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House of Lords

Wednesday, 19 June 2013.

3 pm

Prayers—read by the Lord Bishop of Liverpool.

Alternative Business Structures
Question

3.06 pm

Asked by ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government whether they propose to take action to prevent the re-emergence of the payment of referral fees through the use of alternative business structures.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, alternative business structures allow for increased competition and the provision of more cutting-edge services, helping to lower costs while maintaining high standards. However, they are required to comply with the rules of their licensing authority and the law in respect of the ban on referral fees.

Lord Hodgson of Astley Abbotts: My Lords, I am grateful to my noble friend for that Answer. In doing so, I congratulate the Government on the progress made in banning referral fees, which has led to a 5% reduction in motor insurance costs with a planned reduction of as much as 15%—an achievement in no way to be sniffed at. Is the Minister aware of the extent of the current challenge to this new plan of the Government, which may undermine all the good work so far? For example, is he aware that Tesco, through its insurance company Fortis, has set up a new joint venture with a company called New Law, a personal injury claims specialist based in Cardiff? Will my noble friend accept that it is not doing this for its health? Will he have a word with the Legal Services Board and the Solicitors Regulation Authority, the body that authorises new firms, to see what their view is of new firms being established, apparently with the sole purpose of frustrating the will of Parliament?

Lord McNally: My Lords, if they are established with the sole purpose of frustrating the will of Parliament, they will break the law. I will certainly take up my noble friend's suggestion and talk to the Legal Services Board and the Solicitors Regulation Authority. We have had experience before of putting a law in place and some clever person trying to get around it, but we will take a close look and if they are trying to get around it, we will stop it.

Baroness Deech: Does the Minister agree that referral fees are a bad thing in all areas of the law, not just personal injury? They mean that professionals buy in services that they would not otherwise have and the consumer is deprived of choice. Will the Minister lend his support to the regulators, who are trying hard to maintain a broad ban on referral fees? I declare an interest as a regulator of the Bar.

Lord McNally: My Lords, referral fees are viewed with a certain suspicion, particularly when, as in the case of motor insurance, they were rising to about £800 a pop. That obviously fed into the cost of the insurance. After the first look, it was decided that the greatest abuse took place in motor insurance, and so we concentrated on that area. However, we will consult the regulators and consumer groups to see whether our experience of the ban should be extended to other areas.

Lord Marks of Henley-on-Thames: My Lords, the Solicitors Regulation Authority has approved licences for a number of alternative business structures, where claims management companies and even legal expenses insurers have joined forces with solicitors' firms. In this way, solicitors effectively get personal injury cases in return for a commercial benefit—precisely what LASPO sought to avoid. Will the Minister make it clear to the SRA and the profession that if ABSs clearly undermine the referral fee ban, further legislation is an option?

Lord McNally: My Lords, more than that, LASPO already allows us to extend the powers, if necessary. We therefore want to see the evidence that is emerging. If these groupings of separate facilities and companies seem to be using means to bypass the ban on referral fees, we will revisit our powers under LASPO. I understand the concern of the House on this matter.

Lord Beecham: My Lords, is the Minister aware that a solicitor whose practice is a major participant in referral schemes has recently been reported as saying that if a fee is paid for indirect referrals, whereby the client is merely given the name of the solicitor but has not received the name from the referring organisation, it would be outside the scope of the scheme? Is that a correct view?

Lord McNally: I do not think so. However, a lot of examples have sensibly been raised in the House today, some of them hearsay and some from direct experience, which suggest that what we intended to do in LASPO may not exactly be hitting the target, or that, as a result of organisational devices used by companies, the target has been moved. I can tell the House that we will talk to the regulators and look at some of these examples. If necessary, we will look at the powers that we were given under LASPO to make sure that we do what the House intended, which was to stop the practice of referral fees, particularly in the area of motor insurance.

Lord Faulks: My Lords, is the Minister regularly invited, as I am, to commit fraud, by which I mean that telephone calls are made by companies inviting one to sue for accidents that did not occur? Do the Government have any plans to deal with this, and are they aware that this is a frequent problem?

Lord McNally: I have not had direct experience of that particular problem, but within my family I have had direct experience of just how casually the law is treated in this area and how that has had a direct impact on the cost of motor insurance. Parliament tried to address part of this problem through the ban

[LORD MCNALLY]
on referral fees, but there are many murky practices around this area and the House is right to raise these issues. I will return to the MoJ with the clear message ringing in my ears that we should poke a little further into these murky businesses.

Children: Adult Material Online
Question

3.14 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what plans they have to protect children from easily accessing pornography and other adult material online.

The Parliamentary Under-Secretary of State for Schools (Lord Nash): My Lords, through the UK Council for Child Internet Safety, jointly chaired by three government Ministers, the Government have gained commitment from the five main internet service providers actively to encourage new and existing customers to switch on parental internet controls if children are in the household. Public wifi providers are now filtering pornography in public places, and there is work under way with device manufacturers and retailers to encourage greater availability of parental controls.

Baroness Benjamin: I thank my noble friend for his Answer. Unfortunately there are many vulnerable children without parents, or who have uninterested parents, so no amount of awareness education will do anything for these kids. Many are already re-enacting pornographic behaviour on other children, as highlighted by the NSPCC. So will the Minister tell the House, as the service providers are working on filtering for new customers, why the Government do not insist that they offer filtering for their existing customers, and block porn and adult material by default as part of the solution to protect all children before they end up in a moral wasteland?

Lord Nash: We have asked the ISPs actively to encourage people to switch on parental controls if there are children in the household, whether they are new or existing customers. The ISPs regularly contact existing customers through e-mails and on their bills. We also want the ISPs to put in place measures to check that the person setting up the parental controls is over the age of 18. The five main domestic ISPs, which cover 90% of households in the UK, have committed to ensure that these measures are in place for existing as well as new customers by the end of this year.

Lord Hylton: My Lords, does the noble Lord agree with me that we are faced with harm to children, not only in this country but also overseas? For example, in south-east Asia, children can be kidnapped or bought and subjected to horrific abuse for the making of pornographic films. Does he further agree that action is needed on both the making and viewing of such films?

Lord Nash: I entirely agree. The fact that this happens is shocking, and the fact that it is so easy for our children to access these dreadful images is shocking. Certainly, a step change in attacking images of child abuse on the internet was secured yesterday at a meeting with the Culture Secretary, Maria Miller; companies agreed to increase funding substantially to the Internet Watch Foundation so that it can now actively search, block and remove child abuse images. It will no longer have to wait for illegal material to be reported. Anyone trying to access a page blocked by the Internet Watch Foundation will see a warning message, known as a splash page, saying that they are trying to access illegal material. The industry will commit to sharing technological knowledge to enable all corners of the industry to tackle the availability of these appalling images online.

Baroness Lane-Fox of Soho: I thank the noble Baroness for her Question, which is a fundamental one. While the corporate sector has an immensely important role to play, so does education, and so do schools. I refer the Government to the work that Professor Tanya Byron did on this subject under the previous Government, which is extraordinarily sensible, and a simple way for schools to adapt to the learning that is incredibly important around this issue.

Lord Nash: I agree entirely with the noble Baroness that schools have a big role to play, and I am aware of Tanya Byron's work. Parents have a big role to play as well. It is quite clear that too many members of our modern generation are exposed to unacceptable sexual images, and they should be taught about the importance of relationships.

Lord Harris of Haringey: My Lords, the Government's initiatives in this field are clearly welcome. The question is whether they go far enough. Why is so little effort being put into working with the industries to ensure that there is a robust system of age and identity verification available for those who try to access services of all sorts on the internet? Not only could those who use child pornography be identified, it would also protect children from seeing things that they should not see, and it would no doubt solve all sorts of other problems that we might have in respect of material which is available online.

Lord Nash: The noble Lord is quite right. The Government want the industry to develop robust age verification systems to prevent children and young people being able to access these images. ISPs are bringing in closed loop e-mails so that when the filters are changed in a home, an e-mail is sent to the account holder and therefore to the adult. There is a major piece of work going on through UKCISS, but it is true that it will be difficult to ensure that all pornographic sites have robust age verification systems in place as many—indeed, most of them—are hosted outside the UK.

The Lord Bishop of Liverpool: My Lords, in light of yesterday's question about sex education, and the important Question put by the noble Baroness, Lady Benjamin, can the Minister tell the House whether

there is interdepartmental working that involves the Department for Education, the Department of Health, the Department for Culture, Media and Sport and the Ministry of Justice?

Lord Nash: There is, on a number of fronts, including work on troubled families, but I think that the right reverend Prelate's question merits a more detailed answer, so I shall write to him.

Baroness Sharples: Why do parents allow their children to have computers in their rooms, and even encourage them?

Lord Nash: Or televisions, for that matter. I agree. However, it is a fact of life these days, I am afraid, that the internet is the pavement for our children. That is why this is such an important issue, and parents do not understand enough about it.

Baroness Hughes of Stretford: My Lords, schools are also central to safeguarding children in this area. Yesterday the Minister said that teachers should be able to teach internet safety effectively in computing classes. With respect, I doubt that anyone knowledgeable in this area agrees with that view, because it requires teachers trained in addressing these difficult personal and social issues with young people—and that will not happen in a computing class. One of the most compelling arguments for statutory personal, social and health education within the national curriculum is the provision of specially trained teachers. Will the Government now consider making these important child safety issues part of the national curriculum?

Lord Nash: The noble Baroness and I entirely share that view about the importance of teaching children PSHE. We are bringing in e-safety for the first time in both primary and secondary computer science—and we trust teachers to deliver the pastoral care that their children need. Oddly, the Opposition, who are the party of the unions, do not seem to do so. However—I said it twice yesterday and I shall say it again today—we are not going to make PSHE statutory.

Armed Forces: Reserve Forces

Question

3.23 pm

Asked by ***The Earl of Shrewsbury***

To ask Her Majesty's Government what plans they have for the future of the Army Reserve Forces and in particular for the Royal Mercian and Lancastrian Yeomanry and its component squadrons.

The Earl of Shrewsbury: My Lords, in asking the Question standing in my name on the Order Paper, I declare an interest as a former honorary colonel of A Squadron RMLY.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, the 2011 independent commission on the Reserve Forces reported that they needed to be brought up to date to meet the needs of the new security environment. The Government published a Green Paper followed by a consultation, which generated around 3,000 responses from reservists, their families, regulars, employers, employer organisations and other interested parties. These have helped to shape the way forward, which we shall set out in a White Paper, with a ministerial announcement shortly.

The Earl of Shrewsbury: I am grateful to my noble friend for his Answer. However, is he aware that the Royal Mercian and Lancastrian Yeomanry, which is based in Telford in Shropshire, has a fine recruitment record and currently enjoys a local regimental laydown with its component squadrons? This would be completely lost should the regimental headquarters be moved out of the area. Is he further aware that, bearing in mind the Prime Minister's recent commitment to expand the role and establishment of the Reserve Forces, there is a simple low-cost solution to this problem? That is, simply do not change the current structure of the yeomanry.

Lord Astor of Hever: My Lords, I pay tribute to my noble friend for the very important work he does as an honorary colonel. To meet the likely scale of the security challenges the nation is likely to face, we are configuring our Armed Forces into a new structure under Future Force 2020. Reserve Forces will be central to this and will in future form a great proportion of the whole force delivering a range of capabilities and skills, some of which will be held only in the reserves. This will involve changes to some units but it is too early to say what those will be.

Viscount Brookeborough: Would the Minister not agree with me that in increasing the number of reserves, one of the most important things is the employer and employer relations? We still have not managed to provide the right recipe for them in every case to support members of their businesses in becoming reserves. I declare an interest in that I was on the National Employers' Advisory Board and in the Army.

Lord Astor of Hever: My Lords, the noble Lord makes a very important point and we realise that this is a key area that we must get right. We are grateful to those employers who play a very important role. We recognise that the needs of employers must be understood and respected. That is why we are moving to relationships with employers based on partnering, giving greater predictability and certainty to when reserves will be required for training or, indeed, deployment.

Lord Rosser: My Lords, in the House of Commons on Monday, the Minister for the Armed Forces said:

"I am relatively confident that enough people will come forward to join the reserves and that we can look forward to having a vibrant reserve Army".—[*Official Report*, 17/06/13; col. 609.]

Does the Minister share the doubts of his ministerial colleague, betrayed in that answer, that the target figure of 30,000 for our Reserve Forces may not be achieved? Can the Minister give an undertaking that the size of our Regular Army will not be reduced to the intended figure of 82,000 unless and until our Reserve Forces have been increased to 30,000 and have been appropriately trained?

Lord Astor of Hever: My Lords, we are confident that the reinvigorated reserves will deliver the quality and the number of reservists we require in future, both in training and in operations. Over the next 10 years, we are investing £1.8 billion to revitalise the reserves. We have also appointed a three-star general whose job will be to deliver this transformation, including the engagement that will be required with employers. Unfortunately, I cannot give the noble Lord, Lord Rosser, the undertaking that he asked me to give on the numbers.

Lord Palmer of Childs Hill: My Lords, the policy on this particular regiment highlights the many questions arising about our Reserve Forces as they grow to meet the demands of the Army 2020. Can the Minister say what thought has been given to the proposals to involve those Gurkhas now quite rightly in Britain in our Reserve Forces?

Lord Astor of Hever: My Lords, as my noble friend knows, the Government place great value on the contribution of Gurkhas, both past and present. Gurkhas already serve in the TA and ex-Gurkhas living in the UK can apply to join the reserves. The recent launch of the TA Live campaign encourages ex-regulars, including Gurkhas, to join. While we are not minded to have an exclusive ex-Gurkha reserve unit, the Brigade of Gurkhas is working with recruiters proactively to recruit ex-Gurkhas into the reserves.

Lord Trefgarne: My Lords, in addition to ensuring that our Reserve Forces are sufficiently numerous, is it not also important that they are properly equipped and do not just have to make do with hand-me-downs from the Regular Forces? Can the Minister give that assurance?

Lord Astor of Hever: My Lords, yes, I can. This is central to achieving a fully integrated force. Reserves will train and develop a competence on the weapon and vehicle platforms common to their roles. Some of the most modern equipment currently in use—for example, the amphibious bridging—will only be used by the reserves.

Lord Clark of Windermere: My Lords, can the Minister advise the House what percentage of our doctors serving with our forces in Afghanistan are reservists? Is it envisaged that certain specific roles within the medical services will be designated entirely for reservists?

Lord Astor of Hever: My Lords, this is one of the areas that we are looking at very carefully at the moment. Meetings take place frequently in the Ministry of Defence and I hope to come back with an announcement on this important issue before the Summer Recess.

NHS: Accident and Emergency Units

Question

3.29 pm

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what assessment they have made of the impact of closures of Accident and Emergency units in Buckinghamshire on neighbouring hospitals; and how that compares with the impact of closures of Accident and Emergency units elsewhere in the country.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, we know that there have been increasing pressures in A&E across the country. In October 2012, a GP-led 24/7 minor injuries unit was introduced in Wycombe to deal with cuts, bruises, sprains and other minor injuries and illnesses. A modest increase in the number of patients going to neighbouring A&E units was expected as a result of local changes. Commissioners provided £4 million to these hospitals to address that increase.

Lord Campbell-Savours: My Lords, the minutes of the Heatherwood and Wexham Park National Health Service Trust disclose that the downgrading of A&E and medical emergency departments in neighbouring hospitals led to a fivefold increase in the number of people having to wait more than four hours—the national target—in Wexham Park A&E and a dramatic increase in the number of cancelled operations. Indeed, I am told that that number doubled. What is the point of making this national policy of closing these A&E departments when all it is doing is upsetting people all over the country and making them extremely angry?

Earl Howe: My Lords, I have to emphasise to the noble Lord that, although I understand his concerns in relation to Wexham Park and other hospitals, there is no government policy about the closure of A&E departments. The whole thrust of government policy since we were elected to office has been that there should be no top-down direction of this type of decision. Rather, we are clear that any changes to healthcare services should be locally led, clinically driven and involve the local population in a consultation. All patients have the right to high-quality urgent care at whatever time they use the health service. The key for local commissioners and decision-makers is to ensure that that happens. I am aware that the situation at Wexham Park has improved and money is being invested to ensure that there are enough beds for the future.

Baroness Wall of New Barnet: My Lords, I declare an interest as the chair of Barnet and Chase Farm Hospitals NHS Trust. I was in my A&E department at Barnet Hospital this morning for two hours. In addition to the concerns that my noble friend has expressed, the real issue is that people are turning up at A&E who really should not be there, do not need to be there and ought to be able to get treatment elsewhere. Obviously, government policy is to ensure that we have more services outside, but can we make sure that that happens more quickly than is currently the case?

Earl Howe: My Lords, the noble Baroness is absolutely right. There is no doubt from Sir Bruce Keogh's urgent and emergency care review, published this month, that attendance at an A&E department often reflects the lack of availability or the lack of awareness of alternative sources of help. Some patients may default to A&E departments when they are unsure about which service is most appropriate to their needs. That has to be addressed and is being addressed in Sir Bruce's

review. It will look at the entire system of emergency care and how we can make sure that it provides the right care, in the right place and at the right time.

Baroness Finlay of Llandaff: Will this review include an audit of the number of patients who are in A&E but cannot be sent back to their normal place of residence, whether that is their home or a care home, because of the lack of immediate transport and an absence of immediate referral systems to community services that could monitor and review the patient back in the community?

Earl Howe: My Lords, yes, the whole patient journey should be looked at, including the role of social care in making sure that patients who are not seriously ill but need care can be looked after in their own homes or in a suitable residential setting.

Lord Brooke of Alverthorpe: My Lords, will the Minister be kind enough to enlighten us as to whether Ministers are under instructions these days to blame the NHS and its different levels for failings but to accept no responsibility for putting it right? I watch with increasing fascination the number of Ministers who are now attacking the way that A&E operates, although they are to blame. I heard a Minister the other day attacking GPs for failing to act in the way they should. At the end of the day, I wonder who is responsible for putting this right. The noble Earl said earlier that this is a not a "top-down" operation now. Who, then, is going to accept responsibility for the failings which are now starting to take place within the health service?

Earl Howe: My Lords, Ministers are responsible to Parliament for the provision of the health service so I do not duck that responsibility for a second. Nevertheless, Ministers do not manage the health service day-to-day and have never done so. We are involved day-to-day in the plans to ensure that we have a health service that is properly configured to meet the needs of patients. My right honourable friend the Secretary of State could not be more assiduous in the work that he is doing to make sure that that happens. Responsibilities are not being ducked; nobody is being blamed. The fact is that demand is going up considerably, and has been for a number of years. We need to address that and we need to do it cleverly. It is not always a question of piling more money in; it is looking at how the services are configured and delivering care in the right place.

Baroness Masham of Ilton: My Lords, does the Minister agree that drunken and aggressive people are putting great pressure on A&E departments across the country, especially at weekends? Can he do something about it?

Earl Howe: The noble Baroness is right. Quite a considerable proportion of people who attend A&E do so at weekends after heavy drinking, and in some areas, that has overloaded the system. I am aware of many hospitals that are working with the local police force and others to keep such people out of hospital if they do not need to go, but to make sure that they do not disrupt the work of an A&E department if they do go.

G8 Summit

Statement

3.37 pm

The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows.

"With permission, Mr Speaker, I would like to make a Statement on the G8. The Government decided to hold the G8 in Northern Ireland to demonstrate the strength of this part of the United Kingdom. We wanted to show the success of the peace process, the openness for business and investment and the potential for tourism and growth.

I want to thank my right honourable friend the Secretary of State for Northern Ireland and the First and Deputy First Ministers for all they did to help with the conference. I want to congratulate the Police Service of Northern Ireland and all those responsible on delivering a safe and successful G8 and to thank everyone in Northern Ireland for giving everyone such a warm welcome. Northern Ireland put on its best face, and the whole world could see what a great place it is.

We set a clear agenda for this summit: to boost jobs and growth with more open trade, fairer taxes and greater transparency—what I have called the three Ts. I also added a fourth T—combating terrorism. We reached important agreements including on support to the Libyan Government and ending ransom payments for kidnap by terrorists. Despite our fundamental differences, we also made good progress agreeing a way forward on working together to help the Syrian people achieve the change that they want. Let me take each of these points in turn.

We started with the issue that matters most to our people—jobs, growth, mending our economies. First, we agreed that each country needs to press on with sorting out its public finances. Dealing with our debts and securing growth are not alternatives. The former is an essential step in achieving the latter. In fact the communiqué that we agreed unanimously reflects all three parts of the plan that we have for growth in Britain: not just fiscal sustainability, but active monetary policy to unlock the finance that businesses and families need, and structural reforms to increase our competitiveness so that our young people can get into work and succeed in the global race.

The UK's G8 also launched a bold new pro-business agenda to drive a dramatic increase in trade and to get to grips with the problems of tax evasion, aggressive tax avoidance and corporate secrecy. This was a distinctive British agenda, to shape the way the world economy works for the benefit of everyone. We believe in free trade, private enterprise and low taxes as the best route to growth, but that is only sustainable if ambitious trade deals are agreed, the taxes owed are paid and companies play by the rules. This agenda has now, I believe, been written into the DNA of G8 and G20 summits, I hope for many years to come.

On trade, we started the summit with the launch of negotiations on an EU-US trade deal. This could add, as has recently been said, as much as £100 billion to

[Lord Hill of Oareford]
the EU economy, £80 billion to the US and as much as £85 billion for the rest of the world. We should be clear what these numbers mean: more jobs, more choice and lower prices in the shops—the biggest bilateral trade deal in history, launched at the G8.

On tax, the Lough Erne declaration that leaders signed yesterday sets out simple, clear commitments. Tax authorities across the world should automatically share information so that those who want to evade taxes will have nowhere to hide. Companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily—for example, through central registries—so that people cannot escape taxes by using complicated and fake structures. In a world where business has moved from the offline and the national to the online and the international but the tax system has not caught up, we are commissioning the OECD to develop a new international tax tool that will expose discrepancies between where multinationals earn their profits and where they pay their taxes.

The declaration also makes clear that all this action has to help developing countries too, by sharing tax information and building their capability to collect taxes. Crucially for developing countries, we agreed that oil, gas and mining companies should report what they pay to Governments, and that Governments should publish what they receive, so that natural resources are a blessing, not a curse. Charities and other NGOs have rightly campaigned for years for action on these issues and for the first time they have been raised to the top of the agenda and brought together in one document.

The agreements on tax made at the summit are significant but it is also worth noting what has happened on this front since I put this issue to the top of the agenda. On 1 January there was no single international standard for automatic exchange of information. Now there is such a standard and more than 30 jurisdictions have already signed up, with more to follow. After years of delay, the European Union has agreed to progress the sharing of tax information between member states. The overseas territories and Crown dependencies have signed up to the multilateral convention on information exchange. They have agreed automatic exchange of information with the UK and action plans for beneficial ownership. Taken together, all the actions agreed with the overseas territories and Crown dependencies will provide more than £1 billion of revenue to the Exchequer, helping to keep taxes down for hard-working families here in the UK.

People around the world also wanted to know if the G8 would take action to tackle malnutrition and ensure that there is enough food for everyone. The pledges at our nutrition and hunger summit earlier this month will save 20 million children from stunting by 2020. But crucially at our G8 we also took action on some of the causes of these problems. This is why the work we did on land, extractive industries, tax and transparency is so important.

Turning to the fourth T—terrorism—we agreed a tough, patient and intelligent approach: confronting the terrorists, defeating the poisonous ideology that sustains them and tackling the weak and failing states in which they thrive. The G8 leaders reached a ground-breaking agreement on ransom payments for kidnap by terrorists. In the past three years alone, these ransom payments have given al-Qaeda and its allies tens of millions of dollars. These payments have to stop and this G8 agreed that they will.

We also discussed plans to begin direct talks with the Taliban. Britain has long supported a peace process in Afghanistan to work alongside our tough security response, so we welcome this step forward. We also discussed support to Libya. I believe that we should be proud of the role we played to rid Libya of Colonel Gaddafi, but we need to help that country secure its future. So we held a separate meeting with the Libyan Prime Minister, which included President Obama, and European nations have already offered to train 7,000 troops to help Prime Minister Zeidan disarm and integrate the militias and bring security to the whole country. More contributions will follow from others. Let me be clear that the Libyan Government have now asked for this and that they will pay for it.

Finally, let me turn to Syria. It is no secret that there are very different views around the G8 table. I was determined that we should use the opportunity of this summit to overcome some of these differences and agree a way forward to help the Syrian people achieve the change that they want. This did not happen during just one night in Lough Erne. The talks between Secretary Kerry and Foreign Minister Lavrov have been vital. In the weeks before the summit I flew to Sochi and Washington, and I met again with President Putin and President Obama in the hours before the summit began. These conversations were open, honest and frank, but we were all agreed on what must be the core principle of the international approach to this crisis. There is no military victory to be won and all our efforts must be focused on the ultimate goal of a political solution.

Together with our G8 partners we agreed almost $1.5 billion of new money for humanitarian support. This is an unprecedented commitment from Lough Erne for Syria and its neighbours. We agreed to back a Geneva II process that delivers a transitional governing body, crucially with full executive authority. So a core requirement for success that had been called into doubt in recent weeks has now been reasserted unanimously with the full authority of the G8.

We pledged to learn the lessons of Iraq by making sure that the key institutions of the state are maintained through the transition and there is no vacuum. This sends a clear message to those loyalists looking for an alternative to Assad. The G8 also unequivocally condemned any use of chemical weapons, and following an extensive debate, we reached for the first time a united position, including Russia, that the regime must immediately allow unrestricted access for UN inspectors to establish the full facts on the use of chemical weapons by regime forces or indeed by anyone else. All of these agreements are absolutely fundamental to saving lives and securing the political transition that we all want to see.

Let us be clear on what is happening in Syria and what we are trying to achieve. We are faced with a dramatically escalating humanitarian disaster with more

than 90,000 dead and almost 6 million people having had to flee their homes. There is a radicalisation of terrorists and extremists who will pose a direct threat to the security of the region and the world. There is a growing risk to the peace and stability of Syria's neighbours, and the long-standing international prohibition on chemical weapons is being breached by a dictator who is brutalising his people.

None of this constitutes an argument for plunging in recklessly. We will not do so, and we will not take any major actions without first coming to this House. But we cannot simply ignore this continuing slaughter. Of course it is right to point out that there are extremists among the opposition. There are, and I am clear: they pose a threat not just to Syria but to all of us. The G8 agreed they should be defeated and expelled from their havens in Syria.

I also understand those who fear that whatever we try to do could make things worse, not better. Of course we must think carefully before any course of action. But we must not accept what President Assad wants us to believe—that the only alternative to his brutal action against Syria is extremism and terrorism. There are millions of ordinary Syrians who want to take control of their own future, a future without Assad. That is why I made sure that the G8 agreed that the way through this crisis is to help Syrians to forge a new Government that is neither Sunni, Alawite nor Shia.

We are committed to using diplomacy to end this war with a political solution. This is not easy, but the essential first step must be to get agreement between the main international powers with influence on Syria. That is what we have done at the G8 in Lough Erne. We must now turn these commitments into action. I commend this Statement to the House".

3.49 pm

Baroness Royall of Blaisdon: My Lords, I am grateful to the noble Lord the Leader of the House for repeating the Statement given earlier today in the other place by the Prime Minister on this week's G8 summit.

I commend the Prime Minister and the Government for holding the summit in Northern Ireland. Fifteen years ago, even at the moment when the Good Friday agreement was being signed, holding a G8 summit in Enniskillen would have been unimaginable. Peace has transformed Enniskillen, and the location of this summit alone is testament to what can be achieved through politics and dialogue, and is a credit to the people of Northern Ireland.

I shall take the G8 issues in turn. On hunger and nutrition, it is completely unacceptable that there is enough food in the world for everyone, yet 1 billion people still go hungry and 2.3 million children die every year from malnutrition. We therefore welcome the agreements and commitments made during the hunger summit. The task now must be to ensure that these commitments will be delivered. Does the Leader of the House agree that we are right to stick by our pledge of 0.7% for aid as a proportion of national income? Does he further agree that we should be using all the moral force that we gain from that position to urge others to follow suit?

On trade, we welcome and support the launch of negotiations on a free trade agreement between Europe and the United States. The prize here is enormous. Can the Leader confirm that the Prime Minister will tell his colleagues that this is a timely reminder of the importance for jobs and prosperity of Britain staying in the European Union?

The Government were right to put tax and transparency on the agenda. The question is now how to translate good intentions into action. On tax havens, the Prime Minister has said that one of his goals was to make sure that there will be public knowledge of who owns companies and trusts. What blocked getting agreement on this at the G8? What progress was made on ensuring that information that is being shared between rich countries is also being shared with developing countries? Does the Leader agree with these Benches that, given the importance of this issue for developing countries, it cannot be justified that rich countries agree to share this information with each other but not with the poorest countries of the world?

I turn to the devastating situation in Syria. According to the UN, more than 93,000 people have now died in this brutal conflict. It was right for the Government to prioritise this and make it the focus of this week's talks. We welcome the announcements of additional humanitarian aid, particularly the doubling of UK aid. However, the answer to this humanitarian crisis is a political solution. We all recognise the scale of the challenge of bringing together an international community that has been divided for over two years. The Prime Minister said yesterday that the summit's outcome on this issue was,

"a strong and purposeful statement on Syria".

The centrepiece of that statement was a commitment to the Geneva II conference. Could the Leader therefore explain why there was no agreement on a starting date for the conference? Indeed, it is being suggested that the conference is now being pushed back from June to July, and now even to August. Based on this week's talks, when does the Leader expect the conference to take place?

I turn to the substance of that conference. The Prime Minister has spoken today about the importance of the agreement in Enniskillen on a transitional government, including the maintenance of government institutions and an inclusive political settlement for Syria. This we welcome; but do the Government accept that every one of those commitments featured in the Geneva I conference back in June 2012? The Government talk of this providing a moment of clarity on Syria, but how in concrete terms does this communiqué move us closer to that political settlement? Based on discussions at the G8 on securing access for weapons inspectors, securing access for humanitarian agencies and tackling terrorism, can the Leader set out how these laudable and very welcome goals will be achieved?

The Prime Minister went into the summit having allowed speculation to build that Britain was in favour of arming the rebels as a means to encourage diplomatic progress. Given the limited progress achieved, do the Government still maintain that focusing so much time and effort preceding the summit on lifting the arms embargo was the right approach?

[Baroness Royall of Blaisdon]

The Prime Minister now says that it is not his policy to arm the rebels. Given that the Geneva conference has already been delayed, can the Leader envisage any circumstances in which the Government would seek to arm the rebels before the conference takes place? The reality is that we did not witness the long hoped-for breakthrough on Syria at the G8 summit, a hope that noble Lords on all Benches share.

None of us should doubt the difficulties of the choices that confront the Government. The Government know that on the steps agreed this week to tackle terrorism and on the issues of Afghanistan and, indeed, Libya in particular, we gave the Government our full support. On these Benches we urge the Government in the months ahead to proceed with the greatest possible clarity as to their strategy, and to seek to build the greatest possible consensus across Parliament. I trust that the noble Lord the Leader will continue to keep the House informed.

3.55 pm

Lord Hill of Oareford: My Lords, first, I associate myself very strongly with the point that the noble Baroness made about holding the G8 in Northern Ireland in the first place. A long time ago, when I worked for one of my former bosses, John Major, he started this whole process in Northern Ireland, which the Labour Government then built on. It shows that if people are brave enough and stick at it, they can achieve great things. It was a tribute to the work of many people to have brought that about. It helped boost the economy, and it was a very powerful message all around the world of what can be achieved.

I agreed with the points that the noble Baroness made about the importance of the hunger summit, which happened the week before the G8 summit in Lough Erne. I was very glad that more funding was provided at the summit and that more ambitious goals were set down on what we might be able to do to tackle the problem of children suffering from malnutrition and, indeed, to prevent the deaths of young children. We believe that there may be 1.7 million children whose lives we may be able to save through that programme.

On our approach generally to international aid, we have kept that pledge. I think that that is right and that it lends us moral authority—which I think was the phrase that the noble Baroness used—and helps us deliver some of the other important policies that we are trying to take forward.

On trade deals, the beginning of a negotiation between the EU and the US on a trade deal was announced. It is only a beginning but if it comes in it will lead to many billions of pounds. The Prime Minister was clear earlier today on the benefits to the UK of being in the single market. I think that it is in the interest of all of us to try to make sure that this deal is concluded.

As for public registries of beneficial ownership, every country at the summit agreed to an action plan. Some have said that they will move straightaway to have these registries. So far as Britain is concerned, we have said that we will consult on the question of whether or not they should be public. We clearly need to keep pressing. I think that six of the G8 countries have already published an action plan on this at Lough Erne, and we have moved quite a long way on it.

The noble Baroness is absolutely right about the importance of information sharing applying to developing countries—I agree with her entirely on that. The whole point about this is that it is not just about the developed countries making sure that we all get the proper tax but that if we can deliver that across these countries, those developing countries which need to have their tax revenues paid would benefit as well.

On Syria, I was glad of the welcome that the noble Baroness gave to the increase in humanitarian aid generally and to the UK's contribution specifically. We need a political solution, as she said. I am not able to give a date for when the Geneva II talks will start. It was discussed at Lough Erne but the decision taken there was to try to get agreement on the substance rather than on a specific date. However, it was clear that there was a sense of urgency, and the G8 called for it to happen as soon as possible.

As for the G8 summit moving us closer to a political settlement in Syria, I think that it is fair to say that before the G8 summit the Russians seemed to be backing away from a transitional authority with full executive powers, but they have now reaffirmed their support for one. We also now have the language, for the first time, on our approach to the use of chemical weapons. That is new and I think that it will help. As for the time and effort spent on lifting the arms embargo, we felt that it was right to do so. We think that it has helped to increase the diplomatic pressure on that.

As the noble Baroness knows, no decision has been taken to arm the rebels at all—the Government have been very clear about that. It is a hypothetical question. However, my right honourable friend the Foreign Secretary has made it clear that, were the Government to make that decision, Parliament would obviously have a say in it. On her final point about whether I would seek to make sure that the House is kept informed on all these developments, the answer is yes, of course, I will seek to do so in the normal way.

4 pm

Lord Brittan of Spennithorne: Will my noble friend agree that the last time a serious attempt was made to reach a wide-ranging trade agreement between the United States and the European Union it foundered on the absolute refusal of the US regulatory agencies to agree to any degree of mutual recognition, let alone harmonisation, and that unless at the very highest level action is taken to deal with that blockage, this attempt will be no more successful than the last? Is it not therefore absolutely necessary that there should be a focus on this issue?

Lord Hill of Oareford: I am sure that that advice from my noble friend is extremely wise. I know how closely involved he has been over the years with many of these negotiations. It is clear that this issue was given a great deal of importance at the highest level, during the conversations between our Prime Minister and the President of the United States at the G8. Obviously we are at the beginning of the negotiations;

I think the first meeting is due to start next month. However, I am sure that all those charged with the responsibility of trying to bring about this extremely important deal will know of the history. If they do not, they will have been reminded of it by my noble friend and will bear that in mind as they try to secure this important deal.

Lord Lea of Crondall: Does the Minister agree that the question of regime change now bandied around in our newspapers gives people a sense of déjà vu, when at the same time we are looking at a peace conference? The idea on the Arab street that the West can be involved in regime change will possibly only have the result that the dispute between Alawites and Shia and Sunni Muslims will not be left to them but will also become our dispute.

Lord Hill of Oareford: I understand the point the noble Lord makes. It was said at the G8 that if we can get the G8 and other countries working together to bring about a political situation by bringing their different pressures to bear—whether it is the Russians, the Americans, or whoever—that must be worth trying.

Lord Dholakia: My Lords, I thank the noble Lord for the Statement. This was one of the most successful G8 summits of recent times. The Minister was right to point out the three factors: trade, transparency and tax. Does he accept that they would considerably help not only developed but underdeveloped nations, and would make a real difference to the lives of ordinary people? There is a serious concern about our involvement in Syria. We certainly welcome the idea of and the arrangements for a peace conference, whenever it will take place. However, more than 93,000 people have been killed, and extremism has surfaced from both the Assad Government and the opposition. The Minister was slightly hesitant, but does he accept that Parliament will decide whether there is a need for further involvement in relation to the supply of arms, or any further action the Government takes?

Lord Hill of Oareford: On my noble friend's first points about the importance of trade, tax and transparency for the developing world, he is of course entirely right. We are aiming for more trade and to break down the barriers. Coming out of the G8 we are very keen to make progress at the WTO conference this December. For instance, we will try to break down trade barriers in Africa, where they have a terribly detrimental effect on the ability of people to do business and also affect the tax revenues that flow from that. We aim to make that easier and more straightforward so that tax is paid. We also want to make the system more transparent so that money from industries such as the extractive industries will go into legitimate purposes to help those economies and societies, rather than into a small number of very deep pockets. I agree with him on that.

On Syria, I hope that I gave a clear answer to the noble Baroness, Lady Royall. Both my right honourable friend the Foreign Secretary and the Prime Minister have made clear that, were a decision taken by the Government to arm one side in Syria, which it has not been, that Parliament would certainly have its say.

Lord Wright of Richmond: My Lords, I have warned many times in the past 15 months, as have many others in both Houses, against the folly of military intervention in Syria and I have no need to repeat that warning this afternoon. However, if there is any substance behind the allegation in the *Times* today that the West is trying to engineer a coup in Damascus, I hope that the noble Lord's right honourable friend the Foreign Secretary, distinguished historian as he is, needs no reminding of the disastrous results of some previous attempts by outsiders to change regimes in the Middle East. Not only would such attempts, if successful, almost certainly produce a Government in Damascus of much greater threat to British interests than the present regime, it would directly contradict the Government's repeated view that any future regime is for the Syrian people to decide. Can the Leader of the House assure us that HMG is playing, and will play, no part in any such attempt at regime change—what the Statement describes as helping Syrians to "forge a new Government"? Finally, I ask the noble Lord for an assurance that if, as we all must hope, a peace conference can be arranged, HMG will not oppose the participation of Iran.

Lord Hill of Oareford: My Lords, the noble Lord, as he said, has been very clear and consistent on his position on this issue for 15 months and, I am sure, longer. I recognise that and I am sure that my right honourable friend the Foreign Secretary will be aware of that. On the noble Lord's specific questions, I do not think it sensible for me to go any further than the Statement; I am obviously not involved in those negotiations. I know that those who are involved will have heard what he has said and I will make sure that his consistent warnings about this are relayed to them. Clearly, as we have already said, we are seeking a political solution that is acceptable to the Syrian people. That is what we are working for.

The Lord Bishop of Liverpool: My Lords, we on these Benches very much welcome the direction of travel on taxes, trade and transparency. Can the Minister tell us what steps Her Majesty's Government will take to ensure that these three Ts figure strongly on the agenda of the G20 summit later this year?

Lord Hill of Oareford: That is an extremely good question. I can tell the right reverend Prelate that the hope, expectation and intention coming out of the G8 is very much that some of this detailed work on tackling tax evasion, aggressive tax avoidance and transparency will be taken forward by the G20 and the OECD. Behind the simple, 10-point declaration that summarised the headline points at the summit is a much longer, more detailed communiqué that sets out the much more detailed steps of the sort to which the right reverend Prelate refers.

Lord Davies of Stamford: Does the agreement at the G8 to ban ransom payments to terrorists, which is very welcome, include banning payments to pirates who capture individuals? The noble Lord has probably heard me say several times in the past three years that this problem is of at least equal dimension.

Lord Hill of Oareford: I will need to come back to the noble Lord on whether the agreement covers such payments. Its intention was to eliminate the scourge of ransom payments, but how they are defined in detail is something that I will have to follow up with him.

Lord King of Bridgwater: Does my noble friend recognise how much I echo what has been said, how much I welcome the fact that the conference has been held successfully in Enniskillen—having been all too close to the outrage and tragedy that took place there—and how I am reflecting on the irony of how the world has moved forward? That outrage was almost certainly committed with Libyan explosives, but the new Prime Minister of Libya was present at the G8. I hope very much that one of the outcomes of the G8 will be a better future for Libya. I echo what the noble Lord said. There must be political discussions about the future of Syria; they must be held by everybody without preconditions, which is one of the lessons of Northern Ireland for making progress; and obviously it would be enormously helpful if Iran were present as well.

Lord Hill of Oareford: I understand the second point made by my noble friend, which echoed that made by the noble Lord, Lord Wright. On the first point about Northern Ireland, the noble Lord knows better than most in the Chamber what the situation was and the extent of the work that had to be done. He was closely involved with that. It is a powerful symbol of what can be achieved if people are prepared to take those brave decisions.

Lord Morris of Aberavon: My Lords, perhaps I may explore the assurance in the Statement that Parliament will have its say on Syria. Do I take it that there will have to be specific parliamentary approval, as the convention has now grown?

Lord Hill of Oareford: Yesterday, at some length, and earlier today, the Prime Minister set out what that means: were the Government to decide that they wanted to arm the rebels—which they have not—it would be subject to a vote.

Lord Kilclooney: My Lords, coming from Northern Ireland, perhaps I may say how delighted I am at the success of the G8 conference in County Fermanagh. It has promoted Northern Ireland as a stable society. It has been good for our tourism. We should pass on from Northern Ireland our appreciation to the Prime Minister for selecting Northern Ireland as the part of the United Kingdom where the G8 conference would be held. Is the Leader of the House aware that this has been not only good publicity for Northern Ireland but also successful economically? In the past 10 days we have had another 1,500 new jobs announced in Northern Ireland. Just this morning, the Japanese Prime Minister, who remained in Northern Ireland following the conclusion of the G8, announced a further investment of 400 new jobs in County Antrim.

Turning to the question of transparency in our banks, we know that new standards will be introduced. Since international companies within the United Kingdom have been transferring their corporation tax payments to other countries to avoid tax, and British overseas territories have been fingered as possible places to avoid tax, can the Government guarantee that the five small sovereign states within Europe that use the euro—Monaco, San Marino, the Vatican, Lichtenstein and Andorra—will be subject to the same standards of transparency?

Lord Hill of Oareford: My Lords, I had not heard those latest figures on Northern Ireland, and I am delighted to hear them. They are further evidence of the benefits of holding the G8 there and the wisdom of doing so. I am very grateful for the remarks made by the noble Lord. On his more general point about tax avoidance and so on, this whole approach will clearly only work if it is applied on a level basis across all countries. The aim of much greater transparency is at the heart of this approach. An example is publishing information on where countries pay tax in order to work out where the profits are. Trying to make that approach across a broad front lies at the heart of what was agreed at the G8.

Lord Higgins: My Lords, this has been an usually successful and constructive conference. The proposals being made on taxation regarding transparency and so on should certainly have a pretty rapid and significant effect on tax evasion, but they will have only a relatively limited effect on aggressive tax avoidance. Consulting internationally is certainly welcome, as the Statement says in relation to the OECD. However, at the end of the day, it is a matter for taxation in this country. Multinationals which use these aggressive techniques in this country have said that doing so is within the law. This is true, but it means that our law needs to be changed, which is a very technical subject. The law needs to relate to profits made in this country, and in some way enact a tax on the profits of online transactions which originate in this country. I hope that we will not overlook that side when looking at the international aspect of the matter.

Lord Hill of Oareford: That point is well made. I hope that the drive towards greater transparency will flush out and illustrate some of the problems to which my noble friend refers, solutions to which can then be worked on in the way that he suggests.

Lord McConnell of Glenscorrodale: My Lords, all of us who took part in the debate last Thursday will be delighted that there has been some progress on tax and transparency at the G8 summit. I hope that the steps that were agreed will prove to be significant. I have questions about two of these steps in particular, the first being the agreement made with the UK dependencies and territories last weekend. If they do not fulfil the promises made at that meeting, what further steps will the UK Government take to ensure that they do so? Secondly, I welcome the statement in the communiqué that there will be capacity building in the developing world, to help those countries legislate for and collect taxes under this new system. What will the UK do to help countries build their capacity for tax revenue collection?

Lord Hill of Oareford: On the second point, concerning the specific detail of what we will do, I will follow that up with the noble Lord. There are some specific steps being taken. We are making available people who understand the detail of how the system works in order to help in precisely the way that the noble Lord says is necessary. We will do so because it is obviously right to help developing countries understand the complexities of the tax system and the kind of behaviour that goes on. It is not only Britain, but also other countries which will help to do that. If I can provide more detail, I will do so.

On the first point, about what do we will do if Crown dependencies or the overseas territories do not live up to their promises, my answer is, "Let us hold their feet to the fire and ensure that they do live up to their promises". They made that commitment. It came out of the G8 very clearly that not only the United Kingdom but all G8 member countries will hold them and other jurisdictions to account on that, and will want to see progress made.

Lord Soley: I urge the Government not to raise too many expectations on the quick arrival of a Geneva conference. Listening to Mr Putin's comments in Russia and at the summit, he has made it very clear that he intends not only to continue to arm the present regime but also to, in his words, draw up new contracts for arms with it. That, to me, conveys very clearly Russia's intention to argue at a Geneva conference for a regime which is in control of as much territory as possible. I am afraid that means continued fighting and refugee problems for the Middle East, and little hope of a successful outcome. We need to face up to the fact that Mr Putin has again managed to take us back to that old system whereby we prop up dictators, whoever is the strong one in power.

Lord Hill of Oareford: Obviously, I hope that the noble Lord's warnings will turn out to be wrong, and not like Cassandra's. However, I understand why he makes the point. He is clearly wise to say that one should not set unrealistic timescales and all the rest of it in terms of Geneva II, which was one of the conclusions that the G8 reached. Notwithstanding his points, it is fair to say that progress was made at the summit in terms of Russia making commitments that it had not previously made. We all have to hope that, on the back of that, we will be able to make the progress that I know the noble Lord and the whole House would like to see.

Marriage (Same Sex Couples) Bill

Committee (2nd Day)

4.20 pm

Relevant document: 4th Report from the Delegated Powers Committee

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

Amendment 13

Moved by ***Baroness O'Loan***

13: Clause 2, page 4, line 9, at end insert—

"( ) For the purposes of section 149 of the Equality Act 2010, no regard may be had by any public authority to—

(a) any decision by a person whether or not to opt-in, conduct, be present at, carry out, participate in, or consent to the taking place of, relevant marriages; or

(b) the expression by a person of the opinion or belief that marriage is the union of one man with one woman."

Baroness O'Loan: My Lords, I reiterate my membership of the Joint Committee on Human Rights, whose report on the issues on which I will speak is before your Lordships' House today.

Amendment 13 provides for amendment to Clause 2(5) of the Bill. Despite all that was said on Monday in respect of the Equality Act, and I listened very carefully to all the contributions, there is a significant risk that religious organisations and individuals could be treated less favourably by a public authority in the exercise of its functions, for example, as regards funding, as a result of the public sector equality duty under Section 149 of the Equality Act 2010. This could occur in two rather different situations: first, following a decision by a religious organisation,

"not to opt-in … be present at, carry out, participate in, or consent to the taking place of",

same-sex marriages; and, secondly, following the expression by an individual or organisation of an opinion or belief that marriage is,

"the union of one man with one woman".

This amendment would protect religious organisations and individuals from unfavourable treatment in both these circumstances.

Under Section 149 of the Equality Act, public authorities such as local authorities are under a duty to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. In particular, public authorities must have due regard to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic. Since the enactment of the first public sector duty in 2001, there has been extensive litigation and an expansion of the discretion of public authorities in this context. The courts have consistently interpreted the duty of due regard as a duty to further equality of opportunity and not just a duty to avoid discrimination.

Public authorities have in practice used this discretion to pursue broad equality aims and the courts have been reluctant to second-guess the discretion of public authorities. Public authorities have, for example, denied public contracts to organisations which they regarded as unsuitable—for example, on race equality grounds, and the courts appear to have deemed this entirely lawful. As noble Lords will already be aware, the public sector equality duty now imposes duties on multiple grounds, which include sexual orientation and religion. This means that public authorities now have significant discretion in deciding how best to balance these grounds if they clash, and they will clash.

In relation to the first scenario—unfavourable treatment of a person following a decision not to opt in—the amendment is needed for three reasons. First, the Bill does not expressly state that a public authority will act

[Baroness O'Loan]

ultra vires if it penalises a person following any of those decisions. Clause 2 protects from compulsion; it does not appear to protect religious organisations from being treated less favourably by public authorities under Section 149. The Government appear to think that less favourable treatment should be ultra vires. In the Secretary of State's response to the Catholic Bishops' Conference of England and Wales, she said:

"In all circumstances a person who has suffered detriment for the reason that they have not done one of the acts specified in Clause 2, will be able to rely on the protection in Clause 2 to show that such conduct is unlawful".

During the Public Bill Committee, the Minister stated,

"as the law stands, a public authority would in fact be acting unlawfully … if it attempted to treat a religious organisation adversely simply because that organisation refused, as is explicitly allowed in the Bill, to conduct same-sex marriages. If, for example, a local authority withdrew meeting facilities from a Church only because it did not offer same-sex marriage, that would be likely"—

likely, my Lords—

"to be unlawful direct religious or belief discrimination".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 5/3/13; col. 349.]

This is not clear in the Bill because an ordinary dictionary definition of "compelled" does not include treating someone less favourably. Nor is it at all clear, for example, that it would be unlawful direct religious discrimination for a local authority to withdraw meeting facilities from a church on the ground that it does not offer same-sex marriage. At most, it is likely to amount to prima facie unlawful indirect discrimination and that would then be subject to the justification defence. We know that the results which flow from judicial scrutiny of such defences are uncertain.

Secondly, Clause 2(5) and Clause 2(6) of the Bill provide explicit protection from Sections 29 and 110 of the Equality Act, despite the comprehensive protection from compulsion which Clause 2 is supposed to provide. The presence of these extra exemptions in Clause 2(5) and 2(6) casts serious doubt on the scope of the protection from compulsion. If it is necessary to have exemptions for these sections, it is also necessary to have a separate exemption for Section 149, to give the protection provided for in this new clause.

Thirdly, even if it were established that the actions of the public authority were ultra vires in the scenario described, such a clarification would come only as a result of a judicial review being taken by religious organisations, which would be time-consuming and expensive. What is more, domestic courts have been reluctant to second-guess the discretion of public authorities, where allegations have been made that more weight should be given to a particular ground of equality. The Secretary of State has been careful not to state that a judicial review of a public authority that engaged in this less favourable treatment would be successful. The Secretary of State has said only that the decision would be vulnerable to challenge. This amendment will provide the necessary clarification, and thus protect persons from unfavourable treatment, by making it explicitly clear in the Bill that public authorities cannot have regard to decisions by persons not to opt-in, conduct, be present at, carry out, participate in or consent to the taking place of same-sex marriages.

In relation to the second scenario, in which persons may be treated unfavourably under Section 149 following an expression of the opinion that marriage is the union of one man and one woman, the amendment is necessary for two reasons. First, the Government have repeatedly stated that teachers will not be required to promote or endorse views which go against their beliefs. The Minister stated at the Public Bill Committee:

"It is therefore perfectly lawful for a teacher in any school to express personal views on sexual orientation or same-sex marriage, provided that it is done … in an appropriate manner and context".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 28/2/13; col. 305.]

However it is not clear from the Bill that a teacher would be able to teach that marriage should be only between a man and a woman, because some parents, pupils or other teachers could find such teaching deeply offensive. The public sector equality duty could force a school to review, for example, its anti-bullying strategy to ensure that such expressions of opinion are not given. A teacher could thus be disciplined for expressing such an opinion to his or her pupils.

Secondly, if a school's curriculum positively presents only opposite-sex marriage, there is a danger that the school could fall foul of the Section 149 positive duty on schools to advance equality of opportunity and to foster good relations between people with different protected characteristics. The public sector equality duty could consequently compel schools to endorse same-sex marriages, not just to teach the fact that they exist.

4.30 pm

If the Government agree that less favourable treatment should be ultra vires, then the appropriate approach is to make clear this fact in the Bill, thus avoiding unnecessary litigation. It is unclear why the Secretary of State does not think that it would be "helpful to make legislative changes to the public sector equality duty" when a narrowly tailored amendment is possible, which would resolve the problem without adverse consequences for the public sector equality duty more generally. It is better to eliminate this uncertainty now by making this amendment than to leave uncertainty that is likely to be litigated on.

I move now to the issue of public function and Amendment 18. This amendment will introduce a definition in relation to the word "compelled" in Clause 2. It will provide protection for religious organisations when deciding whether or not to undertake an opt-in activity or an opt-out activity for the purposes of Section 29 of the Equality Act, the Equality Act more broadly, the Human Rights Act and judicial review. This amendment is necessary because religious organisations may be held to be exercising a public function when exercising their discretion to decide whether to opt in or out under Clause 2(1).

In relation to Section 29 of the Equality Act 2010 and the Equality Act more broadly, the exemption in Clause 2(5) to Section 29 of that Act constitutes one of the Government's so-called quadruple locks. Clause 2(5) makes it clear that discrimination claims cannot be brought against religious organisations for refusing to marry same-sex couples, for example. However, the protection is incomplete. Clause 2(5) makes an exception for individuals only if they decide not to conduct a

relevant marriage, not be present at, carry out or participate in a relevant marriage, or not to consent to a relevant marriage being conducted. This list of activities echoes exactly the activities listed under Clause 2(2). There is no reference to the activities listed under Clause 2(1). There is no protection under the Equality Act for persons, as defined in the Bill, who exercise the discretion given under Clause 2(1) and decide not to opt into providing same-sex marriages. This is an important omission.

Section 29 of the Equality Act covers the provision of services and the performance of public functions. It states:

"A person … concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service",

and that a person,

"must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination".

Persons are therefore given this protection when performing Clause 2(2) activities because the Government consider those activities to involve either the provision of a service or the exercise of a public function. The protection from the threat of legal action under Section 29 ensures that persons will be truly free not to perform Clause 2(2) activities if they have a conscientious objection to so doing.

Why are persons not afforded the same protection when performing Clause 2(1) activities? It is entirely possible that a person as defined in the Bill, when deciding whether or not to opt into performing same-sex marriage ceremonies, will be performing a public function. If that is the case, it is imperative that protection is also provided for persons when performing these activities. In short, religious organisations are at risk of successful discrimination claims by virtue of Section 29. This lock will therefore provide very little protection indeed.

The reason why religious organisations are at risk of being held to perform a public function when exercising their discretion under Clause 2(1) is as follows. First, while it seems to be highly unlikely that in general a religious organisation would be regarded as a public authority, bodies that are not generally public authorities may nevertheless be regarded as hybrid authorities if they exercise some public functions. While giving evidence to the Joint Committee on Human Rights, the Secretary of State recognised that in the Church of England, the minister performs the function of a registrar, and thus performs a public function. It is possible she is under the misconception, however, that only the Church of England are in that position, and that in every other religious organisation, the minister performs the religious part of the ceremony, and a separate registrar performs the civil part. That is not true. In the Catholic Church, for example, a religious organisation which is going to have the option of opting in, the priest or another designated person acts as the authorised person performing the civil function. The priest conducts the marriage ceremony—the religious ceremony—and it is usually the priest who is the authorised person who also performs the administrative or civil aspect of the marriage. Therefore, despite the Secretary of State's assertion, other religious organisations such as the Catholic Church also perform a public function when they conduct marriages. I apologise—I should have probably declared an interest as a Catholic.

Does the fact that religious organisations such as the Catholic Church, many minority churches, and many other churches, conduct marriages that are both religious and civil, make the religious organisation a hybrid public authority? The answer to this question may well be "yes", because religious organisations perform a public function when conducting civil marriages. Jack Straw, when he was Home Secretary and the Minister presenting the Human Rights Bill in 1998, said in the House of Commons:

"There was a time when one could get married only in church but, these days, marriage is a matter of civil law—it is the exercise of a public right. The Churches are standing in the stead of the state in arranging the ceremony of marriage, which is recognised not only in canon law, but in civil law. In that instance, the Church is performing a function not only for itself, but for civil society".—[*Official Report*, Commons, 20/5/98; col. 1017-18]

The Joint Committee on Human Rights makes recommendations on these matters at paragraphs 57 and 58, noting the clear disagreement in evidence to the Committee regarding whether this is a public function. The committee states:

"We believe that the solemnisation of legally-binding marriage by any religious organisation under the provisions of the Marriage Act 1949 may be a public function".

This could render a religious organisation's decision not to opt in to conducting same-sex marriages challengeable under the Equality Act 2010 on the grounds that the decision constitutes a public function. This argument is strengthened by Clause 11(1), which provides:

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

What is more, because the discretion to opt in in Clause 2(1) will be a statutory discretion, the likelihood that the discretion will be regarded as a public function is significantly increased.

The Secretary of State responded to this concern by saying:

"In our view, the decision to opt-in or not is not a public function – it is not a function of a public nature. The fact that it would enable a religious organization subsequently to undertake a function that is arguably of a public nature (ie the legal solemnization of same sex marriages) does not make any conduct prior to that also a public function".

In the Public Bill Committee the responsible Minister stated that a decision whether to opt in or not is a public function under Section 29 of the Equality Act. He stated that,

"a religious organisation's decision whether to opt into conducting same-sex marriages is neither a service to the public or a section of the public, nor a public function".—[*Official Report,* Commons, Marriage (Same Sex Couple) Bill Committee, 5/3/13; col. 348.]

That assurance is welcome. It is not clear on the face of the Bill. Should a dispute arise before a court of law, a ministerial Statement provides no guarantee that a court will not find that a religious organisation has exercised a public function in deciding not to opt in under Clause 2(1); indeed, what the courts may consider to constitute a public function is not altogether certain. Without this amendment, a risk will remain that religious organisations that conduct legally recognised opposite-sex marriages could be regarded as exercising a public function in deciding whether or not to opt in.

[Baroness O'Loan]

The second reason is that religious organisations will be at risk of legal action under the Human Rights Act and/or by way of judicial review, on the grounds that exercising the discretion not to opt in could involve a public function. If it is genuinely the Government's intention that religious organisations should not face legal action on the ground that they perform a public function when exercising their discretion under Clause 2(1), why not say so on the face of the Bill?

The Government have argued that making a specific statement on the face of the Bill that religious authorities are not, for these purposes, exercising public functions, would be unhelpfully confusing. The Secretary of State has written to the Roman Catholic Church, saying:

"To make a specific statement of the sort you have requested might … risk creating doubt about whether other decisions made by religious organisations are also public functions".

With respect, this response is unconvincing. As we have seen, there is already uncertainty about which decisions are public functions. The proposed new clause would introduce a degree of clarity in one area of activity, and that can hardly be regarded as unhelpful. A risk, possibly a significant risk, has been identified. Even if litigation against a religious organisation may ultimately be successfully resisted, that will be so only after the organisation has incurred costs. Religious organisations should not be exposed to such costs, particularly if they are not public bodies, as the Government assert. The explicit protection provided in the amendment is clearly needed. I beg to move.

Lord Singh of Wimbledon: My Lords, I shall speak in favour of Amendment 13. As was mentioned on Monday and has been mentioned today, the public sector equality duty rightly requires public authorities to eliminate discrimination, work for equality of opportunity and foster good relations. It is a welcome measure that makes ours a fairer society.

However, we all know that those in authority can, and often do, misuse their authority to intimidate or bully others in employment or those who approach them for goods and services. As Shakespeare and Dickens observed, office can be intoxicating, particularly if you feel that you are working for the greater good. It can lead to a messianic zeal to convert others to your way of thinking. There is a real danger that if this legislation comes into force, some will use it to try to convert those who believe in traditional marriage to their way of thinking. I believe that the amendment is necessary to draw attention to and protect sincerely held beliefs that harm no one—beliefs that will with hindsight be seen as having important implications for family cohesion and the well-being of children. Clarity of the law benefits everyone; lack of clarity benefits only the lawyers.

Lord Hylton: I shall speak to Amendment 17. I thank the noble Baroness, Lady Berridge, for adding her name to it. I hope that I can be fairly brief. Despite assurances and the amendments made by the Minister in Committee and on Report in the other place, I believe that there is still uncertainty about the meaning of compulsion and the word "compelled". The amendment is designed to remove that uncertainty. It aims to make things clear, and thus protect religious organisations and their members from all legal penalties. It would prevent public authorities treating such organisations less favourably if they decide not to opt in. For example, in some sphere completely unconnected and separate from marriage—such as the provision of a youth club or a night shelter—public authorities would be acting ultra vires if they penalised religious bodies for not opting in, and thus co-operating with the Bill when it becomes law.

It is important that such assurances should be plain in the Bill. My amendment tends to consolidate and reinforce the Government's quadruple lock. I urge the Minister to take away all three amendments in this group to see whether they can result in improved amendments on Report.

4.45 pm

Lord Lester of Herne Hill: My Lords, I declare an interest because I, too, was a member of the Joint Committee on Human Rights and had the great misfortune to find myself in a completely opposite place from the noble Baroness, Lady O'Loan, as she knows. During the 10 years I have been on that committee, I have never before had such an experience, where we were totally unable to secure a totally common position. Unlike previous committees, we decided not to take a vote, but to produce a compromise document. I did so in the spirit of conciliation and compromise, but I have to say that I do not agree with the views expressed by the committee in some of its parts.

I also do not agree with the very detailed speech made by the noble Baroness, Lady O'Loan. That would be quite impossible in a debate of this kind, before a body of people who have the great fortune not to be lawyers, judges, experts on the Equality Act or experts on the Marriage Act 1949, and who do not really understand the argument that the Catholic Church deployed and which has been deployed before us today.

I do not propose to answer that with the seriousness that it requires and I advise my noble and learned friend who is replying also, perhaps, not to answer every single point today. A sensible outcome of this might be to give a rebuttal in writing before Report stage on some of the detail. In my view, none of the amendments is necessary; all would create uncertainty and obscurity. The approach adopted by the church reminds me of a curious kind of person who goes around wearing trousers with not just one belt, not just two belts, not just—as in the case of this Bill—four belts, but also with a pair of braces. It is completely unnecessary.

I totally agree with the Government's legal analysis, as expressed by the Minister in her evidence to us and in writing. On these issues, the Equality Act is quite clear. Of course, you can never prevent people bringing challenges in courts on any basis whatever; that is true of all legislation. I think that if these amendments were carried, it would create great uncertainty.

The document that is being discussed in the dinner hour, produced by the Office of the Parliamentary Counsel, *When Laws Become too Complex*, states:

"Good law is necessary, effective, clear, coherent and accessible. It is about the content of law, its architecture, its language, and its accessibility—and about the links between those things".

That is all there in the architecture, language, content and accessibility of the Equality Act—this is a tribute to the Opposition, whose Act it was, with our support—and in the Explanatory Notes to the Bill. Quite honestly, if these amendments were accepted, it would create great uncertainty and damage the object of the Bill.

Baroness Berridge: My Lords, I rise to speak to Amendments 17 and 18, which are in my name. Although they have both been given the heading, "Meaning of 'compelled'", each raises distinct points. First, I wish to state my appreciation that the Government are keen to listen to concerns over the current drafting of the religious freedom protections in the Bill. The Secretary of State said in the other place that she,

"would never introduce a Bill that encroaches or threatens religious freedoms".—[*Official Report*, Commons, 11/12/12; col. 157.]

The Government's impact assessment helpfully outlined that the Bill should,

"ensure that protections are in place for religious bodies who do not want to perform same-sex marriages, not just from successful legal claims, but from the threat of litigation".

I am grateful for the Government's stated intentions but put my name to both these amendments as I believe that the Bill may encroach on such freedoms and that there is a threat of litigation.

I will deal first with Amendment 17. The Government have widely publicised the quadruple locks that supposedly protect religious individuals and organisations. One of those so-called locks is the protection from compulsion, which is supposed to ensure that religious individuals and organisations will not be required, under any circumstances, to conduct same-sex marriages if they object to them. This protection from compulsion is given for two different situations. First, in Clause 2(1), there is a prohibition against compelling any organisation to take the necessary procedural step of opting in, which would enable them to go on to conduct the actual ceremonies. Secondly, in Clause 2(2), there is a prohibition against compelling any person to "conduct" or "participate in" the same-sex marriage ceremony. At first sight, the lock appears comprehensive and wide-ranging, and the Government would have us believe that this is so. However, in reality, the lock is very narrow in scope because there is absolutely no definition in the Bill of "compelled". That omission creates uncertainty and possibly limits the scope of protection offered by the clause.

This concern was recognised by the Joint Committee on Human Rights, of which I am a member, in its recent report on the Bill. The report is perhaps interesting in that it is unanimous, despite members of the committee holding different views on the principle of the Bill. Paragraph 69 recommends that the Government reconsider the issue,

"as to whether religious organisations"—

or people—

"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".

Such reconsideration would, in my view, include considering whether to bring forward amendments such as those that we see today.

The new clause proposed in Amendment 17 would clarify the meaning of "compelled" for the purposes of Clause 2 and thus ensure that the lock provides the breadth of intended protection. The need for clarification was made more evident by the Minister during the Public Bill Committee, when he said that the meaning of "compelled" was,

"absolutely not borrowed from the Matrimonial Causes Act".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 28/2/13; col. 280.]

This statement makes it unclear where, if anywhere, the word "compelled" has a legislative precedent. In the limited case law that is available in other contexts, protection from compulsion essentially provides protection only from the imposition of a criminal penalty.

For example, individuals are protected from being compelled to incriminate themselves when giving evidence in court. Clause 2 is therefore likely to protect individuals and organisations from criminal punishment but it is unclear what else individuals and organisations are protected from. The Explanatory Notes state that compulsion,

"would include, but not be limited to, attempts to use criminal or civil law, contractual clauses, or the imposition of any detriment to force a person to carry out such an activity."

However, Clause 2 as currently drafted does not reflect the Explanatory Notes and may not prevent public bodies treating religious organisations less favourably if they decide not to opt in to the same-sex marriage provisions.

Baroness Knight of Collingtree: I just want to ask my noble friend to look at history and recall the number of times—as I made clear in the earlier debate—promises have been broken with regard to the conscience. Time and again, from the Abortion Act onwards, people have been promised that they would be protected and that their right to a conscience would not be taken away. However, we have watched that happen for the past 50 years. We must look not just at the Bill when it comes to promises, but at this road full of broken promises that has led up to it.

Baroness Berridge: I am grateful to my noble friend for her intervention and I will look back—I am afraid as a newer member of your Lordships' House—at the history to which she refers.

The decisions where an organisation can be treated less favourably can be in situations where they are refused contracts, denied the use of public halls or denied funding. The Minister reiterated the narrowness of the behaviour covered in the Bill in the Public Bill Committee when he said that Clause 2 would have,

"the effect of preventing any type of conduct that would have the effect of forcing a person to do something protected under that clause".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 28/2/13; col. 280.]

Therefore, as long as the local authority is merely registering disapproval of the organisation's views, or penalising the organisation, but is not attempting to compel it to opt-in to provide same-sex marriage, then the religious organisation has no protection under the Bill as currently drafted.

However, the Government's response is that the religious group need not worry as such detrimental behaviour falling short of forcing it to do anything would be unlawful discrimination by the local authority and the charity would have a remedy for this under

[Baroness Berridge]

the Equality Act. As I mentioned at Second Reading, expecting a charity to swap money, potentially from food banks, to legal fees to fight legal claims is not consistent with the state's duty, performed in this instance by the local authority, to promote a plural civic square. Such funding reallocation is not, of course, in line with any growth in the big society and is diametrically opposed to the impact assessment of the Government which is the aim of removing the threat of litigation. The impact assessment means that the Government do not want religious groups being defendants in proceedings, so why are they advising the same religious groups to be the claimants in discrimination proceedings?

Just on a straightforward dictionary definition of compulsion, such unfavourable treatment as I have outlined is not, despite the Minister's comments, covered. It is vital that the meaning of "compelled" is clarified in the Bill because the concept of compulsion is central to the Bill's religious freedom protections and is not as readily understood as the Government assert.

In Committee on Monday there were many assertions about the effectiveness of the Equality Act, ranging from "foolproof" by the noble Lord, Lord Lester, to "shot through" by the noble and right reverend Lord, Lord Carey. This amendment would remove the need for a small charity to incur the expense of legal proceedings to establish that such detrimental behaviour is discrimination under the Equality Act. Surely the avoidance of litigation is a good thing.

This new clause will provide the necessary clarification and thus protect religious organisations from all legal penalties, criminal and civil, if they decide not to opt-in. It will ensure that religious organisations do not suffer at the hands of public authorities by making it clear that public authorities will be acting ultra vires if they penalise religious organisations for not opting-in. The onus is properly placed on the state not to act to the religious group's detriment and not on the religious group to take action against the state. The new clause enshrines in statute the Government's assurance that religious organisations will not be penalised in any circumstances for deciding not to opt-in to providing same-sex marriages if they object to them. Without further clarification in the Bill, the lock may not turn out to be much of a lock at all.

In relation to Amendment 18, it may be helpful if I turn from locks to keys. The key to a claim under the Human Rights Act, the Equality Act or judicial review is that the decision or action carried out by the religious organisation is clarified as a public function. Amendment 18 is necessary because, without it, religious organisations will be at risk of legal action on the ground that the decision to opt-in may be held to constitute a public function. As the noble Baroness, Lady O'Loan, has already explained, ministers in religious organisations outside of the established church can be authorised persons and thus conduct marriage ceremonies that are both religious and legally recognised. Such ministers, therefore, perform a public function. As the noble Baroness, Lady O'Loan, outlined, that was the understanding of the right honourable Jack Straw when he introduced the Human Rights Act and spoke in the other place. However, in the context of the established church, this was also the view obiter of four Supreme Court judges in the case of Aston Cantlow v Wallbank. In delivering his judgment, Lord Hobhouse said:

> "Thus the priest ministering in the parish may have responsibilities that are certainly not public, such as the supervision of the liturgies used or advising about doctrine, but may have other responsibilities which are of a public nature, such as a responsibility for marriages and burials and the keeping of registers".

5 pm

In a recent letter to the Catholic Bishops' Conference of England and Wales, the Secretary of State stated that:

> "The parish priest, if he is also acting as the authorised person, is only performing a public function when he registers the marriage, not when he is conducting the liturgy. These are separate functions and we do not believe that the courts would have difficulty in finding them to be so".

With respect, I disagree, and so do the lawyers. I put on record my thanks to Professor Chris McCrudden of Blackstone Chambers, a former professor of human rights law from Oxford, whose advice has been given to the Catholic Bishops' Conference. I think that two or three comments will highlight the fallacy in the Government's argument.

Only marriages valid under UK law, not merely religious marriages, should be entered on the register by a priest or an imam as the authorised person. If the priest conducted a marriage recognised under UK law during the liturgy, surely that was also the performance of a public function? Why does government guidance to authorised persons given in December 2012 outline the contracting and declaratory words that must be exchanged in the ceremony? It is because this is not just liturgy; it has to contain certain promises to be a marriage, and the authorised person performs the role for the state when he or she oversees and witnesses that these words are in fact included in the ceremony. Finally, if a spouse were to die after the ceremony but before the signing of the register, they are married under UK law. It is not merely the registering of the marriage which is the public function.

Perhaps the confusion has arisen for the Government in the name "registrar" in this context. When the state registrar registers births and deaths, they record merely the fact that an event has occurred, but their role in the marriage context is different. They witness and oversee the formation of the marriage, then later record the fact that the marriage has happened in the register. It is rather like the school classroom: the register is taken and that is recording merely the reality that you are physically present in the classroom. The religious and civil functions are not as easily separable as the Secretary of State would have us believe. A court is highly likely to find that the religious organisation is a hybrid body when officiating in marriage ceremonies.

In addition, the Joint Committee on Human Rights concluded that,

> "the solemnisation of legally-binding marriage by any religious organisation under the provisions of the Marriage Act 1949 may be a public function".

Given that it is highly likely that a religious minister conducting a legally recognised heterosexual marriage will be held to be exercising a public function, of course conducting same-sex marriages will also be a public function. So it is arguable that when religious

organisations make the decision to move from performing only heterosexual marriages to performing same-sex marriages as well, that decision could also be a public function.

Lord Alli: I am a little confused again. Is the noble Baroness saying that the quadruple lock is not secure? Unless I am absolutely wrong, I understood the position of the Church of England to be that the quadruple lock is robust and secure. I am not sure what she is arguing.

Baroness Berridge: I thank the noble Lord for that helpful intervention. That has been the Government's position looking at the established church but there is a different situation for those who are authorised people. Generally in our law, you can get married at the registry office, or at the hotel with the registrar there, or you can marry without any intervention of the state when the banns are read in the Anglican Church. In addition, there is a whole group of people and religious organisations—for example, the Catholic Church and Pentecostal churches—which do those marriages as authorised people. They can decide whether to opt in to do this. First, that places them in a different legal context for conducting marriages. Secondly, the Anglican Church can make no decision at all to opt in; in the Bill it is not allowed to. These groups in the middle, many of which are in the ethnic minority community, are in a very different legal position from the Anglican Church.

The risk that religious organisations face when they move from conducting only heterosexual marriages to also conducting same-sex marriages as a public function is exacerbated by the fact that the decision to opt in is not like a decision by a private members' club where you can look at the rule book and say that the decision was made based on the rules. The discretion to make a decision is in this statute which lends to the argument that it is a public discretion that these organisations would be acting on. The Joint Committee on Human Rights did not come to a firm conclusion on this matter because of a divergence of opinion. However, I believe that helps the case for this amendment. The divergence of opinion makes this amendment necessary because the basis of litigation is a divergence of legal opinion. The Government need to give some reassurance to these religious organisations because without this amendment the lock provided in Clause 1 could be ineffective.

Lord Alli: I apologise again to the noble Baroness. I am trying to get to the core of the mischief here and I am just not getting there. Is she saying that Church of England registrars are not covered by this and that this is for the general pool of registrars who are conducting the registration?

Baroness Berridge: If you attend a Catholic church, the authorised person is the registrar. No one comes from the local authority's office. That person performs that public function and the registry office is not involved. It is the obligation of the priest to fill out the register and to return it quarterly to the local authority's office. No local authority official is present at all. Interestingly, the Catholic Church expressed concern to the Joint Committee on Human Rights—I have heard this concern from other religious organisations—that unless we get clarity in the Bill religious organisations may consider not conducting these marriages at all because they believe the only way to protect themselves is to not be the registrar. That, of course, would have resource implications for the Government.

I am asking the Government to throw away the public function key—the key to actions under the Equality Act, the Human Rights Act and judicial review—and avoid this threat of litigation which would discriminate against some of the nation's smallest charities. The Joint Committee on Human Rights has urged the Government to consider formulating a new clause to provide additional reassurance to any religious ministers or office holders who perform the dual function of officiating on a marriage in a spiritual capacity as well as performing the public function of the registrar under the Marriage Act 1949.

We have ended up in a situation, by responding quite rightly to the concerns of the established Church, whereby other Christian denominations and other faith groups believe that they do not now have the same level of protection as the Church of England and the Church of Wales. It is important that other religious organisations and individual ministers of other faith groups have the same level of protection as the Government have now afforded in this Bill to the Church of England and the Church of Wales.

Lord Deben: I want to try to bring two sides together on this issue. I hope people will recognise that I am entirely in favour of this legislation and I am a practising Catholic. so I understand exactly what has been said. I have great sympathy with what my noble friend Lord Lester has said about how this might be approached by the Government. Let me say two things to the Minister. First, there is a history here of promises made and broken, as my noble friend made clear. So even if this is absolutely okay, there is a feeling that it might not be okay and we have to recognise that fear.

Secondly, there is also a history of campaigning people who seek all the time to push their point further than is reasonable. For example, campaigners have recently argued that we should withdraw aid from youth clubs run by organisations that take a strong view about homosexual practice. That is a campaign that people have suggested—that if you take that view you should not get any help from the state for your youth club. I say to my noble friend that I understand the fears that people have on this issue.

The position of the Catholic Church is particularly difficult because we have a very odd and rather noble system in Britain that has come out of our history: to ensure that it was no longer true that only Anglicans could marry, we extended it to other people via the mechanism of enabling approved persons to act as registrars. There may be an issue here and it may be that the fears that people have are correct. However, I also recognise what my noble friend Lord Lester has said: sometimes, when we try to correct this, those of us who are not lawyers—and I am proud not to be a lawyer—add things that make it worse. That is the danger here. If we are not careful we will have a sort of argument of the deaf, with one side saying, "We want

[LORD DEBEN]
to do what you want, but if we do it that way we will actually make it more difficult for you", and the other side saying, "You may say that but we're still worried about it".

I ask my noble friend to recognise that even those of us who are not just marginally but very much in favour of this legislation are concerned that we should be very careful about the nature of toleration. Unfortunately, "toleration" has become a very curious word. People talk about toleration as if it means tolerating views that you happen to agree with. One of the things that we have to do is produce legislation that enables a tolerant society to accept that some people have very different views. That is not helped, if I may say so, by some of the language used by people opposed to the Bill. Some disgraceful statements have been made by people who have really not come to terms with the fact that we live in a society that should be inclusive and accepting. The churches have sometimes spoken intolerably and intolerantly. However, the truth is that there is intolerableness and intolerance on the other side as well. I will give way to my noble friend .

Lord Cormack: I agree very much with my noble friend, whom I thank for giving way, but I hope that he was not suggesting that there has been intolerance in the debates in this House. That is something that he would find very hard to prove.

Lord Deben: I listened to the whole debate almost without exception, and there were one or two sentences that I think ought to have been withdrawn by the people who made them because there was clearly a misunderstanding about the nature of what we are talking about. However, I do not in any way suggest that my noble friend spoke in that way. I am merely saying that there is a great need at this moment to make people relearn what toleration is. Toleration is accepting the views of people with whom you disagree fundamentally and totally. We need to do that in our society.

Let me be clear: I think the amendments are unnecessary, I do not see the legal basis for them and I am not worried about this issue. However, some people are worried about it. There is another word that I would like to bring into this: "courtesy". There is a great need in our society for courteousness to other people, and there are people here who are legitimately worried. We need to ensure that there is no reason for them to be worried. I wonder if my noble friend might do the following, which is largely to follow what my noble friend Lord Lester said: not to argue this case because, frankly, a legal case of this sort across the Floor would be unhelpful for all of us, but to go back and produce a document that answers specifically the points that the noble Baroness, Lady O'Loan, has made, so that we know exactly where we are.

If there is a concern, the bit that seems to me to have had some truth about it is the nature of the official person—the point that the noble Lord, Lord Alli, was pursuing. I think he would agree that if the official person gets denominated in a particular way, what we all want in terms of a tolerant society could easily be overcast. I wonder if my noble friend might take it away in that way, instead of continuing the legal debate, and then come back with a document, which we might all peruse, and see whether we could not, at least on this, come to a common view across the House.

5.15 pm

Lord Alli: I apologise to the noble Baroness for taking more than my usual length of time to understand the issue. I think I now understand where the issue arises. What worries me is the nature of what the noble Baroness seeks. It seems to me that she wants cast-iron guarantees and, although I am not a lawyer, I assume that we cannot give those in law. Certainly no government Minister, no Member of this House and no Member of the other place can give cast-iron guarantees that any religious organisation will not be subject to vexatious legal actions.

I agree with the noble Lord, Lord Deben, that there is a whole range of people thinking of ways to progress their own politics through the courts, and when they have not succeeded either at the ballot box or in Parliament, they continue to do so. I can put it no better than the noble Lord, Lord Lester, in Monday's Committee in his rather complex and detailed legal argument. He said:

"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".—[*Official Report*, 17/6/13; col. 69.]

The question is not whether these people will take up a nuisance case; that is a matter for them in a democratic society. They must have the right to take up that nuisance case. I like it no more than anyone else, but they have that right in a democracy. The clear intention of this House and of the other place can be in no doubt. We have specifically created a process to opt in so as to protect religious organisations. The Minister in the Commons made it quite clear during the Commons Committee stage when he said:

"The imposition of any penalties on or subsequent unfavourable treatment of a religious organisation or individual in order to compel that organisation to opt in to same-sex marriage is already unlawful under the Bill".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee; 28/2/13; col. 280.]

The locks in this Bill are strong and robust. The intention of this House has to be beyond question. I believe those locks are secure, and I am not sure that we can help the noble Baroness with an assurance that there will be no legal action over these cases.

Baroness Berridge: I will respond to the noble Lord, Lord Alli. I am not seeking a cast-iron guarantee. I have previously been a lawyer, so I know how people can look at us, but there seems to be a case for some sensible, straightforward language in the Bill that could avoid—as we have put it—a situation in which small charities have to take discrimination claims to deal with that kind of behaviour, and it would provide that reassurance.

Lord Pannick: My Lords, I entirely understand the concerns that have been expressed by the noble Baronesses, Lady Berridge and Lady O'Loan, and others. My view

is that those concerns are unwarranted. As I understand it, three issues have been raised. The first is the public sector equality duty, under Section 149 of the Equality Act, which requires:

"A public authority must, in the exercise of its functions, have due regard",

to equality considerations. "Due regard" must require primary consideration to be given to other legislation—in particular, the legislation before us. I regard it as unlikely in the extreme that this public sector equality duty could impose a duty or even confer a power on a public authority to penalise a person or a body for declining to be involved in same-sex marriage, when the whole point of this legislation, and a fundamental feature of it, is that a person should not be compelled to do so for religious reasons. It would be extraordinary for a court to rely on a public sector equality duty.

The second concern was about Clause 2(6) and the exclusion of public functions, and that this does not cover the decision whether to opt in. There is a good reason for that. In very simple terms, marrying a person may well be a public function, as Clause 2(6) recognises. However, a decision to opt in or not is not the exercise of a public function. It is not, of itself, a service to the public but a decision whether to rely upon and maintain a statutory immunity given by this legislation. Any argument to the contrary would conflict with the content and purposes of this legislation, and so is extremely unlikely to be accepted.

The third concern that we are dealing with in this group of amendments is the suggestion that the legislation should clarify the meaning of "compulsion" in Clause 2(1). For a public authority to impose a detriment on a person for refusing to undertake an opt-in activity or to refrain from undertaking an opt-out activity would plainly amount to compulsion in this context. The reason for that is very simple: it would impose legal pressure on that person when one of the central purposes of this legislation is to protect religious freedom.

I entirely understand—I hope courteously—noble Lords' concerns. The noble Lord, Lord Deben, rightly reminds us that we should be courteous about this, but let us not just be courteous but realistic about the risks and concerns that have been expressed.

Lord Cormack: My Lords, I courteously recognise the forensic skills and deep legal knowledge of the noble Lord, Lord Pannick, and of my noble friend Lord Lester. However, my noble friend Lord Deben mentioned times in the past when assurances were given, in good faith, from Dispatch Boxes in both Houses, but have not measured up. Therefore, the recognition of the noble Lord, Lord Pannick, of the validity of the concern of the noble Baroness, Lady O'Loan, and my noble friend Lady Berridge, should be taken a step further. I should like to make a suggestion that builds upon what the noble Lord, Lord Deben, said. He and I do not agree on the fundamentals of the Bill, but he made a conciliatory and helpful speech this afternoon and we should thank him for that.

I inferred, from the speeches of the noble Baroness, Lady O'Loan, and my noble friend Lady Berridge that neither is likely to push this to a Division today. I hope that is the case. As I said on Monday, this House is at its best when it has long debates in Committee and votes on Report, when there has been proper opportunity to reflect on what has been said. I shall not be able to be present later today, for which I apologise. I hope that after this, when my noble friend Lady Stowell responds to this debate, she will undertake not only to reflect most carefully on what has been said by the noble Baroness, Lady O'Loan, and my noble friend Lady Berridge, but to call them in, with others who share their concerns, to ensure that on Report we will be able to make it plain in the Bill, beyond any shadow of a doubt, that the assurances that have been given will not only be honoured but be capable of being honoured.

I withdrew an amendment on Monday night following assurances from the noble Baroness, Lady Royall, and my noble friend Lady Stowell, when I sought to add Roman Catholic priests to the definition of the clergy. I did so for many of the same reasons advanced by my noble friend Lady Berridge. There is concern—real worry and anxiety—in this House and in the country. The Bill will make its way to the statute book; of that I have no doubt. I regret that but, as a good democrat, I accept it. However, I want it to give the strongest possible protection to those who in all conscience cannot accept the fundamental statement that same-sex marriage is the same as marriage between a man and a woman. I urge my noble friend, when she comes to wind up this debate—

Lord Lester of Herne Hill: I hope I am not interrupting at the wrong moment, but will my noble friend agree that we have to think carefully about the role of judges and the role of the legislature? It is the legislature's role to make the law and the judges' role to interpret it. Having heard, for example, the noble Lord, Lord Pannick, with whom I entirely agree, I cannot imagine—I do not know what these breaches of faith in the past amount to; no one has explained what they are talking about—that the independent judiciary would not interpret the legislation as it is now drafted in accordance with its object and purpose. Were there to be any breach of assurances by Ministers, under the Pepper v Hart regime that could, if necessary, be brought to the attention of the courts and they would take that into account. Should we not, when we are making laws, try to make them clear, but at the same time recognise that in the end they are to be interpreted by a wise, independent, enlightened judiciary?

Lord Cormack: Of course, but it is not unknown for a wise, enlightened, independent judiciary, which I strongly defend, to conclude that Parliament has not indeed been clear, and therefore it is very important that Parliament should be clear. We talked about locks, triple locks and quadruple locks. I think that there are very few locks that my noble friend Lord Lester and the noble Lord, Lord Pannick, are not capable of unpicking. We want to bear that in mind. It is very important indeed that this Bill, when it passes on to the statute book, has the full guarantees which I am sure my noble friend, in all honesty, wishes it to have.

To return to the point that I was making when my noble friend Lord Lester so courteously interrupted me, I hope that my noble friend, when she comes to

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wind up, will not only reflect on the concerns, and undertake further to reflect after this debate, but that she will give an opportunity for the noble Baroness, Lady O'Loan, my noble friend Lady Berridge and others to meet her and her officials to discuss these points in detail.

Baroness Royall of Blaisdon: My Lords, although this has been an immensely courteous debate, I would start by wholeheartedly agreeing with the statement from the noble Lord, Lord Deben, about the need for tolerance and respect for the views of people with whom we fundamentally disagree, both inside and outside this House. It is important that all sides of the House recognise that.

The noble Lord, Lord Cormack, quite rightly said that it is important for Parliament to be clear so that the judges can take a view as regards what happens in the courts. From this side of the House we believe that the Bill as drafted is absolutely clear, including the meaning of the word compelled as referred to in Amendment 17. We believe that it would be readily understood and interpreted by the courts as such and that it needs no specific definition in this context. As my noble friend Lord Alli said, the Minister in the other place has given some helpful assurances about the Government's intention regarding protection against compulsion, which I am sure the noble Lord will reinforce today, as well as clarifying that the definition has not been borrowed from the Matrimonial Causes Act.

Clarity is important but, as I said, there is already clarity in the Bill. That is not to say that I dismiss the concerns expressed around the House today. I am sure that the Minister will be able perhaps to assuage those concerns today; but if not, that he will come back on Report and, in the mean time, perhaps put something in writing. The suggestion made by the noble Lord, Lord Lester, that there should be something substantive before Report was a good one.

On Amendments 13 and 18, I say to the noble Baroness, Lady O'Loan, that I was confused about whether she was speaking on behalf of the Joint Committee on Human Rights. It is clear from the exchanges across the Chamber that there were disparities of view in the committee.

5.30 pm

Baroness O'Loan: My Lords, for the sake of clarification, I did not speak on behalf of the committee but declared my membership, as I thought appropriate.

Baroness Royall of Blaisdon: I beg the noble Baroness's pardon. It is interesting that both noble Baronesses, and the noble Lord, are members of the committee.

We are clear that Amendments 13 and 18 are unnecessary. We believe that they would add confusion to the law. As the noble Baroness said, the public sector equality duty is a duty to have "due regard", not a duty to act. The due regard must balance discrimination on the grounds of sexual orientation equally with discrimination on the grounds of religious belief. It would not permit a public body, even with the intention of eliminating discrimination on grounds of sexual orientation, lawfully to treat a religious organisation less favourably on account of its beliefs about same-sex marriage. Furthermore, the authority would be in breach of the clear protections in the Bill that will permit religious organisations to remain outside the system of same-sex marriages.

As the noble Lord, Lord Lester, said, the Equality Act 2010 is a carefully crafted piece of legislation, thanks to many noble Lords present in the Chamber today. It established a balance between protection against discrimination on grounds of religion or belief and protection against discrimination on grounds of sexual orientation. To single out one belief—that marriage should be between a man and a woman—risks undermining the protection afforded to religion as a whole, with its entirety of beliefs and practices, because it sets up this one belief as requiring explicit protection. Therefore, Amendment 13—and Amendment 18, which seeks to achieve a similar effect—would prove unhelpful and unnecessary.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I will start by thanking the noble Baroness, Lady O'Loan, my noble friend Lady Berridge, and the noble Lords, Lord Singh and Lord Hylton, for bringing the amendments before your Lordships' House in Committee. It has given us an opportunity for a very useful debate, which has been conducted in a very courteous fashion. It was clear that genuine concerns were being expressed. What is interesting is that there is no distinction anywhere in the debate between the objectives of what noble Lords wish to see. It is very clear that religious freedom, including the rights of religious organisations that do not wish to opt in, should be secured.

I will take the advice proffered by my noble friend Lord Lester and not reply to every point. However, it is important that I reply to some of them. My noble friend referred to Pepper v Hart, but we cannot get to that stage if we do not in fact say anything. I will also take up his suggestion, echoed by my noble friend Lord Deben, of putting in written form the points that were raised and my responses.

Amendment 13 seeks to ensure that no religious organisation or individual is penalised by a public authority simply because it has exercised its rights under the Bill to not offer or facilitate same-sex marriages, or because it has expressed the view that marriage should be only between a man and a woman. My noble friend Lady Berridge indicated that there was an anxiety that other religious denominations wished to have the same kind of safeguard and security as has been afforded to the Church of England and the Church in Wales. As I indicated to my noble friend Lord Cormack when he moved an amendment on Monday, there is a historic reason for the distinction for the Church of England and the Church in Wales: namely, the duty on priests in these churches to marry people in their parish. This duty is not incumbent on priests, ministers or imams in other religions and faiths.

The specific context of this amendment is Section 149 of the Equality Act 2010, which places a duty on public authorities to,

"have due regard to the need to … eliminate discrimination … advance equality of opportunity … and … foster good relations between persons who",

hold or do not hold particular protected characteristic.

It is absolutely right—I think that this has been echoed on all sides of your Lordships' House—that religious organisations and individuals should be free to express their beliefs about same-sex marriage, and to make the decisions protected by this Bill about whether to conduct or participate in same-sex marriages, without fear of repercussion or penalty of any kind. I hope I can clarify for your Lordships that, as the law stands, a public authority would in fact be acting unlawfully if it attempted to rely on the public sector equality duty to treat a religious organisation adversely simply because that organisation did not wish to conduct same-sex marriages, as is explicitly allowed under this Bill.

A policy of penalising people or organisations which have religious or philosophical beliefs with which a public authority disagrees would in itself be discriminatory. One element of the duty is to have due regard to the need to eliminate unlawful discrimination. It is not meant to be itself an instrument to discriminate unlawfully. For a local authority, for example, to withdraw meeting facilities from a church because it decided not to offer same-sex marriage would be likely to be unlawful direct discrimination because of religion or belief. We believe that it would be subject to successful legal challenge, a point made by the noble Lord, Lord Pannick.

The noble Baroness, Lady O'Loan, commented that there is nothing in the Bill which states that it would be unlawful for a public authority to punish a religious organisation which had not opted in. The courts have considered the question of whether a local authority can use equality legislation to punish an organisation with views of which it disapproves. In the case of Wheeler v Leicester City Council, the council banned a rugby club from using its ground after some of its members attended a tour of South Africa. It used the then Race Relations Act to justify its decision. The case went to the House of Lords, which held that the decision was irrational and that it was an improper purpose, because the members of the rugby club were legally entitled to go on a tour, just as an organisation is entitled not to opt in. I believe that the reasoning in that case to have a clear read-over in this particular case. Similarly, a local authority could not have a policy of refusing to promote staff who have expressed a belief that marriage should only be between—

Baroness Knight of Collingtree: On that very point, why is it that registrars who from conscience, from their heart and beliefs, will not conduct this kind of marriage have been sacked?

Lord Wallace of Tankerness: My Lords, obviously they cannot yet have been sacked because of this legislation, because it is not yet an Act. As my noble friend may recall, we debated the position of registrars at some length on Monday evening. The explanation given then was that registrars perform a public function. As was pointed out by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, judges, who also exercise a public function, are not allowed to pick and choose which cases come before them. Similarly, a local authority could not have a policy of refusing to promote staff who have expressed a belief that marriage should only be between a man and a woman. This would be unlawful direct discrimination, and the equality duty requires public authorities to have due regard to the need to eliminate such discrimination. The equality duty cannot make lawful an otherwise unlawful or oppressive act.

My noble friend Lady Berridge quoted the impact assessment regarding the threat of litigation. It is of course not possible completely to rule out any possibility of somebody bringing legal proceedings. I think it was the noble Lord, Lord Alli, who pointed out—and as my noble friend Lord Lester quoted on Monday—some authorities do idiotic things. No legislation can provide for every eventuality. However, we believe that the Bill minimises this possibility as far as possible by making it absolutely explicit that those relying on Clause 2 are permitted to refuse to be involved in solemnising same-sex marriages. There would indeed be no cause of action. We believe that an application for strike-out could be made early in any proceedings, as there would be no reasonable prospect of success in such claims. The noble Baroness, Lady O'Loan, said that the inclusion of Clause 2(5) and (6) and the protection they provide undermine the protection which we believe is already in place with regard to Section 149 of the Equality Act 2010.

The amendments to the Equality Act 2010 in Clause 2 provide that it is not unlawful discrimination to refuse to carry out acts specified in Clause 2(2). These specific exceptions are provided to ensure that the Equality Act is not in conflict with the protection provided in Clause 2, so that the law is clear and consistent. This aspect of the Equality Act is the only area of legislation which requires this explicit treatment, as otherwise it would conflict with Clause 2.

We should also remember, as the noble Lord, Lord Pannick, indicated, that the equality duty is a duty only to have regard. It is not in itself a duty to act, but rather a duty to think. It does not require that particular action is taken or that any specific objective or outcome is achieved. As the noble Lord said, "having regard" also means that we have to have regard to primary legislation, such as what would be in this Act if the Bill is enacted. I hear what my noble friend Lady Knight says about concerns that sometimes guarantees do not always seem to follow through many years later. However, what we are dealing with here—I think that the noble Lord, Lord Pannick, made this point—is a fundamental part of the architecture of this legislation: namely, that there should be religious freedom not to opt in. Therefore, it would be unthinkable for a court not to have regard to a fundamental piece of the legislation we are passing. I certainly hear what the noble Baroness—

Lord Lester of Herne Hill: Does my noble and learned friend also agree that the Human Rights Act compels this legislation to be construed compatibly with religious freedom as defined in the European convention?

Lord Wallace of Tankerness: Indeed, my noble friend is right. Article 9 of the European Convention on Human Rights gives that right to freedom of religious belief and expression. The noble Baroness, Lady O'Loan, said that sometimes the courts are reluctant to second-guess public authorities. It is highly unlikely that the court would do something which is in direct contradiction

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of what Parliament has clearly expressed and intended not just in the Bill but in all the statements that have been made by Ministers and, indeed, by almost everyone who has participated in these debates.

It is also important to note—again, this point was made by my noble friend Lord Lester and picked up by my noble friend Lord Deben—that amendments can sometimes have unintended and adverse consequences. I know that is certainly not the intention of the noble Baroness who moved this amendment, but the equality duty applies to and protects equally various protected characteristics, including religion or belief so a public authority has to bear in mind the impact of its policies on people holding different religious or philosophical beliefs, such as the belief that marriage should be only between a man and a woman. If, as the amendment proposes, a public authority is prevented from having any regard to individuals' or organisations' beliefs about same-sex marriage, it would be unable to consider how its own decisions could potentially discriminate against, or otherwise disadvantage, people who believe that marriage should be only between a man and a woman. That would remove an important protection for people who hold such a belief. I know that this is not what the noble Baroness intends but it illustrates the fact that when you try to solve one problem you can create another.

As I say, I recognise the concerns that some public bodies might be overzealous or mistaken in their exercise of the equality duty or misuse it to the detriment of those who do not agree with same-sex marriage. As I have indicated, no Government can give a copper-bottomed guarantee that some public authorities will not act irrationally. It is important that we ensure that public authorities understand their responsibilities under the Equality Act 2010 correctly, and how these relate to beliefs about marriage. With that in mind, the Equality and Human Rights Commission has undertaken to review its guidance for public authorities to ensure that the position is as clear as possible. As I have said, while I appreciate the intention behind this amendment, it is unnecessary and could have adverse consequences quite at odds with its intention.

I turn to Amendment 17. The concept of compulsion is readily understood in its natural meaning, and to subject anyone to any type of detriment or unfavourable treatment because they refuse to participate in any way in religious solemnization of same-sex marriages would clearly be understood as a violation of their legal right under this Bill not to participate. We are therefore confident that Clause 2 provides strong and effective protection to ensure that religious organisations and their representatives cannot be forced to participate in same-sex marriages against their belief. The Explanatory Notes to the Bill set out the position, as quoted by my noble friend Lady Berridge: the concept of compulsion is a broad one, which would include, but not be limited to, attempts to use criminal or civil law, contractual provisions or the imposition of any detriment to force a person to carry out the activities protected in Clause 2. The clause provides no specific remedy, but makes clear that no attempt at such compulsion would be upheld.

Less favourable treatment by a public authority of a person or organisation who does something which the Bill makes clear they are legally entitled to do would, in itself, clearly be unlawful and open to judicial review. The imposition of any penalties—civil or criminal—on a religious organisation or representative in order to compel them to opt in, or to participate in, religious solemnisation of same-sex marriages is clearly unlawful under the Bill.

Clause 2 will clearly prevent criminal or civil action being taken against any religious organisation or representatives merely for refusing to undertake acts protected under this clause. This includes, but is not limited to, disciplinary or other action taken in the employment context. In all circumstances a person who has suffered a detriment simply because they have not done one of the acts specified in Clause 2 will be able to rely on the protections in that clause to show that such conduct is unlawful and to obtain a remedy within the context of the particular claim.

5.45 pm

Finally, Amendment 18 is again unnecessary as the Bill already makes clear that the decision to opt in or not is an internal doctrinal decision. It is a matter for the religious organisation involved and—as the noble Lord, Lord Pannick, clearly said—is not a public function. The amendment seems to acknowledge this because, as it says itself, it is drafted for the avoidance of doubt. The activities mentioned Clause 2 (1) are obviously activities which are private in nature, carried out by religious organisations which are of course not public authorities. The Government are confident that no religious organisation or representative could be susceptible to judicial review or challenge under the Human Rights Act 1998 or Equality Act 2010 in this regard.

I know that the noble Baroness, Lady O'Loan, and my noble friend Lady Berridge referred to the Joint Committee on Human Rights. We will give proper consideration to the points raised and respond to the Committee, but we again believe that this is a case where adding words to the Bill might simply increase what there is to argue about, and potentially water down the protection already provided, by casting doubt generally on what functions of a religious organisation are or are not considered to be a public function.

This is made clear if we actually look at the activities which constitute "opt-in activities". These include decisions by the relevant governing authority of a religious organisation to give written consent for marriages of same-sex couples to take place and an application by such an organisation to the superintendent registrar for the solemnisation of marriages of same-sex couples to take place in a place of worship. These are clearly private functions. If, for example, the Bill were to explain that a decision by a religious organisation to apply to register one of its religious buildings for the solemnisation of same-sex marriages is not a public function, this would raise the question as to whether such an application in respect of opposite-sex marriages is currently a public function. I hope that this again illustrates the law of possible unintended consequences. However, I accept the suggestions that have been helpfully made. We will seek to put together a letter or document to respond to the different points that have been made. If, on receipt of that—

Lord Cormack: Perhaps I could remind my noble and learned friend of my other suggestion: that detailed conversations should be offered to the noble Baroness, Lady O'Loan, my noble friend Lady Berridge and others on this point.

Lord Wallace of Tankerness: If my noble friend had allowed me to finish the sentence that I had started when he intervened, I would have said that, having received it, those who wish to pursue this matter further in discussion with myself and my noble friend Lady Stowell—

Baroness Royall of Blaisdon: My Lords, I do not wish to be consulted, but I suggest that the document or letter is put into the Library so that it is in the public domain. Otherwise it will not appear in *Hansard*.

Lord Elton: May I suggest that all those who have taken part in the debate should have a copy sent directly? Could my name be added to that list?

Lord Wallace of Tankerness: My noble friend has taken part in the debate and I usually make it a matter of practice to send a copy to everyone who has taken part. The noble Baroness, Lady Royall, makes a constructive suggestion. I will make sure that it is put in the Library and if, on the basis of the letter and follow-up, it is thought that a discussion would be necessary or wanted, I would certainly be happy to accommodate that. In the light of these comments and the reassurances that we have sought to give, I hope that the noble Baroness will feel able to withdraw her amendment.

Baroness O'Loan: My Lords, I thank noble Lords who took part in this debate. The noble Lords, Lord Lester and Lord Alli, and various other noble Lords have emphasised the need for clarity in legislation. The Bill, as drafted in the House of Commons, is already subject to amendment by the Government. It is clear that there are situations in which law which is drafted in the first instance by draftsmen requires clarification. That is why the House exists.

This particular piece of legislation falls at the interface of a number of different human rights—rights of religion and other rights. That is why it is so difficult for the House. The Bill seems to be based on the assumption that the act of marrying is separate from the act of registering a marriage, and the noble Baroness, Lady Berridge, demonstrated quite clearly that that is not the case. It is one single act. It is that which raises the whole spectre of public function. I raised this issue and specifically asked the Minister at Second Reading about the risk attached to the public function obligations of religious organisations that are in that hybrid position—those other than the Church of England and the Church in Wales. I did not get any answer to that question.

In the context of the Bill, we are looking not only at the acts of marriage but at the unintended consequences of the legislation before your Lordships' House. They go much further than the act of conducting or permitting the conducting and so on of a marriage. They go to the whole remit of public authorities in funding, enabling and resourcing organisations such as youth clubs and schools, and in teachers' ability to speak freely. We have a number of amendments still to come before the Committee in this context. My amendments would have dealt with some elements of these issues but there are other amendments that relate to them. I put it to the Committee that the issues are not quite as clear as some noble Lords would wish to state.

The fact is that there is a clear distinction in the legislation between the Church of England, the Church in Wales and other churches that solemnise marriage, which is that the Church of England and the Church in Wales are not in a position in which they will decide whether to opt in or out without further legislative process outwith this Parliament. That is what makes the difference and it is why we have the quadruple lock for the Church of England, which is not a sufficient lock for other churches. That is why I have tabled these amendments.

I do not wish to be in any way contentious or to delay the House but I cannot help remembering that the Catholic adoption agencies that have now closed as a consequence of legislation were also argued for on the basis of religious freedom. That argument was lost and there is no religious freedom there in the provision of services. It is profoundly important that we ensure that we do not further create very difficult situations. I will therefore, for the moment, withdraw and not move my amendments but reserve the right, having heard what the Minister had to say, to come back to the House on Report. I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 14 not moved.

Amendment 15

Moved by ***Lord Carey of Clifton***

15: Clause 2, page 4, line 20, at end insert—

"( ) A person does not contravene section 29 only because the person—

(a) does not conduct a service of blessing for a relevant marriage, or

(b) is not present at, does not carry out, or does not otherwise participate in, a service of blessing for a relevant marriage, or

(c) does not consent to a service of blessing for a relevant marriage being conducted, for the reason that the marriage is the marriage of a same sex couple."

Lord Carey of Clifton: My Lords, before I address the amendment, perhaps I may refer to an earlier speech by the noble Baroness, Lady Berridge, in which she referred to me personally, I think in relation to Amendment 9. What she did not know was that I had withdrawn my name from that amendment and I think that the reference should have been to the noble Lord, Lord Dear.

The Government have been at great pains to stress that the Bill constitutes no threat to religious liberty in the sense of how religious organisations conduct

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themselves. I am greatly reassured by the Government's comments and we have heard them repeated this afternoon. Nevertheless, it is an important test of the Bill that religious liberty, so defined, can stand varied tests in line with the view expressed by the Secretary of State for Culture, Media and Sport in the other place. She said:

"Our proposals will ensure that all religious organisations can act in accordance with their beliefs because equal marriage should not come at the cost of freedom of faith, nor freedom of faith come at the cost of equal marriage".—[*Official Report*, Commons, 5/2/13; col. 128.]

The Minister, the noble Baroness, Lady Stowell of Beeston, told us that,

"no religious organisation or individual can be forced to conduct or participate in a religious marriage ceremony of a same-sex couple. The religious freedom of those organisations and individuals is protected".—[*Official Report*, 3/5/13; col. 939.]

I welcome those statements. It is absolutely right that no religious body or minister of religion should be compelled to choose between a readiness to act in violation of their faith by withdrawing from the provision of marriages or getting into trouble with the law.

In following through on this intention, however, it is important for the Government to recognise that marriage ceremonies are not the only relevant service that a religious body or minister of religion might be asked to conduct. Increasingly today people who marry outside a religious context come afterwards to a place of worship asking for a blessing. If Members of the Committee are not sure what I am getting at, they may go online and type in "blessings" and see a very good one on the Church of England site, which I have used in the past after a civil marriage. I am particularly thinking of the predicament of nonconformist and minority ethnic churches.

A blessing ceremony may sound less weighty than a marriage ceremony but the Government must understand that officiating at a blessing would be just as problematic for a faith community whose celebrants could not officiate at a same-sex marriage ceremony without violating their conscience as would officiating at a marriage ceremony. Doing so would involve the religious body or minister of religion authenticating, celebrating and affirming something that their conscience forbids them from doing. The provision of a blessing ceremony in such a context would involve the minister of religion and the religious body in question acting in direct violation of their religious identity. Such a religious body or minister of religion would have to decline to provide such a service in just the same way that they would have to decline to marry a same-sex couple.

As things stand, however, if the Bill becomes law, Section 29 of the Equality Act means that religious bodies that cannot perform same-sex marriage blessings will be in just as much trouble as a church that could not provide same-sex marriages, were it not for the fact that Section 29 is being amended for that purpose by Clause 2. The point that I am making, with apologies to the noble Lord, Lord Lester, who is not in his seat, has no belt and no braces whatever. It is entirely vulnerable. If the Government—

Lord Alli: I thank the noble and right reverend Lord for giving way. I know that he will know the Church of England a lot better than I do but in order to conduct a religious blessing, let us say of a civil partnership, in a religious building, it is up to the House of Bishops and the General Synod to approve a liturgy. Without that approval there is no approved blessing by the Church. There is surely, therefore, a mechanism because if I am a priest I cannot conduct a blessing without a liturgy and, therefore, the synod would have to have pre-agreed that it was permitting the blessing, and without such a blessing it could not do so.

Lord Carey of Clifton: Yes. I thank the noble Lord for that intervention but I am referring to nonconformist churches which have liturgies that are laid down. In some cases, the very fact of an extempore liturgy is a liturgy itself. The point is whether it is done in a house or a church is immaterial. I am referring to a specific area that is not covered by the Bill. Such bodies would therefore be vulnerable to litigation.

Lord Alli: That would not be possible in the Church of England, for example, where there can be no blessing without the liturgy. That could never be the case until the liturgy is approved by the synod.

Lord Carey of Clifton: The noble Lord is exactly right but I am not talking about the Church of England because there are liturgies for blessing. I am talking about other areas of church life.

Amendment 15 addresses this problem by amending Clause 2, which already inserts an appropriate protection into Section 29 of the Equality Act with respect to marriage provision. It uses an identical form of words to extend a similar protection in relation to the provision of same-sex marriage blessing ceremonies. In amending Section 29, as Amendment 15 makes clear:

"A person does not contravene Section 29 only because the person (a) does not conduct a service of blessing for a relevant marriage, or (b) is not present at, does not carry out, or does not otherwise participate in, a service of blessing for a relevant marriage, or (c) does not consent to a service of blessing for a relevant marriage being conducted, for the reason that the marriage is the marriage of a same sex couple."

I cannot conceive of any reason why the Government or any Member of your Lordships' House, who agrees with the Government's commitment to protecting religious bodies and ministers of religion from officiating at same-sex marriages, could oppose Amendment 15. It applies exactly the same principles to the increasingly important area of blessing ceremonies that seem to have been overlooked in the drafting of this Bill.

I commend Amendment 15 to the House and hope that the Government and all sides of the House will feel able to support it. I beg to move.

6 pm

Lord Deben: My Lords, this is entirely misconceived. This Bill is not about blessings. The church has a right to bless or not as it likes. In my case I am referring to the Catholic church, and not the Church of England, and you can bless without any difficulty. The idea that somehow by refusing a blessing you would be subject to the law because of this Bill seems totally fallacious. You might be subject to the law according to other

Acts, but we have not found that, and if you want to change those Acts, no doubt that would be sensible. But really, this is otiose. That is what worries me. It seems perfectly proper that people who disagree with the vast majority of both Houses on this subject will seek proper protection in areas where one might be uncertain. However there is also a degree of courtesy—I am sorry to have raised that word because it will now dog me for the rest of my life—about not loading this Bill with all kinds of statements about how you do not want to be pressed in this or that way.

It is quite clear what a blessing is. It is something which the churches give as a generous offering to people who ask for it. There is no compulsion; they do not have to do it. If they refuse it, as they can in many cases, there is no question of there being any recourse to law. My father was an Anglican clergyman; he would give blessings in certain circumstances and not in others. That was because in some circumstances he thought they were suitable, in others he thought they were not. Nobody could, would, or should ever have taken him to court. Imagine the court case: "Well, old father, what did you do this for?" and the response, "These two people have been living with other people as well at the same time and so I decided not to give them a blessing". On what possible basis does the court then say, "You should have given them a blessing"?

I say to the noble and right reverend Lord, Lord Carey, that we have to be very careful. There is a great deal of unhappiness among decent people about the attitude of some churchmen to this Bill. Therefore, for goodness' sake, do not let us load this Bill with all sorts of bits and pieces which are not necessary. Let us protect people where the Bill affects them. Do not let us try to protect people where the Bill does not affect them, otherwise we will be doing something which is the bane of American legislation: because there is no concept of the Long Title, you can add anything you like to any Act. You say, "If you want me to vote for this, I want you to include my bit about a bridge in my constituency". I fear that this is precisely that kind of addition. It seeks to squeeze something into the Bill which has nothing to do with it at all.

Lastly, I will say why this is very serious. If we are to take seriously the contention of some churchmen that same-sex marriages are uniquely unacceptable, those same churchmen have to be very careful that they do not spread that unacceptability to other things. A blessing is manifestly something which the churches have used to overcome the reality of pastoral care as against the reality of doctrinal belief. It ought to stay there. The last place where it ought to be reflected is in the legislation of this House and of this Parliament. Blessing is a mechanism whereby the Church of England, for example, has overcome the fact that doctrinally it believes that marriage is indissoluble, but on the other hand it has to deal with marriage as it is. That is what blessing is. Do not, for goodness' sake, try to muck this up by adding to this Bill something which is entirely extraneous.

Lord Pannick: My Lords, this amendment is concerned with Section 29 which is related to the exercise of public functions. Whether you give a blessing or not is plainly not a public function, it is a religious function. It is subject to a higher authority, no doubt, but that higher authority is not the Queen's Bench Division, the administrative court and the Court of Appeal. It would be very damaging indeed to religious bodies for this legislation to suggest that Section 29 could apply to the exercise of what are plainly and simply religious functions.

Baroness Barker: My Lords, the noble Lord, Lord Deben, used the word "courtesy". I wish to make a plea for clarity. I have said already twice during our debates that I utterly support the rights of religious organisations to take a very different view of same-sex marriage than me, as passionately as I believe that public functions need to be open to all. I regret that none of the Methodist mafia is here today—they are usually around when I need one of them—but I want to make a particular point about the nonconformist churches. We spend an awful lot of time talking about the Church of England for obvious reasons, but I do not want any of the nonconformist churches to be left in any doubt that they will be subject to some kind of compulsion when the Church of England will not be. That is absolutely not the case.

One of the reasons I wished that the noble Lord, Lord Griffiths of Burry Port, or the noble Baroness, Lady Richardson of Calow, were here would be to confirm my understanding that—on a slightly different point—the Methodist church, at its conference, is being asked to uphold the view that it will not bless civil partnerships. That is its right and, along with any other church, it will have the right to exercise the same judgment in relation to same-sex marriage.

I want to go slightly further; I hope that churches that take those decisions make it known publicly and loudly that that is their decision. I have spent my life very seriously observing the rights of religious people and trying not to offend them. It is not my intention, as a gay person, ever to offend somebody who holds that religious viewpoint, but I would like churches to make it abundantly clear to me, as a gay person, what their view is, so that I may lead my life in a way that does not directly offend them.

Baroness Royall of Blaisdon: My Lords, I agree with the noble Lord, Lord Deben, that, as legislators working on the Bill, our duty is to protect those who will be affected when it is enacted and not others. Section 28 of the Equality Act 2010 provides for a clear exemption for services provided in relation to marriage and civil partnership from the Section 29 duty not to discriminate. This will not change under this Bill. I therefore expect the Minister to confirm that a refusal to conduct a blessing of a same-sex marriage would be considered a "related service", and thus protected under existing provisions within the Equality Act 2010. Therefore we believe that Amendment 15 in the name of the noble and right reverend Lord, Lord Carey, is unnecessary.

Baroness Northover: My Lords, I thank the noble and right reverend Lord, Lord Carey, for flagging this issue so that all of us can answer it with clarity. Amendment 15 seeks clarity that the refusal by a religious organisation or its representative to conduct a service of blessing of a marriage of a same-sex couple would not be considered

[Baroness Northover]
unlawful discrimination under the Equality Act 2010. The amendment distinguishes between the legal act of solemnisation of a marriage and a religious blessing which does not have legal effect. The amendment is intended to ensure that there is no requirement to conduct such blessings. As with the last group of amendments, we are in agreement on the aim of protecting religious organisations, and I am glad that the noble and right reverend Lord was reassured by much of the previous debate, on that matter.

As the noble and right reverend Lord recognised, the Government are determined that, in opening up the institution of marriage to same-sex couples, they will protect and promote religious freedom, as other noble Lords have said. The Bill ensures that religious organisations and their representatives will not be forced to conduct or participate in same-sex marriage ceremonies. The quadruple lock in this respect amends the Equality Act 2010 to make clear that it is not unlawful discrimination for a religious organisation or representative to refuse to marry a same-sex couple, and I remind the noble and right reverend Lord that these protections apply beyond the Church of England, as my noble friend Lady Barker made very clear.

The amendment is unnecessary because it is already covered by the Bill, and I thank my noble friend Lord Deben and other noble Lords for their support. Clause 2(2) provides that a person cannot be compelled to carry out, attend or take part in a "relevant marriage". A relevant marriage is defined in Clause 2(4)(a)(iv) as "including any ceremony" connected with the solemnisation of a marriage of a same-sex couple according to religious rites as well as—this is most important—a religious ceremony after a civil marriage of such a couple. The existing religious protections in Clause 2 therefore apply to a blessing of a marriage, which is the same target of this amendment.

In addition, as the noble Lord, Lord Pannick, and the noble Baroness, Lady Royall, explained, and I can confirm, in any event, the conduct of a service of blessing is not something on which the Equality Act 2010 bites, as being purely a religious matter outside of the scope of that Act in the same way that baptisms or the provision of communion are religious issues not covered by discrimination law. So any kind of blessing of a marriage which has no legal effect would not be covered by discrimination law and does not need protection in the way that the amendment envisages.

Lord Tebbit: My noble friend referred to Clause 2(2) which states that:

"A person may not be compelled".

Is she able to say where in the Bill or elsewhere it is provided that a person who does not conduct a relevant marriage and so on may not be penalised in any way?

Baroness Northover: I am not sure if my noble friend was in his place for the earlier debate, but we had quite an extensive discussion. He may be interested in reading the letter that will be put together by my noble and learned friend.

Lord Lester of Herne Hill: My Lords—

Lord Tebbit: I was here for a substantial part of that debate, but not all of it. I ask a simple question: is my noble friend able to confirm that a person would not be penalised?

Baroness Northover: Yes, I can confirm that.

Lord Lester of Herne Hill: My Lords—

Lord Carlile of Berriew: My noble friend is able to offer free advice on this.

Lord Lester of Herne Hill: Yes, it comes free. When the noble Baroness replied to the noble Lord, Lord Tebbit, she may have had in mind not only what was said in the previous debate but also the fact that at common law, as was said in that debate, it is quite clear that for a public authority to misuse its powers punitively is itself a public law wrong. The case quoted was that of Wheeler, but there have been others such as, for example, when Rupert Murdoch was penalised by a public authority so far as advertising was concerned. It was also when Shell was penalised because of a boycott. They were cases where public authorities were doing public law wrongs, and in my opinion that would apply equally at common law so far as this is concerned.

Baroness Northover: I find it amazing that my noble friend Lord Lester knows what is inside my head when I myself do not necessarily know what is inside it, and I appreciate his understanding. Coming back to the amendment that we are addressing here, I hope that the noble and right reverend Lord is reassured by what I have said, and by what other noble Lords have said in addition, and that he will be willing to withdraw his amendment.

6.15 pm

Lord Carey of Clifton: My Lords, I am grateful for this brief debate and I agree with the noble Lord, Lord Deben, that courtesy and respect are very much at the heart of what the House of Lords does and the way in which we do our business. However, as a House we have to listen to the concerns of many of the people out there; people who we know. I can assure noble Lords that I did not concoct this amendment because I was personally associated with it. I did so because of the many concerns that people have. I would differ from the noble Lord, Lord Deben, in his view that this is quite different from the Marriage Act 1949. It is not, because the people who do the blessings are doing so over the marriage itself. Nevertheless, what I gained from this brief debate is a clear assurance that people have nothing to fear. That is now on the record, particularly the view of the noble Baroness that it is unnecessary because it is covered by the Bill. With that assurance, I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendments 16 to 19 not moved.

Clause 2 agreed.

Clause 3 : Marriage for which no opt-in necessary

Amendment 19A

Moved by ***Lord Harrison***

19A: Clause 3, page 4, line 38, at end insert—

"(cc) a marriage of any couple conducted according to the usages of an approved organisation;"

Lord Harrison: My Lords, I shall speak also to Amendments 22A and 27A. I am so sorry that the noble and right reverend Lord, Lord Carey, has departed because I was reminded during the course of the debate today that one of the shorter and most interesting aphorisms of William Blake was, "Damn braces: Bless relaxes". Given the necessity for belt and braces which has been expressed by so many colleagues, perhaps it would have been apposite today. I, too, seek a blessing for the amendment that I would like to introduce.

The amendment would allow humanists to have a wedding fashioned to reflect their humanist beliefs. It would allow those marrying to have a celebrant who is himself or herself a humanist—one of their own kind. The amendment would also allow such humanist marriages to be open to both gay and heterosexual couples, which is consistent with the Bill, for which I am a strong advocate. Indeed, it would have allowed me and my wife, who have been happily together for 40 years, to have celebrated our own commitment and unshakeable love in a marriage of true minds. This amendment is, indeed, an affair of the heart, which brings heartache to none.

This amendment is in line with a succession of reforms over the centuries that have responded to inequalities of the law, or rather to growing sensitivity to such inequalities. The modern law started with Lord Hardwicke's Act of 1753, but since then there have been 45 items of primary legislation that are still on the statute book, 27 of them in the present reign, as well as many that have been completely repealed. Many of them widen the choice of methods by which one can marry, gradually relaxing the original rule that virtually everyone had to marry at their parish church.

Today, any Christian denomination, or indeed other religion, can register its place of worship for the solemnisation of marriage. At the most recent count in 2010, there were in excess of some 30,000 registered places of worship. This total excludes the Church of England and the Church in Wales. They range from the Methodists with more than 7,000, the Catholics with 3,600, to more minor denominations such as the Unitarians with 176 and the Countess of Huntingdon's Connexion with 15. They take in the main non-Christian religions. The Muslims have more than 900 places registered for marriage while devotees of Krishna are content with but one. Then there are the spiritualists with 323 places registered for marriages and there is the somewhat bizarre Aetherius Society with one place registered for weddings, whose website proclaims that its philosophy and teachings come largely from highly advanced intelligences from higher planes of Mars, Venus, Jupiter and Saturn, and that these cosmic masters, or gods from space, visit earth probably in flying saucers.

Every religious taste appears to be accounted for, but as the census reminds us, at least a quarter of us have no religion. What of us? Many of us are reconciled to settle for the one size fits all civil marriage introduced in 1836 in the most significant by far of those Acts that have since vanished from the statute book. Indeed, civil marriage by registrar now accounts for two out of every three marriages. For most people, it is perfectly satisfactory, but if you want to have a ceremony that reflects your own belief, then the registry office can be very unsatisfactory.

The fundamental restriction that it may not include any religious content now under the current laws of equality and human rights means that it may not either include on the part of the registrar or any other participant any content distinctive of a non-religious belief, such as humanism—added to which, of course, the presiding registrar may in fact be an ardent Christian, Muslim, or indeed a member of the Aetherius Society.

The most significant group by far of non-religious people in England and Wales who hold a positive non-religious belief are the humanists. They find it vexing that while marriages according to all religious beliefs are legally recognised, those conducted by humanists are legally invalid. A humanist ceremony may express their profoundest sentiments and commitment to each other, but it counts for nothing in the eyes of the law. To be legally married, you have to go off to a registry office and go through a second procedure.

Moreover, the British Humanist Association finds that there is a growing demand for its marriage ceremonies. The British Humanist Association will be known to many of your Lordships for its funeral ceremonies, which are highly regarded, to the extent that they are now copied with more or less success by funeral directors and even by some clergy. Its marriages, of which it conducts more than 600 a year, are notably even more special. They express humanist values and beliefs, but are individually shaped around the commitments that the humanist couple wish to make to each other in front of their families and friends. Some of your Lordships will have seen the eloquent testimonies from couples who have had such BHA weddings and how much they mean not only to the couples themselves, and to other humanists present, but even how highly they are regarded by their religious relatives who attend. If we want to underpin the importance of marriage in these changing times, one way is to make more marriages like these humanists ones. I speak as someone who has had the joy and honour of being a celebrant and conducting such a humanist marriage, albeit informally.

In order to clarify humanism and the kind of marriage we would want, I will describe what makes it distinctive. The marriage is conducted by a celebrant who shares the beliefs and values of the couple. The celebrant spends time with the couple prior to the marriage itself to know them better and better to shape the subsequent marriage. The marriage ceremony in general reflects specific humanist convictions; for example, that there is no supernatural side to this reality and that human beings in the here and now are the source of value and meaning. These are specific non-religious belief elements. Beyond the general reflection of humanist values that underlie the ceremony, the order of service is created

[LORD HARRISON]

in line with the specific beliefs and values of the couple. This itself reflects a humanist conviction about the creation of meaning in human lives. The marriage is conducted in a place of particular meaning or significance to the couple.

Scotland is relevant only because it shows the pent-up demand for humanist marriages. Since they were legalised in 2005, humanist ceremonies have soared from a few hundred a year to approaching 3,000. In 2011, there were 2,846 humanist marriages, but only 1,729 Roman Catholic ones. Only Church of Scotland and civil marriages are more popular. In 2011, humanist marriages amounted to 8.5% of all marriages and 18% of all religion or belief marriages. Moreover, if one looks at the past few years, since humanist weddings became well established, the picture is striking. In the latest three years for which figures are available—2009 to 2011—the total number of marriages in Scotland has been rising again, by 1,611, with humanist ceremonies contributing 942 marriages, 58% of that increase. Humanists stand ready to boost the pattern and practice of marriage in this country.

It is difficult to think of any reason why England and Wales should be different from Scotland. I mentioned in passing that Ireland has recently legislated to recognise humanist marriages, that a similar change has occurred in Iceland, and that Norway, Ontario, Australia and New Zealand already have such humanist marriages.

In the other place, humanist marriage was strongly supported at the Report stage of the Bill but encountered an obstacle when the Attorney-General pronounced that the version of the amendment under debate there fell foul of the European Convention on Human Rights. That version mentioned humanists specifically and the Attorney-General ruled that it would give rise to claims by other non-religious belief organisations of discrimination. As it happens, the British Humanist Association has legal advice that no such claim could have succeeded. Be that as it may, my present amendment has been redrafted to be proof against any such objection and Matrix Chambers has provided the BHA with written advice to that effect.

The present draft refers not to humanist organisations but to those advancing a non-religious belief. It might be thought that this would open the field to bodies other than humanists—there have been silly scare stories in the press about Jedi weddings and the like—but in fact it is difficult to think of any other organisation with a belief system that can meet the criteria set out in the amendment.

6.30 pm

The British Humanist Association, which was set up in 1896 as the Union of Ethical Societies, has been running well established services offering humanist marriage for a long time. It trains, accredits, insures and provides continuing professional education for hundreds of celebrants throughout the country. These ceremonies attract a very high level of satisfaction—more than 95% of clients give them a five out of five rating. On the basis of extensive and impassioned testimony from couples who have had them, these weddings are profoundly valued as reflecting the beliefs of those who have been married and allowing them to have ceremonies devised in collaboration with the celebrant to meet their own wishes. Many are equally as eloquent about how the need to have a legal registration of their marriages detracted from the magic of the occasion. One couple wrote:

> "The registry office procedure was something we had to do, not something we wanted to do. It would have been wonderful not to have to do this simply to satisfy the legal requirement as it meant nothing of significance to us and was an additional expense and inconvenience".

Such testimony, along with the Scottish experience, shows that there is a pent-up demand for humanist weddings. Reform is supported by the public. According to a recent YouGov poll, four times as many people supported legal recognition of humanist weddings as opposed it.

It is a reform that disadvantages no one. Its cost to the public purse is close to zero. In an age of equality, it removes an unnecessary barrier based on religion or belief and it will, in no small way, strengthen the institution of marriage. The British Humanist Association has had meetings with the Government Equalities Office. I pause to thank the Secretary of State in the other place for being particularly helpful and wanting to see this legislation through when it comes here. We have had discussions with the Ministry of Justice and the Church of England. I thank colleagues from the Church of England who have had the opportunity to go into discussions with the British Humanist Association to ensure that what comes before your Lordships is appropriate and useful. The British Humanist Association tells me that it is unaware of any objection from any of them that it does not believe it has now met in the current draft. None the less, I would be very happy to consider further changes on Report. I particularly welcome the advice of colleagues from around the House so that we can look at this again, if necessary, and pursue it further.

I will conclude with a quotation from a letter from a couple from south-east London who recently had a humanist marriage:

> "A humanist wedding offered us the chance to make the wedding 'ours', it enabled us to construct our own vows and create a ceremony that felt immediately very personal to both of us and our guests, it also portrayed exactly what marriage meant to us and how we see our marriage growing in the future ... We arranged a special 'legal' ceremony for the day before … our 10 minute ceremony felt rather hasty and impersonal, it certainly didn't leave me with any feeling of having just made an important commitment to my husband. It was, as they say, a piece of paper … I personally don't see why our [humanist] ceremony should be any less valid than any other ... our guests would attest to it being one of the most emotionally meaningful ceremonies they've ever witnessed, [and to] feeling like they all now play a part in supporting our relationship".

I beg to move.

Baroness Massey of Darwen: My Lords, I rise to speak briefly in support of my noble friend's amendments and of this Bill. The noble and right reverend Lord, Lord Carey, asked noble Lords a few moments ago to listen to the people out there. We live in an increasingly diverse society and are observing shifts in our lifetime from one generation to another. When most of us were young, it was assumed that most people were Christians—or at least claimed to be. Nowadays, among young people at least, the opposite is true, and surveys

and polls show that the majority are not religious. Even in the census, which was very conservative, 25% of us said we had no religion. Among the under-50s, more than 40% said so.

There are, of course, those who do not welcome this move away from religion. One consequence is that among young people with no religion—I suspect among older people, too—many nevertheless have strong beliefs and commitments that are not necessarily religious but still provide answers to questions about the importance of relationships, respect for others and moral standpoints. I would maintain that most young people have strong moral commitments at the personal and social level. What for many previous generations was expressed in Christianity, many young people today express in beliefs about respect for each other, the world and future generations.

This is relevant to the amendments that we are debating. These young people, when they marry, often wish to do so in a ceremony that expresses their humanist commitments and beliefs, and their respect for other people. Just as for many religious people the idea of a wedding in a register office is a mere legal formality compared to the vows they make to each other and to God in a church wedding, so for these young humanists it is second best to settle for a civil wedding conducted by a registrar who, regardless of his faith or lack of it, is not allowed by law to give expression to any religious belief, including humanism.

The Bill is about equal marriage. It is also about equal weddings and allowing this growing segment of our population—already growing in size, as my noble friend said—to conduct their own legally recognised weddings within the framework of their own humanist beliefs and commitments. The proposal has wide support. In Scotland, as my noble friend said, humanists conduct more weddings than any religious body apart from the Church of Scotland. A YouGov poll tells us that more than half the population support the proposal, with only 6% strongly opposed and another 6% tending that way. I understand that the Church of England told the British Humanist Association last week that they would not oppose it.

The British Humanist Association was accommodating in drafting the amendments proposed at earlier stages of the Bill and in responding to suggestions made at meetings with government Ministers and officials. The difficulties that were expressed then now seem to have been resolved. The amendment breaks no new ground in being based on an organisation rather than a building: the Jews and Quakers are already in this position. The principal concern expressed by officials at Church House last week to the British Humanist Association was that the public nature of marriage should be preserved. That is something that we can surely all endorse but it does not require a registered building, only that the place intended for the wedding is known and open to all who wish to attend. The amendment specifies "with open doors" and the location for all weddings is already included in the notice of marriage required under the Marriage Act 1949.

The proposal is not for a celebrant-based system; what the amendment says about nominating registering officers is precisely what the law says about non-Anglican churches nominating their clergy as such. There are no implications for the safeguards for religions not wishing to conduct same-sex marriages.

I am told that Bills about marriage come along about once in a generation. Let us not, through excessive caution, allow the injustice of the present system to wait for another generation to be put right.

Lord Garel-Jones: My Lords, I support the amendment moved by the noble Lord, Lord Harrison, and the new schedule proposed in Amendment 27A.

Whenever I am asked what my religion is I reply, "I am a Church of England atheist". I hasten to say that this is not some glib witticism, but a true reflection of my position. I do not believe in God and I am a member of the All-Party Humanist Group. However, the King James Bible, the Cranmer prayer book and *Hymns Ancient and Modern* are a part of my DNA. Their role in our history and their language are part of what makes our country what it is today. Consequently, when noble Lords talk about traditional marriage, I understand and respect where they are coming from.

I am a little concerned, as was my noble friend Lord Deben, that a number of religious believers in your Lordships' House may, with the greatest courtesy, have been attempting to load up the Bill. I shall concentrate my remarks on the allegation that this amendment undermines, as it were, the whole basis of the law on marriage. As the law stands, any religion may conduct legally recognised marriages so long as they have use of a registered place of worship. Any sect of any religion that can afford a building can register it as a place of worship, and then re-register it for marriages without any obstacle whatever. In effect, provided you are a religion, you get a bisque.

Putting aside the 11 main Christian denominations—the noble Lord, Lord Harrison, made reference to this—there are almost 4,500 places registered for the solemnisation of marriage by minor Christian groups, and more than 650 by non-Christian groups. Many of these, to put it as kindly as I can, are a little eccentric. The noble Lord, Lord Harrison, referred to the Aetherius Society, which believes that gods from outer space visit the earth in flying saucers—and, yes, the Aetherius Society is registered to perform marriages.

This amendment simply proposes approval for organisations that, unlike religious bodies, which sail through unimpeded, meet a number of serious criteria. The first one in Amendment 22A—it is printed on the Marshalled List so I will not tire the Committee by reading it all out—makes a series of requirements. They must be registered charities of good repute, they must have been established for at least 10 years, the ceremonies must be rooted in their belief, written procedures must exist and so on. In other words, a simple visit from a flying saucer will simply not suffice for the humanist group. A serious list of terms and conditions is set out in the proposed new clause.

On the registration of buildings, to which the noble Baroness has just referred, I think this is a bit of a red herring. Any marriage needs to be preceded by a public notice—either banns in a parish church or a notice under Section 27 of the Marriage Act 1949. The amendment ensures not only that the place is known

[Lord Garel-Jones]
but that the marriage is to be celebrated under open doors. I believe, therefore, that this objection is without substance. The proposal is organisation-based in the same way that the law already recognises the organisations of Jews and Quakers. I recognise that what we, as humanists, are seeking to do is, as it were, to slipstream in behind the Bill, which I strongly support.

In conclusion, I say with respect that the two main Christian religions in our country are in some danger of falling out of step with civil society. For example, any corporation that made it clear that women were excluded from top positions in its organisation would find itself in court. Consequently, the debate about women bishops now going on in the Church of England raises a few eyebrows in this day and age. Most young married couples are involved in family planning and yet, as I understand it, the Roman Catholic Church continues to regard this as a mortal sin.

6.45 pm

Perhaps a Church of England atheist is not the ideal person to give advice to churches about how they should be coping with modern society. However, in the matter of same-sex marriage and humanist marriage, I believe that both of the main churches, and indeed the minority ones, are out of step with civil society. The noble Lord made reference to Scotland, where humanist marriages have now been legal for more than a decade and where there are already more humanist marriages each year than there are Roman Catholic marriages. I understand that it is predicted that by 2015 they will have overtaken the Church of Scotland itself.

Frankly, if I personally were in charge of marketing in any of our principal churches, I would be a little worried. However, that is, of course, a matter for them. The worrying thing for me is the way in which they have been able, with the greatest courtesy, to mobilise objections and amendments to this particular piece of legislation, which I strongly support.

Lord Singh of Wimbledon: On the question of religions falling out of step with civil society, religions are there to give values to society, lasting and ethical values, on which society should be based for its own good so that responsibility and consideration of others is there. I see dangers in civil society falling out of step with that guidance.

Lord Garel-Jones: With the greatest respect, I agree except that I would put it the other way around. The danger that I see for religions, particularly the one to which I feel sentimentally attached, the Church of England, is that they will fall out of step with civil society. For example, the progress that has been made over the past 100 years in rights for women is widely supported in civil society. Therefore, as I said earlier, it seems a little odd to see the Church of England debating whether women should be bishops. It is, of course, a matter for them and for their religious beliefs.

Lord Singh of Wimbledon: I apologise, but the noble Lord refers to religions—he has clarified the issue now—and gives the example of women. Women were given full equality in the Sikh religion from day one.

It is not a question of marketing. Religions and value-based systems should not go for marketing. They are offering something, and that must not go with the tide. That is absurd.

Lord Garel-Jones: As I say, I am not the best person to be advising churches on how to handle the like. However, religions evolve and have, over the centuries, evolved along with society. I would suggest that they might be wise to do so.

In conclusion, I say to the Minister that I very much hope that she will be able to give consideration to this matter. I recognise that we are attempting to slipstream behind the Marriage (Same Sex Couples) Bill, which I strongly support, and which has been strongly supported both in this House and in the other place. We also know—I think we all know this—that even with a piece of legislation of this kind, which is non-party and free vote, officials look to their Ministers for guidance. I have no doubt that if my noble friend the Minister and the Secretary of State in the other place were to suggest to their officials that they would like to find a way of accommodating humanist marriage within the Bill, they could and would do just that. I very much hope that the Government will move such an amendment on Report.

In the mean time, if I may paraphrase a lyric from *Hymns Ancient and Modern*, I can assure the House that we in the humanist movement,

"will not cease from mental fight",

until we have achieved full recognition in the law for humanist marriage.

The Lord Bishop of Guildford: My Lords, I greatly appreciate both the humour of the noble Lord, Lord Garel-Jones, and the courtesy of the noble Lord, Lord Harrison, and the noble Baroness, Lady Massey. Conversations have just been referred to. There has indeed been a conversation, as the noble Lord, Lord Harrison, said, but it was only a few days ago and it was just with officials. There is not yet, I think, a formal Church of England view on this matter. Your Lordships should take account of that in hearing what I have to say.

Personally, I am open to this proposal. Nevertheless, I have a serious question as to whether it is right—to use the phraseology of the noble Lord, Lord Garel-Jones—to slipstream this into this Bill, which is about same-sex marriage. I have three reasons for seeking to avoid confusion at this point.

First, as has been recognised already, this amendment would intrude a celebrant-based recognition, or at least a partly celebrant-based recognition, into the marriage law of England and Wales. I declare an interest: according to the law of England and Wales, I am one of the persons in this Chamber who can and do solemnise marriages in the Church of England, in parish churches and, with the most reverend Primate the Archbishop of Canterbury's special licence, anywhere at any time, which is more than civil marriage allows; that is an aside. There is nothing wrong with the celebrant system—

Baroness Thornton: I thank the right reverend Prelate for allowing me to interject on the subject of the celebrant-based system. This amendment is not

about introducing a celebrant-based system into the arrangements for humanist marriages. It is quite important that the right reverend Prelate does not develop an argument about the celebrant-based system when actually this amendment does not seek to do that. It seeks to follow the Scottish arrangements for humanist weddings.

The Lord Bishop of Guildford: I am grateful for that point of information and I accept that clarification.

The other issue I was going to put before the House is the professional quality of our registrars, and a very significant change in breaking what is a monopoly of either clergy of religious faith communities or our registrars. That sort of change needs more consultation than has taken place thus far on this issue. I repeat that I am actually open to the issue in principle but I do not think it is right to put it into this Bill.

I must confess some confusion—even Church of England bishops can be confused sometimes—at the way in which many humanists wish to have what seems to be a non-religious church. I see that the noble Lord, Lord Garel-Jones, is assenting. For me, that is, in the words of Alice, "curiouser and curiouser", but it will be for the House to decide whether or not to slipstream this in. There is a question mark on this Bench.

Baroness Brinton: My Lords, I would like up to pick up on the right reverend Prelate's last point about the curious distinction between a humanist celebration of marriage and one for those of us of faith. I refer back to the very important point made by the noble Lord, Lord Harrison, about those of us of faith who have been very moved by humanist funerals, where without the liturgy and the solemn elements that are very important to those of us of faith, it has been possible to absolutely capture in a particular style and format that is relevant—in the case of a funeral, for the family and friends of the bereaved, and, we hope in the future, in the case of a marriage, to the absolute wishes of the couple—in a form that is almost like liturgy. I suspect that the humanists would not like that word but it gives a sense of the importance of the act that the couple are about to go through.

The case studies that the British Humanist Association has sent through have drawn the distinction very clearly between the clinical process that can happen in a civil registry office versus the extremely moving ceremony that a humanist celebrant can create with a couple to mark the day in the way that they want. I would regret it if we picked up the French style of having to have two ceremonies. In France, of course, they celebrate both in style; weddings go on for whole weekends there, it is never just one event. But I have been very moved by the accounts in these case studies where it is absolutely apparent that the handfasting and the words that the couple have chosen mean as much to them as the marriage ceremony means to me as a Christian. If this Bill is about the coalition's commitment to equality, and indeed the previous Government's commitment to equality, now is the time to address this and accept that this organisation should be considered an approved organisation.

To reassure the right reverend Prelate, I know the Watford Area Humanists quite well—I suspect that the noble Lord, Lord Garel-Jones, does as well—and I am constantly assured of their sincerity and seriousness in the not just debate they engender locally but in understanding the role that they are performing for the rites of passage within our community for those who do not have a faith. I can think of no better organisation to be able to celebrate a marriage and I really hope that, despite the Government's concerns, it can be looked at.

Wearing my Liberal Democrat hat, I would like to add that the party has been very clear for some time that this is something we would like to see.

Lord Elton: The noble Baroness is very persuasive and I am not at all against what is proposed. But perhaps I might intervene in the mini-debate that my noble friend had with the noble Lord, Lord Singh. The element that my noble friend has not given credit to is that whereas people in his position regard society as being the final moral authority, those in religious faiths see a higher authority but are apt not to mention the fact quite enough. We are trying to handle this in a faith where we acknowledge one leader and one saviour, and trying to reconcile what is proposed now with what he taught us.

7 pm

Baroness Turner of Camden: My Lords, as I said at Second Reading, I am a secularist, but I accept that many people are religious. We have spent a lot of time previously talking about the necessary protections to ensure that people who are religious have their right to a religious conscience properly protected. We have spent a lot of time on that again today. I do not object to that because I accept that people feel strongly about their religion and, while I am not religious myself, I accept the right of people to preach their religion if they want to. My only objection is if there is an attempt to impose those beliefs on people like myself who do not accept them.

One of the reasons I have been a member of the Humanist Society for a long time now is because there seem to be people in that society who are concerned with human values, tolerance, good will among people, and so on, but who nevertheless do not go along with what I can only regard as the supernatural part of most religions. Also, in my view many religions, including the main ones, are often rather bad when it comes to women's rights. Women have made enormous progress in the past century in securing equality and a lot of it has been against some of the major religions.

This amendment draws attention to the requirements many people who are not religious may have which can be met by the Humanist Society. It seems to me to be a very good idea to have the possibility of what the Humanist Society provides for people who want to have a proper ceremony when they marry. The Humanist Society has developed arrangements to train people to provide that sort of service to members of the society. My noble friend Lord Harrison has made a very strong case this afternoon and so have other people. I hope, therefore, that what he is proposing is seriously considered because we are talking about a lot of people. Far more people are non-religious than are practising religious people and therefore we have a right to be considered.

Lord Lester of Herne Hill: My Lords, I am a lapsed humanist. When I was at Cambridge I was a member of the most privileged club which was the Cambridge Humanists and I lapsed because it was too religious. My most memorable experience was asking EM Forster to give a lecture. He said he would give a lecture on whether Jesus had a sense of humour. I said, "That is a splendid subject". I was just thinking that now you could not give a lecture like that. You could give one on whether God had a sense of humour. I am not sure you could give one on whether the Prophet had a sense of humour. But certainly the proposition at the time was very interesting in Cambridge.

I completely agree with the speeches in favour of these amendments for all the reasons that have been given. One further reason why I am in favour is because both the Equality Act and Article 9 of the European Convention on Human Rights recognise the rights not only of those of religious belief but also of those of no belief, and the Strasbourg Court has repeatedly explained that in a plural society agnostics, atheists and non-believers have as much right as believers of all kinds to equality of treatment. I have no doubt that there is inequality of treatment at the moment between humanists as a belief system and others. If you look at those registered as religions, they include, for example, theosophists. It is very difficult to distinguish between a theosophist and a humanist except that one believes in God and the other does not. And Buddhists and Jainists are registered but they are not theistic religions. I believe that, in terms of equality and common sense, we must move on this, and not only because my party thinks so.

My noble friend Lord Deben said that unlike the United States we have orderly systems in this country when we legislate and I am a bit concerned that in the other place they do not seem to take Long Titles seriously. I cannot imagine that these amendments would have slipped through if this legislation had been introduced into this House because, as the Long Title says, the Bill is to make provision,

"for the marriage of same sex couples in England and Wales, about gender change by married persons",

et cetera. It says nothing at all about the rights of humanists or anybody else. Therefore, being boring about it, this falls completely outside the purpose of this Bill. I do not want to do anything to jeopardise the coming into force of this Bill but the poor old British Humanist Association has already gone through hoops to get to the position we are in. Originally, it tabled amendments just for humanists and then the Attorney-General said, "That is discriminatory". It quite rightly changed the amendments to include all belief systems and now I am saying that this is not an appropriate vehicle for doing so.

It seems to me that there must be movement on this and if this Bill is not to be the vehicle, then either there has to be a Private Member's Bill with government support on this separate issue to comply with Article 9 and 14 rights or some kind of inquiry leading to action. Noble Lords—the noble Lord, Lord Alli, in particular—will recall that we had similar problems when we introduced the concept of religious discrimination but did not include discrimination based on sexual orientation. He, with my support, found an ingenious way round that with a regulation power which enabled us to deal with homosexuality as well as with religion. Although that may not be the right way forward here, the Government need to be imaginative and think of ways of giving effect to the object of these amendments without being able to support them in this Bill.

Lord Alli: My Lords, I am not a humanist; I am afraid I am a closet believer in God. But I wanted to add my support to the legislation for humanist marriage and the inclusion of this amendment in the Bill. The Bill is about equal marriage, and allowing fellow citizens to conduct their own legally recognised weddings within their own framework of humanist beliefs seems to me to be a proposal that we should support.

I also believe that there is popular support for this proposal. I suspect the other place was minded to move forward with this but the Attorney-General's advice at the last minute that the amendments as drafted would breach the European convention and put the quadruple lock at risk meant that there was insufficient time to deal with this. As with so many other issues, the ball is now in our court. I understand that these amendments have been changed to address the issues raised by the Attorney-General and I have seen and even read the advice from Matrix Chambers to support that case. There is huge support for this in my own party, in the Liberal Democrats and on the Cross Benches. I think that this House is minded to pass this and would like the Government to find a way to make this happen. The Government should put their best minds together to see whether we can get these amendments through. On behalf of those who have worked in this area for many years, waiting for a Bill to come along that will allow this to happen, I ask the Minister to look carefully at this.

Lord Eden of Winton: My Lords, before the Minister replies to the debate, I would like to follow up the observations made by my noble friend Lord Lester. This touches on the "slipstream" argument brought forward by my noble friend Lord Garel-Jones. I must admit that I am having difficulty enough coming to terms with the Bill as it is and is likely to become, without any further amendments to it of any kind, as I made clear at Second Reading. I believe that what is proposed in the Bill will lead in due course to a fundamental alteration of the concept of marriage in the Church of England such as I have been brought up to know it and indeed as has been the case for many years.

This is clearly not the Bill for an amendment of this kind. None the less, when this matter was considered in the other place in March this year, the Parliamentary Under-Secretary of State for Women and Equalities—I am indebted to the Library for a briefing note on this subject—talking about the inability to hold legally valid humanist marriages in England and Wales, said that the Government would,

"consider amendments to marriage law when an appropriate legislative opportunity arises".

The Minister felt that this Bill was "not the right vehicle" for the proposed change, and that it,

"must not be thrown off its path by attempts to make wider changes to fundamental marriage law in England and Wales".—[*Official Report*, Commons, Marriage (Same Sex Couples) Bill Committee, 12/3/13; col. 475-76.]

Baroness Thornton: Does the noble Lord think that the humanists need to wait another 19 years for another Bill to come passing by?

Lord Eden of Winton: I am afraid that that is not the immediate problem. The problem is the impact on this legislation and whether this legislation is the right vehicle for the sort of amendment that is being proposed. That is certainly not the case; we are talking about same-sex couples getting married and the opportunities that the Bill would provide for that to take place both in a civil setting and, if the Church of England later agrees, in a Church of England setting.

Since it is indicated by the quotation that I have offered to the Committee that the Government are prepared to give consideration to the claims of the British Humanist Association, I hope that the Minister will give a clear indication of just what the Government have in mind when they say they will give consideration to these propositions.

Lord Aberdare: My Lords, I have no specific expertise on humanism and am not a humanist myself. Indeed, I am grateful to the noble Lord, Lord Garel-Jones, for revealing to me that what I might well be is a Church in Wales atheist.

I doubt that at this stage I can add much to the powerful and convincing arguments made by the noble Lord, Lord Harrison, and others in favour of these amendments. I have been very struck by what we have heard about the number of humanist weddings and the seriousness and sincerity with which they are approached, as well as by the number of other organisations that can already conduct weddings, which was explained to us by the noble Lord, Lord Harrison.

I say solely that I add my voice in support of the case that has been made, and I hope that the Government will be able to look carefully and sympathetically at it with a view to fulfilling the sincere desire of humanists to have humanist weddings recognised as legal marriages, as they already are in Scotland. I recognise that this would involve stretching the Bill rather beyond what was originally envisaged, but it would be preferable to take the opportunity presented by the Bill or find a another way of doing it rather than waiting yet another 19 years for the next marriage Bill to come along.

7.15 pm

Baroness Thornton: My Lords, this has been an excellent debate. I say to the noble Lords, Lord Lester and Lord Eden, that the amendments that were tabled in the other place and those that have been tabled here have been accepted as being within the scope of the Bill, so we are perfectly entitled to discuss them as being legitimate within this piece of legislation.

We on these Benches support Amendments 19A, 22A and 27A. I am a humanist. I am not a lapsed one, though I have veered between being a member of the National Secular Society and a member of the British Humanist Association all my life.

I also need to declare an interest in that one of my sisters is a British Humanist Association-accredited celebrant. One of the things that I would like to say to the right reverend Prelate, who has made very generous remarks during this debate, is that the ceremonies that my sister conducts are in every way as professional, carefully constructed, personal and beautiful as any other funeral, marriage or naming celebration that you could wish for. The standard of training and accreditation that the BHA undertakes is exceptional, and it has a commitment to ensuring that, were this to become part of our legislative framework for marriage, its celebrants would of course match the very best of the registrars. So that is not an issue here. I am very proud of my sister and her calling, and I think she has every right to conduct marriage ceremonies.

If either of my children wanted to be married at a humanist wedding service, at the moment they would have to go to Scotland, Australia, the United States, Sweden or, more recently, Ireland. In England and Wales they would have to have a civic ceremony and then a ceremony organised by a humanist celebrant with all the spirituality and commitment that they will have chosen to have in that ceremony. Their choice is restricted by—I have to say this although it might seem a slightly odd expression coming from this side of the House—the closed shop that we find in the old-fashioned rules on marriage in this country, to say nothing of the fact that they would have to pay twice for the pleasure of getting married.

This is an issue that the Government should embrace. The Red Tape Challenge, a commitment to competition and, indeed, the Minister's commitment to equality should lead one to the view that this is an area where there is injustice and unfairness and it needs a remedy. I hope that she will accept the principle behind the amendment or, even better, accept the amendment itself, or that the Government will come forward with an amendment at a later stage that will achieve the objective of remedying this injustice. Bearing in mind, as noble Lords have already said, that it is 19 years since the previous marriage Bill, one cannot blame the humanists for thinking it reasonable not to have to wait another 19 years before this anachronism is addressed. Indeed, legal recognition for humanist marriages was given in Scotland in 2005.

Given that legal recognition for humanist marriages is the party policy of the Liberal Democrats, is supported by the Labour Party on this side of the House and by our shadow Cabinet, and was supported in the Commons by MPs on all sides, the amendment to recognise humanist weddings as legal marriages was one of the first to be tabled when the Bill received its Second Reading in the Commons. In Committee, the amendment to give legal recognition to marriages conducted by humanists and religious charities, meeting certain conditions, was introduced but fell after a 7-7 tie on the voting Committee, which was resolved against by the casting vote of the chairman—as it would be, and I accept that those are the rules. However, that shows that there is significant support for this issue.

The redrafted amendment on Report addressed all the concerns raised in Committee as well as further concerns raised afterwards by government officials, and was debated. Again there was strong support from all sides, but the amendment was withdrawn after the Attorney-General and the Secretary of State stated

[Baroness Thornton]
that the measure would not be compatible with the Human Rights Act and that passing the amendment could lead to a declaration from the Government to that effect. The Government published their legal arguments as to why that was so and specifically asked that the legal arguments should represent the comprehensive statement of the Government's concerns.

The British Humanist Association has taken all of this on board and the amendment before us now addresses all the matters raised in the Government's document. Written advice from Professor Aileen McColgan of Matrix Chambers has confirmed that the revised amendment addresses all the points of law that were raised in objection to the Government. I will not go through all the proposals now because I think that the House fully understands the issues.

It is time to stop giving reasons for not allowing humanist weddings and to give reasons why they should happen and to give proposals on how we can find a way through this. I finish with a quote from something circulated in the evidence that the British Humanist Association gave.

Lord Lester of Herne Hill: I wonder if the noble Baroness can explain the position on Long Titles, because it may well be that her party will form part or the whole of a future Government. On the question of Long Titles, I realise that the pass was sold in the other place, and that therefore it is quite okay for us to debate this. However, in terms of House of Lords procedure, how can the matter possibly be within this Long Title? Is not the better point that there should be a Private Member's Bill, with government support, that deals with this as a discrete issue and that can get through speedily?

Baroness Thornton: The point that I was making at the outset of my remarks—the noble Lord is an expert at getting legislation through this House—is that if it has been accepted by the clerks at both ends of this building, in the Commons and in the Lords, then it is within the scope of the Bill. We can have discussions about Long Titles and their meanings, and indeed we occasionally do, but it seems to me that this is fairly straightforward. It is accepted by the clerks in the Commons and in the Lords. It is therefore before us and is a legitimate thing for us to discuss.

Lord Mackay of Clashfern: My Lords, I think that I am right in saying that it is not without precedent for a Long Title to be amended in this House.

Baroness Thornton: I thank the noble and learned Lord for that remark. That is indeed the case.

I conclude my remarks by quoting from somebody who got married. He said:

"I got married twice in a week. My first marriage was conducted by someone who had interviewed my wife and me twice, at length, before the wedding; who spent hours (and several emails) exploring the key elements of the connection we wished to celebrate during the ceremony; and offered her guidance when we requested it, based on her knowledge of us as individuals and as a couple".

Actually, that is exactly what a vicar would do—of course it is. He went on to say:

"My second wedding–to the same woman, I should hasten to add–happened two days later. It was conducted by an official who had met us for the first time minutes before, and was conducted with the polite efficiency of a market research interview. My first wedding was conducted by a Humanist Celebrant; my second by a registrar. Needless to say, when I think of my wedding, and the vows I committed to, the second set I gave that week rarely cross my mind. Yet it is this exchange currently recognised in UK law".

The question that I put to your Lordships' House is: which date do you think that couple celebrate when they celebrate their wedding anniversary?

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Lord, Lord Harrison, for introducing the amendment and for explaining how important it is to humanists that they be allowed to conduct their own marriage solemnisations, according to their beliefs, by someone who shares their beliefs and in any place of their choosing, which could include the outdoors. I have no doubt that a celebration conducted by the sister of the noble Baroness, Lady Thornton, in the way that she described is one that would be enjoyed by those involved.

I am grateful to all noble Lords who have contributed to this debate and talked about the importance of humanist weddings being able to take place. I feel that this issue warrants a careful reply from me. I want to cover quite a bit of ground in my reply, so I hope that the House will indulge me if I am not as speedy as noble Lords might like me to be, but I think this is important.

First, it is important for me to remind noble Lords about the purpose of this Bill. It is about allowing people to marry who currently cannot marry, and the only people who cannot marry at this time are gay and lesbian couples. When we decided as a Government to bring forward legislation to allow that to happen, we decided to do so by making as little change as possible to existing marriage law. The noble Baroness, Lady Thornton, has described quite clearly how different humanists might celebrate their weddings, so I will not go through all the details. However, it is important to make the point that humanists can marry in England and Wales. They might not be able to have at this time the wedding celebration that they would like but, even if they do not want to follow the route that the noble Baroness suggested, where some people go first to a register office and then have a separate celebration, because humanists are non-religious, they have the option, within a civil marriage at a register office, of being able to adapt that service to include vows and readings that reflect their humanist beliefs and values. Although that might not be ideal, they are not alone in sometimes having to adapt their arrangements.

Baroness Thornton: The noble Baroness needs to acknowledge that humanism is a system of belief. It is quite wrong to suggest that, because humanists do not want to have a religious wedding, somehow it is all right for them to have an adapted civil service. That is not the point here. The point is that humanists want to have a ceremony that is a humanist ceremony, based on their beliefs and their value system.

Baroness Stowell of Beeston: I accept that point. Forgive me if I was suggesting anything that was not respectful of what humanists are seeking to achieve. I absolutely understand the point that the noble Baroness

is making. I was trying to explain that some people who follow a religious faith might argue that because humanists, although belonging to a belief organisation, are not religious, they have some opportunity to adapt a civil ceremony in a way that a religious person would not be able to.

Lord Harrison: The amendment sets out the conditions whereby it would be permissible in the particular case of the BHA. It should be recognised that that would be a barrier to other groups which might describe themselves as religious—as has been wrongly suggested in the press—such as the Jedi.

Baroness Stowell of Beeston: I understand the point that the noble Lord is making. As I said when I began, there is quite a lot for me to cover in responding to this issue. I beg the noble Lord's indulgence to allow me to go through my response. I assure him that I will cover everything, giving this matter the justice and the seriousness that it deserves. The point I was trying to make, which has been mentioned in different debates over the past few weeks in the context of this Bill, is that, for a range of people who want to get married, not just humanists, not everyone is able to have a religious ceremony or the ceremony that they desire. For instance, we heard only the other night, when the noble Lord, Lord Martin, was speaking, about a Scottish MP, a member of the Church of Scotland, who was therefore not able to marry in St Mary Undercroft and had to go to a register office first. I am simply making the point to the noble Lord that things are not so straightforward. It is not the case that everything is okay in one scenario and different in another. However, let me move on. I was just trying to make that point.

On my original point about the Bill and allowing same-sex marriage, although it might seem a counterintuitive thing for me to say, clearly for us to allow same-sex marriage to take place is a big change, but we are able to make that change in the framework of existing marriage law.

7.30 pm

Lord Harrison: We are proposing this under the existing requirement in Section 27 of the Marriage Act 1949. We did so on the advice of colleagues from the church and also from Ministers in order to ensure that this would not require major change.

Baroness Stowell of Beeston: I will cover that point in the course of my response.

The point still stands—I will explain why in a moment—that in order to allow organisations to marry in the way that is covered in this amendment, although it seems like a small change, it requires a change in existing marriage law that has wider implications for our system of regulation of marriage law in England and Wales. The noble Lord, Lord Harrison, and other noble Lords have referred to the contribution that my right honourable friend the Attorney-General made during the debate on Report in the other place when he made it clear that if the amendment that was being debated at that time was passed, it would make the Bill incompatible with the European Convention on Human Rights. The amendment in the name of the noble Lord, Lord Harrison, is broader in scope and therefore does not raise the concern that the Attorney-General raised during the debate in the other place. However, at that time and consistently, the Government have been clear that the proposals put forward by the British Humanist Association have wider implications for marriage law. The Government are concerned because of those wider implications. There has been a lot of focus on the Attorney-General's response to that specific amendment put forward on Report, and how that would have made the Bill at that time incompatible with the European Convention on Human Rights. However, that was not the only issue that the Government have raised, and continue to raise, about this proposal. I will explain all this in the course of my response.

Lord Lester of Herne Hill: I am sorry to interrupt and I hope I am not being a nuisance by doing so. Is not one reason in favour of these amendments that they would make our law compatible with Articles 9 and 14 of the convention by removing a discrimination which needs to be removed?

Baroness Stowell of Beeston: I was trying to make the simple point that the concern that the Attorney-General raised at that time has been addressed. That amendment was very narrowly defined around humanist belief. This amendment is much broader in scope because it is not narrowly restricted just to the British Humanist Association. However, that does not remove from what is at issue for the Government: that by introducing a change this amendment would have wider implications for marriage law in England and Wales. I intend to explain this to noble Lords.

As we have acknowledged throughout our debates on the Bill, marriage is clearly an important institution and a legal recognition through which the state confers rights and obligations. We therefore need to regulate carefully the process by which we allow this important legal status to be established.

Baroness Thornton: I am very puzzled by what the noble Baroness is saying. She is now saying that there are other grounds. In the Commons—and it is on the record in *Hansard*—the Minister specifically said that the letter that she would send to the British Humanist Association would be comprehensive and would cover all the Government's concerns. This amendment and the discussions that the British Humanist Association has had since then, in good faith, have met all those points. I am very puzzled as to why the noble Baroness is now leading us into what sounds like the answer, "The Government have concerns about other matters". It seems like we will never reach the end of this.

Baroness Stowell of Beeston: I do not have the copy of *Hansard* in front of me for the debates that took place in the other place. However, I am confident that my right honourable friend the Secretary of State, Maria Miller, made it clear in those debates that there were other concerns about this proposal that went beyond those raised by the Attorney-General on that specific amendment at that time. In the letter that my right honourable friend sent to Kate Green, she was also clear that there were issues of principle which went beyond the narrow point that the Attorney-General raised in those debates.

[Baroness Stowell of Beeston]

Beyond civil marriages, which now form the majority of marriages, where we give other organisations—that is, other religious faiths—this power to marry, the authorisation is subject to specific safeguards that are well established and embedded in current law. In the case of religious ceremonies—though I absolutely understand that the British Humanist Association is not a religion but a belief organisation—registration is generally linked to a particular building or, in the case of Quakers and the Jewish religion, by a longstanding arrangement that took account of the particular position of those religious organisations. Historians in this House will know that the Marriage Act 1753 recognised the Jewish faith and Quakers as having a special status, which they have retained since that time.

For every other religion except the Church of England and the Church in Wales, a building must first be registered as a place of worship, then a place of marriage. If that is agreed to, the supervising registrar attends all marriages for a year to ensure that compliance with all regulations takes place, including safekeeping of duplicate marriage registers in the relevant premises to accurately register marriages. Religious faiths have very little freedom because the integrity of marriage in England and Wales relies on this system to ensure that marriages are not registered that should not be, and that status is accurately recorded.

The amendment of the noble Lord, Lord Harrison, would mean that eligible non-religious belief organisations could hold marriages wherever they wished and have greater freedom to appoint those who conduct and register marriages. As the noble Lord says, the amendment does not specifically define the British Humanist Association but goes wider in order to address the concerns that were raised by the Attorney-General.

I will be absolutely clear on the point that the noble Baroness was pressing me on earlier. Our concerns are not about entry to the system of marriage, but spring from opening a new route to marriage and a new system of regulation. In the course of this debate, noble Lords have expressed views on religious groups who can marry now. However, the key point is that they must all comply with the existing system in terms of their being approved. I do not suggest for one moment that there is any concern about any of the groups we may be discussing. However, the reason why the system we have is so important, and why we consider that there would be wider implications if we were to change the way in which we authorise people to marry, is because that could have an impact on things such as, for example, the way we are able to police sham marriages conducted by criminal wedding arrangers.

The noble Lord is shaking his head. I stress that I understand the reason why the amendment is drafted as it is, but because it would allow for other organisations there are implications that we need to consider.

Baroness Thornton: Are these implications deal breakers or are they administrative and technical details that could be cleared up? Is the noble Baroness going to say anything positive here?

Baroness Stowell of Beeston: The responsibility I have as the Minister responding to this debate is to make clear that something which on the face of it seems quite straightforward would significantly change our marriage law. We have to consider the implications of that before a decision could be made as to whether to change this law. The system we have of registering and authorising people to marry based on religious premises has been in existence since 1898. To introduce a new system for new organisations to be authorised in a different way is a significant change. If we are going to make that change we need to make sure that we have properly considered all the implications.

Lord Alli: There is huge respect for the Minister in this House and for the way in which she has conducted the passage of the Bill. We all want the Bill to go through. However, the noble Baroness should take the temperature of the House and of the other place. There is a will in both Houses that this should go through. You see this sometimes when the Front Bench are making their response: the explanation of why it should not go through has been crafted by the Civil Service and does not feel like one any of us understand. The unintended consequence argument, the argument that it could delay the Bill and a whole range of financial arguments are the standard set of arguments put forward generally to stop amendments going through. We would be very sympathetic if we understood what was worrying the Government about this amendment but as yet I, like many others, am lost as to what it is that cannot be done in the timeframes that we are talking about.

Lord Garel-Jones: Before my noble friend replies to that, she will, I am sure, have observed that not a single voice in your Lordships' House has been raised against these amendments. She will have observed that the right reverend Prelate, while unable yet to tell us precisely what the position of the Church of England would be, spoke with, one could say, sympathy towards the position. I think what we are all asking is that if the Ministers, both my noble friend and the Secretary of State in the other place, were to say to the civil servants that they would like to find a way of accommodating this, we know that they could it. We would really like an explanation as to why that cannot be done.

Baroness Stowell of Beeston: I was about to conclude my remarks in any case. I am grateful to my noble friend. The noble Lord is right that there has been a great deal of support from all sides of the House, as there was in the other place. Of course I acknowledge that but I am still obliged as the Minister responsible for the Bill to explain when an amendment is put forward that it will have a significant effect—as we think this one could have—so that noble Lords are aware and properly apprised of the seriousness of the issues at stake. While the British Humanist Association and a lot of this House feel strongly that this change should be made, there has not been the kind of consultation and proper consideration of the impact of making that change and that has to take place.

7.45 pm

Lord Lester of Herne Hill: I am trying to helpful. Why can the Government not adopt the same approach as the previous Government on sexual orientation discrimination, or that of the present Government on caste discrimination, and say that there should be a proper consultation and then have a power included in the Bill to deal with this by regulations with the affirmative resolution procedure, with proper exceptions put in for things such as sham marriages?

Baroness Stowell of Beeston: I am not in a position to offer to noble Lords today the kind of specific response that my noble friend has suggested.

Baroness Butler-Sloss: I have sat listening to this for an extremely long time. I do not have any views at all about whether humanists should have a marriage. I have heard very good reasons why they should and I have not heard any reasons why they should not. That seems to me quite an interesting point. No one has stood up and said there should not be a humanist marriage. Can the Minister at least say—and it is 7.45 pm—that she will take it away and have a look at it. Then she could come back on Report or before and say, "No, we are not going to do it". She is not going to make any progress in the House at this moment with her arguments, because nobody is going to accept them if the Government do not go away and have another look at it.

Baroness Stowell of Beeston: Very briefly, before I finally sit down, of course everybody would support humanist marriages. The point is—please let me finish making this point—that it would require a change in law that would have implications that have not been fully thought through. That all said, having listening to the debate today, I will of course report back to my ministerial colleagues and ensure that they reflect further on the points made in this debate.

Lord Harris of Haringey: My Lords, I am in severe danger of letting the nice side of my character come to the fore at this conclusion to the debate. I sincerely thank those from all sides who have risen to support the amendment. I thank the right reverend Prelate for his constructive approach. I invite him to have discussions with me and the British Humanist Association himself, rather than sending an official.

I have watched the Minister struggle. I would like to struggle with her. I want to get round a table and discuss this matter and find the solution that this House most clearly needs. In the mean time, I beg leave—and give notice that I shall bring it back it back on Report—to withdraw this amendment, showing the nice side of my character to the whole House.

Amendment 19A withdrawn.

Clause 3 agreed.

House resumed. Committee to begin again not before 8.49 pm.

Legislation: Complexity

Question for Short Debate

7.49 pm

Asked by ***Lord Bates***

To ask Her Majesty's Government what assessment they have made of the review by the Office of the Parliamentary Counsel, *When Laws Become Too Complex*, published on 16 April 2013.

Lord Bates: My Lords, in the report that we are considering, Richard Heaton observed:

"The volume of legislation, its piecemeal structure, its level of detail and frequent amendments, and interaction with common law and European law, mean that even professional users can find law complex, hard to understand and difficult to comply with".

If Mr Heaton were an instantly forgettable Back-Bench Peer such as myself, that might be a mildly worrying but not an alarming observation. However, Mr Heaton is First Parliamentary Counsel and Permanent Secretary of the Cabinet Office.

Courageous though the admission may be, one might ask, if Mr Heaton finds the legislation piecemeal and hard to understand and to comply with, what hope has the classroom teacher, the doctor, the police officer, the small businessperson, the social worker, the homeowner or the benefits recipient for whom we spend our time legislating—let alone the legislators who are supposed to scrutinise the laws and the courts that struggle to interpret and apply them?

It is not just the complexity that baffles and bewilders but the volume. When Her Majesty made a historic visit to the Cabinet to mark her jubilee in December last year, it is reported that there was a forward item on the agenda relating to the Queen's Speech. Her Majesty apparently suggested—I am not sure how constitutional it was to report this—that it should be,

"on the shorter rather than the longer side".

At the time it was reported as a joke that everybody enjoyed, but, having read the report, I suggest that it should be seen not as a quip but as wise counsel from a Sovereign that should be heeded by her Government.

Halesbury's Statutes is the nearest thing that we have to a statute book. At the beginning of Her Majesty's reign in 1952, *Halesbury's Statutes* ran to 26 volumes. This was the result of 740 years of legislating, stretching back to her predecessor King John and the Magna Carta. In the 60 years that she has been on the Throne, the number of statute volumes has increased from 26 to 74.

It is not just the number of Acts that has sharply increased but the number of pages. In 1952, the average number of pages for a Government Act was 22. In 2009, the average number of pages for an Act was 122. The unrelenting rise in the volume of legislation was pointed out in the House of Lords brief. Reading the appendix at the back, one gets a momentary frisson of Thatcherite zeal when one comes to 1986-87 and sees that the tide of legislation momentarily abates, before resuming its upward course. Then one looks at the footnotes and finds that it was in that year that the Queen's printer moved from using the A5 page size to A4.

[Lord Bates]

Of course, Acts of Parliament are not the only source of legislation. Parliament has also seen a huge increase in the amount of secondary legislation presented to it. In 1952, 29 statutory instruments were laid before Parliament. By 2012, this number had risen to 3,328. Alarmingly, the trend has seen a very sharp increase under this Government. I would be grateful if my noble friend could explain why this has been the case. In 2008, the number of statutory instruments considered by Parliament was 1,395; in 2010 it was 2,971; in 2011 it was 3,133; and in 2012 it was 3,328.

We should consider also what happens to laws once they leave this place. Every year, new legislation results in more than 30,000 legislative effects, according to the report. One area where this is felt more than most is in the tax code. In opposition, I made a little bit of a living chipping away at the then Government and pointing out that, according to Tolley's yellow and orange tax handbooks, the volume of the UK tax code had doubled between 1997 and 2010, and had overtaken the Indian code as the longest in the world. In a spirit of cross-party examination of these issues, I was alarmed to find that since 2010, the length of the Tolley's guide has increased, and gone on increasing, by several thousand pages. What was intended on its launch some 50 years ago to fit into a pocket would now barely fit on to a shelf.

The Government came in with very good intentions. They announced the Office of Tax Simplification to cut a swathe through this complexity. We know that complexity reduces compliance and the tax take. If you simplify the system, you increase compliance and the take. I was amazed when researching for this debate to learn that the number of staff employed by the Office of Tax Simplification is, to quote the Minister, "slightly under six". I presume by that he means five, or perhaps four. Perhaps he will give the figure today. It compares with 25,000 HMRC staff working on enforcement and compliance.

Other measures are under way to reduce the burden of legislation. I pay tribute to the Law Commission and the Scottish Law Commission, whose 2013 Act was the largest Statute Law (Repeals) Act ever. It did away with 817 whole Acts, along with sections of 50 other Acts. That was a great triumph. Noble Lords will be delighted to know that the Streets (London) Act 1696, which required Londoners to sweep and clean the area in front of their house every Wednesday and Saturday between 6 am and 9 am on pain of a 10 shilling fine, has itself been swept away. However, we should not get carried away and think that we are in a libertarian free-for-all, because between 1983 and 2009, Parliament approved more than 100 criminal justice Bills and added more than 4,000 offences to the criminal code. We are still pretty heavily regulated.

I am sure that Europe will be touched on in forthcoming speeches. For every one page of directive, we produce 2.6 pages of regulation and guidance, whereas Germany produces a page for a page—logically. It would be good to know what progress the Government are making here.

There are many reasons for the increase in the volume of legislation. I will mention a few. Some cynics might suggest that Governments of all persuasions find it useful to focus the attention and time of Parliament on considering future legislation rather than on determining whether past legislation has done what it said on the tin. However, there are other issues. The courts have played a part, as a result of the breakdown of trust in society between government and the governed, service providers and customers, and employers and employees. We have become much more litigious. As a result, an increasing volume of legislation is going before the courts. In return, the courts are showing some reticence in passing judgment and are referring back to Parliament for clarification—and so the circle goes on.

There are other drivers. The 24-hour news culture demands that something must be done every day. There are also a huge number of lobby organisations, such as trade unions, trade bodies and charities, all of which are well resourced and able to demand changes in the law to suit their particular concerns.

We should have one thing uppermost in our mind. Every time we add a law or a regulation, we incur a cost—not only monetarily and legislatively but morally. The more we legislate for what people should do and the less we trust them to behave as good citizens, the more we take away. Parliament is creaking at the seams as it seeks to digest the fruits of a burgeoning statute book and, almost 800 years after Magna Carta, the flow is increasing, not reducing. This is bad for the country, bad for business, bad for people and bad for Parliament. It is time to turn the tide, and I hope that the high calibre of contributions that will follow mine will help reverse the process.

8 pm

Lord Phillips of Sudbury: My Lords, I thank my noble friend Lord Bates for this debate. I confess that, since I entered this place in 1998, I have been what some might call obsessed by excessive law-making and excessively complex law-making. That obsession has its roots in my earliest days in the law. I started in a country town solicitor's practice in 1957. As I went around the local magistrates' courts, within months it was blatantly clear to me that we already had a system of law that was way beyond the understanding of the normal citizen. Indeed, the lay magistrates had great trouble as well. That realisation led me to get a headmaster to allow me to teach bored 15 year-olds in his school in the 1960s. I found that they were not bored by the law; they were quickly enlivened and engaged. That in turn lead me to set up the Citizenship Foundation in the 1980s with the financial support of the Law Society, and so it goes on.

We must not forget the late, lamented David Renton. Lord Renton was a lovely man who presided over a very thorough review of all this in 1975. When he asked me to give the Statute Law Society's annual lecture in 2001, I spoke on excessive law-making. It is a massive, profound problem, and it is rather depressing that there are only 10 of us present in this debate, and six of those are speakers. Maybe it is because we follow on the heels of the sex debate, but it is depressing, because it is of the hugest, profoundest importance to us all.

We heard some vivid statistics from my noble friend Lord Bates. The statistic about the creation of 4,000 new criminal offences in the space of 16 years—far

more than in the previous 1,000 years of our island history—is a warning. We would be more worried were we to know just how many of those laws have ever been implemented, which nobody does know. I enthusiastically congratulate Richard Heaton and his colleagues on their report, *When Laws Become Too Complex*. It is a brave report for the parliamentary draftsmen to produce, but it is from the horse's mouth. What is more, it is a warning to us not to too easily blame the draftsmen for the situation we are in, which I am afraid we sometimes do too eagerly. It is not their fault. I think this report will answer anybody who doubts that.

Other Members of the House are perhaps aware that on 9 May the House of Commons Political and Constitutional Reform Committee produced a report, *Ensuring Standards in the Quality of Legislation*. To me, it is striking that neither report refers to our failure to contrive a system of legislation that contains that volume and complexity. I suspect the parliamentary draftsmen felt they had to hold back from criticising the functioning of Parliament as such. I shall go on to talk about the manifesto theory of government, by which we are plagued, and the use of the guillotine in the other place.

I will quickly read to the House what I thought was the sage nub of *When Laws Become Too Complex*. In the foreword, Richard Heaton writes that,

"we should regard the current degree of difficulty with law as neither inevitable nor acceptable. We should be concerned about it for several reasons. Excessive complexity hinders economic activity, creating burdens for individuals, businesses and communities. It obstructs good government. It undermines the rule of law".

That last point is crucial: it undermines the rule of law. If we contrive a system in which the average citizen feels put upon by the law, resents the law and feels outside the law in the sense of any engagement with its passing, then that is all bad and it is too true of today's society.

I quote again from the foreword:

"Good law is necessary, effective, clear, coherent and accessible".

I want to talk about two of those characteristics, because I agree with that list of criteria. I start with effectiveness, because I do not believe that we can have effective laws if they are not fairly and equally implemented and enforced. As a lawyer in his 54th year, I can tell your Lordships that you would be scandalised if you knew both how uneven the enforcement of the law is, and how in some very important respects the law is not implemented at all. It is getting worse. We must address that, and part of doing so is to properly resource the law implementers. I was at the Charity Commission today. It was given huge responsibilities by the Charities Act 2006, and given many more since. What has happened? It has sliced its personnel, including its most senior personnel. How on earth can that commission do the job we force on it if we take away the resources it needs to do so?

Turning to accessibility, it has two aspects, does it not? First, there is the citizenry's understanding of the laws by which they are supposed to lead their lives. Secondly, there is the question of access to legal advice when people need it. We cannot blather on about equality before the law if we leave poor people in the lurch when they desperately need legal advice. I am afraid that with the cuts in legal aid this has happened, and it is getting worse. I understand the problems of austerity, but I believe that if we constantly refer to the rule of law as the bedrock of our civilisation, we cannot then deprive needy citizens of essential advice when they are in deep trouble.

The issue of broad understanding of the law brings me back to the Citizenship Foundation and the few other organisations that seek to give pupils in our schools some broad understanding of the complex society of which they are supposed to be citizens and, most of all, the processes of the law, in terms of both its creation and its implementation. I am informed by the foundation's chief executive, Andy Thornton, that over the past two years the number of schools that carry out schematic citizenship education has dropped by two-thirds. We need to be on our guard, because it is hopelessly hypocritical of us to go on about equality before the law and all the rest of it, yet not to give our young citizens any opportunity to come alongside and feel that it is their law, giving them an understanding of the law that is, of course, broad rather than detailed. In our time there is a huge problem of political disconnectedness, and we must deal with that.

I turn now to the component of necessity in the list of five criteria, and return to the number of laws we put before this place and the use of the guillotine. The guillotine has become a scandal. A quarter or a third of the Bills we see here have never been considered on the Floor of the Commons. That is a scandal. It is the primary House, for goodness' sake. I ask the House to consider figures from the House of Commons office, showing that the effectiveness of the Commons in holding the Executive to account is now so enfeebled that over the past 11 years only six votes of over 3,000 went against the Executive. What sort of democracy is that? What sort of effectiveness is that? Here, I may say, we defeated the Government more than 500 times in the same period, and we are the inferior House.

Lastly, I make the point that we as legislators need more help. We cannot have these big, complex Bills without a Keeling schedule. We have not got the time to spend two days in the Library looking it all up. I hope that we will remember that as well.

8.09 pm

Lord Norton of Louth: My Lords, I, too, congratulate my noble friend Lord Bates on raising this important and timely Question. In the time available, I want to focus on a number of points arising from, or prompted by, the useful review by the Office of the Parliamentary Counsel.

As the report acknowledges, and as my noble friend stressed, legislation is complex both in its form and in the manner by which it becomes law. The complexity is multifaceted and is an impediment to members of the public—indeed, anyone, as my noble friend stressed—wishing to make sense of our law.

Like my noble friend, I want to focus on the volume of legislation and the problems with the means by which we enact it. As we heard, there is by common consent too much legislation. We generate too much law as a result of a "something must be done" mentality and by individual Ministers wanting to get through

[Lord Norton of Louth]
their own big Bills. Until we get the Government to accept that sometimes more legislation is part of the problem, not part of the solution, we will continue to overburden Parliament not only with too much legislation, but rushed legislation.

As the noble and learned Lord, Lord Judge, said of criminal law:

> "For too many years now the administration of criminal justice has been engulfed by a relentless tidal wave of legislation. The tide is always in flow: it has never ebbed".

The problem is not just quantitative but also qualitative. There is not just more law, but more complex law, especially where one is dealing with regulation. This creates problems for Parliament. There is more complex legislation, but there is no commensurate increase in the time and resources available to deal with it. There is a finite number of Members available to sit on committees. There is only so much time available for the different stages of Bills.

There is also a problem with government in how it views Parliament and the legislative process. This is acknowledged in the report, which states on page 27:

> "The legislation secretariat within the Cabinet Office is working with Parliamentary Counsel to promote learning within departments about legislation and the legislative process".

That is a pretty stark admission that government departments are not well versed in the legislative process. Officials and parliamentary counsel do not always appreciate one another's' difficulties, but it is not simply a case of each needing to understand the other: there is a need for officials to understand how Parliament works. I have been pursuing this for some time. There is still a considerable way to go in educating officials about the significance and the processes of Parliament. The replacement of the National School of Government with Civil Service Learning has not necessarily enhanced the capacity for such learning. Given that, it will be helpful if my noble friend the Minister can explain what steps are being taken by government to ensure that officials who advise Ministers are fully aware of the importance of Parliament and the legislative process as well as the difference between the two Houses.

The legislative process is also flawed. There has never been a "golden age" of legislation, and the present procedures actually have some benefits over what went before, but they remain inadequate. Let me adumbrate what in my view needs to be done.

The way in which we undertake legislation, frequently by amending earlier legislation, makes for some complex and impenetrable Bills. One means to aid parliamentarians is that referred to by my noble friend Lord Phillips, which is to produce Keeling-like schedules—he referred to Keeling schedules, but it is more appropriate to refer to Keeling-like schedules—showing how the proposed changes affect extant legislation. Where they have been produced, they have been enormously helpful. I think there is a strong case for arguing that where most of the clauses of a Bill amend legislation, and where that particularly is one or two Acts, the expectation should be that the relevant department will produce a Keeling-like schedule. Perhaps my noble friend could take back to his colleagues the value of such schedules.

It would also aid Parliament and act as a valuable discipline on government if Ministers were required to publish with a Bill the purpose of the measure and the criteria by which it can be assessed to determine if it has fulfilled its intended purpose.

More generally, pre-legislative scrutiny should be the norm and not the exception. I welcome the number of Bills submitted for pre-legislative scrutiny in this Parliament but would like to see the use of such scrutiny taken further. As we have heard, there needs to be a joint legislative standards committee as recommended by the Political and Constitutional Reform Committee of the other place. Such a Joint Committee would oversee the application and effectiveness of a code of legislative standards. I know that the First Parliamentary Counsel has doubts about the value of such a Joint Committee, but my view is that it would ensure consistency and provide a useful discipline for government.

I also commend another recommendation of the Political and Constitutional Reform Committee, namely that there should be agreement between Parliament and government as to what constitutes constitutional legislation. This builds on the report of the Constitution Committee of your Lordships' House that there needs to be a distinct process in government for identifying and dealing with measures of constitutional significance. The position of government at the moment, namely that measures of constitutional significance should be treated in the same way as all other Bills, is unsustainable and, indeed, dangerous in terms of ensuring adequate consideration of changes to our constitutional framework. Not surprisingly, I endorse the Political and Constitutional Reform Committee's endorsement of the test I produced when I was chairman of the Constitution Committee, namely the two P's test: does a measure affect a principal part of the constitution and does it raise an important issue of principle? If both tests are met, it should trigger special consideration.

We also need to look beyond the process of passing a Bill into law. For too long, both Ministers and Parliament treated legislative success as Royal Assent. That was the end of the process. We should be treating success as when an Act of Parliament achieves its intended purpose. We now have post-legislative review, which I greatly welcome, but we need a committee on post-legislative scrutiny. In this House, we have now established ad hoc committees to undertake post-legislative scrutiny of particular measures, which again is a great step forward, but a dedicated post-legislative scrutiny committee would ensure that nothing fell between the gaps and serve as a body for ensuring best practice in departments in undertaking post-legislative review.

Those are but some of the things that need to be done. We are making some progress. Having clearer Bills will be a major step forward. Having fewer Bills will be an even greater one.

8.17 pm

Lord Tyler: My Lords, I congratulate my noble friend Lord Bates and endorse enthusiastically not only what he said but what has been said by my other two colleagues who have contributed to this very timely debate.

I want to take up the point made by my noble friend Lord Phillips about the context and the consequence for the public of some of the work that has been undertaken for this report. In doing so, I refer to the *Audit of Political Engagement* published recently by the Hansard Society, of which I am a vice-chair, which I think is extremely important and, in some respects, encouraging. Mostly, however, it is discouraging. Mostly it says that people are disengaged for some of the reasons to which my noble friends have referred. However, in a number of ways there is new engagement and increased engagement. For example, 42% of the public say that they would like to be involved in national decision-making—up 9% compared with the previous year—and 47% agree that Parliament holds government to account, up from 38% last year. Fifty-five per cent agree that Parliament debates and makes decisions about issues that matter to them, up from 49% the previous year. But most important of all, 55% of the public agree that politics and government seem so complicated that,

"a person like me cannot really understand what is going on".

That is the critical consequence of the complexity to which this excellent report refers.

I want to refer to one or two of the examples given in the report. Incidentally, the authors of the report show that they are masters of complexity. I am not allowed to wave about my visual aid but page 16 sets out the legal effects of the Companies (Audit, Investigations and Community Enterprise) Act 2004. I do not understand how that got past anybody seeking to reduce complexity.

Mr Heaton's foreword to the report is extremely salutary. I hope that your Lordships will forgive me if I refer again to his absolutely critical paragraph. He says:

"Excessive complexity hinders economic activity, creating burdens for individuals, businesses and communities. It obstructs good government. It undermines the rule of law".

That is the context in which we should look at this issue. I pay tribute to the work that has already been done, I understand as a result of this activity by the parliamentary draftsmen. I shall refer to one particular example of the way in which they have looked at this issue: gold-plating, which my noble friend Lord Bates spoke about briefly. Gold-plating has been around for a long time and I congratulate the Government on seeking to deal with it. When I was responsible for agriculture for my party in the other place, I recall looking at a number of directives as they emerged from Brussels, then looking at the regulations as they appeared in the United Kingdom.

I was not at all surprised to read in this document that in 2003 there was an average "elaboration ratio" for the UK of 330%. In an extreme example, directive 2002/42/EC consisted of 1,167 words in its original English text, but resulted in 27,000 words of implementing regulation in the UK. I recall talking to a previous Minister of Agriculture shortly before that, who told me that he got so fed up with the gold-plating going on in his department that he instituted a format for reviewing every directive that came from Brussels. Alongside it, his civil servants had to put what they proposed to add and the resulting consequences in terms of length and complexity. He or one of his Ministers then had to tick off and approve the sequence as acceptable.

The most significant thing he told me was that within three days of losing office, the civil servants abolished the system that he had instituted, because they were so pleased with the way in which they could add excessive requirements to what emerged from Brussels. It is a well-known fact that throughout the other member states of the European Union, directives, for example on abattoirs that I was concerned with, were a matter of reducing responsibilities at a more local level, but in the United Kingdom everything was centralised and imposed much more rigorously.

As has already been said, pre-legislative scrutiny is an extremely important way in which we should take responsibility for removing unnecessary complexity. It should be absolutely explicit at the outset that one of the responsibilities of a Joint Committee is to reduce complexity in draft legislation. I am an enthusiastic supporter of Joint Committees—I sat on several of them—because MPs and Peers educate each other when we sit together. As my noble friend Lord Norton has said, it is also true that both Houses have been asked to think carefully about improving the quality of legislation, most recently by the Select Committee in the other place, but before that the committee chaired with such distinction by Dr Tony Wright. Our own Leader's Group, chaired by the noble Lord, Lord Goodlad, looked hard at this and made a substantial suggestion, which I am afraid has so far not been implemented in this House. It is about improving the quality of legislation and recommended a legislative standards committee in recommendation 16 of its report. Sadly, that has not been pursued, which is a great pity.

I have one simple, practical suggestion to make. Again, I am not allowed to wave my visual aid, so I shall have to ask the Minister to look at it later and take it seriously. In preparing a recent draft Bill with assistance from Members of the other two parties in the other place, my extremely able and far more technically competent assistant Alex Davies, found it was quite possible to put the Explanatory Notes alongside the clauses. That one small step, allowing you to read across from Clause 9 to what Clause 9 actually means, would be hugely more accessible to the general public—indeed to professionals and those in business outside this House—than the present arrangements. With draft Bills, government Bills, Private Member's Bills and secondary legislation, the Explanatory Notes can without great difficulty be side-by-side with the appropriate part of that legislation.

That is a very practical suggestion which I give to your Lordships' House. I will sell it to the Government for only a penny, but I would like to make sure that the credit is not given to me, but to my extremely able assistant. This is a timely debate. What is so interesting about it, referred to by the three previous speakers and me, is that we in this House could do more to improve the situation. It is not just a question of passing the buck to the professional parliamentary draftsmen. It is not even just a government responsibility, it is the responsibility of the two Houses of Parliament to make our legislation more accessible and less complex.

8.26 pm

Baroness Hayter of Kentish Town: My Lords, I add my appreciation to the noble Lord, Lord Bates, for this debate. I gather that he has taken the Minister away from the Countryside Alliance summer ball and me from a farewell to the Fabian Society office where we have been for 80 years, but we shall forgive him. There is, of course, a difference between legislative burden and legislative complexity. I do not think that the former is the problem, it is the latter that is the subject for today.

We must remember that for consumers, legislation is about making roads, offices or homes safer, safeguarding children from danger or preventing consumers being ripped off. So we must stop the idea that legislation is a burden. It is not a burden to consumers if it means that they do not die from carbon monoxide poisoning, if children are protected or provided with decent schools, or if consumers have access to an ombudsman when a service or product goes wrong. It may be that some legislation should have stayed, such as cleaning the path outside our doors. I am not certain that that was the right one to get away. However, let us drop the idea that legislating is bad: it needs to be done, done well, and for a specific purpose.

Today we have heard a good debate, and along with others, I welcome the report—with the exception of one small line—and its analysis of an important area. Of course, it does not propose solutions for us, so I will take time to suggest a couple for the Government to think about. First, however, perhaps I may say that my one difference with the report, which echoes what has already been said, is the idea that the public is a new—and it uses that word—audience for legislation. On the contrary, in answer to the question, "Who is the user of legislation?", I was going to use the word people. The noble Lord, Lord Phillips, used the word citizenry, and the noble Lord, Lord Bates, talked about small businesspeople and shopkeepers. Absolutely: that, surely, is the real user of legislation.

The rest of us—legislators, judges, lawyers or advisers—are basically intermediaries, or maybe implementers. If we hold that in mind, which is what others have said today, our laws will be better drafted and understood. It is notable and, for me slightly regrettable, that the *Good Law* guidance produced in April by the Office of the Parliamentary Counsel, boasts that it is talking to,

"lawyers, the judiciary and legal educators",

but it makes no mention of the general public. It is beginning to listen to users through a project run by the National Archives, but that does not feel core to its work. Surely if the Cabinet Office wants, as it states, to write laws that "can be readily understood", then users ought to be one of the drivers of a new approach?

I turn to the report. As we know and has been said in the debate, unclear law often arises out of either unclear policy or perhaps an overhasty reaction to events. Even before drafting starts, it is important for politicians and policymakers to engage with relevant experts to ensure real clarity in thinking and in writing, including those who know the subject concerned and those in bodies such as the Law Society who have a wealth of experience in interpreting Parliament's words. It also means not bringing clauses here, as is happening today in this House with the Energy Bill, before consultation on them has been completed.

There are some "to dos" or "to be thought abouts" that are ripe for government discussion and perhaps for cross-party attention, especially given that the quality of legislation and its scrutiny should be of concern to government as well as opposition. First, always set out the objective—or, in the words of the noble Lord, Lord Norton, the purpose—for each Bill whereby it is clear what it is meant to achieve, and drafters and legislators can check that it achieves those objectives and the reader knows what it aims to do.

Secondly, unless there is a very good reason or emergency, always have pre-legislative scrutiny, as the noble Lord, Lord Tyler, and others have stressed. We have witnessed the success of where it has happened, for example in the Defamation Act, on which the noble Lord, Lord Phillips, and I spent a good few hours. Such pre-legislative scrutiny ensures that a Bill's drafting really provides for the Bill's clearly stated objectives.

Thirdly, endorse the Commons Political and Constitutional Reform Committee's recommendation last month that,

"the Government should publish the reasons why a bill has not been published in draft and cannot therefore be subject to pre-legislative scrutiny",

where that is the case.

Fourthly, do not introduce "Christmas tree" Bills. Some of us spent a long time dealing with the Enterprise and Regulatory Reform Bill, which was actually five different pieces of legislation.

Fifthly, as the noble Lord, Lord Norton, said, do not revise existing Acts wherever you can but try to start from scratch. Some of us here, including my noble friend Lord Tunnicliffe and I, spent a long time on the Financial Services Bill, which was hung on to another Bill and sometimes left us none the wiser as to what it was seeking to achieve.

Sixthly, please think of the audience. It is interesting how a Draft Consumer Rights Bill should end up being 104 pages long.

Seventhly, do not try to legislate for 25 years hence. Here I do not blame the Government, but there was an interesting amendment to the Succession to the Crown Bill, not in the name of the Government, that tried to deal with what happened if a child yet to be born of the current Prince William turned out to be gay, have a gay marriage and then had a child. Trying to write such legislation was unnecessarily complicated 25 years off.

Eighthly, we should implement another recommendation of the Commons Select Committee, that there should be a code of legislative standards.

We have all heard that this subject is a matter for this House, perhaps even more than the other place, given how much time we spend on scrutiny. It is a matter for government as well as for opposition and I hope that we can move forward. I look forward to the Minister's response.

8.34 pm

Lord Gardiner of Kimble: My Lords, I thank my noble friend Lord Bates for the opportunity to debate the important matter of complexity in law. The report is part of parliamentary counsel's good law programme,

which aims to improve the quality of legislation by identifying ways to improve further its drafting, reduce complexity and make the law more accessible.

I have sympathy with my noble friend Lord Phillips of Sudbury who previously spoke of never-ending "cascades of legislation". Indeed, my noble friends Lord Bates and Lord Norton of Louth spoke of volume. However, this is clearly a long-term trend, as demonstrated by the statistics cited in the report. In 1959, Parliament agreed to 1,163 pages of primary legislation. By 2009, 50 years later, the figure had doubled to 2,247. That is why the report by the parliamentary counsel is timely and will help us to understand why the statute book has grown so much. I am mindful also of what my noble friends Lord Bates and Lord Tyler said about Europe, and I am pleased that the Government are committed to ending the so-called gold-plating of EU rules.

I can assure your Lordships that we do not find ourselves in a unique situation in the United Kingdom. Expanding statute books and complex laws are a problem encountered around the world. Parliamentary counsel's report helpfully cites examples of some European countries that have set up processes, or even whole ministries, dedicated to simplifying legislation.

I am very conscious of the eight-point plan of the noble Baroness, Lady Hayter. Indeed, the Government are currently considering the report by the House of Commons Political and Constitutional Reform Select Committee on its inquiry into standards in legislation, and we hope to respond to this next month.

A number of noble Lords raised the question of a standards committee. My right honourable friend the Leader of the House of Commons has said that it is not clear exactly what it would add to the processes we already have, whereby Bills are often published in draft for consultation and scrutiny. Nor is it clear at what stage a legislative standards committee would be involved. It would add another layer of process, duplicating the efforts of other committees that already examine both the policy and the drafting. However, the point has been made by noble Lords tonight, and we will need to await the response next month.

We should be clear that a conversation about good law is not the same as a conversation about policy. This issue should not be clouded by partisan politics about the merits of policies in specific Bills or orders. Parliamentary counsel's report aspires to "good law", which is defined as,

"necessary, effective, clear, accessible and coherent".

This is a sentiment I am sure we share across all sides of the House.

This Government are committed to legislating in a better way. While there is always more that can be done, in recent years we have taken a number of steps to tackle complexity in legislation. Parliamentary counsel are now drafting legislation in plainer language. My noble friend Lord Bates raised secondary legislation, and we do seek to stem the tide. The Red Tape Challenge is taking stock of unnecessary regulations, and the "one in, two out" rule is limiting the new burdens that can be imposed. This Session, we will be publishing the draft deregulation Bill for pre-legislative scrutiny by Joint Committee. The purpose of this Bill is to remove a raft of unnecessary burdens on businesses and individuals. I trust my noble friend Lord Bates will approve of that.

The noble Baroness, Lady Hayter, referred to the National Archives. It has greatly improved its website, legislation.gov.uk, which 2 million people a year use to access the statute book. I agree with the noble Baroness: we are talking about people—our fellow citizens—who wish to be more engaged with seeing what is on the statute books. It is a good move. Within government, we have been working to increase the capability of Bill teams and make sure we learn from previous lessons. I hope this will go some way to reassuring my noble friend Lord Norton of Louth, although perhaps not in full, but this includes best practice on how to engage with Parliament. The Legislation Secretariat in the Cabinet Office and parliamentary counsel run a regular "lessons learnt" exercise, and we need to continue with that. Obviously, where there are gaps in knowledge, we need to fill them.

This Government want to give Parliament the opportunity to scrutinise legislation in full. If we are to achieve better legislation, we need to tap into the wealth of expertise that exists in Parliament, particularly in your Lordships' House. To this end, more legislation is now published in draft for pre-legislative scrutiny, a point made by my noble friend Lord Norton of Louth and the noble Baroness, Lady Hayter. In the previous Session of this Parliament, 17 Bills or measures were published in draft, more than ever before. Of those 17, six were scrutinised by Joint Committees, again more than ever before. This Government have also continued the practice of providing post-legislative scrutiny memoranda, usually five years after an Act has been passed. This is a useful opportunity to take stock of legislation and consider how it has worked in practice. In the other place, committees have started to make use of these memoranda and publish post-legislative scrutiny reports. These are valuable and I hope that this activity will continue and increase.

In the previous Session, at the instigation of the then Leader of the House, and on the recommendation of the Liaison Committee, your Lordships' House appointed the first dedicated post-legislative scrutiny committee, to look at adoption legislation. Two more such committees have been established in this Session to consider mental capacity legislation and the Inquiries Act 2005.

Of course, there is always more that can be done. The parliamentary counsel report found that users of legislation often expect it to be more complex and more difficult to use than it actually is. Clearly, there is a challenge for the Government and Parliament to be more open and accessible. To this end, the Government are already reviewing—I hope this will be music to many of your Lordships' ears—Explanatory Notes, which should help make legislation more accessible to the lay reader.

I now turn to Keeling or as my noble friend Lord Norton of Louth described it, "Keeling-like". We will also consider whether there is scope to provide "as amended" texts of Bills more frequently, for example as we did for part of the Education Act 2011. By reaching out to users of legislation, we can assist them, allay some of the concerns and give people the confidence to use the statute book, which we all want.

[Lord Gardiner of Kimble]

There is no single cause for overly complex legislation. The report acknowledges that sometimes complexity can be introduced by the drafting. Parliamentary counsel have made great progress in their use of plainer language and are committed to drafting effective legislation that is easier to navigate and understand. However, complexity can be added to legislation at all stages of the process, not just in the drafting. The good law programme is looking at the way in which policies are taken from inception to the statute book. It is not a finite project and it will not present all the answers any time soon, but it has begun a dialogue about how we can improve legislation and shows the Government's willingness to work with everybody to improve the quality of the legislation produced.

Sometimes complexity can be the product of a robust scrutiny process. There is an understandable tendency for Parliament to seek further safeguards and more assurances in a Bill. Each instance is no doubt for a good reason, but in total these can add to complexity and result in laws which are hard to use. The growth of judicial review has also had an impact. As a result, the Government may draft cautiously or include more detail on interpretation and intention. As such, further legislation, occasionally fast-tracked, may be required following a court case, which again can add layers of complexity.

Throughout this process, we in government and Parliament often forget who makes use of the statute book. The noble Baroness, Lady Hayter, and my noble friend Lord Bates in a lengthy list mentioned this point. It is not just lawyers and judges; small businesses, charities, volunteers and consumers, to name only a few, also use the statute book. A new small business does not have a large legal department to rely on and must itself deal with the legislation. Overly complex law hampers enterprise, deters entrepreneurs and adds to the general weight of red tape. There is, therefore, a strong economic case for good law, to which my noble friend Lord Phillips of Sudbury referred. There is also a strong moral case. Citizens should have ready access to the laws of the land which set out their rights and responsibilities. When the law is too complex and inaccessible, it can be held in contempt by the public, again a point highlighted by my noble friend Lord Phillips of Sudbury. It also diminishes respect for the rule of law, which is necessary for a civilised and well functioning society.

The Office of the Parliamentary Counsel's report represents the start of a collaborative process that will need to include parliamentarians, lawyers, the judiciary and academia to understand and tackle what are often long-standing problems. It is self-evident that Parliament has a crucial role to play in forming the laws of the land, but Parliament and the Government need to work in partnership to create better laws. Your Lordships' House has a strong track record in scrutinising and, indeed, improving legislation. As a revising Chamber, it has an important role in ensuring that the legislation it passes is necessary, effective, clear, accessible and coherent.

I am conscious that I have not answered fully, or indeed some questions in their entirety, and I will write to noble Lords to ensure that there is a full record of what has been asked. However, I am grateful to all the noble Lords because this debate forms part of a dialogue, and I have taken away a great deal that needs to be considered. We have made a good start, but there is always more to do to ensure that legislation is proportionate and appropriate to its aims, and that the statute book is accessible and understandable.

8.46 pm

Sitting suspended.

Marriage (Same Sex Couples) Bill

Committee (2nd Day) (Continued)

8.49 pm

Relevant document: 4th Report from the Delegated Powers Committee

Clause 4 : Opt-in: marriage in places of worship

Amendment 20

Moved by ***Lord Curry of Kirkharle***

20: Clause 4, page 5, line 33, at end insert—

""recognised" means recognised according to the ordinary customs and usage of the organisation and in the event of a dispute between the members over which person or persons are recognised for the purpose of giving consent for the purposes of this section, the Secretary of State shall consult all members of the relevant religious organisation to determine which person or persons are recognised, and this shall include power to order a ballot of members in which a quorum of 66 per cent shall be required and recognition shall be determined by a majority vote;

"members" means those whose names have appeared on a formal membership roll kept by the relevant religious organisation for a period of at least 12 months prior to written consent being given, and if no such roll is kept, then the members shall be deemed to be those who have attended worship at the place of worship for a majority of services of worship during the 12 months prior to written consent being given."

Lord Curry of Kirkharle: My Lords, I am deeply concerned about the potentially divisive nature of this Bill. Mention was made a number of times at Second Reading and has been made again in the two days when we have been considering amendments of the serious potential for unintended consequences. We need to consider this very carefully indeed. There is a huge risk that faith communities and church congregations find themselves in dispute as a consequence of this Bill where no dispute existed previously.

Given the strong differences of views on same-sex marriage, there is enormous scope for minority elements within congregations to seek to register premises for same-sex weddings against the wishes of their denomination or majority. The vague drafting of this clause leaves too much to chance. Under the Bill as drafted, it is not clear what "recognised" actually means. What does it mean for members of a religious organisation to recognise an authority that is competent to give consent on this issue? Who are the members of a religious organisation? It is impossible to catalogue the variety of ways in which churches and religious bodies identify their membership. What mechanisms are local authorities and courts to use in attempting to address this question?

The governance arrangements that exist within different churches can be quite complex and sometimes unclear. Some churches may require a member to have fulfilled a formal process. Some will use written lists. Others will use an electoral roll. Even these lists might not reflect the number of people in attendance at any meeting. Some churches are structured in such a way that it is considered best not to have a formal system of membership. Church structures are very complicated. It is possible for the situation to become confusing, with claim and counterclaim being made about who possesses authority to speak for the organisation in binding its membership to conducting same-sex marriages.

There will be huge pressure on churches which do not want to opt in. Local authorities may be strong advocates of same-sex marriage and may happily take the consent of a liberal faction as being binding on the whole organisation. It is necessary to set out clear statutory principles to handle inevitable disputes. Local authorities must hold the tools to assess or reject applications to register a building for same-sex marriages, but the local registry office that receives the application has no legal basis on which to determine an application.

It could be very easy to register the church for same-sex marriages, just by the proprietor making an application accompanied by something that seems to show consent. Consent may be given by a wing, a faction, a sub-committee of a denomination, but that does not mean they are representative or legally and morally competent to give consent. It is not clear what constitutes evidence of consent? Under the Bill, a letter is sufficient, but given the internal complexities involved, have the Government considered any additional requirements to verify the issue of consent? Is there any guidance on the consequences of the local authority wrongly approving an application?

It is unrealistic to expect that all local authorities will have a grasp of the internal politics and structures of every religious body. Without a clear framework they will not have the ability to ascertain who exercises the proper legal responsibility for such decisions within each of a wide range of churches with their innumerable variations of governance, locations, interests, hierarchies and systems.

The purpose of Amendment 20 is to define "recognised" and "members" and the consent that would apply to issues on registering buildings, filling gaps in the Bill and reducing the potential for problems down the line. It promotes consistency across the boundaries of different local authorities. It provides mechanisms for achieving clarity when there are opposing claims about who is legally able to speak on behalf of a particular church or faith organisation.

The amendment makes it clearer whether applications are in line with the respective church's typical decision-making methods. Because of the sensitivities involved, in the event of an unresolved dispute, Amendment 20 would require the Secretary of State to become involved and therefore establish a uniform approach across central and local government. The Government have created the problem by their drafting, so they should take ultimate responsibility for solving individual problems that may arise.

If it is evident that proper processes have been ignored or deliberately manipulated, the Secretary of State should have the power to order a ballot of church members, as set out under the amendment. In such a ballot, a majority vote of two-thirds would be required to authorise the religious body to either opt in or opt out of the same-sex marriage registration system. This, of course, may come with its own complications, which is why it is so crucial to attempt to define in statute what constitutes membership.

Two words have been repeated again and again in debate on the Bill: "divisive" and "discriminatory". It is possible that, despite reassurances, if the Bill is introduced, it will create more discrimination than it seeks to solve and cause divisions where none existed before. The amendment proposed by the Minister—Amendment 21—is helpful but it needs to go further. I hope the Minister will give this amendment very serious consideration.

Lord Singh of Wimbledon: My Lords, I rise to speak in favour of Amendment 22, which is in my name. Very detailed consideration has been given to the impact of this legislation on the Christian and Jewish religions. However, no consideration whatever has been given to the difficulties that may arise for other faiths. Can the Minister enlighten the Committee as to why members of other faiths, each more numerous than the Jews, are being treated as if they did not exist? Was this omission inadvertent or was it thought that newer faiths in this country were less important? Either way, the less than favourable treatment of other faiths, including my own, appears to contravene both the Equality Act and human rights legislation. It seems that some minorities are more equal than others.

The substance of my amendment is best understood through a little story, which is true. An opinion pollster knocked on the door of a house in Birmingham and asked, "Do you belong to an organised religion?". A man in a turban responded, "No, I'm a Sikh". Sikhs do not easily submit to authority. The day-to-day management of each gurdwara is by democratically elected committees. There is no hierarchy of authority in the Sikh community other than the democratically elected Shiromani Gurdwara Parbandhak Committee in Amritsar, which, after years of deliberation in the middle of the last century, produced what we call the Rehat Maryada—the Sikh code of conduct, which gives definitive and universally accepted guidance on Sikh marriage, defined as the union of a man with a woman.

I head the Network of Sikh Organisations UK—the NSO—which is the largest umbrella body of Sikhs in the UK, with over 130 affiliated members. Its purpose is to facilitate co-operation between gurdwaras in promoting Sikh values and living true to Sikh teachings. However, neither it nor any other organisation in the UK has any authority to vary the Sikh Rehat Maryada. Amendment 22 is necessary to make this position absolutely clear to the relevant authorities.

9 pm

Baroness Barker: My Lords, I have been listening with great care to many of the arguments which the noble Lord, Lord Singh, has made during this debate, not least because his is a voice that has not been heard

[Baroness Barker]
for very long in this House. I will take away and contemplate at greater length his statement in one of our earlier debates that it is not the job of religious organisations to adapt to modern society.

I listened very carefully during our deliberations on Monday, and the noble Lord, Lord Singh, indicated that he spoke for all Sikhs. I asked some other people what they thought about that. They said that in many ways, the organisation is as he described in that different gurdwaras do have some autonomy, although there are common principles around which members of the Sikh faith coalesce.

However, there is one group, called Sarbat, which is a lesbian and gay Sikh group. It takes a very different view of this legislation from the one that has been put forward by the noble Lord, Lord Singh. It is not my job, or the job of this House, to determine who is right and who is wrong. However, I do think it is for this House to note that there are different opinions within his religion, which is not surprising as there is a great variety of opinions within the religions to which many of us belong. I wanted to put that on record, and this seemed like an appropriate point to do so.

Lord Singh of Wimbledon: I did not say that it was not the job of religions to go along with society. Religions are formulated and their purpose is to give a sense of moral direction to society that, being human, we sometimes lose. It is to remind us of basic values, such as concern for others before concern for yourself. That should not be subject to public opinion, which today is becoming very much about "me and my rights". Looking to others is very much a part of religion.

As to the other aspect of fringe groups within the Sikh religion, there are such groups. I am talking about the tenets of the Sikh religion as enunciated in the Guru Granth Sahib, the teachings of the gurus, and the code of conduct derived from that. That is the code which 99.9% of Sikhs follow.

Baroness Barker: I do not wish to enter into what I think is something of a distraction. I agree with the noble Lord, Lord Singh, about the role of religion. I merely make the point that the rest of us do not live in a moral vacuum. The rest of us also subscribe to values, some of which are very strong and which he would be familiar with and would share. I simply wish to point out that within his faith, as with all faiths, there are different shades of opinion, and I think the House should be cognisant of that.

Lord Singh of Wimbledon: Again, I have not for a moment said that the rest live in a moral vacuum. I simply stated what religion is all about, because that seems to have been lost in this debate. Very often the debate is religion against society, and it is not that.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I will address the amendments moved by the noble Lords, Lord Curry of Kirkharle and Lord Singh of Wimbledon, in a moment, but I start by speaking to government Amendments 21 and 51. Government Amendment 21 specifies the relevant governing authorities for giving consent to same-sex marriages according to the rights and usages of the Jewish religion. It replaces the provisions currently in the Bill with a definition that reflects the current arrangement for the Jewish community.

During the Committee evidence sessions in the other place, Sarah Anticoni of the Board of Deputies of British Jews' Family Law Group referred to drafting issues which it had brought to the Government's attention. This amendment is the result of discussions with the Board of Deputies of British Jews about those drafting issues, and the Government are very grateful to the board for its helpful and constructive contribution to the completion of this amendment, despite representing a wide range of views on same-sex marriage.

The Marriage Act 1949 already provides a definition of "secretary of a synagogue" in respect of the registration of Jewish marriages. This is because the Jewish religion already has specific provisions for its marriages in the Marriage Act which date back to 1753. This amendment ensures that the new provision in respect of the relevant governing authority reflects the modern structure of the Jewish community.

Government Amendment 51 provides that, where a governing authority has given consent to marriages of same-sex couples, that consent will not be affected purely by a change in the person or persons constituting that governing authority. Where a governing authority provides consent and thereby opts into conducting marriages for same-sex couples, a change in the person or persons who make up the authority will not render the consent void, negate it or remove it. The consent will still stand. However, this does not prevent the new governing authority from revoking the consent and deregistering the building, but this amendment makes clear that that would not happen automatically.

Amendment 22, in the name of the noble Lord, Lord Singh, provides a specific reference to the governing authority of the Sikh religion in relation to opting into same-sex marriage. I assure the noble Lord that no disrespect is intended towards the Sikh religion, or towards any other denomination or faith that is not specifically mentioned in the Bill, and that this amendment is not needed.

Lord Singh of Wimbledon: It may be that no disrespect is intended, but disrespect has been taken and many people are extremely upset about it. I still do not know why the omission occurred. Was it inadvertent or was it deliberate?

Lord Wallace of Tankerness: I apologise if any disrespect has been taken; it was certainly not the intention. A general reference to the governing authorities of religious organisations other than the Church of England, the Jewish religion and the Quakers is already included in the Bill—not by specific reference, but it is covered. The governing authority for the Sikh religion would be covered by this and would enable the members of the Sikh religion to determine who would be their relevant governing authority for the purpose of consenting to same-sex marriage.

The Government do not think it desirable to specify in legislation the governing authority for any particular religious organisation. That is properly a matter for

the members of the religious organisation themselves. For the Government to seek to prescribe this would be an inappropriate interference in the internal governance and autonomy of religious organisations, which should be free to decide, and indeed change, their decision-making arrangements for themselves.

I think it was reflected in what the noble Lord said that he is trying to replicate the specific reference that the governing authorities of the Jewish religion and the Society of Friends—the Quakers—have within the Bill. However, as has already been indicated, they are both in a different position, given their particular treatment under the Marriage Act 1949, which arises from arrangements put in place hundreds of years ago to reflect their particular circumstances at the time. They have long had different arrangements under marriage law and therefore their governing authorities are already specifically referred to in the Marriage Act. In line with that treatment, specific reference must be made to their governing authorities in this Bill. This is not required for other religious organisations, where the relevant governing authority should be determined by the members of each organisation. Indeed, my own religious denomination, the Church of Scotland, which has places of worship in England, is not referred to in this Bill—for the very good reason that there is no historical reason why it should be.

Amendment 20 is similar to an amendment debated in Committee in the other place. It inserts provisions regarding the definition of the relevant governing authority, whose written consent is required to opt into the registration of a religious organisation's place of worship for marriages of same-sex couples. The amendment provides that where there is a dispute over the recognition of the governing authority, the Secretary of State is required to consult members of the religious organisation and if necessary hold a ballot in which at least 66% of members cast their votes. Members are defined as people who have been on a formal membership roll for 12 months or who have attended the majority of services held over a 12-month period.

As I have already indicated, the Government do not believe that it is right for the state to restrict the independence of religious organisations and interfere with their internal governance in this way. Quite properly, that is a matter for each religious body to determine for itself, and we believe that the Bill as it stands gives adequate clarity about what is required regarding the consent of the governing authority of a religious group to marriages of same-sex couples, since the question of who the governing body is will be a matter of fact in each case. If there is a dispute over the identity of the relevant governing authority, that is a matter for the religious organisation to deal with internally, and we do not wish to create additional burdens for religious organisations. Nor indeed do we wish the Secretary of State and the state itself to become involved in internal disputes within a religious organisation.

The noble Lord, Lord Singh, gave us a very helpful explanation as to why he had moved this amendment with reference to the authority in his Sikh religion. It is helpful to have that information about the structure of the Sikh religion, because it illustrates exactly why it would not be proper for the Government to intervene in a religious organisation and its internal workings. It would be quite wrong for the Government to determine which part of the Sikh community should prevail, and it would be a near impossibility for the Government even to identify every religious organisation in the country and make the kind of provision that he would make. Undoubtedly someone would be left off, and that has its own implications. I can assure the noble Lord, Lord Singh, that the references to the Jewish faith and to Quakers are for long-standing historical reasons, and I invite the noble Lord, Lord Curry, to reflect on the fact that it is not appropriate for the state and the Secretary of State to intervene in such a way with the internal workings of a religious organisation. On the basis of that, I invite the noble Lord not to press his amendment.

Lord Singh of Wimbledon: I am grateful for what has been said, but it does not really explain the concerns at all. If there had been any sort of research into the Sikh religion, the Government would have had precise answers as to the state of play in that religion and what and who is the authority. No research whatever has been done. It has been considered unimportant and that is what really upsets. The concern is very similar to that of my noble friend Lord Curry: that any fringe group can say that it is in charge of this or that. If the Government do not wish to take note of someone speaking on behalf of the largest and only relevant authority in India, that is up to them, but this is aiding a "divide and rule" culture that is unhelpful, and that will not be welcome in the community.

Lord Elton: My Lords, this echoes precisely what I was saying at Second Reading. It is a very good example of what is wrong with this whole process. We started off with one unhappy minority and we are going to finish up with 15 or 20 who have not been consulted in the process to the extent that the others have.

Lord Wallace of Tankerness: My Lords, I appreciate the point that the noble Lord, Lord Singh, is making, but I ask him to reflect on the fact that the exceptions are exceptions for historical reasons of the Church of England and the Church in Wales where there is a common-law duty with regard to priests in relation to people within their parish. Quakers and the Jewish faith are included for reasons that go back centuries. Every other religion in England and Wales is treated in the same way. Even my own denomination, the Church of Scotland, is treated in the exactly same way as the Sikh faith is treated by the provisions in this Bill for the religious organisation itself to determine what its appropriate authority is.

It is quite clear from what the noble Lord has said that there is no doubt within his faith as to where that authority lies, just as in my own denomination the General Assembly of the Church of Scotland would be the obvious authority. The fact that he has been able to make very clear where that authority would lie just shows the importance of it being determined by the religion itself. I also ask him to reflect on the fact that if we included his amendment, every other faith

[Lord Wallace of Tankerness]
and denomination would have to be included as well. That would be an impossible task for a Government and would take them into having to decide which the proper authority of some religions is, and I do not believe that is where the state should go.

Lord Pannick: My Lords, I would just add that if the state were to conduct such an exercise and purport to decide for religious bodies what the proper religious authority is, difficult questions would arise under Article 9 of the European Convention on Human Rights.

9.15 pm

Lord Singh of Wimbledon: Having heard that, I will not move my amendment, with the proviso that what I have suggested should be taken as a strong advisory note in any further development of this legislation. The reason given for the Government's position is that this is too complex, but that is not really a reason. If you embark on this sort of contentious legislation, you should be prepared for the consequences. It is there, through and through; this is unhelpful legislation that is set to divide not only the country, as it is divided, but communities between themselves.

Noble Lords: Hear, hear!

Lord Singh of Wimbledon: Thank you, but I will not move my amendment.

Lord Curry of Kirkharle: My Lords, I reinforce that. The Bill itself, as I said in my comments and has been said numerous times, is divisive. Some churches with no clearly defined governing body—and I know many that fall into that category—will find it exceedingly difficult if a minority decides to pursue this. It has the potential to divide church congregations and communities, and that is deeply regrettable. I shall withdraw the amendment, but I would like the Minister to reflect on this. Faith communities need some way of appealing if they believe that a position is being taken against their best interests. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Clause 4 agreed.

Schedule 1 agreed.

Clause 5 : Opt-in: other religious ceremonies

Amendment 21

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

21: Clause 5, page 6, line 18, leave out from "purpose" to end of line 25 and insert "the meaning of "relevant governing authority" is to be determined in accordance with this table—

The "relevant governing authority" is...	*...if the marriage falls to be registered by...*
the Chief Rabbi of the United Hebrew Congregations of the Commonwealth	the secretary of a synagogue certified under paragraph (a) of the relevant definition (certification by the President of the Board of Deputies)
the person or persons duly recognised by the members of—(i) the West London Synagogue of British Jews ("the West London Synagogue"), and(ii) the other synagogues that are constituents of or affiliated to the Movement for Reform Judaism	—either the secretary of the West London Synagogue, as certified under paragraph (b) of the relevant definition—or the secretary of another synagogue in a case where:(i) the secretary is certified under paragraph (d) of the relevant definition by the secretary of the West London Synagogue, and(ii) the synagogue is one of those which are constituents of or affiliated to the Movement for Reform Judaism
the person or persons duly recognised by the members of—(i) the Liberal Jewish Synagogue, St. John's Wood ("the St. John's Wood Synagogue"), and(ii) the other synagogues that are constituents of or affiliated to Liberal Judaism	—either the secretary of the St. John's Wood Synagogue, as certified under paragraph (c) of the relevant definition—or the secretary of another synagogue in a case where:(i) the secretary is certified under paragraph (d) of the relevant definition by the secretary of the St. John's Wood Synagogue, and(ii) the synagogue is one of those which are constituents of or affiliated to Liberal Judaism
the person or persons duly recognised by the members of the synagogue by whose secretary the marriage falls to be registered	the secretary of a synagogue certified under paragraph (d) of the relevant definition (certification by the secretary of the West London Synagogue or the secretary of the St. John's Wood Synagogue) in a case where the synagogue is not one of those which are constituents of or affiliated to:(i) the Movement for Reform Judaism, or(ii) Liberal Judaism

In that table—

(a) "relevant definition" means the definition of "secretary of a synagogue" in section 67;

(b) a reference to a person or persons being duly recognised is a reference to the person or persons being recognised for the purpose of giving consent for the purposes of this section."

Amendment 21 agreed.

Amendment 22 not moved.

Clause 5, as amended, agreed.

Amendment 22A not moved.

Clauses 6 and 7 agreed.

Amendment 23

Moved by ***Lord Dear***

23: After Clause 7, insert the following new Clause—

"School Standards and Framework Act 1998: consciences of teachers

After section 60 of the School Standards and Framework Act 1998 insert—

"60A Teaching about marriage

(1) This section applies to a maintained school.

(2) No teacher shall be required to endorse same sex marriage if he has a conscientious objection to so doing based on his religious or other beliefs.

(3) No teacher at the school shall receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage by reason of the fact that he relies on subsection (2) above.""

Lord Dear: My Lords, I see that Amendments 23 and 24 are grouped together. I had discussions earlier with the Front Bench that in my opinion it would have been better to have split these and discussed them separately. As will become clear very quickly, the only common ground in these two amendments is the classroom. One amendment deals with the position of teachers and the other with parents, but in the interests of time I have had a further discussion with the Front Bench and am more than happy to run these two together and speak to them both one after the other, if that would help. I am looking at the Front Bench and they are nodding so, with the approval of the House, I will do that.

Amendment 23, which seeks to protect schoolteachers, would preserve the position of a teacher so that no teacher was required to endorse same-sex marriage if there was a conscientious objection to so doing, and the same teacher would not be deprived or disqualified by the same action. Under the amendment, teachers with a conscientious objection to same-sex marriage would be protected from being forced to actively endorse it. The amendment would also seek to protect them from being disadvantaged as a result. It offers a conscientious protection similar to that enjoyed by, for example, atheist teachers, who have a legal right not to have to teach religious education. I contend that, unless explicit protection like this is included, the same-sex marriage legislation would jeopardise the civil liberty of teachers holding the traditional mainstream view of marriage.

Discussion about marriage comes up routinely as part of the school curriculum—for example, in English or in history—and there will be pressure, I fear, to ensure that any such discussion includes same-sex marriage. As for sex education, Section 403 of the Education Act 1996 requires sex education to include teaching pupils about the importance of marriage in family life, and will require teaching about the importance of same-sex marriage in that context.

I refer, as I did at Second Reading, to the opinion given by John Bowers QC, a leading barrister in the field of employment law. He stated that Section 403,

"provides no exception for conscientious beliefs".

He goes on to say:

"Unless this were amended I envisage that there would be a duty on the teacher to promote marriage as newly defined".

Many teachers undoubtedly will feel unable, in all good conscience, to express such an endorsement. A representative poll, taken earlier this year among teachers, found that 10%—which equates to more than 40,000 teachers in this country—would probably refuse to teach children about the importance of same-sex marriage if required to do so. In the same poll, 17% would teach about its importance but would not be happy in doing so, and 56% expressed concerns that colleagues who take a stance supporting traditional marriage could find their professional careers damaged.

In fairness, the Government have repeatedly sought to allay these fears by insisting that teachers will not be forced to endorse anything that is contrary to their conscience. In fact, the Minister, the noble Baroness, Lady Stowell of Beeston, told the House at Second Reading:

"Teachers will be expected to teach the factual and legal position when teaching about marriage, as with any area of the curriculum, but they will not be expected to promote or endorse views that go against their own beliefs. It will be unlawful to dismiss a teacher purely for doing so".—[*Official Report*, 3/6/13; col. 940.]

Setting on one side the factual and legal position, and distinguishing it from the promotion or endorsement of views about that same subject, I would think that it is almost a knife-edge position.

In contrast to that view, John Bowers QC, whose opinion I have just quoted from, has suggested that teachers could be required to promote same-sex marriage and be disciplined and even dismissed if they refuse to do so. He states in his opinion:

"If the Marriage Bill becomes law, schools could lawfully discipline a teacher who refused to teach materials endorsing same sex marriage".

Earlier in the document he states:

"The stark position in my view is that a Christian teacher (or indeed any teacher with a conscientious objection) may have to teach about (and positively portray) a notion of marriage (and its importance for family life) which they may find deeply offensive".

He goes on to say:

"Section 403(1A) of the Education Act 1996 would also in my view provide a legitimate basis for schools or LEAs which wish to promote a particular vision of equality to require all teachers to teach materials which endorse same sex marriage. The position of the teacher who manifests a conscientious objection to doing so is not enviable".

I will quote from a letter that was sent to me at the end of last week by a firm of solicitors in Witney in Oxfordshire. It stated:

"I am happy to confirm the attached letter, addressed to you by Mrs X, in relation to an investigation against her in her school, which is an honest summary of a genuine incident. I am aware of the facts of the case. I am also aware that Mrs X wishes to remain anonymous at this stage because an investigation is ongoing".

The letter from Mrs X is illustrative of this problem, and I quote from it directly:

"I am a teacher at a … girls' school in South London. I have been employed by the school for 17 years. During March … I was instructed to deliver a presentation, which included material stating, in effect, that any disagreement with same-sex marriage was de facto homophobia. I felt this was not a fair characterisation of the debate and it was one that conflicted with my own deeply held religious beliefs. I raised my concerns with the teacher in charge".

I will shorthand the next bit. She complained to the teacher in charge, who allowed her her position and let her teach elsewhere. However, another colleague raised a complaint:

"The head teacher investigated the incident and concluded there was no case to answer. Another colleague, who is also a union rep, then followed up the complaint, and has formally raised additional concerns about my Christian beliefs and my membership of a church. The union rep has demanded an investigation of my beliefs and my membership of the church, and whether it had any negative impact on my job as a teacher. That investigation process is currently underway, and at the time of writing I do not yet know the outcome".

The nub of that was on whether any disagreement with same-sex marriage was de facto homophobia.

[Lord Dear]

I could cite other examples, but I will not take up too much of the House's time. I will say simply that other teachers have come under similar pressure. One situation involved a primary school teacher who stopped reading the book *And Tango Makes Three* to her class because it endorsed same-sex relationships in a way that conflicted with her beliefs. When the head teacher discovered that, the teacher was restricted from having her own class because school policy required teachers to promote homosexuality in the classroom. In Scotland, a secondary school teacher was told that he would have to teach a relationships course, promoting same-sex marriage "without exceptions or safeguards", despite that contradicting his beliefs.

We have a tangle. We have leading counsel on one side saying that the law will not protect teachers, and we have the view from the Front Bench, very obviously, earnestly and faithfully put forward, that the factual and legal position can be distinguished from the promotion and endorsement of views. We then turn to the Joint Committee on Human Rights, which is as divided on this as it was on other matters we heard of earlier in connection with another amendment. On this particular issue the Joint Committee said:

"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 … We welcome the Government's commitment to review the protections that may be required in relation to the teaching of Sex and Relationship Education. In particular, we encourage the Government to consider whether specific protections are required for faith schools and for individual teachers who hold a religious belief about same sex marriage".

That sums up the reasoning behind this amendment. I beg to move.

Lord Waddington: My Lords, the noble Lord, Lord Dear, brought to the attention of the House certain remarks made by my noble friend in her speech at Second Reading. I will remind the House of some of her words. In particular, she said:

"Teachers will be expected to teach the factual and legal position when teaching about marriage … but they will not be expected to promote or endorse views that go against their own beliefs".—[*Official Report*, 3/6/13; col. 940.]

That surely means that the teacher must teach the new definition of marriage and must explain the significance of the change. That may be very difficult for some teachers. The Minister says that the teacher does not have to endorse the new definition, and by that I think she means to accept it as right.

Lord Alli: Teachers in any context need to teach the legal position. Is the noble Lord suggesting that they should not teach it, whatever the House decides? The law in terms of marriage is the law. That is a fact. Surely they have to teach the law?

9.30 pm

Lord Waddington: I appreciate what the noble Lord has to say and he will be able to say it in his speech. I wish he would just hear me out on this little piece of the action. He surely must agree that this begs the question as to whether it is anything we should complain about; he surely must agree that the teacher must teach the new definition of marriage and must explain the significance of the change. The noble Lord must concede, whether he likes it or not, that that may be offensive to some teachers. It is no good the noble Lord shaking his head. I should have thought that after all our debates he knows how divisive this legislation is. Some people find it very difficult to accept that a marriage between two people of the same sex is a proper marriage. It is ridiculous him just shaking his head. We have to face the facts.

Lord Alli: I was shaking my head because I do not believe that it is difficult for a teacher to teach the facts. They may not like it, but I believe teaching is a fantastic profession and every teacher I have met is capable of distinguishing fact from opinion. People in this profession are capable of dealing with this issue because that is what they are trained to do.

Lord Waddington: A number of teachers will find it extremely difficult to have to explain the new regime. At Second Reading the Minister said that teachers do not have to "endorse" the new definition—by that I think she means accept it as right. She then went on to say that,

"the expression of personal beliefs should be done in a professional way and not in a way that would be inappropriate or insensitive to pupils".—[*Official Report*, 3/6/13; col. 940.]

I wonder whether some people might judge that any statement to the effect that the only true marriage is one between a man and a woman is bound to be thought insensitive to some pupils and that therefore it should not be allowed. When we come to Section 403 of the Education Act 1996, which was again referred to by the noble Lord, Lord Dear, there is a strong case for giving some protection to safeguard the position of teachers who cannot in conscience teach that the union of two men or two women is a marriage.

As to conscientious objection, there was a debate about that the other night. One thing was not mentioned. The Equality and Human Rights Commission was reported on 12 July 2011 as saying that the court should have done more to protect Christians affected by equality laws. In the case then pending before the ECHR the commission was going to call on the European Court of Human Rights to back the principle that employers should do more to reasonably accommodate employees' religious beliefs like they accommodate staff with disabilities. I am quoting from the commission. Later, for quite unexplained reasons, the commission beat a hasty retreat but we can take some comfort in the fact that for a short time it looked as if we were going to get somewhere. Surely if in the dark days of the war you could give people who had a conscientious objection to fighting the right to opt out of military service we could do something similar here.

There have been so many cases where the demands of equality have been allowed to trump the right of people to observe the dictates of their faith. There may be a case in every enactment for protection of those who would find observance difficult on grounds of conscience. I raised that matter in a Question in the House on 8 July 2010. Unfortunately, I got the usual expression of sympathy followed by a statement that the Government had not the slightest intention of doing anything.

I noted the words of my noble friend Lord Deben earlier this afternoon. He talked about tolerance. I do not see much tolerance in this place tonight—not on that side of the Chamber. The Government would be practising tolerance if they gave protection to teachers who find it difficult to teach the significance of the new law on marriage.

Baroness Farrington of Ribbleton: My Lords, I say in a spirit of courtesy that I rather resent the reference to this side of the Chamber, because this debate is not whipped. What I will say is based on my experience as a mother and as someone, obviously, who went to school. For 10 years I chaired the education committee in Lancashire, with a bevy of bishops—perhaps "beneficence" would be a more appropriate word—because Lancashire had, and I think still has, the largest number of faith schools. I think that this is the last week that the right reverend Prelate the Bishop of Liverpool will be in your Lordships' House. I would like to put it on record that he has contributed very wisely to our debates.

My experience of the education system is that of a parent and an unqualified teacher. I have to say, on the basis of my experience, that the current Government's use of unqualified teachers serves children ill. I will address this issue and concerns raised by the noble Lord, Lord Dear. We tangle with the content of the curriculum and what teachers ought to say and do at our peril. I recollect—this may surprise some noble Lords opposite—my faith in the late Lord Joseph, who, in the circumstance of vitriolic debates about whether teachers were telling young people that they ought to support CND back in the 1980s, said that the role of a teacher could be to say that they supported CND or not, but that as a professional they ought also to say that other teachers, parents and people in the community held different views. To my amazement—I admit prejudice prior to his appointment—I found that Lord Joseph was interested in genuine educational debate and discussion among young people as they grew up. Noble Lords would do well to remember his advice that young people need to know about a diversity of views as they grow into young adults.

Nobody wishes to see the promotion of a particular lifestyle, moral view, political view or religious view. Teachers have to teach children who are growing up in a very diverse culture. It is totally different from my childhood, when there was not a diverse culture in most communities. Most diversity was hidden.

I would like to relate the story of a superb head teacher in a Lancashire church school, who came to me at the time of the introduction of Section 28. This head teacher was a devout, practising Anglican. By chance, she was actually a very devout Conservative Party member, if one can be such a thing. She asked to see me about Section 28. I thought she would come in and say, "You've got to support this, this is important." What she told me was a story. It took place in that small church school in a village in Lancashire, where she was head teacher. She asked the children to draw a picture of their Christmas Day morning. She said to me, "Josie, one little girl drew a picture of herself in bed with two women". She said to the little girl, "Who are they?", and the little girl said, "My two mummies. I don't have a daddy, I have two mummies."

The head teacher said to me that her professional job, given all her views and her devout Christian belief, was to support the family in which this child lived and ensure the child was never in any way victimised for the circumstances of her family life. So she had to explain to other children, "Some people live like this". I explained that story to Lord Joseph. He understood it because he knew that children grow up in families with very different views and very different circumstances.

To the noble Lord, Lord Dear, I say that it is not a question of endorsing but of recognising. Children are growing up in a diversity of families. They may grow up with a mother and a father who are married within a religious faith. Their uncles and aunts and other people they know, other people in the community such as family friends, will have different patterns of life, different beliefs and different relationships. We have to make sure that teachers are given the freedom and responsibility to respond to the young people in their care.

A long way back I was accused by a then Member of Parliament in Lancashire of presiding over a situation in which teachers were indoctrinating children into supporting a particular view. I refer back to the CND. I never actually got proof of the indoctrination, but I had wholehearted support across the political groups on Lancashire Country Council for ensuring that teachers were able to teach children to grow up in the real world that they lived in.

I may not like particular aspects of life. I am not awfully fond of rap, but that it is an age thing, not an artistic judgment. We have to stop preventing teachers teaching children about the world in which they are growing up. Teachers should not endorse views or indoctrinate children but recognise that the world is real and it is out there. That is why I give the Government my wholehearted support. I hope that the noble Lord, Lord Dear—

9.45 pm

Lord Dear: I wonder whether the noble Baroness could apply that reasoning to the letter that I quoted. I will read out the pertinent point again. The lady in question is currently under investigation in the south of England. She says in her letter, which is endorsed by the solicitor as being an accurate reflection of what went on:

> "I was instructed to deliver a presentation which included material stating, in effect, that any disagreement with same-sex marriage was de facto homophobia".

In other words, if you agree with it, it is not homophobia; if you disagree, it is. I understand that the lady is suspended and is currently the subject of an investigation. It seems to me that the difference between disagreement, agreement and endorsement is a very fine line indeed. I hope the noble Baroness will answer a further question at the same time. What about the 40,000 teachers—10%—who said that they would not be able to teach this matter in good conscience and would probably refuse to do so?

Baroness Farrington of Ribbleton: My Lords, my experience in my political career is that it is unwise to comment on individual cases. I would need to know

[Baroness Farrington of Ribbleton]
the detail. I cannot believe—however, the noble Lord tells me it is a fact—that any head teacher or governing body has insisted on that wording. However, I do not doubt that the noble Lord has evidence which seems to support that.

I am slightly more dubious about opinion polls. I think that the opinions depend on the exact question that is asked. If noble Lords were asked as they left the Chamber whether they agreed with indoctrinating pupils into believing that same-sex marriage was right or wrong, we would probably all say that we do not believe in indoctrination. If we were asked a slightly different question, we might answer it differently. As someone who is very committed to political life, I am saddened that out there a variety of groups of people hold a variety of views, many of which I totally oppose personally. Nevertheless, I defend their right to hold them. That is the issue we are dealing with. I do not want my grandsons to be told that anything is right or wrong in regard to the law. They will be told by their parents and teachers and occasionally by their grandmother—although, as they grow up, they may not listen—about certain things of which we do or do not approve. However, I think it is very unwise for us to start assuming that teachers will be told they have to indoctrinate or put forward a particular point of view. For 10 years I chaired the education committee on Lancashire County Council. I once said to somebody, "If I wanted the whole teaching profession in Lancashire, which I respect and admire, to do something, the best way would be for me to ban it".

Lord Pannick: My Lords, we all recognise the strength of feeling that these issues command, and pleas for tolerance, such as that from the noble Lord, Lord Waddington, always command considerable respect and attention. However, we really need to look at the principle behind the proposed amendments of the noble Lord, Lord Dear. As I see it, the teacher's role is not simply to promote same-sex marriage or propagate his or her views. Surely the only role of the teacher in relation to same-sex marriage is to explain to pupils, where this is relevant, that the law allows same-sex marriage, and to explain that some religions do not recognise it and therefore the law does not recognise same-sex marriage of a religious nature in those circumstances.

I cannot understand why a teacher needs or should have a statutory immunity from performing that educative role. Nor can I understand why parents should be able to prevent their children being so informed about the laws of the society in which they live. The noble Lord, Lord Dear, also referred, in the context of the legal opinion from Mr John Bowers QC, to Section 403 of the Education Act 1996, which was said to cause great concern. I remind noble Lords that Section 403(1A) is about giving guidance in the context of sex education. It requires children in that context to,

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

The purpose of that statutory provision, as I understand it, is so that when children learn about sex education, they learn that it is highly desirable that sexual intercourse takes place within the context of marriage. I cannot understand why those noble Lords who are concerned about the Bill should wish in any way to prevent children learning—if and when they do—about homosexual sexual relations in that context, as well about heterosexual sexual relations and the importance of marriage and family life.

Lord Dear: Would the noble Lord then distinguish that from the circumstances of a teacher who is an atheist and already receives statutory protection from teaching religious education classes?

Lord Pannick: An atheist may have good reason for not teaching religious education, because by definition religious education is teaching matters relating to religion. However we are not concerned here with teaching religion, but with the role of the teacher in teaching children, so far as it is relevant, about the society in which they live. If and when the Bill is passed, part of the society in which children live will include same-sex marriage.

Lord Dear: With the greatest possible respect, that is dancing on a pin. I am sorry to put it that way, because I have the greatest respect for the noble Lord. Surely it is exactly the same reasoning which gives protection—if one can use that phrase—for the atheist to fall out of teaching religion and the teacher who has a rooted objection to teaching about sex education and same-sex marriage on religious or conscientious grounds. I see no difference.

Baroness Farrington of Ribbleton: My Lords, would the noble Lord, Lord Dear, please accept that he is referring to two separate issues? One is teaching religious education. Perhaps in some schools this is taught as fact by people who believe, particularly in church schools. As for the other, I do not know if other noble Lords have my experience of children, particularly grandchildren, asking people questions at the most inappropriate moments to get information.

Even if the noble Lord's suggestion in the amendment was agreed, parents could say, "I do not wish my child to be in the classroom when X is being discussed". However, then the child at the back of the class suddenly asks a question that the teacher has to answer. It is not formal sex education. "Where did I come from?" is the question that a child is most likely to ask at the checkout in the supermarket, rather than at the appropriate moment at home. Therefore, one cannot subdivide the process of education. Education goes on all the time. The teacher may be asked such questions in the classroom. It may be a scout leader who is asked—it could be anyone; it may occasionally be the grandmother. Then you have the problem of working out not only what you think but what the parents concerned would like you to say.

Baroness Butler-Sloss: My Lords, perhaps I may put in my 10 cents-worth on this. I entirely agree with the noble Lord, Lord Alli, that the teacher must teach what the law is. There is no doubt about it. I have the utmost sympathy with what the noble Baroness, Lady Farrington, has said. As I have said previously, it is the duty of teachers to support the child, whatever type of relationship the parents with whom they are living

may have. I have happily granted adoption orders to same-sex couples. They are or can be excellent parents—as good as any other. I start from that basis.

However, I have a concern. It is really what the noble Baroness, Lady Farrington, said about being a grandparent. I am a grandparent and my grandchildren ask awkward questions but the concern is about when the question is asked of a teacher. The teacher is there, trying very hard to give a neutral account of what the present law of marriage is. Then a child asks an awkward question and the teacher answers honestly. It could be a question such as, "What do you think about it, miss?", and the teacher says, "I have to say that I am a member of the Church of England and my view is that I do not believe in same-sex marriage". The child goes off and tells the mother, and the mother comes and complains to the school because a member of that family is in a same-sex relationship. That is what worries me. It is the perception; it is the interpretation. It is that which has gone beyond the ordinary, perfectly proper teaching of the teacher. It is for that reason that what the noble Lord, Lord Dear, is asking for is a necessary protection for teachers.

I do not support the noble Lord's second amendment. I think that children should learn everything. When I was a judge, I remember the father of a Roman Catholic family, who was very devout, telling me that I should make an order that in the Anglican school to which he had sent his children they should not attend religious education because it was Anglican education, not Roman Catholic. I basically told him to get lost and that if he had chosen to send the child to that school it was right that the child should learn what the school was teaching. Children should be learning everything and they will then distinguish between matters.

However, the first of the two amendments of the noble Lord, Lord Dear, should not be dismissed out of hand. There is a problem here that has to be recognised.

Lord Alli: I wonder if the noble and learned Baroness has seen the Secretary of State's Second Reading speech in the other place and what the Minister in the other place said. The Minister said that,

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

If a loophole exists—and I have said this to the noble Lord, Lord Dear—we should try to close it, but it seems to me that the loophole is not there.

10 pm

Baroness Butler-Sloss: I very much hope that that is true. It may be that this is not necessary in primary legislation. However, there is a potential problem of perception and interpretation. There will be some teachers who will be at risk, perhaps in areas where they do not read what the Secretary of State said, or what the Minister said in Parliament, and have their own views and take the view that the teacher has gone outside what he or she should say, in having answered the question of the child, or whatever it may be. I raise the question, and my concern, in moderate terms. We ought not just dismiss this. That is the point I am making to the House.

Baroness Farrington of Ribbleton: My Lords, does the noble and learned Baroness accept that I have failed to convey the message of the much missed Lord Joseph? Good professional teachers will answer that question and will point out that parents, other teachers, local clergymen or whoever, may hold a totally different view. What is important is that the child knows about the range of views. That is the safeguard for the teacher.

Baroness Butler-Sloss: I do not want to keep getting up and down. I entirely agree with the noble Baroness, but since she asks me, it is not in fact what the teacher teaches in the class that worries me. It is what is said, probably to the head teacher, about what the child has said, what has gone home, and so on. Although I have never been a teacher I have had experience in different ways of what is said, and what is misunderstood, and the way in which teachers are placed in very difficult positions, when the head teacher has been given the information by a parent, by another teacher, or by somebody else. It is that perception—that interpretation—which worries me.

Baroness Byford: My Lords, I have waited patiently and tried about five times to get in, because this part of the Bill is enormously important. The noble Lord, Lord Alli, said quite rightly that if and when this becomes law, teachers will have to teach the law. How does he envisage the situation where a teacher is in a room, teaching the whole question of marriage as it has been known and accepted until now, alongside same-sex marriage, to children within the same class? That is asking a huge amount of teachers under pressurised circumstances. That is my first point; perhaps I may park that for a moment. I hope I can help a little bit more.

Secondly, I am grateful for the contribution of the noble Baroness, Lady Farrington. She and I share many things, and we disagree on many things, but I was very grateful for her input. I have real concerns, and I welcome Amendment 23 moved by the noble Lord, Lord Dear. He has given us instances of cases being heard at the moment. I am worried that there will be pressure put on teachers—they may find they do not get promotion or may find themselves in a difficult situation. We have been dealing with intricacies, and Amendment 23 deserves greater support than it has so far received. I do not find it objectionable. Proposed Section 60A states:

"This section applies to a maintained school".

Will the noble Lord, Lord Dear, explain a little bit more about that? If somebody really does have a conscientious objection, they should not be jeopardised if they find it very difficult to do what the noble Lord, Lord Alli, wants them to do, within a lesson. All I would say is that it is not easy.

I am sorry that I could not be here on Monday or I would have participated in this debate earlier, but I have only been able to attend since late this afternoon. However, this is a hugely important part of the Bill and there are real and practical issues that need to be addressed. I do not think that what the noble Lord, Lord Alli, wants to do is something that I would want to do, so he knows where I stand. The questions of how we are going to take this forward and how it will work have not really been addressed at all.

Lord Alli: My Lords, I shall be brief because I know that the Committee wants to make progress and there is still quite a lot to be done. This will be handled in exactly the same way as teachers currently deal with the issue of divorce. Teachers in schools up and down the country who hold deeply religious views and do not agree with divorce are free to express those views in the classroom. Nothing prevents them doing so. However, they are required to tell pupils the truth about the world we live in and that divorce exists. I do not think that that causes a problem. The principle applies and it can read across to another set of issues. Teachers have a much better grasp of this than perhaps we are giving them credit for.

Lord Elton: My Lords, there are a couple of things which have not been mentioned that we need to bear in mind before this is resolved. The first relates to classroom teaching. I must congratulate the noble Baroness, Lady Farrington of Ribbleton, on giving a perfect example of proper and professional conduct, and some perfect examples of how extremely awkward children can be. However, noble Lords have not actually grasped the fact that many teachers are required by their heads to teach to a particular programme which has been produced by a publisher, by some think tank in a comprehensive, or whatever. It will take an attitude to this which to some teachers will appear as though it is promoting a particular interpretation. Teachers need to be able not to have that forced on them.

The other thing is that, of course, a lot of a teacher's life is spent in the staff room. No doubt they hold to the view that they are highly professional and will do exactly what the teacher the noble Baroness, Lady Farrington told us about did under all circumstances, yet in the staff room may express views contrary to those that we are now going to be told are mandatory. If they express an objection to same-sex marriage which, as the noble Lord, Lord Dear, has said, is interpreted as being tantamount to homophobia, and that sort of conversation is held in the staff room, particularly of a large school, there will be those on the staff who will regard it as making them unfit to teach. Those teachers will find themselves under undesirable pressure. No doubt the Minister will take this away and think about it, and indeed all these exchanges will prove to be useful.

Lord Eden of Winton: My Lords, I believe that it was the noble Lord, Lord Dear, who said that this is something of knife-edge issue, and I sympathise with that observation. I hope that I will not embarrass her, but I find myself in considerable agreement with the noble Baroness, Lady Farrington of Ribbleton, and I certainly have a lot of sympathy for her whole approach to this subject. However, I have one deeply held anxiety which I would like to express very briefly in the hope that it will be allayed by the response of my noble friend the Minister.

It is not the objectivity of teaching that worries me. It is not the way that teachers will interpret or rehearse the law before their pupils or their classes that is my concern. On the whole, I have enormous respect for the teaching profession, having been associated with it for some time, and I think that teachers will do their job admirably. That is not my worry. My worry lies in what I think the noble Baroness, Lady Farrington of Ribbleton, said, and certainly others have mentioned; namely, the difference between what I would call the objective teaching or factual teaching, as the noble Lord, Lord Alli, said, and promotion. That is the knife edge. It is done so easily. It is done by emphasis and by inference. We know through our respective interests how easy it is, almost subliminally, to encourage a viewpoint that is held firmly by the particular promoter of that view. It is done carefully and sometimes not quite so carefully. This is my worry and I hope my noble friend will be able to reply.

I have seen, as other noble Lords have doubtless also seen—there is nothing peculiar about me, there is no reason why I alone should have seen this—material in the public domain which is promotional material advertising the good things about same-sex relationships. I have heard it said—I give no particular credence to this; it is hearsay—that teachers sometimes encourage pupils in their class to experiment, to find out in terms of sexual relationships, "what makes you happy". This is what worries me. There is an undercurrent there of crusading on behalf of same-sex relationships which I think has no place in a school. I accept teaching factually; I do not accept promotion or promotional material.

Lord Alli: In the spirit of tolerance that the noble Lord, Lord Waddington, asked for, will the noble Lord accept that, for many of us, the use of the word "promotion" and the language that the noble Lord has just used is particularly emotive because of Section 28? Will he therefore accept, in the spirit of tolerance, that where the amendments are crafted in such a way that that phraseology is embedded in them, that is the reason for the perceived reaction that the noble Lord may get? Will the noble and learned Baroness, Lady Butler-Sloss, also accept that where there is a mischief we genuinely want to solve it, but if the language is inflammatory, if the arguments put forward are inserted into the Bill, it is very hard, in the air of tolerance, for us to have a proper and constructive discussion?

Lord Eden of Winton: I am very sorry to hear the noble Lord say that because I certainly do not want to offend him or anybody else of that persuasion. However, he is right to say that I am emotional about the issue, because I feel very strongly about it. I hope he will accept that there are strong feelings on the side that I represent, as strongly as he represents the feelings on his side. I cannot help that. I feel I have to express these views, because we are talking about legislation, which is likely to become the law of the land, in which case my views will be sublimated and the law takes over. Now is the time for me to express these views, and I hope I convey the feelings which I believe represent the views of others beyond this House. I hope that I will get a response from them.

We talk about teachers being required to teach the law correctly. What is the position of teachers in Church of England schools? They will also be required to do this. This is one of the areas of difficulty which I find being developed by the proposals in this Bill, which I hope will be satisfied, if not by the existing protections, at least by the amendment of my noble friend Lord Dear.

Baroness Farrington of Ribbleton: I remind the noble Lord that the example in Lancashire that I spoke of was in a Church of England school. My experience of church schools is that they not only hold their own strong religious views but respect the communities from which their pupils come and the circumstances from which their families come. Perhaps it is different in Lancashire.

10.15 pm

Lord Eden of Winton: I thank the noble Baroness for that intervention, which reminds me, if I needed reminding, of her earlier speech. I said at the beginning that I agreed with a lot of what she said and found that I had a lot of sympathy with her point of view. I accept what she says and just hope that when my noble friend comes to reply there will be some comment about the nature of the material that is made available to interpret the various different aspects of relationships in marriage. It comes back to a point made in a previous debate, on an earlier amendment, about the importance of guidance. What is in the guidance material is very significant. If we could have some reassurances about the nature of the guidance that will be given to the teaching profession, either from local authorities or from the centre, that would be very helpful.

Lord Glenarthur: My Lords, I hesitate to intervene because I have not spoken since Second Reading. However, I want to follow up a point which the noble and learned Baroness, Lady Butler-Sloss, made about teaching. I have no experience of teaching but it seems to me that a teacher coping with a classroom of pupils, who has to deal with one aspect in a particular way, might need a more individual session with a pupil who displays a lack of understanding about a particular issue. It might need to be put over to that individual pupil in a different way from how it might easily be expressed in a more public way. That would almost certainly draw the poor teacher concerned into expressing much more personal views than he or she might have done if it had been in a public classroom. There seems to be a genuine risk here which could imperil the teacher concerned. It needs very careful thought.

Baroness Barker: My Lords, I have a question for the Minister arising from the speech of the noble and learned Baroness, who made very strong points but did not describe something new. The sorts of issues to which she referred have been around for a very long time. We have had guidance for many years about how such sensitive matters should be addressed in school. I believe that bishops and representatives of other faiths have, over many years, been called by successive Governments to contribute to that guidance. The noble Lord, Lord Elton, talked about promotional materials, but there is guidance already. When the noble Baroness comes to summing up—which I am sure she will be delighted to get into fairly soon—can she say whether anything in the Bill changes the statutory guidance that we already have about the teaching of sensitive matters?

Lord Elton: The noble Lord has not, as far as I know, addressed his second amendment at all. I do not think that there is any time for it tonight but, very briefly, I give notice that will we need a debate on the legal opinions that have been expressed on whether the Bill will affect the right of parents to withdraw their children from sex education. We may have an opportunity to do that at the next stage. I put it on record that if the noble Lord does not address it, I will table an amendment to give such an opportunity.

Baroness Thornton: I will address both Amendment 23 and Amendment 24, as the noble Lord, Lord Dear, himself said—

Lord Dear: I am so sorry. Perhaps I may directly address the Front Bench. We agreed that we would try to hurry this through—and of course we have failed in that. I certainly do want to speak to Amendment 24, having moved Amendment 23. I thought that we agreed that I would then go straight on to Amendment 24 and take that as well. I want to discuss it. However, I am also conscious of the time. It is fast coming up to half past 10. I am in the hands of the Committee as to how we handle this.

Baroness Stowell of Beeston: I apologise to the noble Lord if I was in any way unclear when we discussed this. I thought, from our last conversation, that we were going to debate both amendments together as a single group, and that is what I was intending to do in responding to this debate. I think that there is real merit in doing so because there are things relevant to the noble Lord's second amendment which help me to address some of the points that have been raised by my noble friends, particularly points raised by the noble Lord, Lord Eden. My intention is to cover both amendments in my response.

Lord Dear: If it is the will of the Committee I will move on to Amendment 24. Yes, the Front Bench is nodding.

Amendment 24 stands in my name as well and I will try to be fairly brief; I can certainly be briefer than I was before. Because of their religious or other convictions, many parents will not want their children to learn about same-sex marriage before a certain age, fearing that they will find it confusing. Others may be concerned that teaching on the subject will not be balanced or might not respect their own convictions on the matter.

Parents, as we all know, have the right to withdraw their children from sex education. However, same-sex marriage could be included in a range of other subjects, across the curriculum, to which the right of withdrawal does not apply. For example, there is no right of withdrawal from history lessons and there has been a growth of schools taking part in LGBT History Month lessons within the last few months.

Stonewall, the leading gay rights group, promotes an extensive list of materials on same-sex marriage for use in primary schools. These resources cover subjects much wider than just sex education. A teacher training guide, also produced by Stonewall, suggests that primary school children could perform some of Stonewall's recommended story books as school plays. An accompanying teacher training DVD, which was produced with the support of the Training and Development Agency for Schools, suggests that pupils must become "resilient"—and that word is lifted directly from its

[LORD DEAR]
literature—to the values of their parents and grandparents. This is quite clearly an indirect reference to some parents and grandparents who may have objections to issues such as gay marriage.

There is a danger that without an extension of the right of withdrawal, the deeply held beliefs of parents will be undermined, as will their ability to have their children educated in accordance with their own convictions. Article 2, as some of us know, of the first protocol of the European Convention on Human Rights will be weakened. I could give a number of examples where this sort of thing has happened—I am conscious of the time and of the fact that the House wants to progress—but suffice it to say that there are already examples in this country, and abroad, where children have sought to be removed from school because of this sort of thing, and the council have told the parents that action would be taken against them unless the children were returned to school. It has happened in Waltham Forest in east London and it has happened abroad in Massachusetts.

I am galloping through very fast, and I would have liked to develop the argument to greater effect, but Amendment 24 gives a parent the right to withdraw a child from any lesson that includes teaching about same-sex marriage. It also requires the school to notify the parent a week in advance of those lessons, because being informed in that way is obviously crucial to the effective operation of the right of withdrawal.

Baroness Thornton: My Lords, third time lucky. Amendments 23 and 24 in the name of the noble Lord, Lord Dear, address various aspects concerning teaching in schools. I recognise that this is a sensitive issue and of importance to many people. However, we believe that both these amendments go too far.

The obligations of schools, particularly faith schools, in relation to teaching about same-sex marriage were extensively debated in the other place. I will repeat what I said at Second Reading: I think that the Secretary of State, Michael Gove, got it just about right when he gave his evidence to the committee in the Commons. These are not new issues. Current requirements on faith schools around the teaching of PSHE and subjects such as abortion have required schools and DFE guidance to forge a sensitive path between teaching pupils about the facts of life and the law of this country, while still informing them of their faith's views on these issues.

Noble Lords need to understand that teachers have succeeded in navigating these sensitive issues. We understand the concern of faith schools that they will be required to advocate to their pupils something that their faith does not endorse. However, there is a fundamental difference between teaching and advocacy, which is why the noble Lord's Amendment 23 is confusing. By providing for an explicit protection for teachers who refuse to "endorse" same-sex marriage, the amendment misconceives the nature of teaching. The noble Lord, Lord Pannick, explained that extremely well and I will not repeat those arguments.

The Education Act 1996 requires that pupils,

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

It is not the job of teachers to endorse or not endorse a particular opinion, no more than teaching about a subject amounts to their personal endorsement of it. Just as currently all schools are required to teach about the importance of marriage for family life—while being sensitive,

"so as not to stigmatise children on the basis of their home circumstances,

which is what the statutory guidance says on this issue—I put it to those who are concerned about this that schools have already found a way to navigate the sensitive path of teaching children about the importance of marriage without implying that children who come from other arrangements or set-ups, be they single, same-sex or unmarried parent homes, have any less important a family life.

Amendment 24 would allow parents to remove their children from any lesson in addition to PSHE, where they already have such a right, which might involve teaching about same-sex marriage, and would require teachers to give advance notice to parents of any lessons in which this may be of relevance. Disregarding for a moment the complete impracticality of a teacher having to inform parents before any likelihood of a discussion on same-sex marriage—my noble friend Lady Farrington made that point completely clear: you cannot predict what a teacher will be asked by a pupil—will the teacher be forced not to answer that question?

I suggest that the amendment comes close to wishful thinking on the part of the noble Lord, Lord Dear, in hoping that some individuals might go through their entire young lives without ever knowing that same-sex marriage was the law of this country and that it would be wrong to go down such a path.

10.30 pm

Baroness Stowell of Beeston: My Lords, as I said to the noble Lord, Lord Dear, I am grateful to be able to respond to his Amendments 23 and 24 together because some of the issues arising from his second amendment will help me address some of the concerns that have been expressed in this debate by my noble friends.

The noble Lord, Lord Dear, and my noble friend Lord Waddington quoted quite extensively from what I said at Second Reading. Clearly I am not going to repeat that and quote myself but I will be relying on the same facts that I relied on at Second Reading because they are the facts as they are. I want to be clear from the start that I recognise the concern that there is out there and among some noble Lords who have spoken this evening. I feel the passion that was expressed by my noble friend Lord Eden and recognise that it is a real concern. Therefore, there is a responsibility on me to respond from the Dispatch Box and acknowledge that concern. I am grateful for the opportunity to do so.

My noble friend Lady Barker asked me a direct question about whether the Bill changes anything in respect of the guidance that currently exists for teachers on how to teach sensitive issues under the heading of "sex and relationship education". No, it does not. I should note at this point that there is a later amendment, Amendment 46B in the name of the right reverend

Prelate the Bishop of Ripon and Leeds and my noble friend Lady Cumberlege, which relates to religious freedom for faith schools and it is directly linked to Section 403 of the Education Act 1996, which has been quoted by noble Lords in the course of this debate. So I will return to that issue on Monday and, while I hope to be clear and comprehensive in responding to these amendments, this is not the only debate we will have on education in Committee.

Amendment 23 would have broad application to all teachers in all maintained schools. I must stress, as has already been said by the noble Baroness, Lady Thornton, that no teacher is under any obligation to endorse a particular view of marriage or would be in the future as a result of the Bill. Teachers are and will continue to be free to express their personal views or those of their faith about marriage or any other matter, provided they do so in a balanced and sensitive way. There is a significant difference between expecting a teacher to explain something and expecting them to endorse it. Teachers are required to explain the world around them in a way that is appropriate to the age and level of understanding of their pupils. This includes explaining some things which may be controversial and with which they may not necessarily agree. The examples that have been used tonight in debate include divorce and contraception. As many noble Lords have said, teachers are already very experienced in dealing with such issues and do so admirably and professionally. The noble Baroness, Lady Farrington, gave a powerful illustration of how teachers handle these complexities already. They are required to ensure that their teaching is balanced and they take care to ensure that there is no stigmatisation of children based on their home circumstances, their own sexual identity or their own views and beliefs. Teachers are not prevented from discussing their own views, provided they do so in an appropriate way. It is worth reminding ourselves that there are children in classrooms today who are struggling with their sexual identity. This is not just about the teacher; it is also about the pupils and how they respond to the lessons that they receive.

A lot has been said today about tolerance and courtesy. My noble friend Lord Waddington raised the need for that in the context of this debate—we have to continue to respect differences of opinion. I understand the point that my noble friend makes in this context and it has been acknowledged on all sides of the House. As the noble Baroness, Lady Farrington, said, that is precisely what we want children to learn through professional teaching explaining the differences that exist in our society. This is not just about the tolerance that we expect of each other in debating these issues. We want to help our children be tolerant and to respect one another. That is an important part of this process.

The noble and learned Baroness, Lady Butler-Sloss, expressed a concern about teachers being criticised by the same-sex parents of a pupil for expressing their personal view that they do not believe in the marriage of same-sex couples. However, that kind of scenario could happen now in the context of civil partnerships. I therefore go back to the debate that we had on Monday about the law protecting people against others who might not understand their freedoms. Clearly we have a responsibility to ensure that people are aware of and understand the freedom that everyone has to express their views, and it is perfectly legitimate for a teacher in a classroom to be able to do that. If it happens that someone decides to pursue a case against someone else, the law exists to protect them from inappropriate discrimination.

Schools, like any other employer, have responsibilities to their employees under equality and employment law. Teachers, like other employees, are protected from being discriminated against or harassed because of their religion or belief. As I have made clear, this includes a belief that marriage should be only between a man and woman. I forget now who it was but it may have been the noble Lord, Lord Dear, who said that they can express that opinion to each other as teachers in the common room or express that belief in the classroom. It is clearly wrong, as I have stated many times, to say that, because someone believes that marriage should be only between a man and woman, that means the person is homophobic. That is not the case, and I will keep saying that because it is important that we help people to know that it is not the case.

In this context, as I have also said in the context of other debates, the Equality and Human Rights Commission's statutory codes and guidance, particularly where they relate to public bodies, will help us to ensure that this understanding is widespread. No teacher is obliged to endorse a particular view and no school should disadvantage a teacher because he or she does not do so. If a teacher feels that he or she has been treated unfairly, procedures are in place for them to seek redress. I would hope that the first step would be to take this up through the appropriate channels at school level.

The noble Lord, Lord Dear, gave a range of examples that he had been informed of where he felt that some teachers were being treated unfairly. I feel that the process and the protection are there for any teacher who may feel that they are being treated unfairly, but it is worth pointing out that the Bill that we are discussing now has not become an Act. This Bill is not what is affecting those teachers of whom the noble Lord has been made aware. Those situations predate what we hope will become an Act in the future.

I turn to the noble Lord's Amendment 24, which is about parents having the ability to withdraw their child from lessons. Parents already have the right to withdraw their child from any or all aspects of sex and relationship education, including any teaching about marriage, with the exception of those specific topics that form part of the national curriculum for science, covering biology and reproduction. Parents also retain the right to withdraw their children from any and all parts of religious education and acts of collective worship. That is not affected by the Bill.

If a school chooses to cover aspects of teaching that are outlined in the Secretary of State's guidance on sex and relationship education—further to that outlined in the national curriculum in a biology lesson, for example—then parents have the right, and will continue to do so in future, to withdraw their children from those aspects. This is where that matter relates to the issue that my noble friend Lord Eden raised about

[Baroness Stowell of Beeston]
material. It is important to remind the House that parents should be fully consulted about the school's approach to sex and relationship education to ensure that they are comfortable with what is being taught. This should include both the content of lessons and the context in which it will be presented.

I further reassure the House that such information is already available for parents. Schools are required to have a written policy on sex and relationship education and that policy must be available to parents on request. What is being taught in this context should include parents. They should be able to understand it, and it should inform their decision as to whether their children should be involved in sex and relationship education—although we would urge that all students be allowed to participate in those lessons because of the benefits we believe they can derive from them. I note the view expressed by the noble and learned Baroness, Lady Butler-Sloss, about ensuring that all students are included.

As regards teaching that is not part of sex and relationship education or religious education, there is no right for parents to withdraw their children from lessons, because the national curriculum is the statutory body of knowledge that every pupil should know. Furthermore, as the noble Baroness, Lady Farrington, said, questions about marriage may arise in any lesson and at any time, and it is not practically possible to know in advance when this may happen. The Government have full confidence in the professionalism of teachers to handle situations in which sensitive topics arise outside sex and relationship education carefully, professionally and in a balanced way.

As I said at the start of this debate, this is not the only debate that we will have on teaching and education in the passage of the Bill. However, it is important for me to be clear that teachers are not required to endorse any belief that they do not have. They are required to explain the law as it stands. They are free to express their personal view as long as they do so sensitively and take into account the context of their lesson. Clearly, what we hope to achieve is the kind of situation that the noble Baroness, Lady Farrington, said the late Lord Joseph talked about in terms of what we hope all our children will be able to achieve from the kinds of lessons that are available to them now. I hope the noble Lord feels able to withdraw his amendment.

Lord Elton: Did I understand my noble friend to say that parents are not now allowed to withdraw their children from, specifically, sex education?

Baroness Stowell of Beeston: I am happy to confirm to my noble friend that parents are indeed allowed to withdraw their children from sex and relationship education. They can do so now and they will be able to do so in future, if that is what they decide.

Lord Dear: I am very grateful to the Minister for the way in which she has summed up and the way in which she has handled these difficult issues. I thank all noble Lords who have taken part in this debate. It has been very illuminating. We have covered a lot of ground, and I take the point that we will be covering educative issues later in Committee.

I will very quickly make four points. First, I ask the Minister to take on board the very considerable concern that the ComRes poll showed among teachers. I ask her to reflect on her words, which were said, of course, in an effort to be helpful when she spoke at Second Reading, distinguishing the factual and legal position on the one hand and promoting and endorsing views on the other. I still maintain that is a very fine balance in the classroom and may be very difficult to disentangle. In fact, I unashamedly lifted the word "endorse" from the Minister's speech and put it into the amendment. It may be that we can find a different word, but the issue is still there, balanced, as I said, on something of a knife edge. One has to take into account the opinion of leading counsel on this, and that runs straight into the opinion of the Joint Committee on Human Rights, which stated,

"we encourage the Government to consider whether specific protections are required",

and so on.

From what I have heard in the Chamber tonight there is sufficient doubt and concern on these issues for us to carry those forward into later debates on the whole business of the classroom, teaching and parents. I hope that at the end of that debate, between Committee and Report stages, the Government will be involved in discussions. I would be very happy to join in those discussions, if that was thought to be helpful. We may be able to bring something forward that would give a degree of satisfaction to those who are involved.

10.45 pm

On Amendment 24, I do not suppose that it was meant in the way it was put over. However, it is rather more than wishful thinking, which the Labour Front Bench seemed to think it was. Sexuality is very much at the root of much of what we are talking about—it has to be if we are going to change the meaning of "marriage" as it has always been known. There is a very fine line, or balance, between sex education and education about same-sex marriage and it is very hard to disentangle the two. The Front Bench has just confirmed that parents have the right to withdraw from sex education. The difference between that and education about same-sex marriage is almost gossamer-thin. I make that point and look forward to further debates on the issue of education later in this procedure. I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendment 24 not moved.

Clause 8 agreed.

Clause 9 : Conversion of civil partnership into marriage

Amendments 24A and 24B not moved.

Amendment 24C

Moved by ***Lord Elton***

24C: Clause 9, page 9, line 23, at end insert—

"(3A) Regulations under this section shall in particular—

(a) specify the terms of the marriage contract; and

(b) make provision for each party to a civil partnership within subsection (1) or (3) to undertake, before witnesses and by oath or by solemn affirmation, to honour the contract and the other party to it for as long as both of them are alive.

(3B) The oath or solemn affirmation referred to in subsection (3A)(b) shall be made before not less than three witnesses.

(3C) Neither a registrar conducting the conversion of a contract nor either of the parties to that contract may act as a witness under the provisions of subsection (3A).

(3D) The oath or solemn declaration referred to in subsection (3A)(b) shall be recorded in the certificate of marriage issued by the registrar on completion of the conversion."

Lord Elton: My Lords, I have gleaned a little popularity that way. I hope that I will now get a good reception for Amendment 24C.

The background to the amendment is that the whole purpose of the Bill is to accord a higher status to those people who at the moment have been limited for permanent unions to resorting to a civil contract. It seems rather absurd that to convert that to a marriage, which is supposed to be a leg-up, as it were, should be left to regulations made not even by the Secretary of State—which I would have dealt with by the earlier amendments in my name—but by the Registrar General, and that there was to be no mention of any sort of formality or ceremonial required of the process. Some form of swearing of an oath of continuity should form a part of anything that calls itself a marriage.

I have set out an Aunt Sally that requires the regulations—made by the Secretary of State or the Registrar General, as the case may be—which specify the terms of that oath in the marriage contract, to make a requirement that both parties to such a marriage shall swear lifetime fidelity,

"to undertake, before witnesses and by oath or by solemn affirmation, to honour the contract and the other party to it for as long as both of them are alive".

I put a requirement that it should be made before witnesses as that is the barest bones for a ceremony of some sort which incorporates one of the essential elements of a marriage. After all, if they do not want a lifetime union, what is the point of having a marriage? This is a reasonable thing to do, and I do it to enhance the status of what noble Lords opposite are trying to achieve. I hope that it will at least give your Lordships something to think about between now and Report. With those few words I commend this amendment to your Lordships' House.

The Deputy Speaker: I assume that the noble Lord would like to move his amendment.

Lord Elton: I thought commendation amounted to movement. However, I beg leave to move the amendment.

Baroness Northover: My Lords, Amendment 24C sets out a procedure for the conversion from civil partnership to marriage to take place under Clause 9 of the Bill. My noble friend proposes an oath or affirmation to be made before three witnesses. We already have adequate powers in Clause 9 that would enable the making of provision for a ceremonial element to the conversion, which could consist of spoken statements and/or a requirement for the presence of witnesses. It would be premature to be more specific.

We are still developing detailed proposals for how the conversion process would work and these are not straightforward issues. For example, the more elaborate the arrangement, the more costly this is likely to be for the couple, many of whom may wish to have a very simple, essentially administrative process, given that they may have incurred significant costs when registering their civil partnership. Let us not forget that if marriage had been option when many couples contracted their civil partnership they might have opted for marriage originally and will consider that they do not need to jump additional hurdles or show more commitment; they have already done that. It is important that we do everything we can not to force such couples down a costly route if they do not wish to take it.

I acknowledge that some would like a requirement for some form of declaratory or contracting words to be spoken in a procedure as an integral part of the conversion, while others would want a minimalist approach. We will be consulting interested stakeholders as we shape the detailed policy for conversions so that the regulations are as inclusive as possible of affected couples' wishes. We should not lose sight of the fact that a conversion is not, and never has been, intended to signify the beginning of a relationship; rather it is a change of status of an existing legal relationship. Conversion will be an administrative process, although we believe there should be a possibility of an optional ceremonial aspect for those who want it. We will bring forward our proposals in good time so that we can get the process right.

I appreciate my noble friend's recognition of the significance of marriage to couples who wish to convert their civil partnership. Nevertheless, as the methods of such conversion are very carefully considered, I hope my noble friend will bear with us and withdraw his amendment.

Lord Elton: My Lords, I was very interested in the terms in which my noble friend asked me to do that. I wonder if she is familiar with the fourth report of the Delegated Powers and Regulatory Reform Committee on the Bill. Paragraph 6 says:

"We do not consider it appropriate to describe the powers conferred by clause 9 as being administrative in nature"—

which is what she has just done.

"The regulations will set out the entire process under which a civil partnership is converted into a marriage, including whether or not it requires the presence of the parties and (if so) the nature of the ceremony they are to take part in. This is a wholly novel process with no indication given in the Department's memorandum as to the form that it will take or as to fees which may be required to be paid".

It seems that not enough thought has been given to this in advance. In bold type the report then says:

"Accordingly we recommend that regulations under clause 9 should be made by the Secretary of State, with the affirmative procedure applying to the first exercise of the powers, and with the regulations thereafter being subject to the negative procedure".

I hope that my noble friend will warm to that idea as the bare minimum that would induce me at a later stage to withdraw the amendment.

Baroness Northover: My noble friend has neatly rolled up his previous amendment as well. I am aware of the Delegated Powers Committee report. We have

[Baroness Northover]
just received it and will be studying it carefully, considering all its recommendations. I note what my noble friend says and I ask him to await our response to the committee's recommendations.

Lord Elton: That said, and anxiously awaiting developments, which I hope will be ahead of Report stage so that I can digest them and maybe even have the honour of discussing them with the Minister before Report stage, I beg leave to withdraw my amendment.

Amendment 24C withdrawn.

Amendments 25 and 26 had been withdrawn from the Marshalled List.

Debate on whether Clause 9 should stand part of the Bill.

Lord Elton: My Lords, I apologise. I gave notice that I had a point to raise, but it was drawn inevitably into my remarks after the noble Baroness gave me her answer. I no longer have anything to say.

Clause 9 agreed.

Clause 10 : Extra-territorial matters

Amendment 26A

Moved by ***Lord Alli***

26A: Clause 10, page 11, line 1, leave out subsection (3)

Lord Alli: My Lords, the effect of Amendment 26A is to remove the schedule that converts same-sex marriages into civil partnerships in Northern Ireland and Scotland. The Bill makes legal same-sex marriages in England and Wales. I state from the outset that the amendment does not alter the laws of Scotland or Northern Ireland in relation to conducting same-sex marriages. These are prescribed matters for the Parliament in Scotland and the Assembly in Northern Ireland. I do not wish to trespass on their jurisdiction any more than the Bill already does. My intention is not to amend legislation in Northern Ireland or Scotland by the back door.

The effect of the schedule is to state that, even though a couple are lawfully married in England and Wales, they are deemed not to be married in Scotland and Northern Ireland. The Government's view seems to be that a couple lawfully married in England should not be treated as such elsewhere in the union where such marriages are not performed. In particular, a couple of the same sex married in England and Wales should not be recognised as married but rather treated as civil partners, even if they have not entered into a civil partnership. If I were to get married in London and move to Belfast—I am sure the noble Lord, Lord Waddington, would be very pleased about that—the Bill would convert my civil marriage to a civil partnership.

I am not persuaded that the Government are right about this. As the union develops, with increased devolution of the nations and regions, we are all to a certain extent fumbling our way forward together. Our absence of a written constitution has the advantage of flexibility, but there is not always the certainty that would be helpful. There will be times when one of the regions or nations passes a law that does not sit comfortably with the laws of the other parts of the union. The question is how we should resolve that, and whether there are any precedents that might be helpful. I am not aware of any, and the Government are in danger of creating an unhelpful precedent.

In the absence of past guidance, it would be helpful to look at basic principles. A first principle must be that as our devolved union develops, it is very important that it should do so on the basis of what we have talked about this evening: namely, mutual respect. For example, it would be wrong for England to try to force another part of the union to pass laws on which it has devolved powers, but it would be quite appropriate for England to expect other parts of the union to respect English law. A law passed in one part of the union cannot simply be ignored in another part because it is unpopular there.

On the point in hand, it would be a constitutional nonsense for a couple to be deemed to be married in one part of the United Kingdom and not in another. If that were the case, it would be difficult to understand exactly what the union was for. I argue that it is up to the Secretaries of State for Scotland and Northern Ireland, and the Scottish and Northern Irish Ministers, to ensure that a couple married in England and Wales are treated as married in Scotland and Northern Ireland. It is not for us to presume to convert English and Welsh marriages to Scottish and Northern Irish civil partnerships. I hope that the Minister will agree and accept the amendment. I beg to move.

11 pm

The Duke of Montrose: My Lords, my amendments are grouped with that of the noble Lord, Lord Alli. The reason is of course that if his amendment is carried, then the schedule to which my amendments attach will be removed. I thought that the noble Lord, Lord Alli, with his usual bold capacity for initiative, was going to tangle with the whole question of devolved legislation and what can be done between the Scottish Parliament and the English Parliament. In some ways he managed to work around that, although in fact he must recognise that certainly there are separate laws between Scotland and England. Various situations must be responded to according to the law in the country in which they occur. However, at this time of night I shall move rapidly on to my own amendments, rather than trying to unravel some of his proposals.

I found a number of Scottish lawyers with questions about the outcome of what the Government propose in Schedule 2. My amendments were prompted by the Law Society of Scotland, and basically address two issues. First, paragraph 1(1) of Schedule 2 states that:

"The Secretary of State may, by order, provide that, under the law of Scotland, a marriage of a same sex couple under the law of England and Wales is to be treated as a civil partnership".

This would apply to all same-sex marriages. In some ways that is the point made by the noble Lord, Lord Alli: some people might feel that this is unjust,

and there would be room for only limited exceptions for whom this was not agreeable. This would only be possible with a further counter-order from the Secretary of State under paragraph 2(b).

The other more fundamental issue concerns the doctrine of the separation of powers. The Civil Partnership Act 2004 passed legislation for the whole of the UK using the full process of Parliament. Schedule 2 gives the Secretary of State the power to make a ruling by order on private right and personal status. Determining how personal relationships are treated under law is properly a function of the judiciary, which has jurisdiction over matters of personal status. Here, we have the Executive taking over a function of the law. Amendment 28 asks to transfer this function of the Secretary of State to the Court of Session, which has the power to make declarations under current family law. Using the mechanism proposed in the amendment will give the court the advantage of ascertaining the facts in each case where the parties seek a declaration as a civil partnership, and bring in the element of individual choice.

If the Government wish to continue with the mechanism they propose, it would be helpful if they would answer three questions. First, what process will be used to produce orders under Schedule 2, and what safeguards will be put in place to address the issue of separation of powers? Secondly, what criteria will be applied to those orders which permit treatment of a same-sex marriage as a civil partnership? Thirdly, what remedies would aggrieved parties have?

Baroness Butler-Sloss: My Lords, I find this part of the Bill quite extraordinary. I have the greatest possible sympathy with the amendment of the noble Lord, Lord Alli, and indeed with that of the noble Duke, the Duke of Montrose. If one took the analogy of English law, a marriage which is celebrated in another country according to the law of that country is generally recognised in English family law. I have tried endless cases involving a dispute as to whether or not a marriage is valid in the country where it was carried out. There will be issues of whether or not the two parties were capable of marrying in that country, whether they are domiciled or resident in that country and so on.

However, if those particular points are dealt with, then it is a matter for English law to say whether we will recognise a marriage. Why are we legislating for what Scotland or Northern Ireland will do if in fact it is a perfectly lawful marriage in England and Wales? Is it not for Scotland or Northern Ireland to say, "Yes, we accept it", or, "No, we do not"? I find it absolutely astonishing that we are dealing with this. As for the suggestion that a marriage lawfully carried out in England is to be called something completely different in Scotland and Northern Ireland, as I say, I find the whole thing quite astonishing.

Baroness Thornton: My Lords, Amendment 26A in the name of my noble friend Lord Alli would remove the special arrangements made in the Bill to require the legal recognition of marriages of same-sex couples as civil partnerships in Scotland and Northern Ireland. I sympathise with the sentiment behind these amendments. British same-sex couples who get married in England or Wales but choose to live in Scotland or Northern Ireland will not have their status legally recognised for what it is. However, it is the nature of devolution that we cannot impose the will of Westminster on devolved Administrations in areas where it has ceded authority.

Marriage law is devolved to both Northern Ireland and Scotland, meaning that any desire by Westminster to legislate in this area for the whole of the UK requires the consent of these Administrations. I know that Scotland is in the process of looking at same-sex marriages at the moment, so I hope that we shall shortly see same-sex marriage introduced in Scotland and therefore this issue will become somewhat less relevant.

In Northern Ireland, civil partnerships have been available since 2005. However, Northern Ireland has chosen not to consider extending marriage to same-sex couples at this time. A Motion calling on the Northern Ireland Executive to legislate to allow for same-sex marriage was narrowly defeated in its Assembly last month. I recognise my noble friend's frustration at this. However, I ask the Minister, what are the implications if the legislative consent Motion is not agreed to by the Northern Ireland Assembly. Does it mean that married couples of the same sex living in Northern Ireland may be left in a worse position, having no legal recognition of their status whatever? What might be the implications for children and pensions? I am concerned about the legal implications of such a disparity of recognition and hope that the Minister will be able to answer the questions I have around this issue.

Couples in a civil partnership are prohibited from adopting children in Northern Ireland—a situation which is currently being challenged in the High Court. For those couples who have been married and adopted children in England and Wales and who move to Northern Ireland, what will be the status of their adopted children? Will the couple be recognised as the legal parents where they are living?

In relation to pension rights and accrued survivor benefits, if a married same-sex couple have been living in England for 10 years and then move to Northern Ireland, will they lose the right to those accrued benefits, or will they be carried over to their civil partnership status?

Lord Wallace of Tankerness: My Lords, I welcome the opportunity to clarify how the Bill, which makes provision for marriage of same-sex couples under the law of England and Wales, affects Scotland and Northern Ireland. I assure your Lordships that the Government have had lengthy and considered discussions with Scotland and Northern Ireland Ministers and officials to ensure that where the Bill touches on devolved matters, it does so appropriately. I understand where the noble Lord, Lord Alli, is coming from on this but it is not possible for us to accept his amendment or, indeed, those spoken to by my noble friend the Duke of Montrose, which would cut across the approach that we have been discussing with the devolved Administrations.

Indeed, the effect of the amendment of the noble Lord, Lord Alli, would be to remove the relevant part of Schedule 2 to the Bill. It might be helpful if I explain the effect, and importance, of Schedule 2. Without the provisions in Schedule 2, if a same-sex couple married in England or Wales, their relationship

[Lord Wallace of Tankerness]
would not have legal status if they subsequently travelled or moved to Belfast or Glasgow. It is not that their marriage in England or Wales would become a civil partnership; it would have no status whatever under the law of Scotland or Northern Ireland.

Lord Alli: But it does not have a legal status in Northern Ireland and Scotland because it is a marriage in England and Wales. What the Bill is proposing is for this Government and this Parliament to request—because that is all we can do—the devolved Administration in Northern Ireland and the Scottish Parliament to accord it a lower status in those territories.

Lord Wallace of Tankerness: My Lords, the position is that, as things stand at the moment, there is no provision in either Scotland or Northern Ireland for same-sex marriage. Therefore, if a same-sex couple who are married in England and Wales were to move to Scotland or Northern Ireland, their relationship would not have a legal status of marriage in Scotland or Northern Ireland because that provision does not exist. There is no such thing at the moment in Scotland or Northern Ireland as same-sex marriage. Schedule 20 to the Civil Partnership Act 2004 lists the overseas same-sex relationships which are treated as civil partnerships in the United Kingdom. This partly answers the question raised by the noble and learned Baroness, Lady Butler-Sloss.

At the moment, overseas same-sex marriages are not recognised as marriages in England, Wales, Scotland or Northern Ireland. They are treated as civil partnerships in the United Kingdom, and Section 213 of the Civil Partnership Act 2004, under which Schedule 20 has effect, also sets out the general conditions which must be met for such relationships to be recognised in the United Kingdom. If the amendment of the noble Lord, Lord Alli, were to be carried, we would have the slightly anomalous situation where a couple moving to Belfast or Glasgow would be in a worse position than a same-sex couple who married in Portugal, or elsewhere overseas where same-sex marriage is permitted, and then went to live in Scotland or Northern Ireland.

Under the current law, the 2004 Act, these same-sex marriages contracted, for example in Portugal, would be treated as a civil partnership. If this Bill becomes an Act, we do not wish to see a situation where a same-sex couple married in England would have lesser legal status in Scotland or Northern Ireland than a same-sex couple who married in Portugal. It is for that reason that Schedule 2 exists. As the noble Lord indicated, marriage and civil partnerships are devolved matters. The noble Lord asked why Secretaries of State for Scotland and Northern Ireland could not get together with Scottish or Northern Ireland Ministers to make them marriages. That is not how devolution works. Legislation would have to be passed by the Scottish Parliament or the Northern Ireland Assembly.

As the Bill anticipates, referred to by the noble Baroness, Lady Thornton, the Scottish Government have indicated that they will bring legislation before the Scottish Parliament to bring about same-sex marriage as a legal status in Scotland. That is why, if noble Lords look carefully at the provisions for Scotland in Schedule 2, the order-making power would not have effect if the Scottish Parliament passes legislation for same-sex marriage. In many respects, what is there is deliberately framed, recognising the likelihood that same-sex marriage legislation is to be brought forward in Scotland in the relatively near future.

It is probably also fair to say that same-sex marriage legislation does not appear to be on the horizon in Northern Ireland. That is why the position regarding Northern Ireland is that there is not an order-making power, which will lapse in Scotland when or if Scottish law changes, but rather one that sets out in primary legislation the same position for same-sex marriages contracted in England and Wales in Northern Ireland, as is the case for same-sex marriages contracted in other countries, such as Portugal. People there would be in the same position in Northern Ireland as they would at present.

Last week, the Scottish Parliament passed a legislative consent Motion to the provisions in this Bill which impinge and deal with devolved matters affecting Scotland. The question was asked what would happen if we could not get a legislative consent Motion from Northern Ireland. Our concern would be that this would risk leaving couples with no legal status in a part of the United Kingdom. This could have important European Convention on Human Rights implications. We would need to consider this carefully if this situation arose and whether amendments to the Bill would be needed.

I know that this is not what the noble Lord, Lord Alli, wishes to see, but given the devolution settlement, this Parliament should not legislate for same-sex marriages in Scotland or Northern Ireland and I do not think that anyone in this Parliament is arguing for it. However, in the absence of legislation there, it is important that we give couples who have contracted a same-sex marriage in England and Wales a legal status in Scotland and Northern Ireland. Without the schedule they would have no legal status, so we are putting them on a par with couples who are married in other countries which have passed legislation on same-sex marriage.

11.15 pm

With regard to the amendment spoken to by my noble friend the Duke of Montrose, our concern is that he seems to suggest that in some way the Secretary of State would be making an order in respect of every couple who had contracted a same-sex marriage in England or Wales to convert it into a civil partnership in Scotland. The position is that Schedule 2 provides a power enabling the Secretary of State, with the consent and support of Scottish Ministers, to make general provision that England and Wales same-sex marriages are to be treated as civil partnerships in Scotland, and to modify that treatment where that approach achieves a result that would not be desirable by the parties.

If we were to replace that with consideration of individual cases by the Court of Session, which would be the consequence of my noble friend's amendment, that could constitute a heavy burden on the court, would cause unacceptable delays for the couple and, pending the cases being heard, would put their legal status into some doubt. I recognise that the amendments

may be intended to probe how the arrangements would work in Scotland. I hope that I can reassure my noble friend that there is no intention for there to be a situation in which the Secretary of State would consider and pass an order on a case-by-case basis. If that were what was being suggested, I could accept that it would be appropriate not for an executive act but for a judicial act. Rather, the general intention is to ensure that same-sex marriages in England and Wales will be treated as civil partnerships in Scotland.

Of course, if the Scottish legislation happens to come into law before this provision comes into law, this order-making power would not be necessary. Indeed, if the timetable that one may expect the Scottish Parliament to pursue is such that the difference in timing is only a matter of a few months, it may be that the impact of this order-making power will be very limited indeed.

The Duke of Montrose: My Lords, I always understood that the first purpose of an order was to be a blanket order to cover all situations. What remains from my questions is: what process does the Minister expect to use for the implementation of the order and what account does it take of the separation of powers? I think that he was saying that the Scottish Parliament has agreed that you can cross-mix the powers.

Lord Wallace of Tankerness: My Lords, the Scottish Parliament has agreed a legislative consent Motion to the provisions in the Bill relating to Scotland, which is very much what we are talking about. The procedure is that the order-making power would be subject to the negative procedure. I am aware that the Delegated Powers Committee has suggested looking at the possibility of there being an affirmative power. We will obviously give consideration to that, but the power also requires the consent of Scottish Ministers. That will be the process. Consent will be required from Scottish Ministers and there will be a negative procedure in this Parliament, subject to our considering the recommendations of the Delegated Powers Committee.

With regard to the separation of powers, I tried to indicate that this is a general position, not a question of the Secretary of State determining the legal status of each couple individually by order. It is a general power that is being given and it is therefore appropriate for the legislature to give that power to the Secretary of State, and for the Secretary of State then to exercise that power. It is not an appropriate matter for the courts because they obviously cannot exercise such a power on a general basis and would have to consider these matters case by case. As I have indicated, that could place a considerable burden on the courts. It would also mean that those who had moved to Scotland and were petitioning the Scottish courts for recognition of their status would, during that period, have no legal status at all. That is not a satisfactory position in which to put these couples.

Perhaps I may write to the noble Baroness, Lady Thornton, about her question on accrued pensions. There is provision to make some variation of the orders and there may be some situation in which that issue would be relevant. However, I will write to her and confirm that position.

Lord Mackay of Clashfern: My Lords, does it not require a statutory provision in Scotland to make this work? Therefore, it is not a matter for the courts in Scotland; it is a matter for the Secretary of State and Ministers in Scotland to make a statutory order to make the rule part of the statutory law of Scotland?

Lord Wallace of Tankerness: As ever, my noble and learned friend expresses it far more concisely than I do.

Lord Alli: My Lords, I thank the Minister for that reply but, as he probably recognises, I am not happy with it. If I got married in England or Wales, I would expect my marriage to be recognised in Scotland and Northern Ireland. It is the essence of the union. For us to have found a mechanism in the Bill to convert marriages into civil partnerships feels as though it was too difficult politically to keep them as marriages. It is clearly a nonsense for couples to be married in England and Wales, and then be treated differently in Northern Ireland and Scotland. For us, in this Parliament, to determine that a marriage in England and Wales should not be treated as a marriage in Scotland and Northern Ireland, without putting the question—as the noble and learned Lord, Lord Mackay of Clashfern, just indicated—to the Secretary of State for Scotland, and those Scottish Ministers for that order, or indeed to the Northern Ireland Secretary of State and Ministers, is for us to be complicit in perpetuating an inequality. Nevertheless, I will read what the Minister said and reflect, but I have no doubt we will return to this on Report. I beg leave to withdraw my amendment.

Amendment 26A withdrawn.

Clause 10 agreed.

Amendment 27

Moved by ***Lord Trefgarne***

27: After Clause 10, insert the following new Clause—

"Marriages at sea

In section 26 of the Marriage Act 1949 (*marriages which may be solemnized on authority of superintendent registrar's certificate*), after subsection (1)(e) insert—

"(f) a marriage of a same sex couple conducted by the Master of a British ship registered under the Merchant Shipping Act 1995 while that ship is sailing outside of the territorial waters of England and Wales.""

Lord Trefgarne: This is in essence a probing amendment. However, like all good probing amendments, it has the merit of being properly drafted, and could readily form a useful part of the Bill if the probing is not particularly successful or satisfactory. I must say that my research into the legal basis for marriages at sea has been difficult and tortuous, and I am still not entirely clear what the statutory basis is. No doubt the Minister will be able to tell me in a moment. Neither the Public Bill Office nor the Library could identify the particular legislation that apparently authorises marriage at sea. Is there such a thing as a common-law marriage? Oh dear, I am getting into deep water.

[Lord Trefgarne]

Seriously, as everybody knows, captains of ships often carry out marriages. Indeed, one noble Lord—who shall remain nameless—was telling me earlier today that he had indeed been married at sea by the captain. Unfortunately, some years later, when he sought a divorce from his wife, some doubt was cast on the validity of his marriage, which could apparently have been a good thing in simplifying the divorce. None the less, that was a complication that was not looked for.

It is important that, if we are to pass this Bill into law—doubtless we are, even to the regret of many of us, including me—it must be as rational and sensible as possible. If there are to be single-sex marriages in England and Wales at least, marriages at sea—which I believe have formed part of English law for a great many years—should be included in that arrangement. That is the purpose of the amendment that I have tabled.

I have drafted it in a way that I think is sensible; namely, so that it should apply outside British territorial waters. If it were to operate inside our territorial waters, I believe that would create complications. Further, I would suggest that we can extend our legislation only to British-registered ships, although I may be wrong about that. However, that seems both sensible and appropriate. On that basis, I beg to move.

Baroness Thornton: My Lords, I recommend that the noble Lord, Lord Trefgarne, should google marriages at sea. It says that captains can perform marriages, but they need a licence to do so, just like anyone else. There are no laws that automatically grant captains the right to marry, although you would not know that from watching the television. Apparently this possibly originates from the days of sail when Europeans would have to travel by ship for months at a time to reach far-flung colonies. A couple might meet, court and marry while en route to their destination.

The same Google search threw up a quote. I am a great fan of "Star Trek" and the Starship "Enterprise". Apparently, Captain James T Kirk said:

"Since the days of the first wooden vessels, all shipmasters have had one happy privilege, that of uniting two people in the bonds of matrimony".

Captain Kirk's successor, Captain Jean-Luc Picard, played by Patrick Stewart, a fellow Yorkshireman and great Labour supporter, said, "Make it so".

Baroness Northover: My Lords, my noble friend's amendment would enable marriages of same-sex couples to be conducted by the master of a British- registered vessel on the authority of a superintendent registrar's certificate outside the territorial waters of England and Wales. However, this is not a right possessed by opposite-sex couples, so this would in fact be out of line. I am absolutely delighted to fill in my noble friend on marriage at sea, and I have learnt a great deal about it as well.

At present, the validity of a marriage on board a British merchant vessel is governed by the law of the country in which that vessel is registered. In the law of England and Wales, the Marriage Act 1949 does not provide for marriages to take place on board UK registered vessels at sea, and the Foreign Marriage Act 1892 applies only to marriages outside UK jurisdiction. Neither is it clear that the common law of England and Wales provides authority for the validity of marriages that are celebrated on merchant vessels at sea, although there are historic authorities which suggest that a marriage could be formed under the common law only if it was not possible to wait until the ship reached port. It is unclear whether those authorities still apply, given that there is now statutory marriage law covering both domestic and foreign marriages. However, in any event, such a scenario is extremely unlikely to arise in current times. Therefore, at present, we do not believe that it is possible for a heterosexual couple to have their marriage formally solemnised by the master of a British ship.

I can fill my noble friend in on some additional material, but probably not tonight. The purpose of the Bill is to enable same-sex couples in England and Wales to marry in a civil ceremony, or in a religious ceremony if the religious organisation opts in. It is not intended that marriage for opposite-sex couples should be altered, even if everybody does want them to get married at sea, or that the Bill should bring about wider changes to marriage law. I hope, therefore, that although he is no doubt disappointed, my noble friend will be happy to withdraw his amendment. Lastly, I will supply him with more information than either Google or his own investigations have produced.

Lord Trefgarne: My Lords, I have to be honest and say that I am more mystified than disappointed. Listening to the noble Baroness, Lady Thornton, talking about the Starship "Enterprise", I am tempted to ask whether the captains of aircraft might be granted this right, but perhaps that would press the extent of the amendment just a little too far. I am grateful to the noble Baroness for what she has said and I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendment 27A not moved.

Schedule 2 : Extra-territorial matters

Amendments 28 to 32 not moved.

Schedule 2 agreed.

11.30 pm

Clause 11 : Effect of extension of marriage

Amendment 33

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

33: Clause 11, page 11, line 4, at beginning insert "Subject to the later provisions of this Act,"

Lord Mackay of Clashfern: This is an extremely simple point, but possibly of some importance. Clause 11 (1) says:

"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".

This is not correct as it stands, because there are all these provisions later in the schedules; therefore, the accurate enunciation of the law will be subject to the later provisions of this Bill. I beg to move.

Baroness Stowell of Beeston: My Lords, I am grateful to my noble and learned friend and, as is clear from today's list, this amendment was debated as part of a group yesterday. My noble and learned friend gave me notice that he wanted to ask a question following on from the debate. I have been given an answer to his question, which I could read out, but I know I would not understand what it is I am reading, and I know we are keen to make progress. The most sensible course of action is for me to ask Parliamentary Counsel to reflect on the points that my noble and learned friend has made and I will then ensure that I write to him as soon as possible and then put a copy of that letter in the Library.

Lord Mackay of Clashfern: My Lords, I am very grateful and am happy to withdraw the amendment on that assurance that Parliamentary Counsel will look at this.

Amendment 33 withdrawn.

Amendment 33A

Tabled by ***Lord Stevenson of Balmacara***

33A: Clause 11, page 11, leave out line 5 and insert "couples, whether they are of a different sex, the same sex, or non-gendered."

Lord Tunnicliffe: My Lords, I rise to move Amendment 33A in the name of my noble friend Lord Stevenson of Balmacara, which is a probing amendment. Our interest in this issue is to draw attention to people born with an intersex condition; individuals whose anatomy or physiology differs from contemporary cultural stereotypes of what constitutes male and female.

Being intersex is not a disease, it is not a disorder, it is a perfectly normal—and quite common—variation within human development. The need to use the term is made necessary by society's insistence on maintaining a rigid classification of all human beings as male or female. In many ways, those with an intersex condition can be termed non-gendered. Sometimes a person is not found to have an intersex anatomy until she or he reaches the age of puberty or she or he finds himself an infertile adult, or dies of old age and is autopsied. Some people live and die with intersex anatomy without anyone, including themselves, ever knowing.

If we take the classic stereotypes of what constitutes male and female and consider the biological, social, gender or sexual orientation in the round, there are very few human beings who completely conform in all aspects to the rigid stereotypes. Most people vary from the standard stereotypes in some ways, sometimes in small details, sometimes significantly. Some commentators would now consider sexuality as a continuum with the standard stereotypes as the extremes of this continuum.

One major difficulty with the use of bipolar stereotypes is that there is no precise way of determining into which of the two boxes someone should be placed at birth. All the available yardsticks are flawed: karyotype, gonads, secondary sexual characteristics, appearance—none of these, or even any combination of them, can determine sex with absolute certainty. It is only by ignoring the vast amount of biological evidence to the contrary that this fiction of a strict bipolar sexuality can be maintained. Those who clearly do not fit these classifications—a substantial minority—are dismissed as being disordered or biological errors which require fixing.

It is understandable to discover that, when an infant is born, there is often great pressure on parents and clinicians alike to come up with a clear definition of sex for the newborn. Such people are often subjected by the medical professions to surgical and chemical interventions, usually without their explicit permission, to normalise them and thereby eradicate the evidence of difference.

Your Lordships will understand that, with this amendment, we are talking about a largely hidden and often overlooked minority of people. Estimates of this population run to as many as 1% of live births exhibiting some degree of sexual ambiguity and between 0.1% and 0.2% of live births being ambiguous enough to become the subject of specialist medical attention, regretfully including involuntary surgery to address their sexual ambiguity.

If we lived in a legal jurisdiction where marriages were defined without reference to the sexual identity of the couples concerned, these complications would not occur. However, the approach underlying the Bill is based on an assumption that the sex of the participants is settled. The UK of course recognises the legal and official change of gender, which would allow a transsexual person to be legally married in accordance with their adopted gender identity. However, those intersex people who identify as non-gendered do not always, if they are allowed to, attempt to transition and are therefore excluded at all levels. Our amendment would specifically include in legislation, for the first time, those who identify as non-gendered.

Unless there is some consideration given to this largely hidden and often overlooked minority, they will be isolated yet again from the rights accorded to other, higher-profile groups. I beg to move.

Baroness Northover: My Lords, this amendment seeks to ensure that the Bill would allow individuals who identify themselves as being non-gendered—neither male nor female—to marry. We understand the challenges that intersex conditions can pose and appreciate the difficulties people affected by this can face. The noble Lord has, with great sensitivity, outlined the case for consideration of this group of people. I have great sympathy for their situation but, as the noble Lord is aware, we cannot accept this amendment.

As the noble Lord acknowledges, the law of England and Wales recognises only two genders—male and female. Although we understand that some people do not see themselves as either male or female, none the less everyone has a legal gender status of either male or female. The Bill does not change that, and it would not be an appropriate legislative vehicle in which to seek to do so. However, the Bill, by enabling same-sex couples to marry, will ensure that in future there will

[Baroness Northover]
be no bar to an intersex person, or a person who identifies as non-gender, marrying anyone whom they choose. The effect of the Bill will be that people will be able to get married, and remain married, regardless of their legal gender. The issue raised by this amendment goes well beyond marriage. Having a gender in addition to male and female, or not recognising gender at all, would change a fundamental aspect of our law. Such a change would need to be considered carefully, in order to understand the implications for the many aspects of law which are based on gender differences.

I thank the noble Lord for the opportunity to discuss this important issue. I appreciate his statement that this is simply a probing amendment and I am grateful to him for addressing the concerns of those individuals who feel that they do not have a gender. However, I hope he will be prepared to withdraw his amendment.

Lord Tunnicliffe: My Lords, I thank the Minister for her understanding response. It is the first time, I think, that a Minister of the Crown has recognised this group in this House. That is an important first step in discussing this issue and addressing the needs of this group of people. I thank her for the sympathetic approach. My understanding is that, through various changes in the environment, this is actually a growing problem and it is an issue that will have to be addressed over time. However, I wholly accept the point that the Minister is making. This is a very complex issue and it will need very careful consideration and a very sensitive approach from all those involved in the debate. I am happy to assure the Minister that we do not intend to take this matter further forward in this Bill, and I beg leave to withdraw the amendment.

Amendment 33A withdrawn.

Amendment 34 not moved.

Clause 11 agreed.

Amendment 35 not moved.

Amendments 36 and 37 had been withdrawn from the Marshalled List.

Schedule 3 : Interpretation of legislation

Amendment 38

Moved by ***Baroness Northover***

38: Schedule 3, page 25, line 23, leave out "Paragraphs 1 and 2 do" and insert "This Part of this Schedule does"

Baroness Northover: My Lords, in moving government Amendment 38 I will speak to the other government amendments in this group. These government amendments relate to technical but important provisions of marriage law which determine when a marriage is void—that is to say, considered never to have existed in the eyes of the law. Clarity in these provisions protects both couples and organisations conducting marriages. They also clarify the provisions for courts to issue a declaration of the validity of a same-sex marriage in prescribed circumstances.

I start with government Amendment 38. This ensures that paragraph 3 of Schedule 3 to the Bill is consistent with the rest of Part 1 of Schedule 3 in that it does not limit subsections (1) or (2) of Clause 11. It is necessary because, as a matter of statutory interpretation, specific provision may reduce the effect of general provision. Subsections (1) and (2) of Clause 11 make general provision and Schedule 3 makes specific provisions related to that clause. The schedule as drafted may give the impression, by omission of reference to paragraph 3, that that paragraph should limit Clause 11. This could cause confusion about the meaning of both clause and schedule.

Government Amendments 42, 43 and 44 clarify the use of the term "declaration of validity" in the Bill. They ensure that when the courts have jurisdiction to make a declaration of validity relating to a same-sex marriage as set out in Schedule A1 to the Domicile and Matrimonial Proceedings Act 1973, inserted by Schedule 4 to this Bill, the 1973 Act works properly for same-sex marriages.

Government Amendments 49 and 50 make provision for when marriages of same-sex couples will be void in circumstances where the religious organisation concerned has not agreed to same-sex marriages, according to its rights. In relation to the Church of England and Church in Wales, Amendment 49 provides protection to couples to prevent their marriage from being considered to be a non-marriage. If it was held to be a non-marriage, this would mean that the court could not exercise its powers in respect of financial relief, which they can do if the marriage is held to be a void marriage. This amendment also provides clarity for the Church of England and Church in Wales, and I can say that this issue was in fact raised with us by the Church of England, which we have consulted on the drafting of this amendment.

In the case of other religious organisations, Amendment 50 provides that where a couple is unaware that the religious organisation has not opted in to marrying same-sex couples, the marriage will be valid. However, if the couple took part in the marriage knowing that the religious organisation had not opted in, then the marriage will be void. If the couple marry in good faith, believing that the person who solemnised their marriage was representing the religious organisation, and that the organisation had opted in, they may live as a married couple for many years before the mistake comes to light. It is not right that they should be penalised for the mistake of the person who solemnised their marriage.

This amendment mirrors the provisions currently in place to deal with errors and mistakes in relation to the formation of opposite-sex marriages, which will also apply to same-sex couples. Government Amendment 52 provides the same clarity about the status of same-sex deathbed marriage under the Marriage (Registrar General's Licence) Act 1970, which has been conducted by a member of religious organisation which has not opted in to conducting marriages of same-sex couples. Such marriages will be void if the couple knew the religious organisation had not opted in.

Finally, turning to government Amendment 58, the other place approved a government amendment on Report further to ensure that the protection for the

Church of England in this Bill is both full and clear. The amendment replaced the power previously provided in Clause 11(5)(c) with an overarching reference to "other ecclesiastical law", which, on balance, the Government felt would provide the church with more effective protection from the effect of subsections (1) and (2) of Clause 11, so that Church of England law should continue to be interpreted as referring to marriage of a man with a woman. Government Amendment 58 is consequential to that substantive amendment and removes from Clause 16 the parliamentary control procedure for the now deleted power in Clause 11(5)(c). I commend these government amendments and hope that noble Lords will support them.

Amendment 38 agreed.

Schedule 3, as amended, agreed.

11.45 pm

Schedule 4 : Effect of extension of marriage: further provision

Amendment 39

Moved by ***The Lord Bishop of Guildford***

39: Schedule 4, page 26, line 32, leave out paragraph 2

The Lord Bishop of Guildford: My Lords, it is agreed on all sides that parents make the most fundamental contribution to the flourishing and development of children, and that there are many aspects of parenthood and many kinds of parenting in such a complex society as ours. There are many forms of being a family, as was illustrated earlier this evening by the example given by the noble Baroness, Lady Farrington, from her school.

We have a common-law presumption that a child born to a woman during her marriage is also the child of her husband. Paragraph 2 of Schedule 4 says that the common-law presumption does not apply in the case of a woman who is married to another woman—for obvious reasons. This is a probing amendment and the question is whether simply leaving matters there is sufficient. I argue that it is not because, in all the debates on the Bill here and in another place, and during the consultation process, there has not been enough concentration on children. Tonight, as briefly as I possibly can, I want to stress a more child-centred approach to the question of children in marriage—all kinds of marriages and especially same-sex marriages.

Currently and in future, in a marriage between a man and a woman any child born to the woman is presumed to be the child of her husband. As her husband, he bears a responsibility for that child, not least if something should happen to its mother. I am concerned that in the Bill there is no equivalent or automatic provision made for children brought up by a married couple of the same sex. If a woman in a same-sex marriage has a child, there is of course a biological father somewhere but, regardless of whether or not the father is in an ongoing relationship with the couple and their child, there is at present no responsibility on the mother's spouse's side for that child.

Helpfully, it has been suggested in the Explanatory Notes that the other party to a marriage will be treated as the child's parent by virtue of amendments that the Bill is making to the Human Fertilisation and Embryology Act. These provide, under certain conditions, for the same-sex partner of a mother who gives birth to a child as a result of artificial insemination or the placing of an embryo in her womb to be treated as the parent of that child. I am sorry for this rather technical intervention at this point in the evening.

However, not all children born to mothers in a same-sex marriage will necessarily be born as a result of treatment to which the HFE Act applies. Such a child might be conceived in the conventional manner by a woman who is married to another woman. In such a case it would be possible for the mother to register the child's father when she registers the birth, with the effect that he would have parental responsibility for the child. The complications of that are quite interesting. Alternatively, she might not do so and her same-sex spouse might become the adoptive parent of the child. If neither of these things were done, the child would have only one person with parental responsibility for it—this is the point.

There is thus a contrast with a child born to a mother in an opposite-sex marriage and there is a real possibility of children born to a mother in a same-sex marriage being disadvantaged as compared to children of opposite-sex marriages. This is not to say that children always have to have two parents—that is often sadly not possible. Moreover, sometimes a child brought up by a single parent or same-sex parents is actually better cared for than a child brought up by dysfunctional heterosexual parents. I give praise to couples who give love and care to children in same-sex partnerships and eventually in same-sex marriage. However, given the intention of the Bill to extend marriage and to provide equality, why should children of a same-sex marriage— some of them, at least—be at a potential disadvantage in some cases? This is a probing amendment and I ask the Government to consider this question very carefully indeed.

Baroness Butler-Sloss: My Lords, the noble Lord, Lord Northbourne, has asked me to speak on his behalf to Amendment 39A, which picks up exactly the same point as the right reverend Prelate's. The noble Lord is not terribly happy with the wording that he has produced. It is, again, a probing amendment and it raises quite clearly the issue of parental responsibility. I am not sure that it is necessarily appropriate to delete paragraph 2 in Part 2 of Schedule 4 but the Government need to look at the point made by the right reverend Prelate that there will be children born to one partner in a same-sex marriage who will be the only person with parental responsibility although in every other way she and her partner will be married and, were they of opposite sexes, both would have parental responsibility. It is quite an important point. You might say, "Get a residence order", but in the Children and Families Bill residence orders are going to be abolished. Consequently, I do not consider arrangements made for when parties are in dispute to be appropriate for those who are in harmony. Therefore, I ask the Minister to have a look at this question of how appropriate parental responsibility can be achieved for the female partner of a woman who gives birth during their marriage.

Baroness Barker: My Lords, I want to thank the right reverend Prelate for the speech that he just gave. I thought that he addressed some very difficult issues in the most sensitive way. I also think that it is important that we hold this debate, however late it is, not least to put on record the fact that very many gay couples think very seriously about parenthood. It is not something into which they enter lightly at all. Perhaps some of the most distressing of the accusations which have flown around this Bill are that people who are in support of it take the issues of children's stability and parental responsibility less seriously than those who oppose it. That is absolutely not true. I happen to believe very strongly in marriage and one of the reasons is that I believe that it provides stability for children. That is why I want to see it extended to gay people because I believe that the children of those relationships deserve that stability.

I want to take the opportunity to flag up one thing. I am a veteran of the Human Fertilisation and Embryology Act and the question of registration of birth is one which is becoming increasingly complex. It has been very complex ever since we had planned donor-assisted conception. There is a small group of people who will never be able to find out what their identity is because they were born prior to the legislative changes that require there to be a registration of their biological parentage, and that has done enormous damage to those individuals.

There is a small group of people working in this area who have thought long and hard for some considerable time about the way in which the birth registration system of this country needs to be updated and changed. I do not want to go into it in great detail now, but the right reverend Prelate has flagged up an issue that is not for this Bill or indeed just for gay people. It goes much more widely than that, and it is something that the Government will need to return to. There was a report on this a couple of months ago which I thought might be from the Joseph Rowntree Foundation but was actually by the Nuffield Trust. It is one part of the issue that the right reverend Prelate has raised, and it is one that the Government should return to at some length and in more detail than will be possible within the scope of this Bill.

Baroness Thornton: My Lords, my noble friend Lady Royall and I came to the same conclusion as the right reverend Prelate the Bishop of Guildford that we needed to probe this issue, and for exactly the same reasons. It is not clear from reading the Bill exactly what is meant, whether it is satisfactory, whether it covers the point about those children and whether it is adequate in giving those children the stability that they deserve and require. The only way to do that was to put down an amendment to delete this provision, but we have no intention of doing so and merely wish to know that there is no legal uncertainty around the parentage of children of a married couple of the same sex.

All the other points that I was going to make about IVF and the embryology Act have been made. All that remains is for the Minister to reassure us that this point is covered or needs further consideration.

Baroness Stowell of Beeston: My Lords, I understand why noble Lords would want to seek clarification on this aspect of the Bill, so I am grateful to the right reverend Prelate and other noble Lords who have amendments in this group. I echo what my noble friend Lady Barker said about the right reverend Prelate's introduction to this debate, and I share his view that it is important that we consider children in the context of the Bill.

My noble friend Lady Barker made an important point about married same-sex couples providing stability and security for their children and this Bill therefore being a good thing for children of same-sex couples. That is something that we should ensure is not forgotten in the course of our debates.

Amendment 39, in the name of the right reverend Prelate, would remove paragraph 2 of Schedule 4, which makes clear that the common-law presumption often referred to as the presumption of legitimacy, that a child born to a woman during her marriage is also the child of her husband, will not extend to same-sex marriages. For the clarity of our debate, it is probably worth my reading out what it says in of the Bill, which is not very long:

> "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".

This means that where two women are married to each other and one of the parties to that marriage gives birth to a child, the other party will not automatically be presumed to be the parent of that child. That provision does not change the current situation; instead, it clarifies what the legal position would be in terms of the common-law presumption. The presumption is about fatherhood, and the Bill does not change the law on fatherhood.

Amendment 39A in the name of the noble Lord, Lord Northbourne, which the noble and learned Baroness, Lady Butler-Sloss, spoke to, aims to ensure that both parties to a same-sex marriage have parental responsibility for children born to or adopted by that couple, and focuses particularly on the parental rights of the surviving spouse. I understand and share that objective, and I understand why we are having this debate and why clarity is sought. However, we believe that this amendment is unnecessary because the law already sets out specific criteria that must be met in order for same-sex couples to be treated as the legal parents and to have parental responsibility. So in order for me to reassure noble Lords, I will try to explain.

Midnight

For example, Section 42 of the Human Fertilisation and Embryology Act 2008, to which the right reverend Prelate has already referred, provides that a mother's civil partner will be treated in law as the child's second female parent if she consented to the mother's artificial insemination. The 2008 Act will, as a result of this Bill, be amended to allow a mother's same-sex spouse to be treated in law as the child's second female parent in that situation and consequently to have parental responsibility. It would not be sensible for the law simply to presume that a second female parent is the

child's legal parent, since the second female parent could not be the biological parent, and there are established processes for that second female parent to be treated in law as the parent and consequently to have parental responsibility. In certain circumstances, two men who are married can both be considered as the child's legal parents and consequently have parental responsibility—for example, where both men have adopted the child.

The right reverend Prelate the Bishop of Guildford asked what would happen if a second female partner is not registered as a parent. Section 4A of the Children Act 1989 provides that a spouse or civil partner who is not the child's parent or step-parent can obtain parental responsibility by agreement with the parent or by court order. It is our intention that this provision will help to avert unnecessary litigation and other claims about parenthood, which might otherwise arise as a result of a misunderstanding of the effect of the Bill. All that said, since this is a complicated issue, and because of some of the specific points that have been raised, it may be best if I write to the right reverend Prelate and to all noble Lords who participated in this debate and put a copy of that letter in the Library. Then I can provide in detail the reassurance that noble Lords are rightly looking for on this important matter.

Amendment 39 withdrawn.

Amendment 39A not moved.

Amendment 40

Moved by ***Baroness Butler-Sloss***

40: Schedule 4, page 27, line 4, leave out paragraph 3

Baroness Butler-Sloss: My Lords, I will speak to Amendments 40 and 41. This is a sensitive issue and we are speaking, of course, at an extremely late stage. It is an issue that also produces embarrassment in some and humour among others of those who hear what is said. I am, however, entirely serious about this matter and I wish to present it to your Lordships even at this late stage.

My early practice at the Bar was against the background of defended divorces, and the matrimonial offence of adultery was treated very seriously. There were allegations of collusion and condonation to try to avoid a finding of adultery. The Matrimonial Causes Act 1973, which caused dramatic changes to divorce law, retained adultery in Section 1 as the first ground, together with irretrievable breakdown, and it remains the law today. Adultery may not be seen as such a serious matrimonial offence today as it was in earlier times, but that, in my view, is a mistaken approach.

Adultery remains a fundamental breach of the trust of those who make the commitment of marriage, and I have no doubt that there will be an equal commitment between same-sex couples, many of whom demonstrate long-term, stable relationships, so the behaviour of one party to a marriage who breaks the commitment to the other by engaging in a relationship with someone outside marriage strikes at the root of marriage and can be a devastating blow to the injured partner. The suggestion has been made that the injured person in a same-sex marriage could petition for unreasonable behaviour as an alternative ground for divorce, but that is not the answer. In current marriages, if one spouse commits adultery, that is the ground upon which the other spouse can pray in the divorce petition. It therefore demonstrates in family legislation the importance of both spouses remaining faithful to each other during the continuance of the marriage.

According to Part 2 of Schedule 4, following the Civil Partnership Act, the same-sex relationship excludes a ground for divorce available to those spouses who have an adulterous husband or wife. They have the opportunity, but the same-sex couple do not. This is inequality, both to erring husbands or wives, who can be sued for divorce on a ground that would not occur if same-sex partners were in the same position. However, more importantly, it is profoundly unjust to the partner who has suffered the trauma of the failure of the marriage through the sexual misbehaviour of an erring same-sex partner and the breach of the commitment of fidelity. Had I been a Member of this House during the passage of the Civil Partnership Bill, I would have made exactly the same point.

I consider it profoundly unsatisfactory and, more importantly, profoundly unjust that adultery is not a ground for same-sex divorce. It undermines the value of same-sex marriage. Why is this the case? I assume that it is because there has not so far been a definition of consummation of a sexual relationship other than between couples of the opposite sex. This is a failure to come to terms with more than one type of sexual relationship and a broader definition of the consummation of a relationship.

The criminal law includes the rape of a male as well as a female. It has been so ever since the Sexual Offences Act 1956. I will read just one sentence from the Sexual Offences Act 2003, from Section 1(1):

> "A person … commits an offence if he intentionally penetrates the vagina, anus or mouth of another person … with his penis".

That goes part of the way with same-sex marriages. Rape requires proof of consummation, and so far 12,000 men have been identified as victims of rape.

I cannot understand why there can be a definition of rape—a recognition of the sexual act of consummation required to prove rape in criminal law—but a seeming inability or reluctance by the previous or the present Government to give it the same recognition in the context of family law. The failure to find a definition of consummation in civil and family law works, as I have said, as a real injustice. It makes a mockery of the so-called equality that is the bedrock of this Bill. If marriage is to be equal for all those who get married, an embarrassed or ineffective approach to this inequality and brushing aside the matrimonial offence of adultery will not do.

Whether it is a religious or civil marriage, promises and commitments are made by one partner to the other in the marriage ceremony. Is the concept of being faithful to one another during marriage a promise to be kept by opposite-sex couples but not by same-sex couples? How can this be? For those not brave enough to recognise different forms of sexual activity, a possible

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alternative to a revised definition of adultery might be to describe the matrimonial offence as one similar to adultery.

Amendment 41, which looks at the inequality in the matrimonial law of voidable marriages in this Bill, raises the issue of non-consummation. In current nullity law there are two grounds of voidable marriages: inability and wilful refusal to consummate the marriage. A nullity suit on either of these grounds is nowadays unusual. However, the question of inequality and possible injustice arising from the difference in two types of marriage raises the same point as my comments on adultery. If this Government are, as they should be, strong enough to provide a revised definition of consummation and non-consummation, they should deal with voidable marriages as well as adultery. This is not a homophobic point. On the contrary; this is an injustice to innocent partners in a same-sex marriage, who do not have the same rights as innocent partners in an opposite-sex marriage and do not have the specific right to divorce a faithless same-sex partner. I beg to move.

The Lord Bishop of Guildford: Again, I support a probing amendment. I am concerned that marriages between people of the same sex should enshrine the same standard of fidelity as marriages of heterosexual couples. As it stands, the Bill does not quite deliver this. Indeed, the Bill enshrines a very important inequality in the way that the virtue of fidelity is manifested in relationships. Marriage between people of the opposite sex is partially defined by the fact that sexual infidelity—adultery—is a recognised and long-standing ground for divorce, as has been expounded very eloquently by the noble and learned Baroness, Lady Butler-Sloss. This is not found in the Bill.

Faithfulness is intrinsic to the promises a married couple make to one another. I feel very strongly that, as we go forward in our scrutiny of the Bill, this House must find some way of including that faithfulness equally for all married couples, if we are looking to something that has been described as equal marriage. On the grounds of equality that is an omission and in terms of the social significance of faithfulness, which is central to marriage, this omission diminishes the status that couples of the same sex stand to receive from being married. As the Bill stands, such same-sex marriages could be accused of being of a lesser standard in terms of faithfulness than heterosexual marriage unless this point is attended to.

Lord Alli: I thank the noble and learned Baroness for bringing forward this amendment. I have listened to what she said most carefully and I can see the point she raises. Unfaithfulness is understandably a cause for which many people seek divorce but I do not think that anything in this Bill will prevent people divorcing their partners for unfaithfulness. In my view, marriage is a contract that varies in its nature, understanding and commitment from couple to couple. The issue and the importance of fidelity is one that, equally, varies from couple from couple, but it is fair to say that fidelity is a cornerstone of most religious marriages. I think the same should be said of civil marriage, too.

The definition of the sexual act that defines fidelity for heterosexuals is outdated and, in my view, very cumbersome. The noble and learned Baroness is very brave to bring the issue to this House. When one looks at penetration as part of that definition, or we try to import the definition of penetration from rape into this, it does not deal with lesbian couples, for example. So much of our sexual law is defined by the male and not by women that a complete class of marriage is ignored by what the noble and learned Baroness is trying to do. If we had had more and broader discussions on the Civil Partnership Act and over the Bill, we may find common ground, but simply importing the definition of penetration—anal, vaginal or oral—into this would leave lesbians at a complete disadvantage regarding fidelity. While I completely understand what is behind this, we come back to the definition of fidelity. I think the Government's position has been not to disturb the current arrangements as far as possible, to avoid tampering with existing legislation. It is a much wider question, which I certainly welcome. There is no way anyone can accuse the noble and learned Baroness of being homophobic in her amendment.

12.15 am

Baroness Thornton: My Lords, I will merely say that my noble friend Lord Alli has put his finger on the point. This discussion is not about biology but—as the right reverend Prelate said—fidelity. I suspect that the Government have been round this course. I know from reading the record in the Commons that they had these discussions and settled where they did. At the moment I cannot see any way of moving from that point. I do not accept the biological descriptions and solutions suggested by the noble and learned Baroness, Lady Butler-Sloss. The Government have probably ended up in the right place.

Baroness Stowell of Beeston: My Lords, I was wondering earlier how BBC Parliament would cope if this group of amendments came up before the 9 pm watershed. However, we are clearly okay.

Baroness Thornton: They could turn the lights down.

Baroness Stowell of Beeston: At least we are not going to be subject to an inquiry by Ofcom.

The effect of the amendment of the noble and learned Baroness would be that the question of how adultery and non-consummation would apply to same-sex marriages would have to be determined over time by case law. The Government believe that such an approach would leave the law uncertain in respect of divorce and nullity, and would not give people adequate protection. The noble and learned Baroness will know better than I that the definition of adultery has developed in case law over many years. In order for a definition to be determined for same-sex couples, it would have to go through a similar process. That would provide uncertainty for same-sex couples, which is not what any of us want.

The Bill provides greater clarity by confirming that only sexual intercourse with a member of the opposite sex outside marriage will constitute adultery for all

couples, both opposite sex or same sex. The noble Lord, Lord Alli, rightly said that the Government had taken the approach, in designing all parts of the Bill, of trying to avoid disrupting existing marriage law as far as possible. This provision confirms that the current case-law definition of adultery applies to the marriages of same-sex couples. I make it clear that at the moment, if a married man has an affair with another man, his wife would not be able to divorce him on the grounds of adultery. However, she would be able to cite unreasonable behaviour, so she would not be denied the right to divorce; only the grounds that she relied on would be different.

Equally, for same-sex married couples, sexual activity with a member of the same sex will support an application for divorce, since it will be open to someone in a same-sex marriage to cite unreasonable behaviour. This will not mean that same-sex couples have any reduced right to divorce or will suffer any delay in applying for it, because the same procedures apply to divorces on the grounds of adultery and those on the grounds of unreasonable behaviour. If a woman in a same-sex marriage has an affair with a man, her wife would still be able to apply for a divorce on the grounds of adultery. If she has sex with another woman outside the marriage, her wife could not seek a divorce on grounds of adultery but would do so on the grounds of unreasonable behaviour. That is what currently happens. As we know, it is not that unusual for someone in an opposite-sex marriage to have an affair outside the marriage with somebody of the same sex.

The noble and learned Baroness, Lady Butler-Sloss, and the right reverend Prelate argued that these provisions in the Bill mean that there is no requirement for same-sex married couples to be faithful, because adultery is not available to them in the way I have just talked about. The right reverend Prelate used a particular word that I cannot remember; I think he talked about "standards". I think it is worth making the point that we need to avoid assuming that in order to be faithful people need to know they can divorce someone on the grounds of adultery. It is not the possibility of divorcing someone on the grounds of adultery that leads someone to be faithful to the person they are in a relationship with. What makes people faithful is far more complicated than that. The issues around fidelity, the reasons why people stay together, and their trust and commitment to each other are very complex. Even so, in terms of the law, marriage does not require the fidelity of couples. It is open to each couple to decide for themselves on the importance of fidelity within their own relationship. The law does not lay down requirements about the consensual sexual activity which should or should not take place for married couples.

Similarly, the Government believe that not applying provisions on non-consummation as a ground for the nullity of the marriage of a same-sex couple is the correct approach. There has been a lot of discussion of procreation, not so much tonight but certainly at earlier stages of our debates. Historically, consummation was linked to procreation, although now in law it is not. I want to make it clear that there is no requirement in law that a couple should consummate their marriage in order for it to be a valid marriage. We do not consider that there is a need to extend non-consummation as a ground for annulment to same-sex marriage. This also ensures that the law is clear for same-sex couples, as I already noted.

I think the point made by the noble Lord, Lord Alli, in response to the proposal of the noble and learned Baroness, Lady Butler-Sloss, to transfer the definition of penetration from that of an opposite-sex couple to that of a same-sex couple, but focusing only on men, serves to demonstrate that we have not addressed what penetration means for a lesbian couple. That is why, as I say, it would take a long time to develop this in case law in a meaningful way. The Government do not believe that the Bill's approach to adultery and non-consummation for same-sex couples represents an inequality with opposite-sex couples. We believe the Bill makes appropriate provision for same-sex couples, while ensuring that the law for opposite-sex couples remains exactly as it is now.

However, I thank the noble and learned Baroness for bringing forward her amendments because, as she rightly says, this is a very sensitive topic. It is not one that people find easy to debate. I never thought I would stand at a Dispatch Box talking about these kinds of things. She serves the Committee well by raising this matter, but I hope I have been able at least to clarify that by not changing what now exists in law we are not actually creating an inequality. I think the desire of same-sex couples to have a successful relationship through marriage does not require the possibility of adultery for them to remain faithful to each other, if of course that is what they intended when they first married. I hope the noble and learned Baroness feels able to withdraw her amendments.

Baroness Butler-Sloss: I have perhaps found this topic rather easier to talk about, having been a divorce judge and indeed a judge who tried a lot of nullity suits. However, it is a sensitive subject, and I am very grateful to the Minister for the way in which she dealt with it, and to the noble Lord, Lord Alli. I said earlier that I recognised that looking at the issue of penetration was taking only it half way. I also threw out the potential olive branch of saying that you could call it something similar to adultery.

I remind noble Lords that for several thousand years adultery has been the opposite side of the coin to faithfulness for married couples. It has not been an issue only for Jews, Muslims and Christians; it has gone far wider than that. Those who do not believe in any religion do none the less see the importance of making a promise—it has to be a promise, whether explicit or implicit—that, if you marry, whatever your stable relationship is, during that period when it matters, you remain faithful to one another. After nearly 55 years of marriage, I see that as extremely important. However, I see it as equally important for the stable relationships of which I am well aware among those who—

Baroness Stowell of Beeston: I hope the noble and learned Baroness will forgive me for intervening very briefly. I absolutely understand the point that she makes and I do not want to give the impression that I do not take the issue of faithfulness seriously because I certainly do. However, it is important for me to make

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clear for the record that in the context of a civil ceremony it will be possible for those getting married to make promises and commitments in the form of words that they choose. We are not suggesting that we do not think this issue is important. However, we do not think that it is necessary to make provision for adultery in this measure. This is not about denying the importance of fidelity, which is clearly important when people first come together.

Baroness Butler-Sloss: I hear what the Minister says and of course I accept that she is saying on behalf of the Government that faithfulness in marriage of whichever sort is important. I do not for a moment disagree with that. However, there are two sides to the coin—faithfulness and adultery. As I say, for several thousand years adultery has been a ground for setting aside a partnership because of the way that one partner has behaved. To call it unreasonable behaviour, or cruelty in the old days, is not the same thing. I am sad that the Government are not prepared to tackle this because something akin to adultery could be achieved to put everybody who is involved in marriage in exactly the same position. Currently, with the Civil Partnership Act, and now this Marriage Bill going through the House, they will be in different positions. You cannot get away from that. I find that very sad, as, I know, does the right reverend Prelate. I will reflect very carefully on what the noble Baroness has said and, indeed, what the noble Baroness, Lady Thornton, has said about this, but I remain very unhappy about it. However, at this moment, I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendment 41 not moved.

Amendments 42 to 44

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

42: Schedule 4, page 28, line 13, leave out "as to the validity of a marriage" and insert "of validity"

43: Schedule 4, page 29, line 29, leave out "as to the validity of a marriage" and insert "of validity"

44: Schedule 4, page 30, line 34, at end insert—

"Interpretation

6 In this Schedule "declaration of validity" means—

(a) a declaration as to the validity of a marriage,

(b) a declaration as to the subsistence of a marriage, or

(c) a declaration as to the validity of a divorce, annulment or judicial separation obtained outside England and Wales in respect of a marriage."

Amendments 42 to 44 agreed.

House resumed.

House adjourned at 12.29 am.

Grand Committee

Wednesday, 19 June 2013.

Local Audit and Accountability Bill [HL]

Committee (2nd Day)

3.45 pm

The Deputy Chairman of Committees (Lord Skelmersdale): My Lords, as usual, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

Clause 7 : Appointment of local auditor

Amendment 14ZA

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

14ZA*: Clause 7, page 5, line 29, leave out subsection (1) and insert—

"(1) Unless regulations that apply to a relevant authority have been made by the Secretary of State under subsection (9), a relevant authority shall appoint an auditor (a "local auditor") to audit its accounts for a financial year not later than 31 December in the preceding financial year in accordance with subsections (2) to (8)."

Lord McKenzie of Luton: In speaking to Amendment 14ZA, I shall speak also to Amendment 14ZC. These amendments take us back to the debate at the start of our proceedings on Monday. When speaking to Amendment 1, I indicated that we had tabled a further amendment covering the same essential point: that of retaining the capability of enabling national or central procurement. These two amendments adopt an equivalent formulation to that provided for in Clause 5 relating to smaller authorities. It provides the Secretary of State with the opportunity to specify a person to appoint auditors for relevant authorities, and potentially provides relevant authorities with the opportunity to opt into or out of such arrangements. Absent the activation of such a capacity, the provisions on a local appointment would run. The amendment is not prescriptive of the person or persons whom the Secretary of State can designate to undertake these appointments.

I do not propose to restate in detail the arguments in favour of retaining a bulk purchase capacity. These were well aired on Monday and, I believe, well supported. In fact, I think it is fair to say that they found favour with the Minister, who said:

"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".—[*Official Report*, 17/6/13; col. GC5.]

We entirely accept that the Government would need to be assured about how such arrangements would work and be effective. However, these amendments offer a framework for this, and indeed the framework on which the Government are themselves seeking to rely in relation to smaller authorities. I look forward to a favourable reply, again, from the Minister.

I will wait for the noble Earl, Lord Lytton, and the noble Lord, Lord Tope, to speak to their amendments, the thrust of which I understand. However, for the idea to be credible it would presumably require the other body appointed to be subject to the rigours of this Bill. I am sure that was the intention. I beg to move.

The Earl of Lytton: My Lords, I shall speak to Amendment 14ZAA and its co-runner Amendment 14BZA, both of which are in my name and that of the noble Lord, Lord Tope.

The principle behind these two amendments is relatively simple; they seek to allow for a measure of delegation of the duty to appoint an auditor so that the actual procurement of auditors and their formal appointment can be made by another body on behalf of the authority. The issue arises by virtue of Clause 7(1), which states:

"A relevant authority must appoint an auditor".

This, if taken literally, could be taken to mean the direct appointment of a named auditor in person on an exclusive and non-transferrable basis. I am sure that it is not intended to be quite as tight as that. It is certainly felt by the LGA, and others who have briefed me on this matter, that this might prevent any appointment as authorised proxy by an external person or body.

In reality, a firm is appointed to the task and nominates one of its number, often a partner or director, to head up a small team to handle the matter. The appointment of an auditor, to use that singular term of art, and as a specific named individual, is in any event customarily carried out per pro the authority by this means. For instance, most small charities and similar bodies appoint a firm rather than an individual. In the realms of a collective appointment via a national or sector-led service, this becomes more important. A large consultancy firm bidding for a sector-led contract will ultimately make an appointment itself of the named auditor as overseer and signatory to the auditor's report

The gist of Amendment 14ZAA is quite simply to provide for the procurement of an auditor by way of a duly authorised proxy, including a large firm, a sector body or other similar large concern dealing with possibly several authorities. It does not make this mandatory, simply an option.

Amendment 14BZA follows from this. If the procurement is by way of another body charged with meeting the requirements of the Bill and thus delegated from the authority, it is unnecessary, or should be unnecessary, to have an audit panel, because the oversight of the auditor is carried out in accordance with the relevant rules of engagement via the proxy. The authority always remains responsible for whatever measures it has put in place. The appointed procurer of the audit service must observe all the criteria in the Bill for that activity.

The LGA, as I said, provided a useful brief on this and it is worth picking out a few salient points. The amendments would be consonant with the authorities' need to have flexibility to procure their audit nationally, or in some form of grouped manner. It would make collaborative audit procurement more attractive and produce, as we heard on the previous day of this

[The Earl of Lytton]
Committee, the potential for significant savings. That would be to the direct benefit of local finance. Some of the reasons why this is so have already been rehearsed, including the Audit Commission's own modelling and its calculated saving of between £205 million and £250 million over a five-year period.

The Government's own impact assessment does not refute this. Indeed, it concedes that local appointment may not procure the level of savings secured by the Audit Commission during its last procurement round. It seems obvious to me that each authority procuring its own auditors on a recurring basis replicates a cost base. There is an opportunity to save money here.

I will not go into the other details that have been discussed before, save to say that I agree that local appointment does not necessarily increase competition or cut costs. I have no proof of this, but my hunch is probably that not many firms would undertake a municipal audit in the first place. In reality one is probably looking at one of the larger firms, a point that we have heard before. I register the point made by the Minister on Monday. A paraphrase of her words is that there will be no recreation of the Audit Commission by the back door, but if the reality of this Bill's proposals is to create some form of suboptimal procurement with waste by duplication, I have to say that I am against that as a principle. I hope the Minister will feel that subject to any safeguards that might be necessary to eliminate the risk of a "son of" Audit Commission coming about, the principle is acceptable, in which case we can work out the detail as we go forward. I beg to move.

Lord Palmer of Childs Hill: My Lords, I will speak to these amendments, although sitting next to me is my noble friend Lord Tope, in whose name Amendment 14ZA stands. I hope the noble Lord, Lord McKenzie, will confirm that we have already dealt with the collaborative basis and the fact of buying centrally. Even I was a late adherent to this, but I think we agree that in one form or another that is the way to go forward, however it can be arranged, although there were numerous alternatives. As the noble Earl, Lord Lytton, has said, there are going to be significant savings, which is something that we cannot ignore.

I have one question about a sentence in Amendment 14ZA on the appointment of a new auditor, or the re-appointment of an existing auditor, to,

"audit its accounts for a financial year not later than 31 December in the preceding financial year".

Both the Bill and the amendment say that that appointment should be made not later than 31 December in the preceding year. I cannot work this out in practical terms. Let us say that KPMG is the auditor of a local authority or group of local authorities; it has not finished its accounts and the accounts will not be signed off until, at the earliest, the end of January the following year. That company could be under notice, according to the amendments, that it may not be, or could not be, the auditor for the ensuing year. While KMPG is finishing off its audit—the accounts will not have been finished and signed off by the relevant person in the local authority, who in my local authority is me, so I am told; I have done it three years in a row—a new auditor, PricewaterhouseCoopers, perhaps, will have been appointed.

I worry about how that will affect the mindset of the auditor who is being replaced. Enshrining within the Bill that the auditor has to be appointed by 31 December within that year will cause moral, and sometimes practical, difficulties. Perhaps the Minister will take this issue back and consider whether the wording should be "could be appointed by 31 December" or "as soon as possible by that date". I worry how the changeover, if there be a changeover, will affect the performance of the outgoing auditor.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, I thank both noble Lords for these amendments, which take up the points that we made on Monday about the possibility of a centralised audit process for both larger and smaller authorities. As I understand it, the larger authorities will be run, more or less, by the LGA and the smaller authorities by the NALC. I made it quite clear that we were content to have discussions with the LGA and the NALC, to whom we are talking already, on the strict understanding that there could not be, in either case, mandatory schemes. The amendments brought forward today by the noble Lord, Lord McKenzie, and the noble Earl, Lord Lytton, are flexible enough to take account of that. As I said on Monday, we are willing to continue the discussions that are already taking place. I am sure that we can come back to this issue at a later stage if anyone feels that they are not going in the right direction.

Amendment 14BZA would specifically exclude bodies that opted into such an arrangement from the need to have an auditor panel. We agree with that. If there is a centralised system it is plainly not sensible for those who are being helped by it to have their own audit panel. However, it is essential that if they are appointing their own auditor, independently or in conjunction perhaps, with another authority, they have to have an audit panel. We have discussed the make-up of an audit panel and its independent membership, and they would be required to do that.

The noble Lord, Lord Palmer, raised the question of the date of appointment of auditors. The reason behind the auditor needing to be appointed by 31 December is to ensure that if for some reason the local authority fails to make an appointment, there is time for the Secretary of State in particular to take action under Clause 12, which allows him either to direct a body to appoint or make an appointment on behalf of the authority. We will discuss this later, but it will certainly apply to health authorities, and I understand that the situation is similar in local authorities. I hear very clearly what the noble Lord says about the auditors possibly lacking the enthusiasm to carry on if they are about to be replaced, but I think the audit bodies are pretty professional, and they would need to continue.

We will discuss the appointment of auditors when we reach the amendments that are a couple of groups further on, but I think those are the main points that have been raised. As I said, I hope that we shall be able

to return to this matter at the next stage with some further ideas on how the centralised but not mandatory system might work.

I hope that with those explanations, and if I have covered the points that were made, the noble Lord will withdraw his amendment.

4 pm

Lord McKenzie of Luton: My Lords, again, I am grateful to the Minister for a very clear steer on where the Government are on this. I hope that by the time we get to Report we can make progress on seeing how it is working out in practice, particularly if there is a provision in the legislation to take it forward once the Bill is enacted.

The noble Lord, Lord Palmer, made an interesting point about the handover arrangements between auditors. I am sure that it does happen. I read the other day that Land Securities changed auditors for the first time in 60-odd years. I think that PricewaterhouseCoopers went out, but I cannot remember who went in. However, it does happen, and I think that the professional arrangements of the bodies that supervise these organisations include a code of conduct that covers that. I beg leave to withdraw the amendment.

Amendment 14ZA withdrawn.

Amendment 14ZAA

Tabled by ***The Earl of Lytton***

14ZAA*: Clause 7, page 5, line 31, at end insert—

"(1A) A relevant authority may appoint another body to procure the appointment of auditors for purposes of meeting the requirements of this part of the Bill."

The Earl of Lytton: First, I thank the Minister very much for her comments. Secondly, as I understood her, Amendment 14BZA might be acceptable with modifications. I appreciate that, but obviously, pending such modification, I shall not move that amendment at this juncture. I hope that at some juncture the noble Lord, Lord Palmer of Childs Hill, will explain to a mere ignoramus like me what the arrangements are when one auditor hands over to another. It is certainly something that I had not considered at all.

Amendment 14ZAA not moved.

Amendment 14ZB

Moved by ***Lord Beecham***

14ZB*: Clause 7, page 5, line 38, leave out subsection (3)

Lord Beecham: My Lords, this amendment addresses the question of the appointment of local auditors, covered by Clause 7. The procedure requires the local authority to appoint an auditor. Clause 7(2) provides that an auditor may be appointed,

"to audit its accounts for more than one financial year".

Clause 7(2)(b) states that,

"the authority must make a further appointment of a local auditor at least once every 5 years".

The amendment would remove the following subsection, which states that the paragraph to which I have just referred,

"does not prevent the relevant authority from re-appointing a local auditor".

The object of my amendment is to ensure that there is a change after a five-year period. In my submission, it is possible for the auditor and the local authority to have too cosy a relationship. As I read it, there is nothing in the procedure for appointments set out in Clause 8 even for a tendering process to be entered into by the local authority, although I may be incorrect in that regard.

Clause 8 provides that:

"A relevant authority must consult and take into account the advice of its auditor panel on the selection and appointment of a local auditor".

If a panel did not recommend a competitive tendering process, or even if it did, as long as the local authority had regard to that it would not necessarily follow that there would be such a process.

I agree that five years is a sensible sort of period for a firm to be engaged. However, it seems unfortunate, to put it mildly, that people could be reappointed for a substantial period of five years and then be reappointed with, or particularly without, a tendering process. That would be an invidious and unfortunate position to have arrived at. We are aware, of course, that the market for the larger authorities is likely to be dominated by a handful of firms. That was one of the reservations expressed on Second Reading and during our previous day in Committee, and I think that most of us, possibly including the Minister herself, are not entirely comfortable with that. To see such a process as a repeat appointment, particularly in the context of these large national outfits, is anti-competitive, if I might put it in that way. It also raises an issue about the kind of relationship that might develop when a firm is anxious to retain the contract.

For those reasons, in my submission it would be better to require not simply a reappointment process but a process that excluded the original firm. There might have to be a backstop position in case nobody else presented. That matter might require, for example, the agreement of the panel and the authority or even, potentially, of the Minister or the department. I suppose one might need that safeguard, but the important principle is that there should not be indefinite appointments of the kind that, as I see it, the Bill would facilitate. I beg to move.

Baroness Eaton: I find it somewhat surprising that there is this perceived idea of auditors being too cosy with their client, a local authority, because all the probity and requirements of audit mean that they would be being professionally negligent if they did not do the job they are supposed to be doing. I really do not think that this is quite of much as an issue as the noble Lord, Lord Beecham, is suggesting.

Lord Tope: My Lords, I am struggling to understand the implications of what the noble Lord, Lord Beecham, is proposing. I think we all share his concern—I accept that it might not always be a widespread concern—that sometimes, maybe after five years, it could become

[Lord Tope]
too cosy. I hope we would all accept that a tendering process after five years is certainly desirable; whether it should be mandatory is something that we can debate. However, in such a tendering process, would the existing auditor be precluded from taking part in that process, or, if it was to take part in it and was clearly to submit the best value tender, would the authority then be prevented from reappointing it on that basis? That is the point I struggle to understand.

Lord Beecham: Perhaps I might respond before the Minister replies, since we are in Committee. My preference would be for exclusion but as a fallback, at the very least, to have a proper tendering process, as I have explained.

Baroness Hanham: My Lords, I thank the noble Lord, Lord Beecham, for raising this interesting point, but I am bound to say that I have the same scepticism about this as the noble Baroness, Lady Eaton, and my noble friend Lord Tope. It is scepticism about whether it is necessary.

The Bill currently requires local authorities or local bodies to make a new appointment every five years, as the noble Lord said. In most cases, this will require them to go through a full EU tendering process. We expect that most authorities would have that as a requirement, if not in their code of procedure then in their code of conduct. They will also have to go through the process with the independent auditor panel, which will have to manage the tendering process so that it is both independent and transparent. The independent auditor panel will also look regularly at the quality of the audit from the auditors currently doing the job. If they are not doing the job, it will not recommend that they are allowed to proceed. The Financial Reporting Council has ethical standards as well, and will require that key audit staff are rotated on a regular basis. The Government believe that the requirements for a maximum five-year term and the rotation of key staff provide sufficient assurances, along with the other measures on auditor appointment and removal, to safeguard auditor independence and the local bodies' independence of view in taking on their auditors.

I know that there have been wider discussions about, for example, a recent Competition Commission report on the need for mandatory auditor rotation. However, we understand that the evidence that mandatory rotation supports improved auditor independence and auditor quality is inconclusive. Bearing in mind what my noble friend Lord Tope and the noble Baroness, Lady Eaton, said, sometimes there is benefit in the continuation of an auditor, not on a cosy basis but because of the mere fact that, particularly with bigger authorities, you have somebody who understands the processes and what has been happening during the past five years. In any event, I think it would be wrong to exclude them from being able to tender, to bring down the barricade and say, "No, you can't do that".

There is sufficient professional involvement to ensure that auditors are not reappointed where they are unsuitable, where they have not done the job properly or where the local body thinks that they could do with a change of auditor and makes that clear. I do not think we need to make it mandatory that they cannot go beyond five years; that would be too draconian. I am satisfied that we have the processes in place to ensure that a full appointments system takes place every five years. If the current auditors were seen to be the most successful, they should be able to be reappointed.

I hope that that explanation will satisfy the noble Lord, Lord Beecham, and that he will be able to withdraw the amendment.

Lord Beecham: My Lords, as the noble Baroness knows, I am not easily satisfied, and I am not completely satisfied by her reply, although I am grateful. In particular, there is still an issue about market share and the domination by large firms, which I fear will not be addressed by allowing the system outlined in the Bill. However, having heard the debate, of course I beg leave to withdraw the amendment.

Amendment 14ZB withdrawn.

Amendment 14ZC not moved.

Clause 7 agreed.

4.15 pm

Schedule 3: Further provisions about appointment of local auditors

Amendment 14ZD

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

14ZD*: Schedule 3, page 39, line 5, after "may" insert "after consultation with the relevant authorities and representatives of local government"

Lord McKenzie of Luton: My Lords, this is a very straightforward amendment, which is intended to ensure that the Secretary of State will consult before producing regulations under paragraph 4 of Schedule 3. Perhaps the Minister will take the opportunity to share with us what the broad content of the regulations will cover, or say when we might expect to receive a draft. I beg to move.

Lord Wallace of Saltaire: Here I am acting as the Minister, jumping to my fifth subject today, although I am happy to do so. As has just been explained, Amendment 14ZD would require the Secretary of State to consult relevant authorities and representatives of local government before exercising powers as set out in Schedule 3 to make further provision about the appointment of an auditor to certain bodies.

We are sympathetic to the concerns behind the amendment, which we understand are to ensure that bodies are suitably consulted before further provision is made on auditor appointment. Perhaps it would be helpful if I clarify the scope and purpose of this power, which I understand to be the purpose of this probing amendment. The power is limited to bodies not covered by paragraphs 1 to 3 of Schedule 3. It therefore does not apply to local authorities, police bodies, or the GLA.

Schedule 3 already makes provision in relation to these bodies to ensure that the appointment process reflects their specific governance arrangements. In the case of local authorities, it prevents the delegation of the appointment decision below full council. This ensures that the appointment of the auditor is made in a transparent manner and with proper accountability. The power at paragraph 4 is simply intended to allow the Secretary of State to make similar minor provisions for other bodies covered by the Bill to support accountability. This might mean preventing the delegation of the appointment decision for other bodies as set out, as the noble Lord will know, in Schedule 2.

As set out in the statement of intent that the Government laid earlier this week, we will work with delivery partners and interested parties to consider what specific provisions are needed. With these reassurances on the scope and purpose of the clause, and on our intent to consult affected bodies, I hope that this provides sufficient additional information for the noble Lord to be able to withdraw his amendment.

Lord McKenzie of Luton: I am grateful to the noble Lord for that response. I certainly intend to withdraw the amendment. However, perhaps he could be a little more specific about the other bodies covered by this. I am not sure that I fully grasped his point about particular bodies. Does he have an example?

Lord Wallace of Saltaire: Schedule 2 sets out a range of other bodies. The minor bodies that are set out range from waste management boards to drainage boards to parish councils and to others but do not include the major local authorities or the GLA et cetera. Schedule 4 relates to Schedule 2. I hope that is clear.

Lord McKenzie of Luton: I am grateful for that further exemplary clarification. I have not had a chance to read the statement of intent in detail yet, which came on Monday when we were in Committee. In the mean time, I beg leave to withdraw the amendment.

Amendment 14ZD withdrawn.

Schedule 3 agreed.

Clause 8 : Procedure for appointment

Amendment 14ZE

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

14ZE*: Clause 8, page 6, line 26, at end insert "and the appointment process"

Lord McKenzie of Luton: My Lords, the procedure for the appointment of auditors provided for in Clause 8 seems overly bureaucratic, but if that is the Government's approach, I suppose this amendment simply adds to that bureaucracy. Amendment 14ZF would require that the term of the appointment be part of the notification. Indeed, it might specifically cover the point probed by my noble friend Lord Beecham as to whether it is a reappointment.

Amendment 14ZE would require that the appointment process be set down. Transparency on this matter is for the Government, not unreasonably, of high importance, and we agree. The process will have an impact on competition and pricing, so making the interviewing process clear, assuming there was one, and what firms were involved would be an indication of the relevant authority's commitment to these issues. It might also provide an indication of the commitment to trying to open up the market, an indicator of whether local or regional firms have been included.

Doubtless the Minister will tell us that this amendment is unnecessary and will flow from the process set down. That is fine, but it would be good to have an idea of the Government's expectations over these areas.

Lord Tope: My Lords, the noble Lord, Lord McKenzie, began by describing this process as overly bureaucratic, but then I think he went on to say that, since it is overbureaucratic, let us have an amendment that makes it even more bureaucratic. That is not the most compelling argument that I have ever heard from the noble Lord, Lord McKenzie, as I suspect he knows very well.

The amendment certainly seems to describe what is good practice and what I hope would happen in practice. I am moderately confident that that is what would happen, certainly with any good authority. Whether we need to have an even more bureaucratic process to enshrine all this in legislation, I am very doubtful, and whichever Minister is replying they will no doubt tell us that we do not want to make it too bureaucratic.

Lord Beecham: Perhaps I may just ask whether it would remain open to authorities to combine in placing audit contracts. The Audit Commission identified substantial savings having been made by central commissioning, and it anticipated that if extended to the remaining 30% of contracts, a significant further saving of some £400 million over five years could be made. I am not necessarily saying that that is the way to go but, under the provisions of the Bill and this whole appointment process, would it still be open for such an approach to be adopted by authorities coming together, for example, in a particular region or a particular class of authority, obviously with the support of their independent panels? Would it still be open to them to move in that direction, getting a sort of bulk purchase by agreement rather than it being imposed externally? It would be helpful to have some assurance on that.

Lord Wallace of Saltaire: My Lords, I am happy to give that assurance. That is entirely acceptable and to be expected within the Bill. Often small authorities in particular will find it convenient and useful to combine how they approach this matter. However, as the noble Lord has just said, this is by voluntary co-operation rather than by imposition from the centre.

I have to reprimand the noble Lord, Lord Tope, for making exactly the first point that I was going to make, thus cutting down on what I have to say.

Lord Tope: I have never achieved that before.

Lord Beecham: I have not achieved it yet.

Lord Wallace of Saltaire: The Government understand and support the intentions behind the amendment—to ensure that there is transparency over the appointment of the auditor—but they are not convinced that this is the sort of thing that needs to be in the Bill. The Bill already includes a requirement for the notice to include the advice of the auditor panel, which is required to advise on the selection and appointment of the auditor. This might cover issues such as the length of the appointment and the process for appointment. Under the Bill, auditor panels must have regard to guidance issued by the Secretary of State on their functions. We expect that such statutory guidance, or wider guidance on best practice, might cover the sorts of issues that should be included in any advice from the panel.

With those reassurances, I hope that the noble Lord will be willing to withdraw the amendment.

Lord McKenzie of Luton: I am grateful to the Minister. I certainly do not intend to press the amendment. I say to the noble Lord, Lord Tope, that I did not honestly expect the Minister to rush to accept the wording; it was a mechanism to open up a debate, particularly about the process and there being transparency in the extent to which other firms are invited in—in a beauty parade or whatever the mechanism is. That may be some measure of the determination of the local authority, if it has one, to broaden and open up the market. However, I entirely accept that that will be the expectation and that it will be set down in some of the guidance that will flow from this Bill. Accordingly, I beg leave to withdraw the amendment.

Amendment 14ZE withdrawn.

Amendment 14ZF not moved.

Clause 8 agreed.

Clause 9 : Requirement to have auditor panel

Amendment 14ZG

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

14ZG*: Clause 9, page 7, line 7, leave out subsection (1) and insert—

"(1) Each relevant authority shall have an audit committee to exercise the functions conferred on audit committees by or under this Act."

Lord McKenzie of Luton: My Lords, this group of amendments would in essence delete the requirement to have an auditor panel and require that each relevant authority had an audit committee. The audit committee would undertake the role envisaged for the audit panel under the Bill. Other amendments in the group are consequential, substituting "audit committee" for "audit panel", although I acknowledge that more of these would be necessary in practice. Our following amendment, Amendment 14BB, would require that any audit committee must have a majority of independent members and be chaired by an independent member.

The role of audit committees in the public and private sectors is well understood. It would be good to hear from the noble Lord, Lord Palmer of Childs Hill, who has particular experience in chairing his local audit committee. In the private sector, the audit committee has become one of the main pillars of corporate governance. Its aim is enhancing confidence in the integrity of processes and procedures relating to internal control and corporate reporting, and it has a key role in providing oversight of the work of the external auditor.

Equally, in the public sector, audit committees are an essential element of good governance. They help to raise the profile of internal control, risk management and financial reporting, as well as providing a forum for the discussion of issues raised by internal and external auditors. They can enhance public trust and confidence in the financial governance of an organisation.

The CIPFA guidance is that audit committees should be chaired independently of executive and scrutiny functions. CIPFA has issued non-statutory guidance that draws on best practice, including that issued by the FRC. That practice makes clear that audit committees should consider the effectiveness of the auditor's risk-management arrangements, the control environment, and associated anti-fraud and anti-corruption arrangements. They should seek assurances that action is being taken on risk-related issues identified by auditors and inspectors. They should be satisfied that the authority's assurance statements properly reflect the risk environment and any actions required to improve it. They should approve internal audit strategy and plan, and monitor performance. They should review summary internal audit reports and receive the annual report of the head of internal audit. They should consider the reports of external audit and inspection agencies. They should ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted. They should also review the financial statements, external auditor's opinion and reports to members, and monitor management action in response to the issues raised by external audit.

We will discuss the matter of audit committees for health bodies in our debate on a subsequent amendment, but the Government's intent, in Paragraph 32 of the Explanatory Note to the Bill, seems to be that the existing audit committees of health service bodies, which already satisfy the independence requirements, will be the auditor panels for a health service body; so we are half way there. Audit committees in local government are not currently mandatory, although most authorities have one, or an equivalent.

This would seem an ideal opportunity to rationalise matters by requiring all local authorities, certainly principal ones, to have independent audit committees and to subsume the proposed narrower role of audit panels within this. Although the Bill allows for an audit committee to act as a local audit panel, the position could end up with an authority that has an auditor panel and an audit committee, just an auditor panel, or an audit committee that is properly constituted. This is a recipe for overlap and confusion. Has the

time not come when we should require principal bodies at least to have a proper audit committee independently organised, following CIPFA guidance? I beg to move.

4.30 pm

Baroness Eaton: It is not often that I agree with much of what the noble Lord, Lord McKenzie, says in this context, but I fully agree with much of what he has said about the role of the audit committee. Having chaired the audit committee of a large metropolitan authority myself, I see great value in it. The proposal for an audit panel in addition is really a sledgehammer to crack a nut. It adds again to the bureaucracy.

I have slight concerns about the requirement for a majority of independent members. I see fully the value in the noble Lord's suggestion of an independent chairman, but it is extremely difficult in many authorities to find suitably knowledgeable and qualified people to take these roles. I know that under the old standards regime, finding suitable people to chair those bodies was quite difficult. In some cases, they had the desire to take over the world and gradually grew, like Topsy, the role of that body. If we could have independent chairmen, that would satisfy what is perceived as the body's independence. I certainly do not see the need for an additional body in the audit panel to decide who should audit the authority. There are many checks and balances already within local authorities on probity issues, as I said earlier, so this is an unnecessarily bureaucratic step. The audit committee could happily perform that role.

Lord Tope: My Lords, the noble Lord, Lord McKenzie, has raised a very important and useful issue. We will discuss in relation to a later amendment the actual composition of a committee or panel and the number of independent members on it. I would guess that most principal authorities have an audit committee. I do not know, but it had not occurred to me that they would not until now. In many cases, as in my own authority and as in the case of my noble friend Lord Palmer of Child's Hill, that committee is chaired by a member of the opposition. That is very much not the same as an independent chairman. Nevertheless, it is a good practice that is followed by many authorities. In my case, it is a Liberal Democrat authority, while in my noble friend Lord Palmer's case it is a Conservative-controlled authority. It is therefore a useful extension to have a panel or committee chaired by an independent member.

There is room now for further discussion and consideration about whether we really need to have completely separate and independent auditor panels, as proposed in the Bill, or whether there is some way of meeting that through the existing audit committees and amending that practice. Rather than reinventing something that in most cases is working quite well in practice, I would rather see us adapting it. It can certainly be adapted without too much difficulty to meet the Government's requirements through the Bill, which I think we all broadly support. We are all trying to achieve the same ends, so having poked a little fun at the noble Lord, Lord McKenzie, for the previous amendment, I thank him sincerely for raising a very important issue with this series of amendments.

Lord Beecham: My Lords, I endorse what the noble Lord, Lord Tope, has just said about the principle, which my noble friend also referred to, of combining these two roles. It does not seem at all necessary to have panels on the one hand and a committee on the other. As the noble Lord has reminded us, most authorities have established audit committees. I ought to declare an interest again as a member of Newcastle City Council and as an elected member serving on the audit committee, which is independently chaired and has a majority. It works very well and it seems to make absolute sense that that body should also have oversight of these appointments.

Perhaps I may refer to the noble Baroness's observations. Although technically the noble Lord, Lord Tope, is right that it is not for this amendment, as the remarks have just been made I shall endeavour to rebut the thrust of the argument. This is really a matter of perception. It is important that the public are convinced that in the matter of the propriety and regularity of an authority's financial transactions, the oversight of the process—not just the appointment process, but the whole job of audit—is carried out without the conflict that might arise from, for example, a controlling group in an authority having a majority of members on a committee.

Whereas of course in many cases there will be a mix of members, in some councils the political position is that there is no opposition, or there is insufficient opposition to be represented on the committee. It is desirable that we should go that further step, to which we will no doubt address our minds shortly. The cardinal point is that the Government are right that there should be audit committees, but they should do the whole job, including the appointment process. I very much welcome my noble friend's amendment.

Baroness Eaton: My Lords, I failed to declare that I am also a member of the audit committee of my council.

The Earl of Lytton: My Lords, I have an amendment coming up, Amendment 14BBA, but had I known how the discussion on this amendment moved by the noble Lord, Lord McKenzie, would proceed, I would have asked for it to be grouped with these amendments, so it is possibly better that I make my comments now and consolidate the entire process somewhat. Otherwise, I fear that Amendment 14BB will have stolen a large part of my thunder, apart from anything else.

I queried the majority of independent members issue on Second Reading. I am mindful of what the Minister said on Monday: that the panel would not need to be large but that independence was important. I can certainly relate to the question of whether you have a committee and a panel as a term of art, with the duplication that that involves, to which I referred earlier. I think that the principle of an independent chairman is a given, but it appears to me from my much lesser knowledge of these procedures than that of other noble Lords that some councils might have few politically independent members. I do not know how many would have none at all, but there must be some. Even political independence, it seems to me, is

[The Earl of Lytton]
no guarantee of freedom from bias, if that is the point that the Bill is intended to address. The subtitle of my amendment would be, "Precisely what do we mean by independent in this context?". That ought to be explained.

Picking up on the point made by the noble Baroness, Lady Eaton, it seems to me that objectivity and competence, rather than independence, would be a better test for this purpose. I am bound to admit that I am at a loss to know which would be the more readily capable of definition and, if necessary, enforcement, so to some extent I can see it from the Government's side. I think we are all agreed that we are trying to get a true and fair picture of an authority's financial affairs. Up to a point, that works back to the basis of oversight from within the council.

Apart from asking the Minister whether she can enlighten the Committee on the question of independence, I remind your Lordships, who all know it far better than I do, of the veritable layer cake of qualifications and eligibility criteria that already applies to audit and to auditors, to which the Bill in this respect risks adding further complexity. I relate to the points made by the noble Baroness, Lady Eaton, about the independence and objectivity of auditors as professional people embedded in their culture, training and ability to retain their professional status. As a member of another profession altogether, I very much relate to that. Ultimately, it is the auditor who is doing the scrutiny, not the committee or panel. They are there simply to select—if selection be needed; we will get to that later. If the auditor is given the proper tools and the freedom to act and attacks it with the independence of mind necessary, that is the fundamental safeguard sought by the Bill.

Lord True: My Lords, I declare an interest myself, as leader of a local authority, and apologise for not being able to take part in these proceedings before. I shall make a very small point, which need not be clarified now but perhaps could be before Report.

I have a great deal of sympathy with the tenor of comments being made universally around the Committee about the risks of overlapping. I strongly follow the noble Earl's comments about the importance of the integrity and role of audit as it is practised by local authority officers at the moment. I was going to raise my query later, but I shall follow the noble Earl, because it affects independence, which is the subject of this amendment. Paragraph 2(2)(b) of Schedule 4 would not disqualify somebody from being a member if,

"the panel member has not been an officer or employee of an entity connected with the authority within that period"—

that is, for five years.

The only thing that needs to be made clear and perhaps can be made clear on Report is whether that means the authority or the individual. Let us posit a case of somebody who has been an officer of a body and has gained a great deal of lifetime experience, and has retired early, perhaps eight years ago—we do not want any age complication, so let us just say that he no longer works for that authority. After his departure, some years later, that body becomes a connected authority, whereas he has had no connection with it for some time. His experience might be useful, and one does not want to exclude potential individuals by idle wording. I take it that the Bill means that somebody who has been working for, or connected with, the authority in the past five years should be excluded. However, the way in which it is written could mean that if you have worked at any time for a body that becomes connected in the previous five years, you would be excluded. I think that the second category might be considered, as somebody could be useful in pursuing this role.

Lord Wallace of Saltaire: My Lords, the definition of independence is set out in Schedule 4, which says that a person is independent if they are not a member or officer of the authority and have not been within the past five years, or a "relative or close friend" of such a person. Questions of objectivity and competence, particularly competence, are, apart from qualifications in accountancy, a little more subjective. Professional competence is defined by qualifications rather than by other things.

The intention here is to allow flexibility rather than to be too prescriptive. I am told that 80% of local authorities already have audit committees; 31% have at least one independent member and 15% have more than two independent members. If panels can be constituted from members of the audit committee, that is fine, provided that they are independently chaired and have an independent majority. There could be two independent members of the local audit committee, plus one other, to make the specific appointment for external audit. I assume we all accept that there is a difference between the continuing internal audit process and the appointment of external auditors. We are trying not to be too prescriptive on this, but that is the distinction that we are drawing.

There are concerns that audit committees will get in a muddle about having audit panels alongside them, but that is not at all necessary, particularly in larger authorities. We are not convinced that we need to make audit committees a statutory requirement in local government, although, of course, practice is such that the overwhelming majority of large and small local authorities have audit committees. Local authority audit committees may wish to set up a small auditor panel, which may be connected with the audit committee, provided that it has an independent chair and an independent majority. There can be important links between the role of a panel and the audit committee, but their specific roles are distinct.

We do not think that there is a wider case for imposing statutory majority independent audit committees on local government for internal audit, for some of the reasons mentioned, but for a panel that appoints the external auditors that case should stand. Under the accounts and audit regulations, local authorities are already required to ensure that a committee, or a meeting of the whole body, reviews arrangements for the internal control and effectiveness of internal audit, approves the annual governance statement and considers and approves the statement of accounts. That is what the audit committees in most local authorities already do, usually led by back-bench councillors and, as noble Lords have said, very often by opposition councillors. However, the Government are not prescriptive

about the precise structure that local bodies use to meet these requirements. Based on these existing functions, guidance from the Chartered Institute of Public Finance and Accountancy suggests that members of audit committees should be independent of the executive but need not be fully independent of the council.

4.45 pm

The Bill therefore includes the flexibility for bodies to retain their existing councillor-led audit committees by setting up a separate independent panel. Where an authority wishes its audit committee to advise on auditor appointment and independence, it is right that that committee has a majority of independent members. A general requirement for majority independent audit committees, without any flexibility, would be more prescriptive and possibly even bureaucratic. It would require local authorities to significantly restructure their existing audit committees, even though they might be functioning well with respect to their current, non-appointment-related roles. In the light of these reassurances and the flexibility that the Bill continues to provide to local bodies, I hope that the noble Lord will be willing to withdraw his amendment.

Perhaps at the same time it might be appropriate if I reply to the noble Earl, Lord Lytton, on his amendment, which would remove the requirement for a relevant authority's auditor panel to consist of a majority of independent members. The amendment would mean that a panel would need to have only an independent chair. We understand that the amendment might be related to concerns that we avoid any undue burdens on local bodies. There might also be concerns that some authorities would struggle to find enough skilled and fully independent members to form a majority. Given the noble Earl's interests in the smaller bodies sector, I understand that he might have particular concerns about ensuring that requirements are proportionate for smaller bodies that choose not to take part in central procurement arrangements.

As we discussed earlier this week, protecting the independence of the auditor is critical to ensuring the quality and integrity of audit. The pre-legislative scrutiny committee endorsed the need for a properly independent panel to oversee auditor appointment. In the companies sector, guidance from the Financial Reporting Council recommends that audit committees consist of independent non-executives. It is right that panels advising on auditor appointment should be majority independent.

The Bill meets these aims while minimising additional bureaucracy and burdens for local bodies. There is no requirement for panels to be large. If, for example, a panel consisted of three members, which is the recommended minimum size of audit committees in Treasury guidance, only two independents would be needed to form a majority. The Bill also allows bodies to share panels to further minimise any burden.

On the possible concerns about smaller authorities, I agree with the general principle that arrangements need to be proportionate. In most cases, I expect that such bodies will participate in central procurement arrangements, so they will not need to have a panel. Where a smaller authority decides not to participate in such arrangements and makes its own appointment, it is right that a majority panel should oversee auditor independence. As I have said, the Bill therefore provides flexibility to allow authorities to minimise any burden. A smaller body might, for example, choose to share an auditor panel with a larger neighbouring authority where they would otherwise struggle to find independent members. With those reassurances, I hope that we have satisfied the noble Earl's concerns and that he will not press his amendment.

Lord True: My Lords, I do not wish to detain the Committee. I just hope to have a response in writing before Report. My point about paragraph 2(2)(b) to Schedule 4 was simply whether it meant that,

"the panel member has not been an officer or employee",

within the past five years,

"of an entity connected with the authority within",

the past five years, rather than, as it reads,

"the panel member has not been an officer or employee of an entity connected with the authority within",

the past five years: namely, that he could never have worked for that authority at any time in his life. That is the point that I was hoping to clarify, but it can be clarified in writing.

Baroness Eaton: Perhaps I may raise one small issue about the independent members of an audit panel. I do not see, unless I have missed it, how the process is expected to take place, and I have some concerns about the clarity of the job description and expectations. In some local authorities, particularly in the appointment of people such as coroners, these have not always been as transparent as they should be. It would be helpful if we knew what process is expected for authorities to achieve the genuine independence and quality suitable for the needs of the panel.

Lord Beecham: Perhaps I may add some more questions. I am sorry that they come so late. While paragraph 2 of Schedule 4 deals with a number of issues, it helpfully defines what is meant by a "relative". Although seven categories of relative are referred to at page 40 of the Bill, there is no definition of the words "close friend", which appear in paragraph 2(2)(c). Is it possible to define what is meant by "close friend"? If it is not, I suggest that the words should be taken out of the Bill, because this could lead to a ridiculous situation.

What is the rationale for dealing with health service bodies in a different way under paragraph 3 of Schedule 4? It seems to be a parallel process, and I wonder why it is regarded as separate. Why is the process not the same for the two bodies? In particular—I should know, but I do not—what are the current audit arrangements in health service bodies? We know what they are in councils—they either do or do not have an audit committee—but I do not know whether, at the moment, health bodies have audit committees as such. If they have, just as many of those who argued for the panel concept to be incorporated in the audit committee would argue for the same in health. At least my noble friend and I think that these two bodies are one more than is necessary, and if that is true for local government it is also true for health bodies. I am slightly puzzled by the potential parallel structure here.

Lord Wallace of Saltaire: My Lords, we will move on to the question of health bodies in our discussion of further amendments, and I hope that the noble Lord will allow us to return to the issue when we deal with them.

In answer to the noble Lord, Lord True, the Bill would not prevent someone who had worked for the local authority but had finished working for the local authority more than five years ago acting as an independent member of the panel. That is certainly my reading, and I state that as the Government's clear understanding of the position.

On the question of a close friend—I appreciate that the noble Lord, Lord Beecham, is querying this—I am told that the phrase is already in the Localism Act. It is, to some extent, a matter of perception, but we all understand, from having dealt with local authorities over a long period, that this is one of the areas where one needs to make sure that panels look independent and are assured to be independent. Where someone seems like a close friend, it is clear that we will give guidance that that sort of person ought not to be appointed to a panel in that area.

There is more on the definitions in the letter of intent that was circulated on Monday, which I hope noble Lords have seen, and there will be more in the guidance provided to local bodies. I hope that provides sufficient reassurance for the amendment to be withdrawn.

Lord Tope: My Lords, I am slightly confused, because the group of amendments with which we are dealing is about the relationship between audit committees and auditor panels. The noble Lord, Lord McKenzie, as the mover of the amendments, will comment on that in a moment. However, I am quite sure that we will return to this issue, if only to seek clarification about the distinction and whether the two bodies should be, or have to be, separate. My noble friend Lord Wallace seemed almost to be saying that the auditor panel could in effect be a subcommittee of the audit committee. I do not think that that was quite what he meant, but maybe it was. We still need to clarify that role.

My confusion started when my noble friend went on to reply to Amendment 14BBA, which is not only in the name of the noble Earl, Lord Lytton, but in mine. That amendment has not been moved yet, so I am not quite sure whether we are dealing with it. If we are, and for the sake of preventing us from dealing with it later on—if and when it ever gets moved—perhaps I might say that the noble Earl is vastly more expert than me on the case of small bodies, such as parish councils and the like. However, the amendment comes from the Local Government Association, which represents primarily the larger authorities that do have these concerns. Personally, I have no great problem with majority independent members, but the LGA is concerned about it on a number of grounds.

First, the LGA quite rightly makes the point about the professional integrity of auditors, which the noble Baroness, Lady Eaton, has already made, as has the noble Lord, Lord True, and others, and which I think we all accept. They are already fully regulated, quite rightly and properly, and therefore the perception of independence is, in a sense, already covered to a considerable extent by the regulation.

Secondly, there is the rather more important, practical problem of whether in some areas it will be possible to find a significant number of truly independent people. That does not mean somebody elected to the council as being independent of a political party; it means somebody who is truly independent of the council in a way that is defined in the schedule. In some areas, it may not be possible to find sufficient people of relevant experience. That does not mean that they have a professional qualification necessarily, but that they have relevant experience and are also able and willing to put in the necessary time to serve on this. That may be less of a concern in some London boroughs that many of us know. However, I can well see that in more rural areas or smaller district councils, it may well be quite a significant difficulty. That is part of the concern that the LGA was raising and which we need to include in this debate, whichever amendment we are debating at this moment.

Lord Palmer of Childs Hill: Since we are not sure which amendment it is, perhaps the Committee will forgive me if I say just a word, having come in late on this section. I hope it will. I want to pick up on what the noble Lord, Lord Beecham, said about close friends. I feel that whatever legislation these Houses of Parliament pass should not be capable of ridicule. That must surely be paramount in people's minds. Can one imagine the situation in which people vehemently deny that they are a close friend: "I am not a close friend, let me on it."? It is quite nonsense. The idea of having to justify not being a close friend is capable of being ridiculed.

We are not putting these words into the Bill; we are trying to say that the relationship of someone in this position should not be such that they could influence the person on the panel. Imagine a court trying to decide whether this person was a close friend when they were denying it. Mr Saatchi and his wife might have problems saying whether they were close friends, given that he put his hands around her throat—he has been cautioned, so I think I can say that. It really is a worry. As I say, I understand what the Bill is trying to do and it is absolutely right to do so. However, to pick up on what the noble Lord, Lord Beecham, has said, the words are unfortunate.

Lord McKenzie of Luton: My Lords, I thank all noble Lords who have contributed to what was a wide-ranging debate in the event. I also thank the Minister for his reply, but I am bound to say that I do not feel reassured by it. There are two sorts of issues flowing through this debate. One is whether, as the amendment proposes, the audit committee could not take unto itself the role of the auditor panel. Then there is the separate but obviously related issue of composition, whether it is of the audit committee or the auditor panel, and whether that should be independent as defined, quite apart from the definition.

The noble Lord, Lord Wallace, asserted that 80% of local authorities have audit committees. I accept that. I know that it is not currently mandatory, but it is certainly encouraged and there has been a substantial development of them. Their role is not limited to internal audit, controls and processes. That is part of

their role, but the CIPFA guidance makes clear that part of their role is reviewing the financial statements, the external auditor's opinion, and reports to members, so they should already have an engagement with the external auditors and be able to take a view on how they should proceed.

5 pm

If that is right and if the audit committee's role is wider than that perceived for the audit panel, why not have the audit committee able to undertake that role? Why confuse the matter with a separate body? If, along the way, that makes it a statutory requirement to have an audit committee, what on earth is wrong with that? That is good governance. It is mandatory, I think, in the private sector but not currently in the local government sector. We have a chance to rationalise something here for good governance and remove the possibility of confusion about which the noble Baroness, Lady Eaton—and pretty much every noble Lord who has spoken—was concerned by having the two bodies.

The amendment argues for one body to be the audit committee, which can encompass its existing role under the CIPFA guidance and the role required of the auditor panel. It seems to me to be entirely logical and straightforward.

When we are talking about independence in this context, we are talking about the independence of the members from the local authority involved. That is the independence judgment to be made. We will come to broader issues of independence. We have to question whether the definition of independence in that context is right, but that is another matter. It is argued that it would be difficult to get enough members. I am unsure about that. Were the noble Lord, Lord Shipley, in his place, I think he would strongly assert that it is not a problem. It would be good to have more evidence on that.

In a sense, the question of whether there should be a majority of independent members—I am with my noble friend Lord Beecham on that—is a separate matter. If there is agreement that there should be an independent chair and just one body, which should be the audit committee, we are well along the way to getting something that could change the Bill to make it more fit for purpose. The prospect of having those two bodies running at the same time seems horrendous. The overlaps and bureaucracy involved in that just do not seem to me to be worth while. There is a very easy solution for the Government, which is to have audit committees across the piece, certainly for all principal local authorities, as most do at the moment.

We will return to this issue as we move towards Report. I urge the Government to reflect. I think there is a chance of improving the Bill that in no way diminishes what the Government seek to do by their proposition of auditor panels. For the time being, I beg leave to withdraw the amendment.

Amendment 14ZG withdrawn.

Amendments 14A to 14BA not moved.

Clause 9 agreed.

Schedule 4 : Further provisions about auditor panels

Amendment 14BB

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

14BB*: Schedule 4, page 40, line 6, leave out sub-paragraph (1) and insert—

"(1) A relevant authority, other than a health service body, shall determine the membership of its audit committee, provided the committee—

(a) consist of a majority of independent members (or wholly of independent members), and

(b) must be chaired by an independent member;

subject to sub-paragraphs (1A) and (1B).

(1A) An individual shall be ineligible to act as a member of an audit committee if that individual has any disqualifying interest.

(1B) The Secretary of State may by regulation determine interests that would disqualify an individual under sub-paragraph (1A)."

Lord McKenzie of Luton: My Lords, the purpose of this amendment is to introduce arrangements to prevent individuals with a disqualifying interest from sitting on an audit committee. In this context, the term "audit committee" is being used but, if we reverted to the context in the Bill, it would be the "auditor panel". We have just discussed the fact that there is a requirement for the auditor panel, or auditor committee, to be independently chaired and, as we have also discussed, for there to be a majority of independent members.

However, as the Bill is currently drafted, whether somebody is independent for the purpose of being able to serve is determined broadly by whether they have been a member, officer or employee of the authority, a connected entity or, indeed, a close friend, whatever that may mean. These relationships which preclude someone from serving on the committee or panel do not appear to encompass a person with a significant business relationship with the relevant authority. This might be someone who is a major supplier to the authority—a significant landlord, for example—or a major client of one of the audit firms being considered for appointment.

We have not attempted here to define these disqualifying attributes exhaustively because it seems to me that that is a job for parliamentary counsel. However, another issue is raised about the obligation, if any, on audit panel or audit committee members, whether or not they are members of the authority, to declare any interest which, if prejudicial, would require them to withdraw from any meeting if they were a member of the authority. Obviously that could upset the balance of dependent and/or independent members. It may be that this is all closed off through other regulations but perhaps the Minister will put it on the record.

In summary, the question is whether a business relationship between an individual and a local authority could be deemed to make them not independent of the authority and how that is encompassed within the Bill? Also, what guides the activities of such members when they serve on one of these bodies and might have a conflict of interest arising from something that is on the agenda of the meeting? I beg to move.

The Deputy Chairman of Committees (Lord Haskel): I have to inform your Lordships that if Amendment 14BB is agreed I cannot call Amendment 14BBA on the supplementary list because of pre-emption.

Lord Wallace of Saltaire: My Lords, we are, in a sense, continuing the previous debate. Before I directly address the amendment in terms of defining "independent", I shall speak with another hat on. As noble Lords will know, I speak for the Cabinet Office on issues of civil society and I am struck by the fact that the largest single part of the population that is becoming more active in all civil society activities is the fit retired. There is a very large and growing element there and it is precisely the area from which local bodies are likely to find the independent members that they are looking for. Looking around this room, I note that many of us would fit into that category but, unfortunately, we are not retired. Therefore we have less time than we would otherwise like to have. The noble Lord, Lord Tope, is particularly fit, although I like to think that I am fitter than he is.

We are happy to look into the question of how one defines "close friend" and of course we will have discussions on a range of these issues between Committee and Report. However, I reiterate that a third of audit committees already have independent members and 15% have two independent members. We see the independent panels which will appoint external auditors as not having the heavy weight of work that audit committees have but as fulfilling a rather more distinctive function.

The proposal in the amendment for mandatory audit committees is addressed more directly in other amendments but, as I understand it, this specific amendment is intended to ensure that, as well as being independent of the authority, members of an auditor panel or audit committee do not have wider conflicts of interest that might compromise their independence. I agree that potential conflicts of interest should of course be taken into account in appointing members of auditor panels. However, the Bill already includes a duty for relevant authorities to have regard to guidance issued by the Secretary of State in relation to their independent auditor panels.

We intend that such guidance will cover exactly these sorts of issues, such as how auditor panels will operate and who should sit on them. We intend to work closely with the sector and interested parties on developing such guidance and identifying what wider interests should be considered in appointing members of a panel. I hope these reassurances are sufficient for the noble Lord to withdraw his amendment, or perhaps to ask for further discussion between the Committee and Report stages.

Lord True: My Lords, I should apologise to the Committee. It was probably my fault that we got confused. I was following my noble friend Lord Lytton and my eyes went to page 40, and we therefore drifted on to the next group.

Perhaps I may ask a brief question. The noble Lord, Lord Beecham, raised the question of a "close friend"—it is good to know that the noble Lord has many close friends—and he is right to be concerned about the definition. Where is the question of political friendship dealt with in this? While it is good practice in local authorities, including my own, to have an opposition chairman—we are conscious of the political issue—is the situation of independents having close political associations but not close personal ones dealt with, in this or other legislation, in a way which would enable the work of panels not to be distorted by political considerations? In some authorities which are perhaps not as well governed as others, those kinds of considerations can be just as important as personal friendships.

Lord Wallace of Saltaire: My Lords, we are willing to look at that as well and I will write to the noble Lord. After all, we are talking about panels that may consist of two independents and one member of the audit committee. We are not talking about a vast number of people to be found outside. However, my understanding is that "independent" will exclude close political friendship. My experience of close political friendship also tends to mean close personal friendship, but we could discuss that in the bar or on another occasion.

Lord Palmer of Childs Hill: My Lords, perhaps I can come back on that because I am probably the only person in your Lordships' House who is a chairman of an audit committee. The present situation in many audit committees, of which mine is one, where the chairman is a member of an opposition party, which I am, gives an incredible independence. You are not part of the ruling party and when we were in power we did the same the other way round.

As the noble Lord mentioned, we already have two independent members, which is very good. However, the trouble is that if you appoint an independent chairman or chairwoman of the committee, that person could well have a political affiliation. Therefore, when the controlling party in that local authority was looking for an independent chair of that committee or panel, not unnaturally it would look to people whom they know or know of. The current situation where the person is of an opposition party, where that is relevant, seems to get over that point because that person is not a close political friend. I just wanted to pick up that point from my personal experience as something to think about that when we are considering this point.

Lord Tope: My Lords, I think that we are trying to achieve the same thing here and therefore further discussion will be helpful. I pick up on the Minister's example of an auditor panel that has two independent members, in the terms defined thus far, and a member from the audit commission. Whether they are friends by any definition, they could easily be members of the same political party. In a slightly different context, we said earlier that all of us are concerned that that should not happen in terms of elected members, with a majority party having a majority on the committee or sometimes even all the places on the committee. If we are talking about a small auditor panel, with the three members suggested, it is possible—this is not in the realms of fantasy in some areas of the country—that

all three could be members of a political party. That does not necessarily imply a conspiracy or corruption; that is merely how it is in that area.

Thanks to the noble Lord, Lord True, we have moved to an area to which we may have to give greater thought if we are to achieve the objectives we all share.

5.15 pm

Lord Wallace of Saltaire: My Lords, I am very happy to look at this again between Committee and Report and make sure that the definition is as clear as it can be.

Lord McKenzie of Luton: My Lords, I am grateful to the Minister for that response and for the undertaking to look at this again. The points that have been made around the Committee today emphasise that there is less clarity than there should be on how this is all meant to operate and some of the nuances that could flow from just a strict reading of the legislation as it is.

I understand the point about making a judgment about whether someone was independent from an authority because of a business relationship. As the Minister said, you would seek to deal with that through guidance and it would be an issue as to whether they should be appointed to serve on the committee or the panel. In a sense, we are differentiating between someone who is not independent in that category and someone who is a relative, where they are not precluded from being appointed to the panel or committee. However, there cannot be too many of them or the requirement for a majority to be independent would break down. I am not quite sure of the logic in that. However, rather than stretch the debate this afternoon, I ask the Minister to look at that as part of the broader discussion. Maybe we could have a meeting of all noble Lords who have contributed before we get to Report because it would be difficult to repeat this discussion at Report without some interim deliberations. Having said that, I beg leave to withdraw the amendment.

Amendment 14BB withdrawn.

Amendment 14BBA

Tabled by ***The Earl of Lytton***

14BBA*: Schedule 4, page 40, line 8, leave out paragraph (a)

The Earl of Lytton: My Lords, I am going to be incredibly brief and thank the Minister for his reply in the previous debate, as well as for his comments on the bit that I did not actually ask about, which were very informative. Secondly, I apologise to the noble Lord, Lord Tope, for lifting this amendment from where it was and sticking it three groups further forward. Thirdly, I apologise to the Committee for my confusion on the definition of independence. I see that the jury is out on that. On that basis, I do not propose to move the amendment.

Amendment 14BBA not moved.

Amendment 14BC

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

14BC*: Schedule 4, page 41, line 5, after "may" insert ", after consultation with representatives of health service bodies,"

Lord McKenzie of Luton: My Lords, this amendment touches on something that my noble friend began to address in an earlier debate. It addresses paragraph 3 of Schedule 4, and the making of regulations about a health service bodies auditor panel. These regulations would enable the Secretary of State to determine whether any of the members of the health service bodies auditor panel must be independent and, if so, what proportion must be independent, as well as the definition of independent.

A health service body means a clinical commissioning group and special trustees for a hospital. These powers are subject to the negative procedure. The amendment would require there to be consultation with representatives of health service bodies before regulations are produced. This seems to be a significant paragraph to be dealt with by the negative procedure, particularly given the prescriptive nature of the constitution of auditor panels for other relevant authorities.

The Explanatory Note to the Bill, to which I referred earlier, states:

> "The intention is that these panels will be the existing audit committees of health service bodies which will meet the independence requirements of best practice for central government audit committees".

I took the opportunity to raise this in advance with the Bill team, and I had a helpful reply, which I have not had a chance to get my mind fully around yet. Perhaps the Minister might take the opportunity to put something on the record. If I understand the position, it is accepted that the audit committees of health service bodies, as currently constituted, which they are required to have under legislation, will serve as the auditor panels. In a sense, we have achieved for health service bodies what we have been seeking to achieve for local authorities. Therefore, it should not be too great a step to complete the journey. I should be grateful if the Minister would put something on the record generally about why there is this differentiation between health service bodies and local authorities. I beg to move.

Baroness Hanham: My Lords, the direct answer to the noble Lord is that there are different arrangements in the various bits of legislation. As he has said, the clinical commissioning groups have governance arrangements that say that their audit committees can carry out this duty. That is how it has been set up in the health service. The composition of the clinical commissioning groups and local authorities' arrangements are different. I want to make clear that where local authorities have audit committees with independent members on them, it is possible for them to appoint the panel from the audit committee as long as they use the independent members. The arrangements are not and do not have to be totally different from those available as regards the health service.

[Baroness Hanham]

I have pages of response to a question that the noble Lord has not asked. Is he reasonably happy that I have addressed the amendment? If not, I will give him the reams of pages that I have in response.

Lord McKenzie of Luton: Will the noble Baroness remind me of the question which I have not asked?

Baroness Hanham: I am tempted but I will not rise to that. If the noble Lord does not know what question he has not asked, I am not about to tell him what he might have asked.

Lord McKenzie of Luton: I shall ponder that response but I think that I would hang on to the basic point. It seems to me that the regulations that will flow from this provision will be, as has been said, a creation of the audit committees as the auditor panels. There will be only one body for health service bodies, which, in a sense, is the clarification that I was seeking as to what would flow from the broad powers set out in that paragraph. Obviously, there is a broader issue to which we will return about why that cannot be replicated for local authorities.

I am struggling to remember the question that I should have asked. Perhaps in the interim, I should beg leave to withdraw the amendment.

Amendment 14BC withdrawn.

Schedule 4 agreed.

Clause 10: Functions of auditor panel

Amendment 14BD not moved.

Amendment 14BE

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

14BE*: Clause 10, page 7, line 14, leave out "must" and insert "may"

Lord McKenzie of Luton: My Lords, I shall speak also to the other amendments in this group. The amendment would remove the requirement on the auditor panel to advise on the maintenance of an independent relationship with the local auditor. Indeed, it makes it discretionary. When I prepared for this debate, I could not for the life of me immediately recall why we tabled it. Obviously, the circumstances where a relevant authority ends up with an auditor panel and an audit committee, as we have discussed, would give rise to overlap and confusion, and possibly conflicting advice.

However, on reflection, we tabled it as a probe to establish a definition of "an independent relationship". The Bill defines who is independent in establishing eligibility to serve on an audit panel and/or committee, but this definition does not appear to help in defining the parameters of an independent relationship between the relevant authority and its auditor. Is it proposed that guidance will be available, or is it expected that audit panels or audit committees will work that out for themselves? This issue is of particular relevance to the provision of other services by audit firms and how this is to be managed.

Amendment 14BJ would make a minor wording adjustment to advice related to liability limitation agreements. By referring to proposals for an authority to enter into such an agreement, it implies not that the proposal must have originated from the relevant authority but that it is more likely to have come from the audit firm.

Amendment 14BK would remove subsection (7), which seems superfluous. If subsection (6) requires the panel to advise on proposals for liability limitation agreements, why must there be the extra stricture for it to respond to requests for advice? It is not clear to me. I beg to move.

Baroness Hanham: My Lords, perhaps I may first deal with the description of "independent" which, I understand, will be a matter of consultation. There will be consultation on what "independent" means in health bodies and how it should be defined. We all need to be clear about what "independent" means, a point raised by the noble Lord, Lord Palmer, and others. This is in relation to health bodies, not local government bodies, but that consultation will be carried out. I hope that that is helpful.

On the main question about the auditor panel's duty to advise on a proposal for an audit authority to enter into a liability limitation agreement, Amendment 14BJ would require that the panel should advise where there is a proposal for the authority to enter into such an agreement, rather than a proposal by the authority to do so. Amendment 14BK would remove the requirement that a panel must give advice on such a proposal if the authority asks for it. Amendment 14BE would require that an auditor panel "may" advise on auditor independence whereas the Bill currently states that a panel "must" advise on it.

The intention behind the amendments, to remind the noble Lord, relates to separate amendments that we had proposed to allow for a central body to appoint auditors on behalf of any relevant authority which had opted in to this structure. Where such arrangements applied, it would not be necessary for—I am sorry, something seems to have gone seriously wrong with my notes.

I will reply on the basis of the independent relationship but I am afraid that I am going to have to ask the noble Lord to come back on Report on this so that can I fulfil his right to a proper reply.

As to advising on the maintenance of the independent relationship, it is important that the panel maintains an on-going oversight of the auditor's relationship with the relevant local body. As in the company sector, this might include, for example, an annual assessment of the independence and objectivity of the auditor and setting policies for the provision of non-audit services.

The noble Lord asked about limited liability agreements. I ask him to raise the issue again. I shall certainly write to give him an answer. I apologise.

5.30 pm

Lord McKenzie of Luton: I am grateful to the Minister for that response and am happy to follow up on those points. They were quite narrow points concerning the wording; they were not substantive points of principle. I am happy to send the noble Baroness an e-mail or drop her a line. I am sure that we can deal with that before we get to Report.

In relation to the definition of an "independent relationship" with a local auditor, I obviously accept the importance of the maintenance of such a relationship—I think that we would broadly understand what that means—but, as I said, I could not find a definition of it anywhere in the Bill. I think that the noble Baroness said that, certainly in relation to health bodies, that issue was going to be the subject of consultation, and presumably that would give some guidance on the definitions that would apply for the purposes of local authorities. If there is anything further that on reflection the noble Baroness wishes to follow up on, perhaps she can write to me. Accordingly, I beg leave to withdraw the amendment.

Amendment 14BE withdrawn.

Amendments 14BF to 14BR not moved.

Clause 10 agreed.

Clause 11 : Relationship with relevant authority

Amendment 14BS

Moved by ***Lord True***

14BS*: Clause 11, page 8, line 23, leave out "other than a health service body"

Lord True: My Lords, I need not speak at length on this because I made a relatively lengthy intervention at Second Reading setting out the reasons for my concern about the need to be assured of proper public accountability for the actions of NHS bodies. I think that public accountability is important, and there is material in the Bill about what should be done with reports, but it is essential that a body cannot just receive a report and sit on it.

Reference has been made to a case in which a primary care trust lost £28 million. At Second Reading, I described to noble Lords what happened. A supervisory body called in an auditor but the audit report was not ultimately published. Instead, a commentary was published with various recommendations—some good and some bad—but it was written on the basis that, as no one had really lost any money, we could all proceed and other bodies would make up the money. It was entirely unsatisfactory.

Since speaking at Second Reading, I have been contacted by the leader of another local authority, who thought that I was rather mild in what I said and felt that I should probably have named some names in connection with this affair. I have reflected on that. I think that my decision not to do that at Second Reading was right, and I maintain that position. Since Second Reading, I am very grateful to have had the opportunity to meet with my noble friend Lady Hanham and with officials from the Department of Health. My noble friend had very kindly drawn the attention of her colleagues in the Department of Health to this issue.

We have a fast-evolving world in health and local government, and these worlds are now encouraged to overlap. Indeed, my own authority, along with another local authority, is currently negotiating with clinical commissioning groups and, we hope, a foundation trust to set up an integrated commissioning organisation. That is the way in which the Government wish everyone to go within eight years. Alongside that, other elements of the health service will continue.

I believe that we now have the very odd situation where there is one strand of law which is semi-engaged in this legislation and which derives from the National Health Service Act 2006, as amended in 2012, and a whole strand of local authority-related legislation concerning audit and accountability. As the two empires come together, so should those two worlds come together. In my judgment, they need not necessarily be identical, but the noble Lord, Lord McKenzie, made a fair point when he said that the clinical commissioning group is being treated very differently in this Act from the way in which local authorities are treated. I do not make a case for identity but I do for accountability.

Local authorities have a public responsibility to ensure that what is done in their area is done for the good of their local populations, and that it is done effectively and openly, as we would expect it to be done ourselves. I made the point at Second Reading that there were various issues relating not only to audit but to scrutiny and its important role. I would like to think that while it may not be possible to achieve it in the short term, as I understand it from my discussions so far with my noble friend, in the time that this Bill is before Parliament—perhaps even when it is in the other place—it might be possible to think with a little more foresight about how we are going to adjust to this world and ensure full accountability. It is simply not acceptable that a body existing in an area and other parts of the health service, as happened in the case that I reported to noble Lords at Second Reading, should simply refuse to respond to questions from a public authority about the use of resources, certainly considering the scale involved.

We have to find a method somehow, whether or not it is through guidance—and there is existing guidance—although I would perhaps prefer it to be stronger than that. This Bill should provide us with opportunities, as local accountability is not just about local authorities and neither is this legislation. I am encouraged by what my noble friend has said so far. We may be able to find some improved structures, which may be simplified in some respects, as other noble Lords have said in Committee. They should be structures which ensure proper behaviour in the first place, effective independent audit and effective and open accountability. All those strands need to be addressed. If an internal audit document is published with a commentary and then scrutiny is refused, it is not a satisfactory outcome where there is evidence of large-scale ineptitude. That

[LORD TRUE]
is a kind way of putting it regarding the use of £28 million of public resources. I am sure that there are other examples.

I am not going to repeat all the circumstances of the case but I urge the Committee to see those great public entities of local government and the National Health Service as two great elements of the state, providing vital services to our country and overlapping in many ways. We should therefore find the opportunity to construct an architecture that meets those three strands: effective and proper governance; effective and ultimately independent audit, although internal audit is vital in all those things and I do not denigrate it; and the strand of openness and, ultimately, scrutiny. This is really a probing amendment although my noble friend encouraged me to think that were this to be laid, she might perhaps be able to give some encouragement to me and to the Committee that the Government would be prepared to look at these matters in the months ahead. I beg to move.

Lord McKenzie of Luton: I would simply urge the Minister to give some encouragement to the noble Lord, Lord True, who has raised a very important point, as he did at earlier stages in our deliberations. I hope that the Minister can help him at least a bit.

Baroness Hanham: My Lords, I thank my noble friend for having introduced this amendment because it opens up the relationship that exists between local authorities and health authorities, particularly in relation to what is required of scrutiny. As my noble friend has said, the primary care trusts and the clinical commissioning groups have now come into being, while the local authorities still have a health scrutiny role since that changeover. If I may, I will refer to the duties in the health scrutiny regulations as I go through what I have got to say.

Failure to comply with a duty under the health regulations will place the relevant body in breach of its statutory duty and render it at risk of a legal challenge. The regulations provide that the local authority can require attendance of a member or employee of a relevant health service provider or commissioner to answer such questions as appear to the authority to be necessary for discharging its health scrutiny functions. It is the duty of that member or employee to comply. The regulations also require a health service commissioner or provider to provide a local authority with such information about the planning, provision and operation of health services in the area of the authority as the authority reasonably requires in order to discharge its health scrutiny functions. To focus particularly on attendance, if a local authority was to require the attendance of members of a clinical commissioning group, it could do so under the health scrutiny regulations.

On employers' actions, we would expect employers to take the appropriate steps to ensure that the relevant member or employee complied with the local authority's requirements. It would be highly unlikely that an NHS body, as a public authority, would refuse to take action to ensure that its members or employees complied with a request from a local authority. I think that these provisions are part and parcel of the health service legislation which recently passed through Parliament. The emphasis put on this since the noble Lord's problem arose may have changed.

Any refusal would not be in line with the duty of co-operation that applies as between the National Health Service and local authorities. Section 82 of the National Health Service Act 2006 imposes a duty of co-operation between National Health Service bodies and local authorities and requires them, in exercising their respective functions, to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

As regards the attendance of particular individuals, identification of the appropriate member or employee to attend may depend on the type of scrutiny review being undertaken and its aims. To take a theoretical case, where the local authority has required attendance of a particular individual—let us say the accountable officer of a clinical commissioning group—and it is not practical for that individual to attend, or if that individual is not the most suitable person to attend, we would expect the clinical commissioning group to suggest another relevant individual. In such situations, both the local authority and the commissioning group or provider, as the case may be, will be expected to co-operate with each other to agree on a suitable person for attendance and, in doing so, to act reasonably.

Therefore, in the interpretation of the health scrutiny regulations and on the basis of the duty of co-operation contained in the National Health Service Act 2006, there are existing principles that guide how the National Health Service and local authorities conduct themselves in relation to the discharge of the local authority's health scrutiny function.

We share my noble friend's desire to ensure that everything works as it should in the future and, although we feel that the duties and powers already in place are correct, we believe that we can take further action to ensure that the responsibilities on NHS organisations and local authorities are clear. We shall shortly be publishing updated guidance to support the health scrutiny regulations and to emphasise these responsibilities. If my noble friend would find it helpful, I know that the Department of Health would be happy to work with him on the development of this guidance.

I appreciate that this was very much an individual case to which my noble friend brought our attention, but it flows widely across the health scrutiny role. I hope that I have reassured my noble friend that there are requirements on people to come, that the health authority can require them to come and that they are truly expected to appear. I know that that was not the situation that he described but the regulations are there. If my noble friend is willing to give his experience and help to the Department of Health, I know that it will be very willing to take it up. With that, I hope that he may feel that he has enough to enable him to withdraw the amendment.

5.45 pm

Lord True: My Lords, I am very grateful for what my noble friend has said. Certainly, I would be extremely interested in seeing this guidance in draft. I am sure

that the leaders of the other five local authorities involved might also be interested as well, and perhaps other people in the local government world. I do not know whether it might be possible to extend that offer but, as far as I am concerned, I accept the courteous proposal and am very grateful for it.

As for the individual case, my noble friend referred to the 2006 legislation. The blunt truth is that the body concerned was happy to volunteer one individual, but the unfortunate thing was that that individual was not involved at all. Those who were involved—some of whom no longer worked for the body and therefore could not be volunteered by the body—need to be accountable. Others declined to be presented. Effectively, the authority was told that it could have this individual, but those who had actually given the instructions and done things were not available.

I would have to examine very carefully the wording of the guidance and the regulations to ensure that that situation could not be replicated. What we do not want is a kind of legalese compliance—that of saying, "We sent someone along who stonewalled at the scrutiny committee, but you have to be satisfied with that, not act unreasonably and not want to actually hear from the people who were involved". That is a very important rider. It is very easy to say that the body can do something, but scrutiny must go to the individual. It is no good the Government saying, "You can talk to the Chancellor of the Exchequer", when it is actually the Minister of Defence whom you want to talk to. That is an issue that I would want to elucidate in the discussions that my noble friend has kindly offered with officials.

I am very grateful for what she said and for the earlier discussion. With a warning that I will be coming to look in those corners, I beg leave to withdraw the amendment.

Amendment 14BS withdrawn.

Clause 11 agreed.

Clause 12 : Failure to appoint local auditor

Amendment 14C not moved.

Clause 12 agreed.

Clause 13 : Failure of clinical commissioning group to appoint local auditor

Amendment 14D

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

14D*: Clause 13, page 9, line 31, leave out "25 March" and insert "31 December"

Lord McKenzie of Luton: My Lords, this was a very straightforward amendment, which probes the difference between deadlines in relation to the appointment of auditors to health bodies and local authorities. One is set at 25 March and the other, as we touched on earlier—or the noble Lord, Lord Palmer, did—at 31 December. Perhaps the Minister can just give us an explanation for that difference in approach.

Baroness Hanham: My Lords, this goes back to what we were discussing when we were talking about local authorities. If the clinical commissioning group has not appointed an auditor by December and has no reasonable expectation of employing one by the end of March, the Commissioning Board will have to notify the Secretary of State and he, NHS England or the commissioning group will have to ensure that an auditor is appointed. There is no question that the clinical commissioning group should not have an auditor in place at the beginning of the financial year.

Lord Palmer of Childs Hill: Perhaps I may ask the Minister for clarification. The Bill states:

"by the end of 25 March in the financial year preceding the financial year to which the accounts to be audited relate".

So, if the relevant year is to 31 December 2012, as I understand it, the auditor will have to be in place by 25 March 2011 because that is the financial year preceding the financial year to which the accounts to be audited relate. Is that right? I would have thought it should be in the financial year to which the accounts to be audited relate, not the preceding year. This is bringing the date incredibly far forward and I wonder whether I have misunderstood it. Perhaps my noble friend the Minister can elucidate.

Baroness Hanham: My Lords, I have misled the Committee, for which I apologise. As the noble Lord said, it is the preceding year. If the clinical commissioning group fails to appoint an auditor in the preceding year at the end of March, the Commissioning Board will have to notify the Secretary of State. This gives time for an auditor to put in place the provisions for the following year. The Secretary of State has to be notified by the commissioning board by 25 March that the clinical commissioning group has failed to appoint an auditor. The provisions are intended to ensure that a clinical commissioning group has a local auditor in place in a way that is consistent with their respective roles. I agree with the noble Lord that nine months seems a long time to get someone in place.

Lord McKenzie of Luton: I thank the Minister. I am going to have to read the record on that. The potential discrepancy that I was probing was the difference between using the 25 March and the financial year preceding it. As I understand it, if the financial year ends 31 December 2014, it would be the 25 March 2013 that would count. However, the difference is between the 25 March for the clinical commissioning groups and 31 December for the relevant authority's appointment date. Why is it 31 December in the preceding year for the relevant authority and 25 March for clinical commissioning groups? I am happy to receive a follow-up letter if that is easier. I beg leave to withdraw the amendment.

Amendment 14D withdrawn.

Clause 13 agreed.

Debate on whether Clause 14 should stand part of the Bill.

Lord McKenzie of Luton: My Lords, in seeking that Clause 14 should not stand part of the Bill, I should say that this is a probing measure to seek Government assurances about the appropriateness of facilitating the limitation of local auditor liability arrangements. The impact assessment and other documentation records that the Audit Commission currently provides an indemnity to audit firms for certain aspects of their work. This is, presumably, their statutory audit function. It also appears that it covers irrecoverable legal costs. We are told that the indemnity has been used only twice over the past five years and that auditors have faced legal action four times over a five-year period. Perhaps the Minister will let us know the amounts involved in the use of the indemnity and how much was paid.

What benefits ensue from limited liability arrangements which relieve auditors of liability in respect of negligence, default or breach of trust when conducting an audit? What are the benefits of that? The limitation of auditors' liability has been permitted under the Companies Acts since 2008, although reports suggest that there has been little take-up. I am indebted in this regard to a Mr James Herbert, who is a corporate partner in a law firm who wrote an interesting article in *Accountancy Age* back in 2009. I took the opportunity of speaking to him to see whether the view he expressed then had changed. It had not.

Part of the reason for little take-up of those arrangements is attributed to issues with the SEC prohibiting UK companies registered with them from entering into those arrangements. Under the Companies Acts, any limitation must be fair and reasonable. A separate agreement is reached for each year and each agreement must be approved by shareholders. On the face of it, there is no reason why auditors should be protected from the consequences of their negligence or default in the public or private sectors. However, one of the public policy objectives was to enhance competition in the UK audit market and to address concerns about auditor concentration. As we have discussed before, the big four have deep pockets, are better able to bear the risks and have more clout with professional indemnity insurers. There are concerns that the smaller and mid-tier firms have been least able to benefit from the agreements.

Another reason for allowing such agreements might be its impact on the price of an audit. If the risk on the audit firm is less, the cost of the audit should go down. However, it is difficult to gauge whether there will be any real downward pressure on fees in the public sector, particularly given the infrequent calls on the commission's indemnity. We can see some merit in allowing limitation of liability agreements if tightly regulated and if they can be demonstrated to help to open up the markets and put downward pressure on fees. However, we are sceptical that they will deliver that outcome. Perhaps the Minister can say when we might see a draft of the proposed regulations referred to in Clause 14 or what else might be provided in the key elements in the regulations. How do the Government propose to monitor and assess the effects of the clause?

I emphasise that in my discussions with that particular lawyer, it appeared that limitation of liability agreements have simply have not taken off, certainly not in the private sector, so one wonders about the merits of introducing them to the public sector.

We might wish to return to the matter on Report, but it seems to me that, at the very least, there may be an argument for a sunset clause on the provisions, or at least a very clear process of assessment so that one can see whether what should be the benefits—downward pressure on audit fees and an opening up of the market to smaller firms—is actually achieved. We remain sceptical.

Lord Palmer of Childs Hill: We have already mentioned that the number of accountancy firms capable of carrying out these audits is quite small—five to seven, probably. The maximum would be 13, and most of those would probably not achieve those audits. All of those in the top echelon of firms of audits are now limited liability partnerships. The days of my times in practice when we were personally liable have, for the large firms that we are considering, long departed.

I ask my noble friend: if there is a liability, where should it rest? Should it rest at the end with the Government as a short-stop? Should we say, at the end of the day, if things go sour, the Government will pick up the liability? Bearing in mind that no partner of one of those firms would be personally liable, and that they are firms of great size with considerable power, I wonder whether they should not bear that liability.

We had the example within the corporate sector of Arthur Andersen, which messed up on an audit—not a local authority audit but a public audit—and that ended with the demise of that firm. Are we trying to say that, in terms of local or public health authorities, these firms should have this protection, or are we saying that these are the professionals and they must do their audits, work correctly and cover themselves? We are not talking about anyone being responsible for fraud or errors within local authorities or the health service; we are talking about them not having carried out their work properly to an extent where they can cover themselves. I ask the Minister to reconsider whether the liability should ultimately rest with the Government, or whether it should rest with these five to seven very large limited liability concerns.

6 pm

Baroness Hanham: My Lords, perhaps I can pick up the questions as I go along. However, it would probably be helpful if I gave the justification for the clause and then we could look at the impact.

As in the companies sector, auditors appointed under the Bill will, by agreement with the audited authority, be able to limit the extent of their liability to the body in relation to negligence or breach of duty or trust. This clause gives the Secretary of State powers to place restrictions on such agreements to ensure that they are reasonable and proportionate.

The decision to allow liability limitation agreements in the companies sector was made following extensive consultation. Such agreements aim to ensure that auditors are not held liable for consequences beyond their control and responsibility. Under the joint and several

liability principle in UK law, auditors may be held liable for damages beyond that for which they are directly responsible. The Financial Reporting Council has welcomed provision for such agreements.

Clause 14 mirrors the Companies Act 2006 by providing that any such "liability limitation agreement" must comply with certain conditions. The purpose of this clause is to ensure that the agreements do not unreasonably limit the auditor's liability and are entered into transparently. Without such a provision, there would be no limits on an auditor limiting their liability and nothing to stop them removing all liability completely. As I said, it is right that auditors are held responsible for their actions in a fair way.

Subsection (2) requires that:

"A liability limitation agreement must comply with regulations made by the Secretary of State".

Such regulations may address the duration of an agreement or the amount to which it may limit the auditor's liability, or require it to contain, or not contain, certain provisions. Under subsection (5), regulations may provide that any limited liability agreement not complying with regulations is void or has effect only in so far as it complies with them. In the interests of transparency, subsection (6) allows the Secretary of State to make regulations requiring the disclosure of any such agreement. Subsection (7) excludes compliant agreements from wider provisions in the Unfair Contract Terms Act 1977, which set out similar but more general provision and conditions around limitation of liability.

With regard to the amounts of money involved, perhaps I may write to the noble Lord. I think that the amounts are very small but I will provide them to the noble Lord. As the Bill proceeds, there will be further details on the various matters that have been raised. We will, as with all new legislation, be undertaking a review of monitoring to see what the situation is.

With regard to the point raised by the noble Lord, Lord Palmer, about who should pick up the liability, the Bill includes provisions that enable auditors to recover the costs of their time in exercising their functions from the body being audited. It does not replicate the Audit Commission's indemnity scheme, which covers the costs of auditors taking or defending legal action. We believe that it is appropriate for private companies to bear the risks and costs of that. We do not believe that it would unduly deter auditors from exercising their functions. The Audit Commission has rarely indemnified its suppliers. On the noble Lord's question as to whether the Government should pick up liability, the answer would be no. With that, I urge that the clause remains part of the Bill.

Lord McKenzie of Luton: My Lords, I am grateful to the Minister for that response. I think that we understand a bit better that the regulations will broadly follow the Companies Acts requirements and what flows from that. I found her response confusing in some respects. We are talking about something that is not beyond the control of the auditors. These arrangements are predicated on a breach in respect of any negligence, default, breach of duty or breach of trust occurring in the course of the audit of accounts, so it is a failure of an audit firm which triggers them. The noble Lord, Lord Palmer, raised a very important point. If there is a breach or damages and if that is not to be visited on the auditor, or what is to be visited on them is restricted, who bears the cost of the rest? I do not think we understand that from the Minister's response.

I thought that the public policy issue about this was partly to do with making sure that another big four company did not go under. The ramifications of those four big beasts going down to three would be significant over a whole range of areas, as we learnt from the demise of Arthur Andersen because of Enron. I thought that a key point was to make it easier for smaller firms to enter the market because their risks were, in a sense, capped. There is no great evidence to suggest that that has happened in the private sector. We do not yet know whether it will happen in the public sector, but if it does not, that raises the question: why have these agreements in the first place? All they do is to protect audit firms. Why? These are sophisticated organisations. They have excellent training programmes, generally recruit very good staff and have been around the block a few times. If they mess up, should they not bear the consequences? If not, the question of the noble Lord, Lord Palmer, is absolutely right: who should? Part of the rationale may be that it would produce downward pressure on audit fees, but that is difficult to justify, particularly if the use of the commission's indemnity was pretty restricted.

We may return to that issue, perhaps in terms of a sunset clause, if these things are to continue. I hope that the same arrangements as in the private sector, where I think they have to be annual contracts, will persist in the public sector in so far as they are used at all. I hope that guidance is given to firms when faced with such a request from their auditors as to how they should respond. We have probably taken this as far as we can this afternoon, but for us it is an outstanding issue to which, one way or another, we will wish to return.

Clause 14 agreed.

Clause 15 agreed.

Clause 16: Resignation and removal of local auditor

Amendment 14E

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

14E*: Clause 16, page 12, line 5, at end insert—

"( ) the right of the local auditor to make representations to the authority's auditor panel or supervisory body"

Lord McKenzie of Luton: My Lords, Clause 16 concerns the resignation and removal of the local auditor, and the amendment refers in particular to circumstances relating to the removal of a local auditor, although on reflection it could refer equally well to circumstances in which a local auditor resigns.

The purpose is to ensure that the procedure specifically encompasses the right of a local auditor to make representations to the auditor panel or supervisory

[Lord McKenzie of Luton]
body, or the audit committee, if that is what is in place, and that might encompass a right to make representation to members. The removal or resignation of an auditor is a serious business. Under the Companies Act 2006, an extensive process is set down where somebody is removed or resigns. These include, in the first case, the right to make representations to members when removed and a statement of circumstances when resigning. It is these Companies Act processes which the Government are seeking to import into the Bill, and we support that.

Under the current regime, there is no need for regulation on the removal or resignation of local public auditors because it is the Audit Commission that appoints and removes them. However, a change in auditor could be straightforward—arising, say, from a new potential conflict of interest—or it might be indicative of a fundamental difference of view as to the accounts, where an auditor feels that they can no longer carry out the audit effectively because of concerns over the governance of the body or a fundamental breakdown in the relationship. Ensuring that there is a right for auditors to make their case at an appropriate level is therefore very important.

The Bill includes, at Clause 16, regulation-making powers which cover a range of issues. Doubtless, the Minister will say that they are broad enough to cover the thrust of this amendment. So be it, but perhaps we can hear from the Minister what the plans are in respect of resignation and removal to cover circumstances where the appointment has been made by the local body, jointly with another body, or in transition by the Audit Commission. I beg to move.

Lord True: My Lords, the noble Lord makes an extremely important point which in certain circumstances could touch on issues of public accountability, although referred to on another matter. It may well be that he could be satisfied in that Clause 16(3)(d), at the top of page 12, allows a regulation-making power in relation to,

"the role of the relevant authority's auditor panel or … supervisory body".

On this issue of a right of audience, or a right to make representations, my noble friend might well be able in discussion to consider including the point which the noble Lord has raised. It is a significant one and he is right to refer to Companies Act procedures. Perhaps it could be clarified whether it is potentially encompassed in that area, which might help some of us on the Committee.

Baroness Hanham: My Lords, Amendment 14E would add to the regulation-making powers under Clause 16(1)(b), which relate to the circumstances of an auditor being removed, as the noble Lord said, by a local public body before their term of office expires. It would enable regulations giving local auditors the right to make representations to the authority's auditor panel or to the auditors' "recognised supervisory body" in those circumstances. The noble Lord asked what would happen if it was the Audit Commission; as we have already said, that commission will have an interim body between it being abolished in 2015 and when this changes. That will be a responsible transfer, which is the main thing.

We are sympathetic to the intention of this amendment, which is to ensure proper scrutiny of the removal of an auditor. However, as the noble Lord suspected, we consider this amendment to be unnecessary. Subsection (3)(c) already provides a regulation-making power about,

"the steps that may be taken by the local auditor in connection with the local auditor's removal from that office".

As set out in our consultation paper on the draft Bill last year, we intend by regulations to enable the auditor to respond to a relevant authority's notice of intention to remove them, with that response to be considered by the relevant authority's auditor panel. So the auditor panel now has a role in overseeing that in an independent way.

The auditor panel would then be required to advise the authority on the proposal to remove the auditor. In light of the auditor's response, we intend that the authority's final decision to remove the auditor would be subject to that advice. As with appointment, we intend that where a body does not follow the audit panel's advice it would need to publish the reasons for not doing so. We also intend to require that the recognised supervisory body is notified of a removal. Therefore, we do not consider that it is necessary to include this additional wording in the Bill. We think that there are enough safeguards in it. With that explanation, I hope that the noble Lord will feel able to withdraw his amendment.

6.15 pm

Lord McKenzie of Luton: I thank the Minister for that reply. I did not assume that she would accept the wording, but I wanted to get something on the record. I am grateful to the noble Lord, Lord True, for his acknowledgment of this issue. The Minister has dealt with it wholly satisfactorily. I beg leave to withdraw.

Amendment 14E withdrawn.

Clause 16 agreed.

The Deputy Chairman of Committees: The question is that Clause 17 stand part of the Bill.

Lord McKenzie of Luton: My Lords, I think that we agreed to draw stumps at the end of Clause 16. We will get on to Clause 17 next week.

Committee adjourned at 6.16 pm.

Written Statements

Wednesday 19 June 2013

EU: Employment, Social Policy, Health and Consumer Affairs Council

Statement

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My honourable friend the Minister for Employment (Mark Hoban MP) has made the following Written Ministerial Statement.

The Employment, Social Policy, Health and Consumer Affairs Council will be held on 20 June 2013 in Luxembourg. I will represent the UK.

The Council will finalise its contribution to the European Council to take place on 27 and 28 June 2013. The European Semester 2013 discussion will focus on a number of documents linked to the European Semester. There will also be a separate discussion on Youth Employment.

Council will seek a general approach on the European Globalisation Adjustment Fund Regulation (2014-2020) and will provide an update on the Fund for European Aid for the Most Deprived Regulation.

Council also seek a general approach on the proposed Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights. There will be updates on Directives on equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation; posting of workers in the framework of the provision of services; and gender balance among non-executive directors of companies listed on stock exchanges.

Ministers will consider two sets of Council Conclusions on Social Investment for Growth and Cohesion and on Women in the Media.

Under Any Other Business the Presidency will provide updates on legislative files and other issues. There will also be information on Public Employment Services (PES) and state of play regarding preparation for the G20 Labour and Employment Ministers meeting and joint meeting with Finance Ministers. Finally, the Lithuanian delegation will outline the work programme of their forthcoming Presidency.

Food: Labelling

Statement

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My hon Friend the Parliamentary Under-Secretary of State, Department of Health (Anna Soubry) has made the following written ministerial statement.

Today we are launching the new Front of Pack Nutrition Labelling Scheme across the UK.

This will introduce more consistent nutrition labelling across the UK by providing, on the front of food and drink products, clear information on energy and those nutrients of public health concern that the majority of us should be aiming to limit in our diets.

The scheme incorporates reference intake (previously known as guideline daily amount) information together with the levels of energy and the levels of fat, saturates, sugar and salt, highlighted by red, amber or green colour-coding. The combination of this information will allow people to judge how much energy and nutrients a portion of the labelled food will contribute to their overall diet, and also enable them to compare products and make healthier choices.

Two new Public Health Responsibility Deal pledges are also being launched today in order to enable food businesses to commit themselves to adopting the new scheme and, more widely, to enable businesses, non-Government organisations and others to help promote it.

The *Guide to creating a front of pack (FoP) nutrition label for pre-packed products sold through retail outlets* has been placed in the Library. Copies are available to hon. Members from the Vote Office and to noble Lords from the Printed Paper office.

It is also available at:

https://www.gov.uk/government/publications?departments[]=department-of-health

Copies of the two new Responsibility Deal pledges have also been placed in the Library. Copies are available to hon. Members from the Vote Office and to noble Lords from the Printed Paper office.

The two pledges are also available at:

https://responsibilitydeal.dh.gov.uk/

Written Answers

Wednesday 19 June 2013

Banks: Funding for Lending

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government when they expect to see an increase in net lending by United Kingdom banks to small and medium-sized enterprises; whether they will publish a review of the impact on such lending of the Funding for Lending Scheme; and, if so, when. [HL671]

The Commercial Secretary to the Treasury (Lord Deighton): The extensions made to the Funding for Lending scheme in April 2013 focus particularly on strengthening incentives to lend towards SMEs.

As part of the monitoring of the Funding for Lending scheme, the Bank of England publishes the net lending data of individual banks on a quarterly basis. A sector-level break down is currently unavailable. However, the Bank of England will publish net lending figures, by sector, once the extension element to scheme is in place from 2014.

Banks: Shareholdings

Question

Asked by ***Lord Barnett***

To ask Her Majesty's Government what plans they have to sell publicly owned shares in (1) Lloyds TSB, and (2) the Royal Bank of Scotland; and when they expect to announce that sale. [HL784]

The Commercial Secretary to the Treasury (Lord Deighton): The Government's objective remains to sell its holdings in Lloyds Banking Group (LBG) and the Royal Bank of Scotland (RBS) when it is right to do so.

The Government's shareholdings in the banks are managed on a commercial and arm's length basis by UK Financial Investments Ltd (UKFI).

Children: Looked-after Children

Question

Asked by ***Lord Condon***

To ask Her Majesty's Government what progress has been made in reducing the number of looked-after children from London boroughs who are placed in East Kent. [HL780]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): Children should only be placed out of the local authority responsible for their care when such a placement is in the child's best interests and meets their identified needs.

The number of looked after children placed in out of area placements is published annually and figures for 31 March 2013 will be published in the autumn.

On 23 April 2013, we published the Report of the Expert Group on the quality of children's homes, which includes the recommendations of the Task and Finish Group's work on out of area placements, and announced our plans for reform.

These plans include a consultation later this month on making significant changes to regulations in respect of children placed in children's homes. We are seeking to strengthen the regulations so that any decision to place a looked after child in a distant placement outside of the local authority responsible for their care can only be made by a senior official in consultation with the authority where they intend to place the child.

Furthermore, our plans for reform include a new duty on children's homes to notify local authorities when children move in from other local authority areas and when they leave the home.

Communities: Community Tensions

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what assessment they have made of the impact of civilian deaths, including those of children, in Palestine and Muslim countries on community tensions in the United Kingdom. [HL620]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The Government regularly discusses a range of issues with diaspora communities and others with an interest in Muslim countries, including the impact of events in those countries on communities in the UK.

In terms of assessing impact on community tensions relating to events and incidents abroad, the Department for Communities and Local Government and the Home Office also funds the National Community Tension Team (NCTT), part of the Association of Chief Police Officers (ACPO). The NCTT collates and assesses local police community tension reporting, which includes tension generated by events abroad.

Crime: Perverting the Course of Justice

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government how many convictions for perverting the course of justice resulted in the imposition of (1) an immediate, and (2) a suspended, custodial sentence, in each of the last five years. [HL200]

The Minister of State, Ministry of Justice (Lord McNally): The number of offenders found guilty and sentence at all courts for attempting to pervert the

course of justice broken down by sentence outcome, in England and Wales, from 2008 to 2012, can be viewed in the table.

Offenders found guilty and sentence breakdown at all courts for attempting to pervert the course of justice [1], England and Wales, 2008 to 2012 [2] [3]

Outcome	*2008 [4]*	*2009*	*2010*	*2011*	*2012*
Found guilty	1,191	1,149	1,181	1,037	904
Sentenced[5]	1,191	1,149	1,183	1,039	904
of which:					
Immediate custody	476	470	453	475	424
Suspended sentence	449	437	446	406	352
Community sentence	222	202	228	133	110
Fine	15	13	18	6	2
Absolute discharge	1	-	-	1	1
Conditional discharge	24	21	28	10	9
Otherwise dealt with	4	6	10	8	6

"-" Nil

(1) An offence under Common Law of England and Wales – "Attempting to pervert the course of public justice - fabrication of false evidence; causing person to be wrongly convicted; interference with witness, etc".

(2) The figures given in the table relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

(3) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

(4) Excludes data for Cardiff magistrates' court for April, July and August 2008.

(5) The number of offenders sentenced can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed for sentence at the Crown Court, may be sentenced in the following year.

Source: Justice Statistics Analytical Services - Ministry of Justice.

Ref: PQ HL 200

Egypt

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government, further to the Written Answer by Lord Newby on 3 June (HL205), what is their assessment of the human rights situation of the Copts in Egypt. [HL554]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We are concerned about the human rights situation and sectarian violence in Egypt. In response to events of 7 April at the Coptic Cathedral in Cairo the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, my Hon. Friend the Member for North East Bedfordshire (Mr Burt), issued a statement, including our concerns about the safety and protection of religious buildings.

Foreign and Commonwealth Office Ministers have stated clearly throughout events in Egypt since the revolution that freedom of religious belief needs to be protected and the ability to worship in peace is a vital component of a democratic society. Mr Burt discussed this issue with contacts in the Muslim Brotherhood several times this year. I attended the Organisation of Islamic Cooperation (OIC) Summit on 6-7 February in Cairo and delivered a speech on the importance of Freedom of Religion or Belief and tackling religious intolerance. We are also in regular contact with representatives of the Coptic Church and other religious groups. I discussed the issue of freedom of religion with Pope Tawadros II when I visited Cairo. We are in regular contact with the Egyptian authorities about the protection of minorities.

Embryology

Question

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

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 3 June (WA 114) regarding the consultation on mitochondrial replacement by the Human Fertilisation and Embryology Authority (HFEA), whether the HFEA's Scientific and Clinical Advances Advisory Committee will evaluate the practicality of somatic cell nuclear transfer being used to correct mitochondrial DNA (mtDNA) mutations and rescuing the metabolic function of pluripotent cells from existing patients with inherited mtDNA diseases; if so, when the HFEA intend to consult the general public on this matter; and why this was not previously considered. [HL634]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Human Fertilisation and Embryology Authority (HFEA) has advised that its Scientific and Clinical Advances Advisory Committee considered a paper entitled "Update on alternate methods to derive embryonic stem cells and embryonic stem-like cells" at its most recent meeting on 12 June 2013, the papers for which are available on the HFEA's website at:

www.hfea.gov.uk/7878.html

The HFEA will be evaluating developments into somatic cell nuclear transfer and its use as an alternative to induced pluripotent stem cells.

The HFEA has also advised that it has no plans to consult the general public on the matter raised by the noble Lord.

EU: Budget

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government under what provisions the European Union Council of Ministers was able to decide by majority an increase of £770 million to the United Kingdom's contribution to the European Union budget for 2013; and whether, and by what means, they will seek the agreement of the House of Commons to that increase. [HL690]

The Commercial Secretary to the Treasury (Lord Deighton): Article 314 of the Treaty on the Functioning of the European Union provides for all EU Annual Budget proposals, within Multiannual Financial Framework (MFF) ceilings, to be agreed by Qualified Majority Voting. ECOFIN reached political agreement, through Qualified Majority, on an amendment of €7.3 billion to the General Budget 2013. This position will be formalised contingent on and, in parallel, with the conclusion of talks on the EU's MFF for 2014-2020. The UK opposed the amendment.

The Government fulfilled its Parliamentary obligations by seeking the views of Parliament on DAB No 2 to the General Budget 2013 through the usual Parliamentary scrutiny process (submission to Scrutiny Committees in both Houses of Explanatory Memorandum on 23 April).

Financial Policy Committee

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether there are any restrictions placed on the commercial employment in the financial sector of members of the Financial Policy Committee (FPC); and whether those members receive information via the FPC which is commercially sensitive. [HL809]

The Commercial Secretary to the Treasury (Lord Deighton): Before appointing a member of the Financial Policy Committee (FPC), the Chancellor considers whether a person has any interests, including from commercial employment, that could substantially restrict his/her ability to discharge the functions required of a member of the Committee. The commercially sensitive information seen by FPC members is also taken into consideration. The acceptability of particular appointments and interests is assessed on a case-by-case basis prior to appointment.

Fostering: Foster Parents

Question

Asked by ***Lord Condon***

To ask Her Majesty's Government, following the Staying Put: 18 Plus Family Placement Programme, whether they will consider extending the financial support given to foster parents to enable them to foster young people beyond their 18th birthday to enable a more successful transition to further education, employment or adulthood generally. [HL781]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): Local authorities should provide young people with placements that are safe and suitable and meet their individual needs. We recognise that for many young people, 'staying put' is the right option. That is why we revised the statutory guidance in April 2011 to encourage local authorities to provide this type of placement, including by providing financial support to foster carers.

My hon. Friend, the Children's Minister Edward Timpson, wrote in October 2012 to all directors of children's services asking them to prioritise 'staying put' arrangements. We have also recently issued practical guidance on tax and benefits issues for foster carers who wish for support young people in this way.

We are monitoring how many care leavers are on 'staying put' arrangements and the figures for April 2012- March 2013 will be published in the autumn. We hope to see progress made across the country.

Health: Cancer Drugs Fund

Questions

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what assessments they have undertaken of the changes in clinical involvement in decisions about the availability of cancer medicines since the introduction of the Cancer Drugs Fund. [HL862]

To ask Her Majesty's Government how they intend to continue from 2014 onward the principle of clinically-led decision-making that has been implemented through the Cancer Drugs Fund, if the current Cancer Drugs Fund arrangements are not retained. [HL863]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): NHS England has taken on responsibility for commissioning specialised services, including chemotherapy, and for the Cancer Drugs Fund.

Direct commissioning to a national specification informed by specialist clinical advice from specialised services Clinical Reference Groups should lead to improved consistency in the commissioning of, and access to, National Health Service chemotherapy services across England.

On establishing the single national Cancer Drugs Fund system, consideration was given by NHS England to how strong clinical involvement and clinical decision making would be retained. This has been achieved through the establishment of national and regional clinically-led panels.

NHS England has developed a single national list of cancer drugs that will be routinely funded through the Fund. This list is regularly reviewed by clinical experts, and clinicians can apply for the inclusion of a

drug within it. Regional clinically-led panels will continue to consider individual patient applications for those cancer drugs not on the national list.

Asked by ***Lord Turnberg***

To ask Her Majesty's Government whether NHS England has plans to create a transition mechanism to ensure that all patients whose access to medicines is currently funded through the Cancer Drugs Fund will be able to continue to access those medicines after 2014. [HL899]

Earl Howe: We are committed to ensuring that arrangements are in place to protect individual patients receiving treatment through the Cancer Drugs Fund as the planned end of the Fund approaches.

Health: Ophthalmology

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government how many cataract operations have been performed in NHS hospitals in each of the last five years. [HL733]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The following table shows the count of finished consultant episodes, with a cataracts procedure, for National Health Service and non-NHS providers between 2007-8 and 2011-12.

Where non-NHS providers are shown, this represents NHS commissioned activity undertaken by non-NHS providers.

Table: Count of finished consultant episodes[1] (FCEs) with a cataracts procedure[2], for NHS and non-NHS providers[3], 2007-08 to 2011-12

	FCEs	
Year	*NHS*	*Non-NHS*
2007-08	312,747	7,462
2008-09	327,742	11,500
2009-10	330,599	16,370
2010-11	317,315	25,830
2011-12	307,097	30,080

Source: Hospital Episode Statistics (HES), Health and Social Care Information Centre

Notes:

[1]. Finished Consultant Episode (FCE)

A finished consultant episode (FCE) is a continuous period of admitted patient care under one consultant within one healthcare provider. FCEs are counted against the year in which they end. Figures do not represent the number of different patients, as a person may have more than one episode of care within the same stay in hospital or in different stays in the same year.

[2]. Cataracts procedure

This involves a combination of diagnosis (ICD10) and procedure (OPCS) codes ICD10 codes in a primary or secondary position:

The number of episodes where this diagnosis was recorded in any of the 20 (14 from 2002-03 to 2006-07 and 7 prior to 2002-03) primary and secondary diagnosis fields in a Hospital Episode Statistics (HES) record. Each episode is only counted once, even if the diagnosis is recorded in more than one diagnosis field of the record.

H25 Senile cataract

H26 Other cataract

Q120 Congenital cataract

or in a secondary position only:

H280 Diabetic cataract

H281 Cataract in other endocrine, nutritional and metabolic diseases

H282 Cataract in other diseases classified elsewhere

OPCS codes in a primary or secondary position:

The number of episodes where the procedure (or intervention) was recorded in any of the 24 (12 from 2002-03 to 2006-07 and 4 prior to 2002-03) procedure fields in a Hospital Episode Statistics (HES) record. A record is only included once in each count, even if the procedure is recorded in more than one procedure field of the record. Note that more procedures are carried out than episodes with a main or secondary procedure. For example, patients under going a 'cataract operation' would tend to have at least two procedures — removal of the faulty lens and the fitting of a new one — counted in a single episode.

C71.- Extracapsular extraction of lens

C72.- Intracapsular extraction of lens

C73.- Incision of capsule of lens

C74.- Other extraction of lens

C75.- Prosthesis of lens

C77.- Other operations on lens

[3]. NHS/Non-NHS provider

This is determined by the provider code of the Organisation - those beginning with 8 or N are independent providers whereas others are NHS providers

[4]. Assessing growth through time (Inpatients)

HES figures are available from 1989-90 onwards. Changes to the figures over time need to be interpreted in the context of improvements in data quality and coverage (particularly in earlier years), improvements in coverage of independent sector activity (particularly from 2006-07) and changes in NHS practice. For example, changes in activity may be due to changes in the provision of care.

Healthcare: Costs

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answers by Earl Howe on 20 May (WA 24–5), whether the French documentation in relation to the £196,692,000 sought and paid in 2011 for the actual healthcare costs incurred by United Kingdom pensioners living in France is itemised and includes the individual amount incurred by each pensioner; and, if not, how they check the accuracy of the total figure; whether they will seek individual accounts in future; and what are the average pensioner healthcare costs currently charged by (1) the United Kingdom, and (2) the Republic of Ireland for pensioners living in the other's country. [HL760]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): In accordance with European Union regulations, France provides the United Kingdom with a breakdown of the total number of individual claims for UK citizens, and the cost per claim. The UK

validates each claim from France against the registration of an S1 per individual. If a registration is not held the claim is rejected. The UK does not carry out an assessment of the breakdown of each individual claim. There are no plans to change this approach.

The latest published pensioner average cost for the UK is for 2010 and is £4,054.40. The latest published pensioner average cost for Ireland is for 2005 and is €7,483.51. Ireland's average costs for 2006, 2007 and 2008 have been submitted to the European Commission for approval and are expected to be published shortly.

Housing: Lodgers

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether, in the light of the large number of spare bedrooms available, they have any plans to exempt from income tax payments from lodgers to individual householders for a limited period of time. [HL782]

The Commercial Secretary to the Treasury (Lord Deighton): The Government already supports those willing to rent out a spare bedroom in their home. Under the rent a room scheme, individuals can rent out a room in their main residence and receive up to £4,250 free of income tax.

Israel

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the government of Israel concerning its projected legislation to enable the forcible eviction of Bedouin from their lands. [HL621]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs, my honourable Friend the Member for North East Bedfordshire (Mr Burt), visited the Negev in January 2012, where he heard from vulnerable Bedouin communities in unrecognized villages facing the threat of house demolitions and forced displacement. He raised our concerns with the then responsible Minister Benny Begin in several meetings. During his visit to Israel earlier this month, the Mr Burt discussed the proposed legislation with members of the Knesset Ahmed Tibi and Hanna Sweid. Our Embassy in Tel Aviv is also in regular contact with Bedouin leaders and activists and our Ambassador in Tel Aviv has discussed the proposed legislation with relevant Ministers and parliamentarians.

Asked by ***Lord Hylton***

To ask Her Majesty's Government what representations they are making to the government of Israel about the alleged destruction by settlers of land and olive trees belonging to the villages of Madama and Burin near Nablus. [HL715]

Baroness Warsi: We have serious concerns at the increase in violence by extremist Israeli settlers against ordinary Palestinians and Palestinian property. Our Embassy in Tel Aviv has repeatedly raised our concerns about incidents of settler violence and intimidation, including the importance of bringing those responsible to justice and that the Israel security forces provide appropriate protection to the Palestinian civilian population, with, among others, the Israeli Attorney General, Defence Minister and the Israeli Prime Minister's office. In the last month 13 suspects of violence and so-called 'price tag attacks' (where settlers vandalise Palestinian property and mark it with graffiti) have been arrested by Israeli authorities and the Israeli government is taking steps to classify price tag attacks and settler violence as terrorism.

We note the particular sensitivities around olive trees given their status as a national symbol and the sole source of income for many Palestinian farmers. Moreover, any actions taken by Israel in the Occupied Palestinian Territories must be in compliance with Israel's obligations under international humanitarian law.

Legal Aid

Questions

Asked by ***Baroness Doocey***

To ask Her Majesty's Government what assessment they have made of the impact of the proposed residence test for civil legal aid claimants on potential child victims of trafficking. [HL284]

The Minister of State, Ministry of Justice (Lord McNally): As part of our consultation "*Transforming Legal aid: delivering a more credible and efficient system*" we have published https://consult.justice.gov.uk/digital-an impact assessment which is available at communications/ transforming-legal-aid.

The residence test proposal would mean that applicants for civil legal aid would need to be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time they apply and for at least a 12 months continuous period in the past. We have proposed exceptions for asylum seekers and members of Her Majesty's UK Armed Forces and their immediate families.

Where victims of trafficking were claiming asylum they would still be eligible for legal aid.

We are currently analysing responses and will ensure that we have fully assessed any risks or impacts our proposals may have before making a decision.

Asked by ***Lord Beecham***

To ask Her Majesty's Government whether they will be monitoring the impact on the working of the courts and tribunals as a result of the increasing numbers of unrepresented parties due to cuts in legal aid; and whether they will publish the results of any such monitoring. [HL562]

Lord McNally: The Ministry of Justice has established a Litigants in Programme Board which, as part of its responsibilities, monitors the impact of the legal aid changes in relation to litigants in person. The Board

includes members from Her Majesty's Courts and Tribunals Service (HMCTS) and the Judicial Office and will be considering the impact of the changes on the effective running of the courts and tribunals.

In addition Ministers and Officials in the MoJ meet regularly with HMCTS and members of the Judiciary and will receive regular feedback on the impact of the changes.

NHS: Clinical Commissioning Groups

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government how many patient representatives have been recruited directly to Clinical Commissioning Group Health Boards. [HL858]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): A clinical commissioning group (CCG) must have at least two lay members on its governing body. One of these lay members will act as champion of patient and public involvement. Appointments to CCGs' committees and sub-committees are set out in each CCG's constitution. As these are local decisions, we are unable to confirm how many patient representatives have been appointed directly to each CCG's governing body, committees or sub-committees.

The NHS Act 2006, as amended by the Health and Social Care Act 2012, also places strong duties on CCGs to ensure the involvement of patients and the public in the commissioning of services.

NHS: Websites

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government who (1) operates, (2) authors, and (3) is responsible for the content of the NHS website Map of Medicine. [HL857]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Map of Medicine Ltd is a wholly-owned subsidiary of Hearst Corporation. The Map of Medicine has been defined as a nationally mandated service by NHS England in its publication, Securing Excellence in GP IT Services.

The Map of Medicine national pathway is made available in a number of ways including the NHS Choices website.

Map of Medicine operates a quality assured editorial methodology for the creation and updating of its national pathways and referral templates. The operation of the NHS Choices website and the pages relating to Map of Medicine will be managed by The Health and Social Care Information Centre.

For national pathways, Map of Medicine is responsible for the content. If a local clinical commissioning group adapts the clinical flow of a pathway they assume responsibility, and any national accreditation of the content is removed. Each pathway shows clearly when the content has been locally developed.

Pensions

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether they support European Union proposals to limit bonuses and compensation paid to the investment managers of pension funds. [HL675]

The Commercial Secretary to the Treasury (Lord Deighton): The European Commission has not proposed to limit bonuses paid to the investment managers of pension funds. The European Parliament's Economic and Monetary Affairs Committee has voted for a limit, but it has yet to be confirmed in a plenary vote of the European Parliament.

The Government would not support such a measure. The Government supports the Commission's goal of better aligning investor and fund manager interests and to tackle conflicts of interests without hampering the efficient operation of Undertakings for Collective Investment in Transferable Securities funds. More intrusive and prescriptive requirements would run counter to this aim.

Schools: Nutrition

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government whether they have plans to encourage more schools to participate in the British Nutrition Foundation's Healthy Eating Week programme. [HL683]

The Parliamentary Under-Secretary of State for Schools (Lord Nash): The Department for Education does not promote the participation of schools in specific programmes of this nature. It is for individual schools to determine which programmes they wish to participate in, including those such as the British Nutrition Foundation's Healthy Eating Week.

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.

Schools: Secondary Schools

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government, further to the agreement of a city deal with Liverpool City Council, what progress has been made towards (1) the establishment of a Secondary School Investment Plan, and (2) construction of 12 new secondary schools in the City. [HL709]

The Commercial Secretary to the Treasury (Lord Deighton): The City Deal between Liverpool City and the Government includes a commitment to a school investment plan that will see 12 new build secondary schools. This will help to create a fit for purpose

schools estate and education system in Liverpool that will support its children and young people to exceed expectations and prepare them for the world of work.

The Government's programme of City Deals seeks to foster local growth as well as empower our great cities through decentralisation. The school building programme is being led and delivered by Liverpool City Council and Liverpool's school investment plan. The programme to deliver these twelve new school buildings between September 2013 and January 2016 is on track, with the first school, Notre Dame, scheduled to be formally opened later this year.

Syria

Questions

Asked by ***Lord Dobbs***

To ask Her Majesty's Government what they consider to be the key United Kingdom national interests in Syria. [HL711]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): It is in the UK's national interest to promote an international system which maintains peace and stability, upholds international law and guarantees the basic rights of all human beings. The continuation of the crisis in Syria, which is now in its third year and according to the UN has already claimed over 93,000 lives, poses a direct challenge to that system. The conflict increasingly threatens the peace and stability of neighbouring countries and the wider region.

The way that the Assad regime has responded to the legitimate demands of the Syrian people has also undoubtedly contributed to radicalisation in Syria. The conflict is therefore creating opportunities for extremist groups, with Syria now being the number one destination for Jihadists anywhere in the world, including approximately 70 to 100 individuals connected to the UK. These individuals may return to the UK ideologically hardened and with experience of weapons and explosives. Therefore the longer the conflict continues, the greater this danger will become.

Asked by ***Lord Dobbs***

To ask Her Majesty's Government how many United Kingdom nationals they estimate are currently in Syria. [HL712]

Baroness Warsi: 450 British nationals were registered as being in Syria in February 2012. We have not been able to update this figure since our Embassy in Damascus closed last year. Foreign and Commonwealth Office travel advice recommends against all travel to Syria and advises any British nationals in Syria to leave now by any practical means.

Taxation

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what they consider to be the difference between a legal duty and a moral responsibility to pay taxes authorised by the House of Commons. [HL753]

The Commercial Secretary to the Treasury (Lord Deighton): The Government is committed to creating a clear and fair tax system for individuals and companies and it expects individuals to meet their obligations under this. The basic principles and objectives of the UK tax system and the intention of Parliament should be clear to everyone. Where the Government finds taxpayers purposefully misinterpreting tax law to gain an advantage that Parliament never intended, it takes strong action and has a clear legislative record in doing so.

Turkey

Questions

Asked by ***Lord Patten***

To ask Her Majesty's Government what is their assessment of the government of Turkey's response to the recent demonstrations in Istanbul and other cities. [HL745]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): Our ambassador in Ankara issued a statement on 1 June, expressing concern at the violence, urging the authorities to exercise restraint, and encouraging them to respect the right to peaceful protest and freedom of assembly which are fundamental human rights in any democratic society.

Turkey is a democracy with multi-party elections whose government has been democratically elected. We welcome statements from the Turkish government apologising for the disproportionate use of force and recognising that some of the concerns raised by the protestors are legitimate. We hope the issues raised by the protestors are resolved through an inclusive process of constructive engagement and dialogue.

Asked by ***Lord Patten***

To ask Her Majesty's Government when they last met President Gul of Turkey; and what is their assessment of the outcome of that meeting. [HL746]

Baroness Warsi: The Deputy Prime Minister, my right honourable Friend the Member for Sheffield Hallam (Mr Clegg), last met President Gul on a visit to Turkey in October 2012.

They held a positive discussion on a number of bilateral issues including commercial engagement, Syria and Turkey's commitment to EU accession and human rights reform. Mr Clegg also confirmed UK support to help manage refugee pressures on the Syria border and announced an extensive joint UK-Turkey training package aimed at training 360 lawyers on Chapters 23 and 24 of the EU acquis, which cover fundamental rights, and justice and home affairs.

Asked by ***Lord Patten***

To ask Her Majesty's Government when they next intend to meet President Gul of Turkey; and what topics will be on the agenda. [HL747]

Baroness Warsi: The Government maintains a close relationship with the Turkish leadership, including Prime Minister Erdogan, President Gul and other Turkish Ministers. We hope to meet President Gill during the next senior ministerial visit to Turkey, if not before.

We would expect the meeting to cover a broad range of issues including commercial engagement and foreign policy co-operation, EU Accession and human rights.

Asked by ***Lord Patten***

To ask Her Majesty's Government when was the last occasion that they met the Turkish Foreign Minister, Ahmet Davutoglu; and what is their assessment of the outcome of that meeting. [HL748]

Baroness Warsi: The Secretary of State for Foreign and Commonwealth Affairs, my right honourable Friend the Member for Richmond (Yorks) (Mr Hague), last met Ahmet Davutoglu on 7 May during the London Somalia conference. On that occasion, their discussion focused on Syria. They speak frequently, reflecting close UK/Turkey collaboration on a broad range of issues, including Somalia, Afghanistan, the Middle East Peace Process, Iran, Cyprus and Turkey's EU Accession process.

The Foreign Secretary discussed the recent demonstrations with Ahmet Davutoglu on 11 June as part of a broader discussion. He said he hoped the protests would be resolved peacefully. They also discussed recent developments in Syria.

Asked by ***Lord Patten***

To ask Her Majesty's Government what is their assessment of the number of journalists currently imprisoned in Turkey. [HL749]

Baroness Warsi: The Government shares the concerns expressed by the Council of Europe, the Organisation for Security and Co-Operation in Europe and other partners about matters pertaining to freedom of expression in Turkey, including the arrest of journalists.

The Turkish government has however itself recognised the need for further reform and has adopted a series of reform packages introducing new regional courts, reducing blockages in the judicial system and amending anti terror laws. We welcome these concrete steps that will help to improve the outlook for freedom of expression in Turkey and will continue to support their reform agenda. We and our EU partners will also continue to raise freedom of expression and other freedoms as part of our wider dialogue on human rights issues.

Asked by ***Lord Patten***

To ask Her Majesty's Government whether they have conducted a risk assessment of the safety of United Kingdom tourists in Turkey in the light of the current demonstrations in that country. [HL750]

Baroness Warsi: The Government frequently updates its travel advice for Turkey. In view of the current situation, we are monitoring our advice on a daily basis. Our travel advice to British nationals is based on regular assessments of the risk to safety for British visitors and residents in Turkey. We are currently advising British nationals to avoid demonstrations. Staff across our Consular network in Turkey continue to monitor the situation closely.

We base our travel advice on information from a number of sources including local knowledge from our embassies abroad and in some cases information gathered by the intelligence services.

Young Offenders

Question

Asked by ***Baroness Doocey***

To ask Her Majesty's Government how many foreign children and young people up to the age of 21 were accommodated in the youth secure estate over the past three years; and what nationalities those children and young people principally represented.

[HL511]

The Minister of State, Ministry of Justice (Lord McNally): The youth secure estate comprises Secure Children's Homes, Secure Training Centres and under 18 Young Offender Institutions. The youth secure estate accommodates young offenders aged 10-17 plus some 18 year olds who are near to the end of their sentence. Therefore there will be no foreign nationals aged 19-21 held within the youth secure estate. The Youth Justice Board collects information on the nationality of offenders accommodated within the youth secure estate for the last 12 months, but the data is not held centrally. In order to provide the information it would be necessary to manually examine approximately 3,500 records which could only be done at disproportionate cost.

Young Offenders: Searches

Question

Asked by ***Baroness Stern***

To ask Her Majesty's Government how many times (1) unauthorised drugs, (2) knives, and (3) guns, were found on children subject to a full search in a secure establishment in each of the last five years. [HL599]

The Minister of State, Ministry of Justice (Lord McNally): Tables 1-3 below show the number of times (1) unauthorised drugs, (2) knives and (3) guns were found on young people subject to a full search in a secure establishment in 2011/12 and 2012/13. Data collection on full searches began in 2011/12; therefore it is not possible to provide figures prior to this year. For public YOIs, the data are only available from May 2011 to September 2012.

Table 1: Number of times Unauthorised Drugs were found on young people subject to a full search in a secure establishment

	Unauthorised Drugs			
Establishment type	2011/12		2012/13	
	No.	Proportion of full searches carried out	No.	Proportion of full searches carried out
Secure Children's Home	1	0.17%	0	0.00%
Secure Training Centre	0	0.00%	0	0.00%
Private YOI	1	0.01%	0	0.00%
Public YOI*	11	0.06%	2	0.02%
TOTAL	13	0.0%	2	0.0%

Source: Monthly returns from the youth secure estate to the Youth Justice Board for England & Wales (YJB).

Table 2: Number of times knives were found on young people subject to a full search in a secure establishment

	Knives			
Establishment type	2011/12		2012/13	
	No.	Proportion of full searches carried out	No.	Proportion of full searches carried out
Secure Children's Home	0	0.00%	0	0.00%
Secure Training Centre	0	0.00%	0	0.00%
Private YOI	0	0.00%	3	0.07%
Public YOI*	0	0.00%	0	0.00%
TOTAL	0	0.0%	3	0.0%

Source: Monthly returns from the youth secure estate to the Youth Justice Board for England & Wales (YJB).

Table 3: Number of times guns were found on young people subject to a full search in a secure establishment

	Guns			
Establishment type	2011/12		2012/13	
	No.	Proportion of full searches carried out	No.	Proportion of full searches carried out
Secure Children's Home	0	0.00%	0	0.00%

Table 3: Number of times guns were found on young people subject to a full search in a secure establishment

	Guns			
Establishment type	2011/12		2012/13	
	No.	Proportion of full searches carried out	No.	Proportion of full searches carried out
Secure Training Centre	0	0.00%	0	0.00%
Private YOI	0	0.00%	0	0.00%
Public YOI*	0	0.00%	0	0.00%
TOTAL	0	0.0%	0	0.0%

Source: Monthly returns from the youth secure estate to the Youth Justice Board for England & Wales (YJB).

Notes:

* For public YOIs, this data is only available from May 2011 to September 2012, from which point onwards only the number of full searches conducted is available.

The YJB does not collect data on a specific category for unauthorised drugs, so for the purposes of this parliamentary question, the categories of 'Drugs' and 'Unauthorised Medication' have been grouped together.

Young Offenders: Transport

Question

Asked by ***Baroness Stern***

To ask Her Majesty's Government what is their policy regarding (1) the latest time at which children should arrive at secure establishments, and (2) the maximum period in which children can be held in cellular vehicles when being transported to secure establishments; and what sanctions are applied to escort providers who breach those policies. [HL598]

The Minister of State, Ministry of Justice (Lord McNally): (1) Young people should be transported to secure establishments as soon as possible following a court hearing. Escort providers are expected to take all reasonable steps to expedite the journeys of young people in order to reduce the likelihood of late arrivals at establishments. Some under-18 Young Offenders Institutions do have locally agreed latest reception times but no young people will be refused entry if they arrive after that specified time. Secure Training Centres and Secure Children's Homes do not have latest reception times. (2) The length of time young people are held in cellular vehicles should be kept to the absolute minimum possible. There is no maximum period specified in which young people can be held in cellular vehicles. (3) There are financial implications for providers if conditions of contracts are breached which includes missing latest reception times.

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