. 11.7 per cent have received a negative conclusive grounds decision and 23.4 per cent are awaiting a conclusive grounds decision. One case was withdrawn and in five cases there has been a suspension of consideration.

989 potential child victims of trafficking (excluding those with a declared country of origin of Nigeria) have been referred to the National Referral Mechanism since April 2009. Of these, 35.5 per cent have received a positive conclusive ground decision, 12.4 per cent have received a negative conclusive grounds decision and 15.6 per cent are awaiting a conclusive grounds decision.

Refusal of a conclusive grounds decision, in any case of potential trafficking, is because the facts of the case do not, on the balance of probabilities, meet the criteria set out in competent authority guidance. Competent authority guidance for UK Visas and Immigration staff is available online at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary.

A copy will be placed in the House Library.

Asked by ***Baroness Doocey***

To ask Her Majesty's Government whether local authorities are asked to pay for specialist care and safe accommodation for 16- and 17-year old child victims of trafficking out of the £71 per child per day grant currently given by the UK Border Agency to reimburse care arrangements for asylum-seeking children. [HL556]

To ask Her Majesty's Government whether local authorities are asked to pay for specialist care and safe accommodation for 18-year old victims of trafficking in the leaving care system out of the £150 per child per week grant for formerly relevant children currently given by the UK Border Agency to reimburse care arrangements for asylum-seeking young people. [HL557]

Lord Taylor of Holbeach: The Home Office provides funding to local authorities to assist with their costs in supporting unaccompanied children who have claimed asylum, including the proportion who have been trafficked. The funding is used to cover the costs of providing foster parents or other accommodation arrangements, as well as the costs of the social workers who provide appropriate care.

Currently, £95 per day is provided for each supported child aged under 16 and £71 per day for each child aged 16 or 17. Extra funding is also provided to those local authorities that support high numbers of cases, generally because of their proximity to our major ports or asylum screening offices.

Local authorities usually have a duty to continue to provide support ("leaving care support") to the persons after they reach 18 years of age provided they are legally entitled to remain in the United Kingdom, for example because they have been granted refugee status. £150 per week is provided to the local authority for each person supported in this way. This funding is additional to the mainstream benefits and housing assistance available to the majority of cases.

Local authorities only have a duty to provide leaving care support to persons aged over 18 who have been refused asylum and remain unlawfully present in the United Kingdom if the provision of support is necessary for human rights reasons. For this reason, Home Office funding ceases three months after the person's asylum claim and any appeals are finally determined as refused.

Asked by ***Lord McColl of Dulwich***

To ask Her Majesty's Government, in relation to European Union Directive 2011/36 on combating human trafficking, why the notification made to the European Commission on 25 April 2013 was of only partial transposition of the Directive; and when they expect to be able to notify the Commission of full transposition. [HL798]

Lord Taylor of Holbeach: The Government notified the Commission of full compliance in April, subject to the Criminal Justice Act Northern Ireland receiving Royal Assent. This was received on 25 April 2013 with

the human trafficking provisions commencing on 26 April. I expect the Commission to reflect our full position shortly.

Asked by ***Lord McColl of Dulwich***

To ask Her Majesty's Government what documents have been submitted to the European Commission in support of the notification of transposition of European Union Directive 2011/36 on combating human trafficking; and whether they will place copies of those documents in the Library of the House. [HL799]

Lord Taylor of Holbeach: A transposition table, including details of those documents that transpose the Directive, was submitted to the Commission by the deadline. I have placed a copy in the Library of the House.

Immigration

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government how many families were separated for the purposes of immigration control in 2012; what were the outcomes for the children separated; how many families were reunited; and how many children are currently in statutory care as a result of being separated from their parents. [HL637]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): For immigration controls at the border, Border Force will endeavour, where possible, to keep family groups together. However, family groups are occasionally separated in specific circumstances, as outlined below:

Where a family group includes adults who are judged to have a high risk of absconding staff will aim to detain the whole family group until their return flight. Where this is not possible one of the adults, usually the head of the family could be detained as an incentive for the rest of the family to comply with temporary admission.

Unaccompanied children who arrive in the UK where there is no suitable family member to care for them are referred to Children's Services. This could include children where the person coming to collect them has not produced sufficient evidence that they are a family member as claimed or where there are doubts about the suitability of the family member to care for the child. These cases are referred to Children's Services so that they can make a professional assessment of the risks involved in allowing the child to be cared for by the adult.

In addition a child may arrive accompanied by an adult who claims to be a family member but if there are doubts about the claimed relationship or suspicions that the child may be a victim of trafficking then the child will be separated from the adult pending further investigations by Children's Services and if appropriate the police.

We hold some local data on cases where families were separated at the border for the purposes of immigration control in 2012. However, the way in which cases are recorded varies between ports. To obtain an accurate record of how many families were separated at the border could only be obtained at disproportionate cost.

For immigration control inland, information is not recorded in a reportable field on the Home Office's Case Information Database (CID). Obtaining such information would therefore require a manual search of records and could only be achieved at disproportionate cost.

Immigration: Unaccompanied Children

Question

Asked by ***Baroness Doocey***

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 21 May (WA 59), how many non-British children were intercepted at Greater London and south-east regional ports in 2012. [HL507]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): 1,386 non-British children were intercepted at Greater London and south-east regional ports in 2012.

We have taken Greater London and south-east regional ports to mean the following ports: Gatwick, Heathrow, Stansted, Luton, London City, Southend and St Pancras International.

Caveat: The figure quoted above is management information, which is subject to internal quality checks and may be subject to change.

Israel

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what discussions they have had with their European partners about the case for Israel incurring penalties for its policies of forced displacement and settlement building. [HL622]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The issue of Israeli settlement construction and demolition of Palestinian homes in the Occupied Palestinian Territories is a subject of active discussion with our EU partners. The EU remains deeply concerned by continued settlement construction, which threatens the viability of the two-state solution.

The Secretary of State for Foreign and Commonwealth Affairs, my right honourable Friend the Member for Richmond (Yorks) (Mr Hague), has been talking to others, including the French and German Foreign Ministers, about how EU member states can actively support US Secretary of State John Kerry's efforts to revive the peace process over the coming months, with European states contributing to incentives and

disincentives for both sides to make progress towards a return to negotiations. But we continue to believe that imposing penalties would do nothing to promote the peace process, and that negotiations are the only route out of this impasse.

Luxembourg Compromise

Questions

Asked by ***Lord Jopling***

To ask Her Majesty's Government what is the procedure to be followed when a Minister seeks to invoke the Luxembourg Compromise mechanism in European Union negotiations. [HL652]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The Luxembourg Compromise is a convention which has not been formalised and the procedure for invoking it is not defined. However, it remains in place following the entry into force of the Lisbon treaty.

Asked by ***Lord Jopling***

To ask Her Majesty's Government, further to the Written Answer by Lord Deighton on 3 June (WA 139), whether the "relevant negotiating and legal framework" includes the use of the Luxembourg Compromise mechanism. [HL653]

The Commercial Secretary to the Treasury (Lord Deighton): The Luxembourg Compromise is a convention that has not been formalised and the procedure for invoking it is not defined. However, it remains in place following the entry into force of the Lisbon treaty.

The Government reserves the right to use all available negotiating tools to block any proposal that may adversely affect its national interest, including in relation to financial services.

Order of St Patrick

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether the Order of St Patrick is presently closed for new members; and, if so, whether they will review the arrangements governing its re-opening for individuals associated with, and who have given service to, Northern Ireland; and whether women can be invested with the Order. [HL757]

Lord Wallace of Saltaire: The Order has effectively been in abeyance since the establishment of the Republic of Ireland in 1922. There are no plans to review existing arrangements.

Pakistan

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government what assistance they have offered to the government of Pakistan to maintain their polio eradication campaign following the attacks on volunteers in Kaga Wala village on 28 May. [HL572]

Baroness Northover: We strongly condemn the recent attacks on volunteers in Kaga Walla, and any attack or threat against aid workers who are trying to help others. We are committed to maintaining the progress of recent years and ultimately see the eradication of polio from Pakistan.

The UK is a long-standing contributor to the global polio eradication effort and remains deeply committed to this goal. At the Global Vaccine Summit in Abu Dhabi in April the UK made a new commitment of up to £300 million over six years for polio eradication, in support of the Global Polio Eradication Initiative's Eradication and Endgame Strategic Plan. This will include support to Pakistan - one of just three countries where polio is still endemic. We also provide support via GAVI to help the Government of Pakistan develop comprehensive immunisation plans.

Pensions

Question

Asked by ***Baroness Thomas of Winchester***

To ask Her Majesty's Government what assessment they have made of the adequacy of pension provision for wives resulting from husbands buying single annuity pensions; and whether they intend to hold talks with the insurance industry to find ways to encourage more husbands to take out joint annuities. [HL631]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): DWP has not made a specific assessment of the adequacy of pension provision for wives resulting from the annuity decisions of their husbands.

DWP and wider research illustrates that the great majority of married people purchasing annuities have a good awareness of joint life annuities. However, they will not always purchase or prefer such annuities. Research evidence suggests a range of factors influence their final decisions. Indeed, it will not always be appropriate for a married couple to have a joint life annuity.

DWP has been working with the industry through the Open Market Option Review Group to find ways of encouraging people to consider what type of annuity is most appropriate for their needs. The Group has delivered a number of measures to offer increased support to people in considering their options.

Planning: Land Value

Question

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government whether they have made an assessment of the potential rise in land values attributable to large infrastructure projects in progress or planned; and whether they will promote the use of some of the developer or landowner gains to help finance the projects. [HL700]

The Commercial Secretary to the Treasury (Lord Deighton): The Government promotes the use of developer gains to finance infrastructure projects where it is viable and fair to do so. These options to capture increases in land value associated with major infrastructure are considered on a project by project basis.

For example, in 2012 two developer funded revenue streams were established by the Greater London Authority to secure a £1 billion loan from the Treasury for the Northern Line extension to Battersea:

1) The growth in business rates revenue in the development sites around the new station within a new 'Nine Elms Enterprise Zone'.

2) Contributions from local developers collected by the local authority under the section 106 and Community Infrastructure Levy (CIL) regimes in the planning system.

In a separate example, the Mayor of London has introduced a new charge on development in London to raise £300 million to fund Crossrail. The Community Infrastructure Levy charge is set according to the Borough's average house price and the extent to which it will benefit from Crossrail; thereby capturing a portion of the land value uplift from the developer.

Infrastructure UK and Government bodies will continue to innovate financially to help both the private and public sector deliver Britain's next generation of infrastructure.

Planning: Onshore Wind

Question

Asked by ***Lord Hunt of Chesterton***

To ask Her Majesty's Government, further to the statement by Baroness Hanham on 6 June, whether their proposed changes to local planning procedures will allow communities near proposed wind farms to object on the grounds of anticipated excessive noise. [HL681]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The National Planning Policy Framework is clear that an application for renewable energy development should only be approved if its impacts are, or can be made, acceptable. Where relevant such impacts include noise.

The Government announced that compulsory pre-application consultation with local communities will be introduced in England for more significant onshore wind development. Once this requirement is in place, during this pre-application consultation communities may choose to raise concerns about planning issues such as noise. Communities are already able to raise concerns once a formal planning application has been made, through the statutory consultation process.

Post-2015 Development Framework

Question

Asked by ***Baroness Coussins***

To ask Her Majesty's Government what place they expect corporate sustainability reporting to have in the post-2015 development framework. [HL607]

Baroness Northover: The government welcomes the attention paid to corporate sustainability reporting in the recently published report of the High Level Panel on Post-2015, co-chaired by the Prime Minister. We are working with others to explore ways to continue this helpful focus into the final post-2015 framework, to be agreed in the United Nations.

Schools: Free Meals

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government how they are encouraging more parents and guardians whose children are entitled to free school meals to apply for that benefit; and what action they are taking to reduce the social stigma associated with applying for such benefits for (1) parents or guardians, and (2) their children. [HL686]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The Government is committed to increasing the take-up of free school meals by pupils who are entitled to them. We want disadvantaged pupils to benefit from nutritious meals, and for their schools to receive extra funding through the Pupil Premium in order to help them to raise the attainment of these pupils.

In order to encourage all schools to take action to remove the stigma which is sometimes attached to free school meals and to encourage all those who are eligible to apply, the Department provides guidance on good practice and steps that schools and local authorities can take to encourage take-up of free school meals, for example by informing parents that registering for free school meals is confidential.

The Department's online Eligibility Checking Service enables parents to apply for school meals without having to give the school information about their income from benefits or earnings. We are encouraging local authorities to increase their use of this resource so that more parents have the opportunity to apply online.

A number of schools and local authorities have implemented cashless payment systems, which help ensure that those children who are receiving free school meals cannot be identified.

Schools: Funding

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government whether they have plans to decrease funding for schools in the next spending review; and, if so, what safeguards they will put in place to ensure the quality of school dinners does not decrease. [HL684]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The Government has announced the amount of funding for schools up to and including the financial year 2014-15. Decisions about school funding for 2015-16 will be taken as part of the current Spending Round which concludes on 26 June 2013.

Independent reviewers, Henry Dimbleby and John Vincent, have been preparing an action plan for school food. The School Food Plan will be published later this summer, and will set out what needs to be done to increase the number of children eating good food and promote a positive food culture in schools.

Syria

Question

Asked by ***The Lord Bishop of Bath and Wells***

To ask Her Majesty's Government what representations they have made to the governments of Qatar and Saudi Arabia, and to the National Coalition for Syrian Revolutionary and Opposition Forces, regarding the release of Metropolitan Yazigi and Metropolitan Ibrahim, who were kidnapped in Syria on 22 April 2013. [HL563]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We are very concerned about this kidnapping, which highlights the seriousness of the situation in Syria. The Syrian National Coalition have confirmed that they do not know who is holding the two bishops or where they are being held. They have had no contact with the abductors or the bishops.

Along with prominent religious leaders, the Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs, my honourable Friend the Member for North East Bedfordshire (Mr Burt), has publicly condemned the kidnapping and urged whoever is holding the Bishops to release them immediately. Foreign and Commonwealth Office officials are in direct contact with the Greek Orthodox Patriarch's office about this case.

Violent Extremism

Question

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

To ask Her Majesty's Government whether they will encourage an international conference of Muslim religious leaders to address the issue of violent extremism within Islam. [HL617]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): This country is resolute in its stand against violent extremism. As the Prime Minister, my right hon. Friend the Member for Witney (Mr Cameron), has made clear, there is no religious justification for these acts, and he has stressed that al-Qaeda-inspired terrorism has taken more Muslim lives than any others. We are working with international partners and religious leaders worldwide to combat violent extremism.

Visas

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government, further to the Written Answer by Lord Taylor of Holbeach on 3 June (WA 154), whether they have any plans to amend the existing Immigration Rules to identify those Israeli citizens who are domiciled in an illegally occupied territory with a view to requiring them to secure a visa for any visit to the United Kingdom. [HL603]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): There are no plans to amend the Immigration Rules that would see Israeli citizens, regardless of where they are domiciled, requiring a visa to visit the UK.

Waterways: Sewage

Questions

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government how many combined sewage overflow pipes are located between the Thames Barrier and the source of the Thames; what are the locations of each of those pipes which relate to overflow at sewage pumping stations; and what are the locations of each of those pipes which relate to gravity-fed combined sewer overflows. [HL800]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): There are 446 permitted discharge points into the River Thames, of which 34 could be classed as combined sewer overflows ("Sewage Discharges—Sewer Storm Overflow—Water Company" in Table 1). A further 57 sewage treatment works are permitted to make discharges under storm conditions.

The permitted discharges to and within 250 metres of the main River Thames (between source and the Thames Barrier), are listed in Table 1.

Table 1 Permitted discharges to the River Thames, or within 250 metres of the River Thames

Type of discharge	*Number of permits*
Miscellaneous Discharges - Mine/Groundwater As Raised	2
Miscellaneous Discharges - Surface Water	15

Table 1 Permitted discharges to the River Thames, or within 250 metres of the River Thames

Type of discharge	*Number of permits*
Miscellaneous Discharges - Swimming Pool Water	1
Miscellaneous Discharges - Unspecified	1
Sewage & Trade Combined - Unspecified	9
Sewage Discharges - Final/Treated Effluent - Not Water Company	233
Sewage Discharges - Final/Treated Effluent - Water Company	6
Sewage Discharges - Pumping Station - Water Company	57
Sewage Discharges - Sewer Storm Overflow - Water Company	34
Sewage Discharges - STW Storm Overflow/Storm Tank - Water	43
Company	
Trade Discharges - Cooling Water	12
Trade Discharges - Process Effluent - Not Water Company	21
Trade Discharges - Process Effluent - Water Company	5
Trade Discharges - Site Drainage	6
Trade Discharges - Unspecified	1
Grand Total	446

The locations of permitted discharges that relate to overflows from sewage pumping stations are listed in Table 2, below. The locations of those pipes which relate to permitted gravity-fed combined sewer overflows are listed in Table 3.

Table 2: Locations of permitted discharges that relate to overflows from sewage pumping stations

Site name	*National Grid Reference*	*Receiving watercourse*	*Operator*
Kew PS, West Hall Road, Kew	TQ1980077000	Tidal River Thames	Thames Water Utilities Ltd
Emergency discharge, Egham Water Wo	TQ0237071740	Thames	Veolia Water Central Ltd
Kemble Pumping Station, Kemble, Glo	ST9961097390	Thames	Thames Water Utilities Ltd
Baldwins Shore	SU9670077800	Thames	Thames Water Utilities Ltd
Blue Cottage	SU7760078800	Thames	Thames Water Utilities Ltd
Brading Way	SU6670076200	Thames	Thames Water Utilities Ltd
Brentford Dock	TQ1780077200	Tidal River Thames	Thames Water Utilities Ltd
Bridge End, Dorchester	SU5700094000	Thames	Thames Water Utilities Ltd
Burcot	SU5570096000	Thames	Thames Water Utilities Ltd
Camps Pool	SU7850079100	Thames	Thames Water Utilities Ltd
Cattle Market	SU6090089200	Thames	Thames Water Utilities Ltd
Chertsey Lane (N)	TQ0350070700	Thames	Thames Water Utilities Ltd
Cleeve - Goring	SU6010081400	Thames	Thames Water Utilities Ltd
Court Gardens	SU8490086200	Thames	Thames Water Utilities Ltd
Cricklade (Hatchetts)	SU1040093900	Thames	Thames Water Utilities Ltd
Dorney Reach	SU9170079200	Thames	Thames Water Utilities Ltd

Table 2: Locations of permitted discharges that relate to overflows from sewage pumping stations

Site name	*National Grid Reference*	*Receiving watercourse*	*Operator*
Eastfield Lane	SU6390077100	Thames	Thames Water Utilities Ltd
Fairmile Hospital	SU5990085300	Thames	Thames Water Utilities Ltd
French Horn	SU7520075800	Thames	Thames Water Utilities Ltd
Friday Street, Henley	SU7630082700	Thames	Thames Water Utilities Ltd
Grandpont	SP5100005300	Thames	Thames Water Utilities Ltd
Ham Haugh Island, Shepperton	TQ0720065700	The Bourne	Thames Water Utilities Ltd
Hambleden - Mill End	SU7850085000	Hamble Brook	Thames Water Utilities Ltd
High Street, Staines	TQ0350071500	Thames	Thames Water Utilities Ltd
Jew's Row Pumping Station	TQ2600075500	Tidal River Thames	Thames Water Utilities Ltd
Kingston Main	TQ1780069601	Thames	Thames Water Utilities Ltd
Laleham Park	TQ0510067800	Thames	Thames Water Utilities Ltd
Lammas Drive (Foul), Wraysbury	TQ0260072000	Thames	Thames Water Utilities Ltd
Littlemore Low Level	SP5250002900	Thames	Thames Water Utilities Ltd
Lock Island, Shepperton	TQ0740065901	Thames	Thames Water Utilities Ltd
Lower Cookham Rd Car Park	SU9030082500	Thames	Thames Water Utilities Ltd
Lower Hampton Road	TQ1200069100	Thames	Thames Water Utilities Ltd
Lower Wharf	SU6080089100	Thames	Thames Water Utilities Ltd
Mill	SP5310001400	Sandford Lock Cut	Thames Water Utilities Ltd
O'Hagans Hampton Court Road	TQ1500068900	Thames	Thames Water Utilities Ltd
Old Windsor B	SU9900073700	Thames	Thames Water Utilities Ltd
Osney Mead	SP5020005600	Thames	Thames Water Utilities Ltd
Park Road, Henley	SU7640082100	Cold Bath Brook	Thames Water Utilities Ltd
Petersham (Buccleugh) - Kew S.T.	TQ1810073800	Tidal River Thames	Thames Water Utilities Ltd
Pharoah's Island	TQ0690065900	Thames	Thames Water Utilities Ltd
Raymill Rd. East	SU9000081600	Thames	Thames Water Utilities Ltd
Red Lion Square Hampton	TQ1390069400	Thames	Thames Water Utilities Ltd
River Gardens	SU9060079600	Thames	Thames Water Utilities Ltd
Saxon's Cross	SU5450093700	Thames	Thames Water Utilities Ltd
Scouts Camp	SU8590085900	Thames	Thames Water Utilities Ltd
Shooters Hill	SU6290076800	Thames	Thames Water Utilities Ltd
St. Albans Hampton Court Road	TQ1430069300	Thames	Thames Water Utilities Ltd
Staines Road	TQ0490069400	Thames	Thames Water Utilities Ltd

Table 2: Locations of permitted discharges that relate to overflows from sewage pumping stations

Site name	National Grid Reference	Receiving watercourse	Operator
Suttons Seeds	SU7370073900	Thames	Thames Water Utilities Ltd
The Island (Foul), Wraysbury	TQ0120072500	Thames	Thames Water Utilities Ltd
Watermans Way	SU7800078500	Bowsey Hill Brook	Thames Water Utilities Ltd
Wharf Road	SU5940092600	Thames	Thames Water Utilities Ltd
Wheatsheaf Lane	TQ0380070200	Thames	Thames Water Utilities Ltd
White Hart, Sonning (SU758759)	SU7580075900	Thames	Thames Water Utilities Ltd
Willow Caravan Site	SU9350077200	Thames	Thames Water Utilities Ltd
Winterbrook	SU6070088700	Bradfords Brook	Thames Water Utilities Ltd
Yardmead	TQ0120072200	Thames	Thames Water Utilities Ltd

Table 3: locations of those pipes which relate to permitted gravity-fed combined sewer overflows

Site name	National Grid Reference	Receiving watercourse	Operator
HEATH WALL PS, LONDON	TQ2953077620	Tidal River Thames	Thames Water Utilities Ltd
EARL PS STORM OUTLET, LONDON	TQ3672078970	Tidal River Thames	Thames Water Utilities Ltd
GREENWICH PS, GREENWICH, LONDON	TQ3889078150	Tidal River Thames	Thames Water Utilities Ltd
WESTERN PS LOW LEVEL SEWER, LONDON	TQ2868077940	Tidal River Thames	Thames Water Utilities Ltd
SHAD, THAMES PS, LONDON	TQ3381080060	Tidal River Thames	Thames Water Utilities Ltd
HAMMERSMITH PS, LONDON	TQ2304078160	Tidal River Thames	Thames Water Utilities Ltd
COUNTERS CREEK, LOTS ROAD PS, LONDON	TQ2657177100	Tidal River Thames	Thames Water Utilities Ltd
LONDON, ISLE OF DOGS PUMPING STATION	TQ3838079720	Tidal River Thames	Thames Water Utilities Ltd
Angel Road Sewer Storm Overflow, He	SU7630082502	Thames	Thames Water Utilities Ltd
Ashton Keynes	SU0640093401	Thames	Thames Water Utilities Ltd
Barnes Storm	TQ2139076420	Tidal River Thames	Thames Water Utilities Ltd
Cassington (New)	SP4660010100	Thames	Thames Water Utilities Ltd
Cookham	SU8930085901	Wey	Thames Water Utilities Ltd
Cole Stairs, Pennigton St, Wapping	TQ3557080660	Tidal River Thames	Thames Water Utilities Ltd

Table 3: locations of those pipes which relate to permitted gravity-fed combined sewer overflows

Site name	National Grid Reference	Receiving watercourse	Operator
Down Hall Road, Kingston	TQ1780069602	Thames	Thames Water Utilities Ltd
Temple Place, Essex Street	TQ3113080790	Tidal River Thames	Thames Water Utilities Ltd
Kew	TQ1980076800	Tidal River Thames	Thames Water Utilities Ltd
Lombard Road	TQ2670076400	Tidal River Thames	Thames Water Utilities Ltd
London Bridge	TQ3286080620	Tidal River Thames	Thames Water Utilities Ltd
Low Level 1 N, Grosvenor Ditch, Mil	TQ3026078790	Tidal River Thames	Thames Water Utilities Ltd
Medmenham	SU8180084401	Danesfield Brook	Thames Water Utilities Ltd
N E Sr Shadwell, King Edward Mem Pa	TQ3563080700	Tidal Thames	Thames Water Utilities Ltd
Nightingale Lane, Downstream Tower	TQ3416080190	Thames	Thames Water Utilities Ltd
Portsmouth Road, Uxbridge Road	TQ1770068000	Thames	Thames Water Utilities Ltd
Portsmouth Road, Surbiton Road	TQ1770068500	Thames	Thames Water Utilities Ltd
Portsmouth Road, Riverside Close	TQ1770068300	Thames	Thames Water Utilities Ltd
Ratcliffe Highway, Limekiln (Narrow Mem Pa	TQ3599080830	Tidal River Thames	Thames Water Utilities Ltd
Streatley	SU5970081001	Thames	Thames Water Utilities Ltd
Smith Street, Chelsea Embankment	TQ2811077790	Tidal River Thames	Thames Water Utilities Ltd
Pauls Pier Wharf, Thames Street	TQ3200080820	Tidal River Thames	Thames Water Utilities Ltd
West Putney S R, Home Way	TQ2349076241	Tidal River Thames	Thames Water Utilities Ltd
Whitchurch (Oxon)	SU6300076900	Thames	Thames Water Utilities Ltd
Windsor	SU9970075001	Thames	Thames Water Utilities Ltd
Waterman Street	TQ2400075700	Tidal River Thames	Thames Water Utilities Ltd

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what is the site name of the discharge point to the Thames of the outflow from the Little Marlow sewage works.

[HL801]

Lord De Mauley: The Little Marlow sewage treatment works discharges into the River Thames via outfalls on the north bank and is known locally as Spade Oak Reach (approximate National Grid Reference: SU 8779 8700). The Environment Agency refers to the site as Little Marlow sewage treatment works outfall.

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