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# House of Lords

*Wednesday, 24 May 2006.*

The House met at three of the clock (*Prayers having been read earlier at the Judicial Sitting by the Lord Bishop of Leicester*): the LORD CHANCELLOR on the Woolsack.

## South Asia Earthquake

**Lord Ahmed** asked Her Majesty's Government:

What financial and logistical support they have provided to the Government of Pakistan in response to the recent earthquake in Kashmir and north Pakistan.

**The Lord President of the Council (Baroness Amos):** My Lords, the United Kingdom has pledged £129 million for relief and reconstruction activities in Pakistan following the earthquake. The UK Government provided direct support to the relief effort led by the Government of Pakistan and channelled funds through UN agencies and NGOs. We flew out 86 search and rescue experts and funded over 70 relief flights, three Chinook helicopters and a Royal Engineers squadron. We have already provided £5 million for health, education and infrastructure reconstruction, and a further £65 million is committed.

**Lord Ahmed:** My Lords, I thank the Minister for her reply. On behalf of the British Kashmiri and Pakistani community, I take the opportunity to thank the British fire and rescue teams. I also thank the British Army and pilots for delivering the tents, blankets and medicines that were needed; the Department for International Development, the DEC and the British public for their support; and the British doctors. Will Her Majesty's Government consider giving the £70 million committed through the Earthquake Reconstruction and Rehabilitation Authority as a budgetary grant, rather than assistance over the long term?

**Baroness Amos:** My Lords, I thank my noble friend for his support for our efforts and those of other organisations. We will try to ensure that the funds that we have committed are spent in accordance with the Government of Pakistan's priorities. We are looking at whether those funds can be channelled through budgetary support—that would be the most effective way of ensuring that they are spent in accordance with the Government of Pakistan's priorities—but we have not yet made that decision.

**Baroness Rawlings:** My Lords, following the warnings from Human Rights Watch of the possibility of a return to massive sectarian violence in Gujarat and Kashmir, what representations have Her Majesty's Government made to the Indian Government, the state governments of Gujarat, Jammu and Kashmir and the Pakistani Government to take all steps possible to protect religious minorities in the two regions, especially in light of the past failures of these authorities to identify and prosecute those who plan and execute such attacks?

**Baroness Amos:** My Lords, the issues of human rights violations and abuses and the importance of protecting religious minorities are raised constantly as part of our ongoing dialogue with the Indian and Pakistani Governments.

**Lord Avebury:** My Lords—

**Lord Judd:** My Lords—

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** My Lords, it is the Liberal Democrats' turn.

**Lord Avebury:** My Lords, I acknowledge the generosity of the British Government, but will the Minister consider reallocating the £70 million that, she has said, is due to be given to ERRA directly to the agencies, in view of the widespread allegations of incompetence and bureaucracy in that organisation, particularly the 30,000 dud cheques that it passed off on the people who became homeless and were expecting £250 each to reconstruct their dwellings? Will she also consider that, in any reconstruction programme, the money should be channelled directly to villagers so they can decide, in collaboration with aid agencies, what sort of dwellings they should construct, rather than having to stick to ERRA's designs?

**Baroness Amos:** My Lords, we provided technical support to ERRA to help it to draw up a master plan for the overall reconstruction programme. Its responsibility is to co-ordinate and monitor at the federal, provincial and district levels. If reconstruction efforts are to mean anything in Pakistan, the Government of Pakistan have to be at the centre of those efforts. We will continue to work with the Government of Pakistan to ensure that the issues of corruption, which the noble Lord has raised, are tackled at a very early stage. The noble Lord may be aware that the Government of Pakistan have their own anti-corruption programme, which has delivered some success in the short term, and we want to see greater success in the longer term.

**The Lord Bishop of Leicester:** My Lords, is the Minister aware of the meeting between the most reverend Primate the Archbishop of Canterbury and the Prime Minister of Pakistan in March this year to discuss the contribution made by Christian minorities in that country to earthquake relief? Furthermore, is she aware of the very positive effects of UK governmental aid and charitable support for earthquake relief on interfaith relations in the region and in this country?

**Baroness Amos:** My Lords, I am aware of the discussions and of the enormous effort that UK

[BARONESS AMOS]
Churches have put into working in an interfaith capacity. That work is very important in building greater trust on the ground, and we shall continue to support it.

**Lord Judd:** My Lords, is my noble friend aware that many front-line aid workers are saying that credit should be given to the Pakistan army for the part that it played in the relief? Is she also aware that they are emphasising that the fact that we came through without disease on the scale that had been feared was partly due to the mild winter and that a mild winter cannot be expected this year as well? If that is the case, we have only two months in which to tackle convincingly the reconstruction programme by providing housing that is both earthquake-proof and weather-proof.

**Baroness Amos:** My Lords, I am aware that a number of organisations have been complementary about the efforts that the Pakistan military has made, particularly in handling some of the logistical difficulties that arose. The reconstruction efforts are likely to take some three to four years. The urgent thing to tackle between now and the onset of winter is the situation of the 50,000 people who still have not been able to go back to their village because of the nature of the disaster. We will need to ensure that semi-permanent camps are produced between now and the onset of winter so that they are sheltered.

**Lord Swinfen:** My Lords, are British helicopters still working in the earthquake area? Without them it will be virtually impossible to get medical relief to those who need it.

**Baroness Amos:** My Lords, I believe that helicopters were previously used in early May, but if I am wrong about that I will write to the noble Lord.

## Nano Materials

3.08 pm

**Baroness Miller of Chilthorne Domer** asked Her Majesty's Government:

> Whether, after their current consultation, they plan to develop a regulatory framework that covers specifically the production or application of nano materials.

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** My Lords, my department is currently gathering evidence to support decisions on the best ways to control any risks from the production and use of nano materials. This involves government-led research, supported by a proposed voluntary scheme. The evidence will be reviewed in two years, and, if sufficient information is available, we will make proposals for appropriate control.

**Baroness Miller of Chilthorne Domer:** My Lords, I thank the Minister for his reply. Does he accept that this is a fast moving area of technology with very exciting developments and that the UK has not led the field, as recognised in the report from the other place entitled *Too little too late*? We are losing out on some of the benefits of this exciting technology. Given the timescale involved, is the Minister confident that some of the hazards that this country will face—the products are already being imported and used here—will not pose a threat to human health or the environment? We just do not know whether they will. The resources devoted are too little, and the time taken by his department is too long. The market will be flooded with these products before we know much about them.

**Lord Rooker:** My Lords, it is not as if it has happened overnight. The voluntary scheme that I referred to should start in late summer this year, and the public consultation that was initiated in March will finish on 23 July. The process was initiated by my noble friend Lord Sainsbury in June 2003 when the Royal Society and the Royal Academy of Engineering were asked to investigate the implications. I realise that this is important technology and that products are now in use. I am told that probably dozens of laboratories and private companies are exploring and using these very tiny materials around the country.

**Baroness Byford:** My Lords, does the European Parliament have a regulatory framework on this question?

**Lord Rooker:** My Lords, I do not think that it does. We are doing the work as a voluntary process because it will be quicker. That is why we are going down this route rather than slapping on regulations. First of all, we need to assess the risks to humans and to the environment of these incredibly small materials. Some are in use now, and their potential is enormous. But we cannot make regulations at either European or UK level without the evidence on which to make them.

**Earl Attlee:** My Lords, where are the risks that have been identified so far thought to lie?

**Lord Rooker:** My Lords, I am told that a nanometre is one-billionth of a metre, which is about one-80,000th of a human hair. So we are talking about quite small bits. One of the points about such tiny materials is that the surface area is massive compared with the surface of large solid materials, and that brings in other factors.

In respect of hazards, the key issue is a lack of hazard exposure or risk characterisation information, and that is why we are taking a precautionary approach. We also need to balance mass emissions of coincidentally produced nano particles from various combustion sources. It is not as though the materials are new; they have been around for thousands of years in the form of viruses, in some respects the particulates from diesel fumes, volcanic ash and so on. Nano

materials are not new, but now they are being manufactured for use as products. That is what makes this different.

**Lord Skelmersdale:** My Lords, does the noble Lord accept that homoeopathy is a nano product and that a lot of people for a long time, if not thousands of years, have believed that it does them good?

**Lord Rooker:** My Lords, I think that that is a trick question. The original Question covered the production or application of nano materials. I am not getting involved in the row about different forms of medical practice.

**Earl Ferrers:** My Lords, does the noble Lord realise that some of us do not have the slightest idea what he is talking about? Some of us can understand something that may be an 80th or an 80,000th of a part of the size of a human hair, but what is a nano material?

**Lord Rooker:** My Lords, it is basically a reconfiguration of atoms and molecules in a way that has not existed before but is engineered by man. I can give the noble Earl some examples. He may have read about the phenomenon of self-cleaning windows. There are such things, and that is nanotechnology. The windows are coated with a material that is born out of nanotechnology. Work has also been done on sunscreens, and nanotechnology could have a massive benefit in the remediation of contaminated solar water supplies. It has a lot of pluses, but we also have to measure the risk of possible minuses; that is the important point. Self-cleaning windows are a good example.

## Armed Forces: Joint Strike Fighter

3.14 pm

**Lord Hoyle** asked Her Majesty's Government:

What representations they have made to the Government of the United States on their decision to deny the United Kingdom access to stealth technology used in the F-35 and to cancel plans for a second engine for the fighter to be built by Rolls-Royce and General Electric.

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Drayson):** My Lords, my right honourable friend the then Secretary of State for Defence and I have both explained to our US opposite numbers our requirement for appropriate assurances on information exchange prior to signing the production, support and follow-on development MoU for the Joint Strike Fighter. We remain optimistic that we will receive the information that we require. We have also explained our views on the advantages of pursuing an alternative engine for the aircraft.

**Lord Hoyle:** My Lords, perhaps I may say to my noble friend how disappointed I am at the Americans' attitude. Here we are, the most loyal and staunchest ally, yet when we go to them and ask for technology and benefits, they do not reciprocate and offer them to us. Why is that? Why are they dragging their feet in that way? I understand that talks have taken place, but what measures are we taking to get the Americans to change their minds and to realise that it cannot all be one-way traffic?

**Lord Drayson:** My Lords, we should recognise that we have been successful over many years in working with the Americans on technology transfer relating to highly sensitive defence matters. However, matters relating to the Joint Strike Fighter are complex, and we are clear what specific areas of technology transfer we will require to use, operate and fight the aircraft in the way that we as a sovereign nation wish. These matters are receiving the highest level of attention in the Ministry of Defence, and we remain optimistic that by the end of this year we will receive the information that we require to be able to sign the MoU.

**Lord Boyce:** My Lords, will the Minister be more specific in answer to the previous question and say whether we have been unsuccessful in areas other than that referred to on the Order Paper, where we cannot get the Americans to pass across the technology for use in equipment that is either in use or about to be put to use in our Armed Forces?

**Lord Drayson:** My Lords, the noble and gallant Lord is correct that we have had difficulties; they have arisen because of the bureaucratic nature, in some cases, of the process by which technology transfer takes place. We have a simpler system of transferring technology to the United States, and it has worked more efficiently. It is clear that we have to improve the process; however, I am pleased at how the matter is receiving attention at the highest levels in the American Administration, and I remain optimistic that the Joint Strike Fighter problem can be resolved and that that can indicate an improved bilateral relationship on technology transfer.

**Lord Garden:** My Lords, I assume that the Minister receives copies of the United States Government Accountability Office reports, of which there have been two recently on the Joint Strike Fighter. The first, on 22 May, criticises the US Department of Defense for increasing costs through not competing the engine—in other words, the GAO supports the Rolls-Royce solution. Does the Minister agree that that is a case to be made? The second report of the 15 March is more worrying. Does the Minister share the GAO's concerns about the risks of cost-price inflation for the JSF, given that the Americans are going into production before they have finished development?

**Lord Drayson:** Yes, my Lords, there is a strong case to be made for having two engines. The later technology in the Rolls-Royce engine provides potential advantages in terms of fatigue, life and power, and in the procurement approach, where we see that as an option. We have been making that case

[LORD DRAYSON]
strongly. I have read the reports to which the noble Lord referred, and we share those concerns. The costs for the system development phase of the JSF have increased from $28 billion to $41 billion. Our contribution to that is fixed at $2 billion through the agreement that we signed. We have to look at this carefully as we go forward. We have not committed yet to the programme. We have not gone through a main investment decision. We need to look closely at the development of the cost and timescale.

**Lord Pearson of Rannoch:** My Lords—

**Lord Craig of Radley:** My Lords—

**Lord King of Bridgwater:** My Lords—

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** Lord King.

**Lord King of Bridgwater:** My Lords, does the Minister recognise that, if he failed to achieve what the noble Lord, Lord Hoyle, indicated in his Question, it would be enormously damaging to the defence relationship between our two countries? I think that he fully understands that, and I hope that his new Secretary of State is fully aware of it as well. This is of such significance that I hope that he has made the Prime Minister fully aware of it and that the Prime Minister, despite the relationship that he has with the president of the United States, makes it absolutely clear that it is vital for our country that the transfer is achieved.

**Lord Drayson:** My Lords, I am absolutely crystal clear about the importance of the matter. Recently, when I was in Washington, I said to the Senate Committee on Armed Services that, if we were not able to receive the information that we required to have the operational sovereignty to fight this aircraft, we will not be able to buy the aircraft.

**Lord Craig of Radley:** My Lords, do her Majesty's Government recognise that the commitment to build and to commission two new large aircraft carriers could not be sustained unless there were suitable combat aircraft to embark on them?

**Lord Drayson:** My Lords, the noble and gallant Lord is absolutely right: our carrier strike capability, which is a fundamental plank of our strategic defence posture, requires there to be appropriate aircraft to go on the two new aircraft carriers. Therefore, the Joint Strike Fighter is an important aircraft for us. None the less, we have contingency plans.

**Lord Pearson of Rannoch:** My Lords, would it not be understandable for the Pentagon to be nervous of sharing stealth and other sophisticated technology with us, if it feared that we, under our EU commitments, might have to share it with the French and, through them, more widely? If that is so, does it not mean that the special relationship is pretty well over?

**Lord Drayson:** My Lords, I am grateful to the noble Lord for raising the issue because it gives me the opportunity to be crystal clear on this point also. There is absolutely no requirement on us, under British law or any EU treaty, to share technology related to this or any other defence-related project. Where we have received information, we are under no requirement to pass it on to any of our EU member state partners.

**Lord Russell-Johnston:** My Lords, does the Minister see any relationship between this matter and the reported intention of BAe to withdraw from the Airbus project in order to invest in American defence projects?

**Lord Drayson:** No, my Lords. I have spent considerable time studying the BAe strategy, and I do not believe that there is any connection between the sale of the Airbus stake and the Joint Strike Fighter project.

**Lord Astor of Hever:** My Lords, further to the second part of the question put by the noble Lord, Lord Garden, the Senate Committee on Armed Services has voted to delay JSF production by a year. What consequences will that have for our STOVLs, and is there still a weight problem?

**Lord Drayson:** My Lords, there is no weight problem, although we have to watch the development of the aircraft carefully to ensure that the STOVL weight problem does not come back. On progress, the project is going through an important development stage: we are seeing the first flights of the aircraft. As such, we need to recognise the procurement risks in such a complex project, particularly one that depends on international collaboration. We should not forget that a significant contribution of British technology has gone into the project. We need to monitor it carefully and make commitments in a staged way as the project progresses.

## Contaminated Blood Products: Hepatitis C

3.23 pm

**Lord Jenkin of Roding** asked Her Majesty's Government:

> Whether the files of papers about contaminated blood products which have recently come to light, some of which have been returned to the Department of Health, provide evidence to support the claims of haemophiliacs that their infection with hepatitis was caused by such blood products.

**The Minister of State, Department of Health (Lord Warner):** My Lords, we have established that a number of documents that have been disclosed by the department in the HIV and hepatitis C litigation were

held by Blackett Hart & Pratt Solicitors. It agreed to return the papers to our solicitors, who are now considering them with other departmental officials. Advice has yet to be given to Ministers on the significance of the returned files.

**Lord Jenkin of Roding:** My Lords, the files that have turned up came from the archives of more than one firm of English solicitors. Given the substantial volume of documents passed to the department's solicitors—I am told that there are no fewer than 12 big lever-arch files—and the fact that what they have is a small fraction of the material that has been held in solicitors' archives, and given that the department's paper *Self-Sufficiency in Blood Products in England and Wales* was expressly dependent on information that had survived the inadvertent destruction of some 600 of its files, are not there overwhelming arguments for a much more open, independent inquiry into what many regard as perhaps the most serious disaster that has ever happened in the National Health Service?

**Lord Warner:** My Lords, as the noble Lord acknowledges, there are a substantial number of lever-arch files, as he put it, containing documents to be gone through, which is what we are doing. Until we have gone through those files we cannot explain to the noble Lord or anyone else the significance of the documents for the document that we published. We will go through those files as quickly as possible, and I will discuss shortly with my honourable friend the Minister for Public Health how we can give public reassurance and place information from those files where it is significant in the public arena.

**Lord Morris of Manchester:** My Lords, I declare an interest as president of the Haemophilia Society. Is my noble friend aware that 1,242 haemophilia patients have now been fatally infected by contaminated NHS blood products? In the light of this awesome reality, is it not disgraceful that officially protected documents of such sensitivity and importance to the haemophilia community were destroyed at the Department of Health? Is it not indisputable now that extra funding is urgently needed to help the afflicted and bereaved, not least widows who today receive no help at all?

Again, has not the case now become unanswerable for an impartial public inquiry into what my noble friend Lord Winston, vice-president of the Haemophilia Society, has called the worst-ever treatment disaster in the history of the NHS?

**Lord Warner:** My Lords, I pay tribute to my noble friend's work on behalf of the Haemophilia Society and its members. He has great persistence and skill in this area. I share his concerns about the position that many of the victims whose blood has been infected by hepatitis C have suffered. As he knows, we have introduced a hepatitis C *ex gratia* payment scheme, which is working. We do not believe that a public inquiry is needed. As I have said on many occasions in the House, we do not think that there is evidence to suggest wrongdoing. We will examine carefully the new files that the solicitors have passed to us and place the results in the public arena as quickly as possible.

**Baroness Barker:** My Lords, what steps will the Department of Health take to ensure the safety of the documents and to ensure that they will not be destroyed inadvertently, as documents that should have been kept for 25 years were destroyed between 1994 and 1998?

**Lord Warner:** My Lords, they were passed from solicitor to solicitor. Government solicitors have professional responsibilities in this area. My colleague Caroline Flint and I will ensure that they are safeguarded, but we need the time to go through the documents to see what their significance is. There are a large number of documents to be gone through.

**Baroness Gardner of Parkes:** My Lords, surely the Minister accepts, though, that the haemophiliacs who have hepatitis got it from blood products. He said that there was no evidence of wrongdoing, but I do not think that anyone is talking about wrongdoing. People would never have given blood products if they had been aware that they were contaminated. It was a most unfortunate thing. As chairman of a hospital that had a major haemophiliac unit, I saw such tragic cases, and it should be acknowledged that that was the cause.

**Lord Warner:** My Lords, I do not want to give a science lecture, but we have been over the ground before. The blood infected with hepatitis C was used in circumstances where there was no means of identifying hepatitis C in the blood. The clinical opinion at the time was that hepatitis C was a mild infection, and it took 25 years to find out its seriousness. There was no means of treating the blood in those circumstances. This was blood given to people when it was a matter of life or death whether they received that blood, and we were acting on the best scientific and clinical advice at the time.

**Baroness Finlay of Llandaff:** My Lords, given the distress caused to those who are now bereaved, can the Minister give an assurance that the information gleaned from the review of documents will be communicated not just to the public through the press and media but directly to bereaved families, who may need help in interpreting the information that they receive?

**Lord Warner:** My Lords, the noble Baroness's point is absolutely fair, and I accept it. We will be working with the Haemophilia Society. We will consult it, as we do on many occasions, when we have been through the documents, and we will discuss with it how best to inform individual members of the society and others, where that is appropriate and necessary.

## Safeguarding Vulnerable Groups Bill [HL]

3.30 pm

Report received.

Schedule 1 [*Independent Barring Board*]:

**Baroness Buscombe** moved Amendment No. 1:

Page 32, line 33, leave out sub-paragraph (3) and insert—

"( ) No less than half of the members of the IBB shall be relevant persons seconded from a local authority.

( ) "Relevant persons" means persons with skills in any aspect of child protection or the protection of vulnerable adults."

The noble Baroness said: My Lords, the Independent Barring Board will be called on to make some incredibly difficult decisions and we will be exposed to an enormous volume of cases. The amendment is intended to clarify the exact make-up of what I shall refer to as the IBB. There is a clear case for seconding skilled professional staff from within local authorities to ensure that the IBB is continually refreshed with skilled and experienced professionals, who will be equipped with an up-to-date working knowledge of the relevant child and vulnerable adult protection.

The benefit of manning half of the IBB with skilled local authority professionals is that it provides a degree of flexibility in the recruitment of the remaining IBB members. That provides further opportunities to ensure that the IBB maintains a strong professional and capable membership. The volume of cases will require significant staff resources. Will the Minister elaborate on how the IBB is to employ its staff? It is right to envisage that long-term exposure to disturbing cases may result in a fairly high turnover of staff and board members. It is therefore essential that we get the process of recruitment and the composition of the IBB right.

Can the Minister tell us how large the entire IBB will be? He has stated that he envisages a membership of 10 to 12 of the board, but I expect that that means an executive of 10 to 12 and a much larger staff base. I have heard various figures suggested as to how many applications will be processed every year. It is possible that the number of applications to be processed will be up to 2 million per year. That seems like a huge figure but, given the number of people in employment, I suppose that it is not that large. I hope that the Minister can give a more solid estimation of the IBB's workload. Can he also suggest how many staff he expects to take on in total to cover that workload? How much does he think that it will cost?

I should also be very grateful if the Minister could suggest where the IBB might be based. Does he intend to run it as a central operation, or will local authorities be expected to take the brunt of the work and provide a satellite IBB staff to make the initial checks? The workload incurred by the IBB could impose a serious burden on local authorities. I therefore seek reassurances from the Minister on that point.

If Her Majesty's Government are not aware of the potential workload of the IBB, I will certainly come back at Third Reading with an amendment to ensure that local authorities are not expected to bear the burden of the IBB's groundwork. I beg to move.

**The Parliamentary Under-Secretary of State, Department for Education and Skills (Lord Adonis):** My Lords, I am very grateful to the noble Baroness for giving me the opportunity to say more about the IBB and to cover ground that we covered in Grand Committee, when I made available to her the regulatory impact assessment, which covers the issue of costs. First, I shall explain the broad structure of the IBB and some of the criteria for selecting its members, as the noble Baroness's amendments relate to the composition of the IBB. I shall also respond to her points about the members of staff, how they might be recruited, and what the total size of the staff will be.

The IBB will have a chairman and members. We expect its executive to have a total of about 10 members. It will be able to appoint members of staff to enable it to carry out its core functions of deciding whether to include an individual on a list, determining whether to remove someone from a list, and considering representations. Its other functions may be delegated. We expect that much of the administrative work will be done by the Criminal Records Bureau, and will build on the bureau's current expertise in data-handling. So the great bulk of the work, to which the noble Baroness referred, will be done by the CRB.

We expect the IBB to employ about 100 staff in total—that is, over and above the number of members of the board. We also expect it to take approximately 20,000 decisions a year, and to bar about 25,000 people. I am told that the location of the IBB is unknown at the moment, but I will let the noble Baroness know what the options are as and when we have them. We expect the cost of the IBB to be in the region of £12 million to £15 million, over and above the existing costs of the Criminal Records Bureau.

The IBB and its staff will need to be the best people, with relevant expertise. As I said in Grand Committee, there is considerable expertise in local authorities, and we hope and expect that expertise to be represented in both the membership and the staff. However, its members and staff must also have had experience in a wide range of professions other than local government. For example, the interim expert panel, chaired by Sir Roger Singleton, includes individuals drawn from local government, the chief constable of a major police authority, child psychiatrists, a representative of the National Offender Management Service, the chief executive of the National Confederation of Parent Teacher Associations, and a senior representative from the Children's Society.

Respondents to the department's recent consultation on IBB membership suggested that it should include: experts in employment law and civil and human rights; experts on vulnerable older people; informal carers; human resources professionals; those engaged in, and with knowledge of, supported housing; professional

and regulatory bodies; victim support groups; and many others. The length of this list shows that we cannot expect the 10 members of the IBB alone to represent all these areas of expertise, but we do expect the members of the IBB and its staff to represent all the necessary disciplines. That is why we need the larger membership that I have set out. But we do not want to put rigid quotas in the Bill, for reasons that I am sure the noble Baroness will appreciate. We believe that to do so would impose undue rigidities on the body and would constrain the Secretary of State's ability to appoint to the IBB people with the best range of expertise as a whole to perform the tasks of the IBB.

We also need members' experience to be recent and to be coupled with knowledge of the situation on the ground. Secondees to the staff will have recent relevant experience, and we expect them to come from various sources, including, of course, local authorities. They will fulfil another valuable role; taking the experience of working in the IBB back to frontline services when their secondments finish. As well as secondees being among the IBB's staff, paragraph 2 of Schedule 1 states that IBB members will be appointed on fixed-term contracts that cannot exceed five years. This will help to ensure that there is a reasonable turnover among members, and that their experience is up to date. I know that members of the Grand Committee were concerned that that should happen.

I hope this gives the noble Baroness the information that she sought, and that it will enable her to withdraw her amendment.

**Baroness Sharp of Guildford:** My Lords, I have two issues. Will there be a read-over between the current POCA and POVA lists and List 99 into the new lists? Secondly, is there likely to be an initial rush of applications, as there was with CRB checks? The Minister mentioned a figure of 20,000 applications a year, but the NSPCC has been talking about 2 million being processed. It may well be that initially there will be something like 2 million but, given the run-up, will the IBB authority be in a position to process what might initially be such a substantial amount of work?

**Lord Adonis:** My Lords, there will be a read-over between the existing lists and the new list maintained by the IBB. So far as the additional number of checks is concerned, I do not believe that there will be that cliff edge feared by the noble Baroness, Lady Sharp, since the increase in the categories covered by CRB checks is being done over the next two years. In response to the events of January and the statement made by the then Secretary of State for Education and Skills, we have extended the requirements to undertake CRB checks. That is being done in stages. When the IBB regime comes into play, there will be no sudden cliff edge with a huge additional number of checks required. So, I believe that the move from the existing system to the new one will be manageable.

**Baroness Howarth of Breckland:** My Lords, I hope first that the Minister will tell me if I am asking an inappropriate question but, as I understand it, there are already staff with considerable expertise carrying out this task. Clearly, it would be a great pity if those staff were lost at this point. There is also, presumably, a cost implication because their costs are already being incurred. Secondly, having spoken to Sir Roger Singleton, I understand that the range of referrals is indeed wide. Will the new board have some capacity to make decisions on that? I notice that the schedule gives them delegated powers. How will they be able to use those powers to get their priority lists properly scheduled?

**Lord Adonis:** My Lords, in my year in your Lordships' House I have never known the noble Baroness to ask an inappropriate question, so she need have no concerns on that score. It is our intention that existing professional staff dealing in the area, who of course have a good deal of experience and expertise, should be able to transfer to the IBB as appropriate. However, the decision on how many would transfer and for what areas of expertise they would be recruited is a matter for the IBB itself, once it is established. We do not intend to take such decisions for it, but expect some of the existing staff who would deal with those cases to transfer.

On the issue of how the IBB organises its own activities, there is wide discretion in the Bill for it to decide how to handle those matters—and for precisely the reason given by the noble Baroness, Lady Howarth, which is that Sir Roger has identified that its range of responsibilities is wide. We do not want to constrain unduly the way that it works.

**Baroness Buscombe:** My Lords, with reference to my earlier question, I also wonder whether the Minister could reassure us at this stage that the role of local government authorities will not extend to acting as what one might call a point of entry for initial checks.

**Lord Adonis:** My Lords, local authorities play a role in the existing CRB system in validating the identity of many who come forward for checks. However, they will play no role over and above that in the new regime. If the concern of the noble Baroness, Lady Buscombe, is that it will impose additional and unfunded obligations on local authorities, as I believe she fears, that will not be the case.

**Baroness Buscombe:** My Lords, I am grateful to the Minister for that reply. That was one concern that we had considered between Committee and today's debate. I will use this opportunity to thank the Minister for the chance that we had to meet him and his officials to discuss the Bill before going on Report. That has been extremely helpful.

I am pleased that the Minister has responded to our repeated proposal that it should be possible to second individuals from industry and other organisations to refresh the IBB, and that those secondees should extend to staff at the board. It is important too that we have had this opportunity to clarify how the system is to work, the composition of the board and its total staffing numbers—it is helpful to know now that we

[BARONESS BUSCOMBE]
can envisage around 100 staff—and the numbers of decisions in respect of applications and bars. I thank the Minister for his detailed response and I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.45 pm

Clause 2 [*Barred lists*]:

**Lord Harris of Haringey** moved Amendment No. 2:

Page 1, line 17, leave out subsection (6).

The noble Lord said: My Lords, in moving Amendment No. 2 I shall speak also to Amendments Nos. 68 and 69, which are all part of a package. My concern throughout our consideration of the Bill has been twofold. First, I have wanted to see as broad as possible a mechanism for ensuring that people who may present a risk to children or vulnerable adults are picked up through this new mechanism and placed on the barred list. Secondly, however, I am concerned about situations where names might be put forward maliciously or without proper regard. These amendments would ensure that the legal indemnities, which were extremely wide in the original Bill, would not apply in situations where the provision of information that would lead to the Independent Barring Board considering whether to include someone on the barred list was originated by someone who knew that the information was untrue. In those circumstances, one would have to assume that the information had been provided maliciously. That is an essential safeguard.

Later amendments address the requirement for a professional judgment to be expressed when considering whether someone may be liable to cause harm or may intend to do so, but what worries me are situations in which the judgment, regardless of whether it is expressed by a professional, may be used to harm an individual entirely maliciously. I can conceive of circumstances where that may happen, particularly in smaller organisations where a chief executive has found a certain member of staff irritating, annoying, disruptive and so on, but whose behaviour had nothing to do with their professional conduct in respect of children or vulnerable adults. That chief executive may decide, once the individual has left the organisation, that he will try to wreck their future career, and to do so by making a reference to the IBB. We must have a provision that protects people from that kind of abuse in what is otherwise an extremely important system. That is why the amendment is designed to ensure that anyone who may have such a malign intention to try to destroy someone's name and future career would not be the recipient of the indemnity that the Bill previously would have given them. That is why I think the amendment is important. It would provide a vital safeguard and make sure that the system is not brought into disrepute by individuals trying to abuse it. It is because I want the system to work that I believe it is important to reduce the legal indemnity originally included in the Bill. I beg to move.

**Lord Adonis:** My Lords, my noble friend has rightly raised the issue of vexatious and malicious allegations masquerading as references of information to the Independent Barring Board. He raised the point both at Second Reading and in Grand Committee. We have given it a good deal of consideration and agree that it is important to limit the exemption from claims for damages in the case of vexatious and malicious allegations. We are therefore very glad that he has come forward with these amendments which refine the previous provisions made by the Bill. His new subsection (2) of Clause 43 would remove protection from damages claims in cases where the provider of the information knew that the information was untrue, and was either the originator of the information or caused another to be the originator of the information.

We believe that it is important to limit the exception to these cases. We do not want to allow claims for damages to be made in cases where referring bodies are under a duty to provide information which they had no hand in creating and the content of which they could not control. But we see no reason why referring bodies should be protected from defamation claims in circumstances where they deliberately create defamatory material which they know to be untrue for the purpose of referring it to the IBB.

We entirely agree with my noble friend in this regard. We understand the impact that allegations to the IBB will have on the personal and professional reputations of those affected, and we do not want allegations of untrue information to blight people's lives. On the other hand, we do not want to reduce the flow of information that is true, or genuinely believed to be true, because this information forms the basis on which the IBB can consider whether to include a person in the list.

We are therefore very happy to support the amendments of my noble friend, as we believe that they address both these points. They give a legitimate exemption from claims for damages, but they do not impede the proper flow of information to the IBB. On that basis, we are content to accept the amendments of my noble friend.

**Lord Harris of Haringey:** My Lords, I am grateful to my noble friend for that response. The approach that he and his colleagues have taken during the discussion so far on this Bill—we shall see how far we get during the rest of the day and in a couple of weeks' time—has demonstrated a willingness to listen and to take on board what are genuine concerns from people who want the Bill to work and to be effective. So I am grateful to my noble friend for that reply.

On Question, amendment agreed to.

Schedule 2 [*Barred lists*]:

**Baroness Walmsley** moved Amendment No. 3:

Page 36, line 14, leave out "child"

The noble Baroness said: My Lords, this amendment relates to the Schedule 2 definition of what sort of behaviour can be regarded as relevant conduct of a person being considered for the children's list. It would change the phrase "conduct involving child pornography" to "conduct involving pornography", so that the scope would be wider. My amendment would then make it the same as the similar paragraph in the schedule relating to the adults' list. If noble Lords look at the equivalent paragraph later in the schedule—paragraph 9(1)(c)—they will see that all pornography is included.

I note that this is a legal activity that is being used to consider the person for the barred list, and I do not quarrel with that at all. But I think that certain kinds of behaviour relating to pornography that is not child pornography should give the IBB cause for concern—for example, the production of pornographic material; pornography involving violence or bestiality; or, perhaps even more obviously, involvement with pornography involving adult models dressed as or behaving as children. That is not illegal—it is adult pornography—but it should certainly give the IBB cause for concern.

My amendment would leave in the important phrase that such conduct would be relevant only if the IBB thinks that it is inappropriate. It would not cover any kind of pornographic activity that a person might take part in; it would cover only such activity that the IBB considered inappropriate for somebody who might be going to work with children in any capacity.

I understand that these two parts of the schedule were drafted by two different departments. The stuff relating to the children's list was drafted by the DfES, while that relating to the adults' list was drafted by the Department of Health. Is it a mistake that "child" has been inserted in one section but omitted from the other? If we accept that the IBB should consider candidates for one barred list also for the other—which I know the Government have accepted—we should also consider that the same range of activity should be considered by the expert panel, to see whether it is appropriate for a person to work with children or vulnerable adults.

I hope that that explains my reasons for wanting to see both lists exactly the same as regards this relevant activity. Child pornography, of course, is absolutely relevant for consideration by the IBB, but I think that there are also categories of adult pornography that should be considered inappropriate. The IBB should be given the duty of considering it. I beg to move.

**Baroness Howarth of Breckland:** My Lords, I support the noble Baroness, Lady Walmsley. When I looked at the two lists I thought it must be a typing error, because consistency would seem to be appropriate. I spent many years as a regulator for the premium rate industry and have probably seen more pornography and read more of the rather unpleasant Sunday newspapers than most of you. It is quite true that there is other "inappropriate pornography". I do not mind what people do behind closed doors so long as it does not affect children or vulnerable adults. There is pornography that will have that effect. We have experts on the IBB who can make that assessment and I think that they should be allowed to do so.

**Baroness Buscombe:** My Lords, I have added my name to this amendment. I congratulate the noble Baroness, Lady Walmsley, on spotting this. I, too, am assuming that this is some kind of oversight. There is clearly a requirement that behavioural criteria directing inclusion on to the adults' list should match that of the children's list. At present, conduct that could lead to inclusion on the children's list includes, as we have heard, conduct involving child pornography; but for inclusion on the adults' barred list, conduct that would merit inclusion involves simply pornography. Surely any conduct involving any kind of pornography could amount to inappropriate behaviour, meriting inclusion on the lists. By removing the word "child" in this context there would be clear guidelines on pornography for the IBB in relation to both the children's and adults' lists.

**Lord Adonis:** My Lords, my noble friend Lord Harris was kind enough to say earlier that the process of parliamentary scrutiny had enabled us to reconsider issues that would improve the Bill. My best response to the noble Baroness, Lady Walmsley, is to say that she makes a fair and reasonable case on the discrepancy between paragraphs 4(1) and 9(1). Intensive conversations are taking place between departments on this issue. If the noble Baroness will permit me, I would like to return with an appropriate amendment in this area at Third Reading. I am not yet in a position with the authority of the Government to accept her amendments, though I fully understand her point. I would like the opportunity to come back to it at Third Reading, accepting, as I do, that she will table the same amendment at Third Reading if I should fail to do so. On that basis, I hope the noble Baroness will be content to withdraw the amendment at this stage.

**Lord Harris of Haringey:** My Lords, before my noble friend sits down, I hope he will recognise—perhaps I misunderstood the precise form of words that he used—that it is not simply a question of consistency between the clauses in respect of vulnerable adults and children. The very strong argument has been made that certain forms of pornography—not only child pornography—are relevant in respect of children. It is not only saying that there ought to be consistency; it is saying that there is a strong case for a wider definition.

**Lord Adonis:** My Lords, I think that I implicitly accepted that point. I certainly was not proposing that we would amend paragraph 9(1)(c) by changing "pornography" to "child pornography" in respect of vulnerable adults. Any change could go only other

[LORD ADONIS]
way. I entirely accept the point that my noble friend makes. As I say, I will come back to this at Third Reading.

4 pm

**Baroness Walmsley:** My Lords, I am most grateful to the Minister for listening once again. I echo the thanks that have already been made to him and to his colleague, the noble Baroness, Lady Royall, for the time that they have spent with their officials discussing the nitty-gritty of the Bill. It started off as a very confusing Bill, and there are still elements that are confusing, but we feel that Ministers have been listening and we are grateful for that. I shall certainly do what the Minister suggests and wait and see what comes out of his discussions. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Sharp of Guildford** moved Amendment No. 4:

Page 36, line 37, after "if" insert "he has engaged in conduct which, in the expert opinion of an appropriate professional, indicates that"

The noble Baroness said: My Lords, in moving Amendment No. 4, I shall speak also to Amendments Nos. 5, 8 and 9. The purpose of these two pairs of amendments is to clarify the issue relating to risk of harm. In Grand Committee, my noble friend Lady Walmsley argued that paragraph 5 in Schedule 2, relating to risk of harm, was unnecessary as,

"any assessment of risk of harm must be based on previous behaviour",

and would therefore be covered by the range of behaviour listed in paragraph 3. She continued:

"Conversely, any assessment of a future risk of harm not covered by paragraph 3 must be based on behaviour that has not endangered a child ... To bar someone from working with children or vulnerable adults on the basis of something they might do in the future will inevitably raise concerns about inappropriate barring".—[*Official Report*, 2/5/06; col. GC 183.]

The Minister countered by referring to the letter he had sent to a number of noble Lords on 14 April setting out clarification on the issue of discretionary barring and the risk of harm criterion. He quoted two examples. The first was that of a teacher who had downloaded pornography including within it photographs of fully clothed children in school uniform. When challenged by the police, the teacher admitted that he was sexually attracted by children. But he had of course committed no offence, and there was no evidence of his ever having attempted to involve a child in sexual behaviour. The second example quoted by the Minister was that of a teacher receiving psychiatric help who revealed under treatment that he had a sexual interest in children. In this case, the psychiatrist felt this sufficiently concerning to report it to the authorities under List 99.

We would argue in the first case that the teacher's behaviour in downloading pornography was sufficient to bring him before the IBB under paragraph 3. This picks up on the previous amendment proposed by my noble friend, which the Minister has been good enough to agree to look at quite seriously. We admit, however, that the second case is more problematic as there was no evidence of harmful behaviour of any sort. We assume that the fact that the psychiatrist in this case reported the behaviour under List 99 does not in any sense breach medical confidence; that such behaviour on the part of the psychiatrist is acceptable; and that we should expect psychiatrists in future, under the proposals in the Bill, to do exactly the same. We would be interested to further explore this with the Minister.

I return to the issue of evidence of harmful behaviour. The same would be true if the individual concerned had had sexual fantasies involving children even though those had not been acted upon. As the Minister said in his letter:

"We would not wish the IBB to be in a position of having medical evidence in the form of a psychiatric report, for example, which indicates that the individual has a sexual interest in children and may be likely to act in future, but [the IBB would] not be able to consider a bar".

Given those circumstances and the fact that the Minister rejected our original amendment eliminating risk of harm, we have sought to be more helpful in this amendment—not by seeking to remove paragraph 5 but by spelling out the way in which someone can be found to be a risk. As the amendment makes clear, the individual concerned must indulge in behaviour which, in the eyes of a professional, indicates that he might in future be at risk of harming children or vulnerable adults. Amendments Nos. 5 and 9 would spell out what sort of professional that might be. The advantage of this formulation is that it is much more specific about how risk of harm should be interpreted. We remain of the opinion that the wording in the Bill is too loose and imprecise and risks being open to abuse. I beg to move.

**Lord Harris of Haringey:** My Lords, at Second Reading and in Grand Committee, I expressed the strong belief that it was important that there be some mechanism to refer cases where there was a perception of a "risk of harm". I cited examples from memory, from when I was chair of a social services committee. They were examples in which, with all their years of professional judgment, the professional supervising an individual about whom there was concern felt that the relationship that this individual had with a child, or a vulnerable adult, was somehow inappropriate but the professional could not actually point to specific behaviour. It seemed that capturing that professional judgment was important for the work of the IBB.

I had the concern, similar to that of the noble Baroness, about ensuring that this is done in a way that can be reasonably validated. In fact, the noble Baroness has tabled an amendment, which is rather less restrictive than the one I moved in Grand Committee, where I had in mind a concept of two people expressing a view that there was a concern and a "risk of harm". By specifying that it is a professional, and by specifying some of the categories of profession—with a degree of latitude for the Secretary of State to vary that list in the light of experience—it seems that the noble Baroness's proposal amplifies the

Bill, provides protection, and clarifies what is looked for. Introducing the concept of "risk of harm" is quite a major step. Again, we want to ensure that it is got right, and I will be listening with extreme care to my noble friend's response. An amendment, perhaps along the lines put forward now, would strengthen the Bill.

**Baroness Buscombe:** My Lords, I certainly accept the principle of the amendment but our concern is that there could be a real problem with the burden of proof. While we do not want a culture of suspicion generated by this provision, we feel that this amendment would challenge that. At the same time, we do not want to curb employers—for example, teachers—from taking the initiative by reporting someone they consider to be harmful but without having incontrovertible evidence. We thought about this a great deal but we felt unable to put our names to these amendments, while accepting in principle the reasons behind them. We will be very interested to hear the Minister's response.

**Baroness Howarth of Breckland:** My Lords, I am unable to support the amendment as it is phrased. My deep concern about this Bill, as the Minister knows, is that we—some organisations—are working to enable people—usually men—who have inappropriate thoughts about children to come forward. If those who have a real anxiety about themselves in relation to children—who on assessment can be shown to be not a risk—are referred, we will find that they will not come forward. I speak as the deputy chair of the Lucy Faithfull Foundation, running the Stop It Now! helpline. Adults who are worried about their own behaviours are coming forward, but they are seriously concerned about the consequences for their whole lives and for their families. In my experience, I know that there are risks and that it would be useful if we could find some provision that would strengthen the provision. But, like the noble Baroness, Lady Buscombe, I am concerned about this amendment.

**Lord Adonis:** My Lords, the amendments would restrict IBB considerations under paragraphs (5) and (10), which deal with risk of harm to those cases where an appropriate expert opinion indicated that the individual may harm a vulnerable person. Where there was no expert opinion, the IBB would be required to obtain one before it could further consider the case. We entirely understand the desire of the noble Baroness, Lady Sharp, to see this provision on the face of the Bill, but I hope that I can reassure her that the practice of the IBB would meet her concerns.

The noble Baroness's concern is, understandably, that people should not be barred on the basis of insubstantial allegations without proper professional assessment, in the case of risk of harm. We entirely agree with this position and would expect that if the information before the IBB did not provide the necessary substantiation, the IBB would always seek more information so as to establish what substance any case has. That might involve asking a relevant local agency, such as the police or social services departments, to consider a referral received or to provide other relevant evidence. This is how referrals are handled currently and the IBB will continue the practice of making any necessary inquiries in all risk of harm cases.

There is an important additional fact in our consideration. The IBB will be an expert body and will be able to assess the case once the evidence has been assembled. While the IBB will in most cases have the professional expertise to fulfil this role either from its members or the staff it employs, it would also be enabled to seek expert opinion or assessment externally where necessary, and we would expect it to do so in cases of this kind.

I hope that that clarifies the Government's position and addresses the issues raised. We entirely support the noble Baroness's objective but we think that to specify in such detail the precise sources of professional advice which should be secured by the IBB would not be appropriate.

**Baroness Sharp of Guildford:** My Lords, will there be details in the guidance to the IBB about seeking further information on cases where it is uncertain about risk of harm?

**Lord Adonis:** My Lords, I need to come back to the noble Baroness about whether we would issue formal guidance to this effect. It seems to us inconceivable that the IBB, as an expert body, with a membership that we discussed earlier, would not seek to behave in this way. We do not believe that any reasonable professional body with such a membership would not seek to do so. However, I will come back to the noble Baroness about whether we will issue formal guidance. It is so much our expectation that the IBB should behave in this way that I do not see there will be any difficulty on our part in doing so if that would help meet the noble Baroness's concern.

**Baroness Sharp of Guildford:** My Lords, I thank the Minister for his reply and noble Lords who supported us. The difficulty we are confronted with in paragraph (5) of Schedule 3 is the sheer uncertainty of precisely what "risk of harm" means. I take on board the points that the Minister has made; we will be looking for clarification from him on whether guidance will be issued. We take on board what he says about the composition of the IBB, but there are difficulties, when experts assess people at third hand, regarding the degree to which the IBB can probe further on some of the information it receives. We will be looking at the guidance that might be issued by the department. We will look at the Minister's answer when he comes back to us.

**Lord Adonis:** My Lords, I will write to the noble Baroness after today's sitting. I hope that that will satisfy her.

**Baroness Sharp of Guildford:** My Lords, I beg leave to withdraw the amendment.

[BARONESS SHARP OF GUILDFORD]

Amendment, by leave, withdrawn.

[*Amendment No. 5 not moved.*]

4.15 pm

**Baroness Sharp of Guildford** moved Amendment No. 6:

Page 36, line 42, at end insert—

*"Under 18s*

(1) The IBB cannot include a person under the age of 18 in the children's barred list without that person having the right to representations and the IBB must undertake an age-appropriate risk assessment process.

(2) If a person is included on the children's barred list under the age of 18, his case will be reviewed when he reaches the age of 18.

(3) If a person is included on the children's barred list under the age of 18, his needs will be assessed and appropriate therapeutic services provided."

The noble Baroness said: The purpose of this amendment is to distinguish under-18s from other offenders who might be barred by the IBB, and to ensure that their issues are treated differently. Once again, this issue was raised in discussion in Grand Committee, and in response to my noble friend Lady Walmsley the Minister made it clear that no person under the age of 18 would be included on either list automatically. He said,

"There may be mitigating circumstances which mean that it will not be appropriate in every case to include young people who commit offences on a barred list without the right to make representations . . . He or she may not present a risk of harm to children in general and therefore may not be an appropriate person to automatically be included in the children's barred list. Consequently, we do not intend that those under the age of 18 when the relevant offence is committed should be included on either list automatically. Instead, they would be dealt with under a discretionary route, with a right to make representations. I assure the noble Baroness that we will consider this when making regulations to cover the prescribed criteria for automatic inclusion".

He also made it clear that the filter requiring leave to make representations would still apply, and that the IBB would not be required to conduct a full review including representations unless there was new evidence to be assessed. This amendment challenges that conclusion, and asks for a full review to be undertaken on all cases of under-18s included on the barred list when they reach the age of 18. In addition it requires that all those under 18 who are on the barred list receive therapeutic treatment to help alter their behaviour.

Our reason for asking this is that it is important to remember that these young children are not young sex offenders. Most are not motivated by a sexual preference for children, although such behaviour can become entrenched. Rather, the behaviour is the response of a very vulnerable set of children to their own experiences and difficulties; it is a way of expressing anger and exerting power on the part of those with complex issues and needs. Such children are still in the process of maturation, and can be helped away from spiralling patterns of sexual abuse. While we need to acknowledge the risk these children pose to others, we must also acknowledge that these are children with severe needs who need help and specialised services themselves. What is more, there is clear evidence that such help can and does change behaviour for the good.

These worrying policy developments have seen a move away from a child welfare approach with regard to under-18s to a criminal justice approach. The problem is clearly that the Department of Health and the Home Office come to these areas from different starting points. We believe that it is essential that child protection and criminal justice agencies work together, and that there is a clear obligation on social services departments to respond to this group of children and young people from the child protection perspective. Children and young people going down the criminal justice route are unlikely to be adequately assessed in terms of their own needs.

The outcomes of these different routes are inevitably very different. Behaviour can result in no further action under social services, whereas a custodial sentence can lead to a child being placed on the sex offenders register. It is important to recognise that the models of risk assessment for an offending child and those for an offending adult are very different. Children are still in the process of developing and maturing, and their lives may be in constant change. It is important that there is an appropriate risk assessment, with a model in place that is clearly appropriate to the under-18s. If these children have been found to be sexually harming we need to offer them services to help them change their behaviour, and, if we do so, we need to give them a chance to lead a life that is not stigmatised by early misdemeanours. I beg to move.

**Baroness Buscombe:** My Lords, I have considerable sympathy for the amendment which would, as we have heard, prevent the IBB containing anybody under the age of 18 without their having had the chance to make representations first.

While we do not take the view that a crime committed by a person aged between 16 and 18 is any less serious than a crime committed by somebody over 18, there is a strong argument for intervening early and putting a stop to self-perpetuating abuse.

We would not want to get into a debate on diminished responsibility due to age, but it is possible to help those young people who commit abusive crimes to rehabilitate. Placing them on a list will only slow down that process. We therefore support the noble Baroness's amendment.

**Baroness Howarth of Breckland:** My Lords, I support the noble Baroness's amendment. In the 1980s the NCH produced a report on children who abuse other children in which it outlined the issues which are encapsulated in the amendment. There is a wide variety of young people with a wide variety of offences. There is a paucity of experts who can assess those young people and very little therapeutic help. Following the report there was an attempt to put a

series of projects in place, which, unfortunately, disappeared over the years, and have still not been replaced.

There is one hope. A young burglar is likely to grow out of being a burglar; a young sex offender is very unlikely to grow out of sex offending without therapeutic help and assessment—the sad fact is that without help they are more likely to continue offending. However, given the wide range that I have mentioned, it seems totally appropriate that the IBB should review a case when the relevant person is 18. I note that the amendment proposes simply a review. It proposes not that if a young person continues to be viewed as dangerous—as is the case with some young people—their case should be reviewed, but that we should treat young people and children as such and should not condemn them to a long life of inclusion on a register that will affect their employment, relationships and whole future.

**Lord Adonis:** My Lords, the amendment of the noble Baroness, Lady Sharp, has three distinct elements. The first is the right of those under the age of 18 to make representations in all cases without exception. The second is their right to have those cases reviewed at the age of 18 and the third is to provide for mandatory assessment of need for such young individuals. I believe that I can more than meet the noble Baroness in the first respect and I hope that I can give her sufficient reassurances in the second and third respects in relation to the issues that she raised.

We entirely agree with the noble Baroness that it would not be appropriate for those under the age of 18 to be automatically included in the children's barred list without the right to make representations. Indeed, we would wish to go further than that and ensure that no juvenile under the age of 18 could be included in either list—the children's list or the vulnerable adults' list—automatically without the right to make representations. The regulations that we will make under paragraph 19 to Schedule 2 will ensure that that is the case and that there is a right for juveniles to make representations on their inclusion in either list.

Where somebody who is under 18 has committed one of the specified offences, the IBB would consider this under a discretionary route, allowing the individual to make representations. The IBB will, as with all discretionary cases, need to make a judgment whether the individual poses a risk to vulnerable groups and whether it is appropriate to include them in either or both barred lists.

The second proposition is that under-18s who are included on the children's barred list will have their case reviewed when they turn 18. That raises the possibility that somebody could be included on the list in this scenario just before their 18th birthday and then undergo an almost immediate IBB review of their case at their 18th birthday. We do not think that that would be a satisfactory regime so we are not drawn to the precise wording of the noble Baroness's amendment but we have sympathy with the position that she has set out.

We have, however, already considered how to deal with reviews within the barring scheme and have a policy which we believe makes adequate provision for younger individuals. Our intention is to specify a minimum barring period following an IBB decision. The current barring schemes and other similar barring mechanisms, such as disqualification orders made by courts, have a minimum barring period of 10 years for adults and five years for juveniles. This would be our starting point for consultation: a minimum barring period of five years for juveniles, which is a substantially reduced period than that which applies to adults.

However, after taking further advice from professionals in the field, we are considering a shorter minimum barring period for those under 25 to reflect maturity issues. Again, we would consult on this age boundary before setting it in regulations. Once the minimum period has expired, the individual may request a review of their case and make any representations which support their removal from the list. If an individual chooses not to request a review after the minimum barring period, presumably on the basis that their case would not be strong enough, there would be nothing to stop them applying for a review at a later date, once they felt they had sufficient evidence that they were no longer a risk. This is intended to introduce an element of flexibility for the individual and to ensure that the IBB's time is spent considering cases of substance, rather than those resulting from an administrative trigger of the kind envisaged in the amendment.

The final section of the amendment would require an assessment of the needs of anyone under 18 who is included on the children's barred list, and the provision of appropriate therapeutic services. This is a much more complicated proposal. We have great sympathy with the arguments put by the noble Baronesses, Lady Sharp and Lady Howarth, in this regard, but we do not consider that the IBB's role should be assessing needs or providing therapeutic services. The IBB must focus on vetting and barring to protect vulnerable adults and children from abuse by those who would work with them.

We assume that the proposal in the amendment would require referral to existing service providers, such as the NHS, local authority children's social care services or appropriate charitable organisations. Again, this does not fit with the IBB's primary role and it would be unhelpful that an IBB referral to a therapeutic service provider is made at the end of a process. The IBB's decision is based on information from police, sector bodies, employers, courts and other sources, any or all of which will have been able to advise the individual to seek medical or psychiatric help at earlier stages—of course in all such cases, the earlier, the better. To make an assessment compulsory for juveniles upon barring is not the most effective way to help these individuals and would add an additional set of processes where there are already established routes to access help of this kind, such as child and

[LORD ADONIS]
adolescent mental health services and the requirement on local authorities to safeguard and promote the welfare of children in need.

On the basis that I have been able to meet the first of the noble Baroness's concerns and to offer reassurances on the second and third, I hope that she may feel able to withdraw the amendment.

**Baroness Sharp of Guildford:** My Lords, I thank the Minister for his lengthy reply. I am delighted that he accepts the first issue: the rights of young people to make representations. I take it that that will be made clear in guidance to the IBB.

**Lord Adonis:** My Lords, actually it will be stronger than that, because it will be in regulations. So it will be a requirement on the IBB, not simply guidance.

**Baroness Sharp of Guildford:** My Lords, I am grateful and even more pleased. In relation to the second issue, I understand that the Government are considering setting a shorter barring period for under 25s. Will the Minister let us know when that has been decided? Are we likely to know before the Bill completes its passage through the House?

**Lord Adonis:** My Lords, the consideration is ongoing; but I shall seek to let the noble Baroness know before Third Reading how our thinking has developed.

4.30 pm

**Baroness Sharp of Guildford:** My Lords, it would be helpful if the Minister could let us know. Obviously we would like to see a shorter barring period of, say, three years. This would apply to those who are under 18, as distinct from under 25. The Minister raised the case of someone barred just before their eighteenth birthday, but for those who are barred from the age of 15 or 16 it could be important in terms of the career that they seek to develop. A three-year bar would be far more appropriate. It would give them a chance to embark on proper training, which is the sort of thing that we are concerned about.

We accept entirely that it is not the IBB's role to police the provision of therapeutic services. Equally, because it is so important that young adults—the under-18s—receive therapeutic services, it would be extremely helpful if the IBB could check at some point whether the appropriate authorities are providing them. We know that frequently such matters fall between the stools of the responsibilities of different services. The police do not do it because they think the social services are doing it, and the social services do not do it because it has come up through a psychiatrist in the NHS. Nobody makes sure that those therapeutic services are being provided to the young adult.

We will withdraw the amendment but it would be good if the Minister could reconsider the issue and reassure us, perhaps in guidance, that the IBB would satisfy itself that such services were being provided.

**Lord Adonis:** My Lords, I will happily add that to the list of things that I shall write about to the noble Baroness.

**Baroness Sharp of Guildford:** My Lords, with those reassurances, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Buscombe** moved Amendment No. 7:

Page 37, line 9, at end insert—

"( ) An individual automatically included on the barred list will have the right to appeal his or her inclusion on the finding of fact or by reference to a point of law.

( ) Automatic inclusions shall be subject to a status review after a period of no less than 5 years."

The noble Baroness said: My Lords, noble Lords may recall our debate in Grand Committee regarding the possibility of appeals based on findings of fact. As I explained, the amendment would give an individual who has been automatically included on the barred list the right to appeal the decision regardless of whether the IBB wishes to receive the appeal. It would also place a duty on the IBB to monitor the rehabilitation progress of those included on its list by reviewing the status of automatically listed individuals every five years.

I hope that I assured Members of the Grand Committee that the amendment was not intended to give individuals who have committed heinous crimes an easy ride. It was intended to preserve the integrity of the IBB and to ensure that it functions to the very highest standards.

The Minister's response to our concerns regarding findings of fact was very welcome. He said that he was giving "intensive" consideration to the issue of appeals. His response to our amendment proposing to allow an application for review following a period of no less than five years, again the Minister's response was constructive. He said:

"On the minimum period within which an individual may not apply for a review, we [the Government] intend to use regulations to make provision for a review period of five years in the case of under-25s, to reflect developing maturity, and 10 years for those over 25".—[*Official Report*, 02/05/06; col. GC 196.]

We were very pleased with that statement and with the Minister's response to the amendment tabled by the noble Baroness, Lady Sharp.

Following the Minister's "intensive" consideration, we were pleased to receive from him in this morning's internal post an information note on appeals—for which we are grateful and to which he will no doubt refer—and an explanation of his amendments grouped with mine. I am grateful to the Minister for responding very positively to our concerns on appeals on findings of fact and for his co-operation on these important points.

However, I would like to detain the House a little longer to probe further on the status of employers during the investigation and decision-making process. I am sure that noble Lords will remember the debate in Grand Committee on the status of employees. The noble Baroness, Lady Walmsley, tabled an

amendment—I believe it was Amendment No. 58—which would have given employers the right to initiate appeals of an IBB decision. The Minister's reply then prompted an interesting research project on employment law on behalf of Her Majesty's Opposition. The Minister stated in Grand Committee:

"Nothing in the IBB's decision not to bar an individual limits the right of a specific employer not to employ a specific individual. I should stress that point. It cannot be emphasised enough that a decision by the IBB not to bar someone is quite separate from the decision of an employer as to whether or not to employ them in the full knowledge of their past history ... We would expect employers to take their duties in that regard very seriously indeed, irrespective of any decisions of the IBB not to bar an individual".—[*Official Report*, 2/5/06; col. GC202.]

Reassuring as those words are, I could not help but imagine a case where an employer turns down an otherwise perfect candidate for a job, or a person is made redundant from a job that is in no way a regulated activity, due to their inclusion on a barred list. While it is not my intention to make life easy for those whose crimes merit inclusion on one or both of the barred lists, I am anxious about the state of employers. The main question is: could inclusion on a barred list lead to unfair dismissal representations from any job or a dismissal that will see the employment tribunals and employers under pressure. Unless the job is a regulated activity, inclusion on a barred list should supposedly have no bearing on employment decisions; therefore, I would be grateful for confirmation of that from the Minister. If a job is not regulated, can an employer dismiss someone from it on grounds of lack of faith or no-confidence on finding that an individual is on a barred list?

If an individual is working in a regulated activity and commits a crime which ends up with his inclusion on the list, the position is clear: an employer will have the right to dismiss that individual on the basis of misconduct. It would be deemed fair for the purposes of statutory unfair dismissal protection, on the basis that continued employment would be against the law.

However, my interest is in the read-across to employers who are not regulated activity providers. How does the Minister envisage the information on the lists fitting into current employment law? There is clearly a risk that misinformation and, worse, prejudice could lead to employment malpractice. Employers have a duty of mutual trust and confidence in relation to their employees, which must be balanced with a duty to take care to protect vulnerable people from harm. That is just as much a problem for regulated activity providers as it is for non-regulated providers.

In Gogay v Hertfordshire County Council [2000] the employers in question were in breach of the implied mutual trust and confidence because they had no reasonable grounds to suspend the plaintiff and failed to carry out a proper investigation of the circumstances before suspending her. That is a case for diligence on the part of the employers.

There is a distinction to be drawn between that process of investigating whether a vulnerable person is at risk of significant harm and the process of dealing with an employee who may be implicated in that risk. But this Bill takes no account of those issues and simply renders it unlawful to employ an individual who is debarred. In terms of regulated activity, the employee's only recourse is at the stage of being barred, not during the consequent action of the employer. However, if an allegation is not investigated at the relevant time, and a vulnerable person suffers as a result, there could be a charge of negligence.

Let us consider the other side of the argument: where an individual has been investigated and found to be innocent of any wrongdoing, yet is subsequently dismissed or refused employment. On that point, we fully support Amendment No. 28, tabled by the noble Baroness, Lady Walmsley, which we shall come to in due course. The Minister proposes to bring forward provisions to ensure that malicious or vexatious accusations are considered as part of an IBB inclusion. I believe that those amendments have already been agreed to today. They should at least give an employee the right to bring a charge of defamation against an individual for making false or defamatory statements, and the employee could bring a claim against an employer for a breach of the duty of mutual trust and confidence for making or acting on a false allegation. The law is in some ways clear. My anxiety is that the Bill could generate a blame culture that sees employers unwilling to employ and people unwilling to work in a culture that threatens rather than supports job status. I beg to move.

**Baroness Walmsley:** My Lords, I rise to speak to Amendment No. 27 in this group. I thank the Minister for listening to the arguments put forward by the noble Baroness, Lady Buscombe, and I about the need to allow finding fact appeals. I hope that part of his decision to table Amendment No. 20 was based on the suspicion that otherwise the Bill would be non-compliant with the European Convention on Human Rights. Having said that, if the appeals tribunal is going to be hearing appeals not just on points of law but also on finding of fact, we need to be reassured that the personnel on the tribunal have the appropriate expertise to make those decisions. That is why I have introduced Amendment No. 27, which is similar to an amendment that I tabled in Grand Committee, to specify some of the areas of expertise that should be represented on the care standards tribunal when it is hearing appeals on both law and finding of fact points.

It is vitally important that the members of that tribunal know what they are talking about when they are looking at issues of fact. I am aware, thanks to the explanation from the Minister in his recent letter to us, that situations where the facts have already been established by a competent authority such as the courts will not be allowed because those issues have already been raked over and a competent authority has found those facts to be correct. We are talking about situations where considerable discretion and understanding of the issues may be needed in looking at whether the facts of the matter were correct.

That is why I have reintroduced the amendment and asked for it to be grouped along with the Minister's amendment introducing appeals based on the finding

[BARONESS WALMSLEY]
of fact. I understand that the care standards commission consists of about 100 people; about 20 legal people and 80 lay people. But we do not know about the expertise of those lay people. Does it include a sufficient range of people who have the sort of expertise to carry out the new appeals that will be asked of them? My intention with the amendment is to ensure that the appropriate expertise is there on the tribunal that will hear the appeals.

**Lord Adonis:** My Lords, in replying to the noble Baroness, Lady Buscombe, on Amendment No. 7, and the noble Baroness, Lady Walmsley, on Amendment No. 27, I will speak also to government Amendments Nos. 20, 21, 22, 24 and 25. I will also deal with the impact on employment status of employing on the basis of disclosure of information, which was the wider issue raised by the noble Baroness, Lady Buscombe, and which has been of concern to her.

Amendment No. 7 and the government amendments relate to the grounds for appeal against IBB decisions. This issue was debated at both Second Reading and in Grand Committee. Concerns were expressed that appeals should not be limited to points of law when decisions are being taken about such a serious matter as barring individuals from the entire children's workforce and vulnerable adult workforce. The Government have given a good deal of consideration to the points made and wider issues raised and our Amendments Nos. 20, 21, 24 and 25 have been introduced to extend the current provision to allow appeals on points of fact, in addition to appeals on points of law. In a note I sent to the noble Baroness, Lady Buscombe, and copied to other noble Lords yesterday, I set out at some length our thinking on the issue of appeals.

New subsection (1A) provides that an appeal may be brought on the ground that the IBB made a mistake on a point of law or on any finding of fact which it has made and on which its decision was based. The appeal must be subject to leave being granted by the Care Standards Tribunal to avoid appeals which are frivolous or vexatious or unlikely in the opinion of the IBB to succeed.

An individual will not be able to dispute findings of fact which have been established in a court of law, or as a result of their acceptance of a caution for an offence—which is an admission that they committed the offence. We would not wish the scheme to allow an individual to, in effect, re-run the earlier arguments considered by a court. Findings of fact made by a competent body, such as the General Medical Council, or the General Teaching Councils for England and Wales—the full list is given in paragraph 12(4) of Schedule 2—will also not be subject to appeal. The competent bodies all have robust processes of decision-making, including oral hearings, prior to reaching their decisions. Again, we would not wish to re-run a set of arguments which were considered by, for example, the General Medical Council or the General Teaching Council as to why a doctor or teacher should or should not have been struck off.

But the IBB is not only a fact-finding body. It has the very important function of deciding whether, on those facts, it is appropriate for a person to be excluded from regulated activity relating to children or vulnerable adults or both. That is an expert function, and we intend the IBB to have the expertise in its composition to determine those matters. We want the IBB to be the body which has this role, rather than a separate body on appeal.

The effect of new subsection (1B) is that the exercise of the IBB's discretion in this matter—that is, deciding whether or not it is appropriate for a person to be included in a barred list—is not a ground on which an appeal may be made to the Care Standards Tribunal. Of course if, in coming to its decision on appropriateness, the IBB made an error of law or on any finding of fact, there could be an appeal under the amendments.

Together, the effect of these amendments will be to give a wider right of appeal in cases where there is a dispute on points of fact. That will ensure that there is a right to appeal where issues of fact are disputed and will therefore enhance transparency and public understanding of the scheme as a whole.

Amendment No. 7, moved by the noble Baroness, Lady Buscombe, would allow appeals for those automatically included on a barred list for a small number of the most serious offences, such as rape of a child. I explained in some detail at Second Reading and in Committee why we felt that an appeal would be unnecessary in such extreme cases and I hope the noble Baroness will be satisfied with that position.

The second part of Amendment No. 7 would place a duty on the IBB to review automatic barring cases after no less than five years. The information note which I circulated prior to the Committee stage indicated that we would use as our starting point for consultation the 10-year period under the current schemes, with a shorter period for younger individuals, as I said in our earlier discussion. We are open to further discussion on this issue and will consult but we feel that consultation and regulations are the right way to handle review periods, allowing a degree of flexibility to adapt to circumstances, rather than including a requirement in the Bill.

Finally, government Amendment No. 22 removes the provision that an individual is kept on the list in the absence of an IBB decision. That also reflects discussion in Grand Committee. We recognise that there is a technical difficulty with Clause 4(2): notably, that there is no mechanism for an individual to come off the list in such cases. That is part of the detail of IBB processes which will be dealt with as a package of measures in regulations under paragraph 11(1) of Schedule 2, following consultation.

On the issue of the composition of the Care Standards Tribunal raised under Amendment No. 27 by the noble Baroness, Lady Walmsley, we entirely agree with her that it is essential to ensure that panels considering appeals against decisions made by the IBB have the right experience and expertise in relation to each case being considered. As the House

will know, the composition of the Care Standards Tribunal is determined by regulations. These will need to be adjusted to reflect the new range of appeals that the Care Standards Tribunal will be handling once the new vetting and barring scheme is available, and we shall certainly take account at that point of the views expressed today and in earlier debates on what types of expertise should be available. That, of course, includes all the categories of membership set out by the noble Baroness in her amendments.

The Care Standards Tribunal currently considers appeals from those included on the existing lists. It already contains a number of members with experience of vulnerable groups. When appointing a lay panel for a tribunal, regulations provide that the president of the tribunal must nominate members who appear to him to have experience and qualifications relevant to the subject matter of the case. To give the president of the tribunal the ability to select appropriate lay panel members for each case, the current regulations provide for individuals to be experienced in one of the listed areas of expertise. Examples of the type of experience required include: experience in the education sector or the health sector; conducting disciplinary investigations; being a member of a child protection committee or similar; and experience of child protection conferences or negotiating the conditions of service of employees. We will consult further on this issue and ensure that the existing secondary legislation to provide for the Care Standards Tribunal lay panel membership is amended as appropriate to include any additional expertise necessary for the tribunal to fulfil its extended remits. On that basis, I hope that the noble Baroness will feel able to withdraw her amendment.

Finally, the noble Baroness, Lady Buscombe, expressed concern about employers and the decisions that they take on the basis of disclosure of information. Employers already decide not to employ someone on the basis of information obtained on disclosure or by other means where an individual is not barred. However, any employment decision is open to challenge on the basis of discrimination, whether or not it is within the scope of barring schemes. It is, we believe, only right that individuals have the right to challenge an employer's decision not to employ someone if, for example, they are the subject of race or sexual discrimination. We do not believe that this position is changed at all by the additional provisions in the Bill.

**Baroness Walmsley:** My Lords, before the noble Baroness replies, I thank the Minister for his reassurances about the composition of the Care Standards Tribunal. I find them extremely satisfactory, so I will not move Amendment No. 27 when we come to it.

**Baroness Buscombe:** My Lords, I will be brief. I thank the Minister for his response to my Amendment No. 7. I entirely accept what he says, and I am extremely pleased with the government amendments, which the Minister has laid before the House today, on appeals on findings of fact. I feel that we have made real progress on this part of the Bill, and I am grateful to the Minister for that.

I am also grateful to the Minister for allowing me to set out our concerns about employment law and employer versus employee, and to ask some of the questions that I thought about in response to some of the statements that the Minister made quite openly and quite rightly in our debates in Grand Committee. I think it is important to ensure that, during our consideration of the Bill, we are as clear as possible about the relationship between employer and employee and whether an individual is on a barred list or is undertaking a regulated or unregulated activity. At the end of the day, the employer and the employee need certainty, and our research on the issue between Grand Committee and today's debate, as well as the Minister's response, have contributed to that certainty. On that basis, and with pleasure, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 8 and 9 not moved.*]

**Lord Adonis** moved Amendment No. 10:

Page 38, line 26, at end insert—

" (1) IBB must ensure that in respect of any information it receives in relation to an individual from whatever source or of whatever nature it considers whether the information is relevant to its consideration as to whether the individual should be included in each barred list.

(2) Sub-paragraph (1) does not, without more, require IBB to give an individual the opportunity to make representations as to why he should not be included on a barred list."

The noble Lord said: My Lords, I am glad to seed the noble Lord, Lord Rix, in his place as he has played a great part in the genesis of this amendment. So, indeed, have other noble Lords present who raised concerns that led to considerable debate both at Second Reading and in Committee about the relationship between the vulnerable adults list and the list of those barred from working in the children's workforce.

Amendment No. 10, which owes a good deal to the discussions we had at Second Reading and in Committee, makes explicitly clear in the Bill what we believe is already implicit there, that the IBB should consider any information it receives in relation to both lists—that is, the children's workforce list and the list of those barred from working with vulerable adults. IBB experts will then exercise their judgment in deciding whether the information merits being taken to further consideration in which the individual would be invited to make representations on that information, which could be in relation to either or both lists. I set out our thinking on the issue when I met the noble Lord, Lord Rix, and have mentioned it to other noble Lords in our discussions. I hope that it will meet the legitimate concerns raised that there should be proper consideration of cases that are referred for both lists, not simply for one. I beg to move.

**Baroness Buscombe:** My Lords, I rise to speak to my Amendment No. 19, which is grouped with

[BARONESS BUSCOMBE]
government Amendment No. 10. I am pleased that the Minister has brought forward that amendment in response to the debates at Second Reading and in Committee. That is welcome, and I am pleased that the amendment goes further than our original amendment by imposing a duty on the IBB to cross-reference. On reflection, at Second Reading several noble Lords expressed a preference for a single list. There was a strong feeling across the House that if an individual is not suited to be with children then he or she is certainly not suited to be with vulnerable adults. My amendment was tabled in the light of the Minister's reply at Second Reading and the notes that he kindly forwarded to noble Lords before the Committee stage.

A central tenet of the new scheme is to establish more consistent information sources with a strong read-across to both lists. Although an individual may in some circumstances present a risk to children or vulnerable adults, but not to both groups, there will invariably be many circumstances in which a person presents a risk to both groups and should be included on both lists. That was the concern expressed so eloquently by a number of noble Lords. The Minister's pre-Committee information note on automatic barring stated that the list of offences in each case will be consistent with offences resulting in an automatic bar without representations with respect to children leading to an automatic bar with representations with respect to adults, and vice versa. My concern was then to ensure that the dialogue, or read-across, should be explicit. With the Minister's amendment, I now believe that to be the case.

**Lord Rix:** My Lords, in Committee I asked the Minister if it would be possible to see him, as it were, in the department to discuss the read-across or whether there should be a single board. I realise that my amendment was unacceptable because of the Human Rights Act, but I am happy to say that I did attend the meeting with the Minister and members of his department, as did the noble Lord, Lord Carter, who unfortunately is not in his place today.

I have to say that it was the shortest meeting that I have ever attended. We did not even have time for a cup of coffee. I walked into the room, was introduced to the members of the department and the Minister then assured me that this amendment was going to be brought forward. With that assurance, I am very glad to support Amendment No. 10. If the noble Baroness, Lady Buscombe, wishes to pursue Amendment No. 19, I am happy to support that also because, having lost my trousers 12,000 times down the road at the Whitehall Theatre, I believe in the cause of belt and braces and I think that her amendment would provide the necessary braces for the belt which has been offered by the Minister.

5 pm

**Lord Harris of Haringey:** My Lords, on a similar theme of belt-and-braces provision, I have a question to put to my noble friend at the Dispatch Box. This is an amendment to line 26 on page 38. Does a parallel amendment need to be made at line 42 on that page? This is being inserted following the clause covering the risk of harm to vulnerable adults, so should there not be a similar amendment covering the risk of harm to children? I simply do not know the answer because I have the advantage in this House of not being a lawyer. It may turn out that the point is covered by the wording; it certainly seems very helpful.

Perhaps I may also share with the House that my experience of meetings with my noble friend is not dissimilar to that of the noble Lord, Lord Rix. When I first went to see him to express some general concerns about the Bill, we were in and out in around 10 minutes. My noble friend recognised that one or two issues would need to be looked at, but again the promised cup of tea was slower to arrive than the Minister's response to the issues I put to him. However, I am grateful for his response today because it addresses issues that were raised in Grand Committee and I seek clarification only on whether the approach is not flawed because it has not been repeated in the clauses referring to children.

**Baroness Walmsley:** My Lords, I can share with the House that I have not had a cup of tea from the Minister either. However, I thank him for bringing forward Amendment No. 10. I would say that, wouldn't I? It achieves pretty well exactly what Members on these Benches were arguing for in Grand Committee. It is therefore very welcome. This is the level at which we felt it was right to do the read-across: relying on the expertise of the IBB.

I too will be interested to hear the Minister's response to the question just posed by the noble Lord, Lord Harris of Haringey, because this has to be a two-way street.

**Lord Adonis:** My Lords, I should stress that I don't accept cases made to me very rapidly so as to avoid offering hospitality to noble Lords when they come to visit me in the department. The tea in the Department for Education and Skills is excellent, and I would be more than delighted to invite noble Lords to come and partake of it, whether they wish to discuss amendments to this or any other Bill.

I am glad that our decision in this matter has been so warmly received. I am told that the point raised by my noble friend Lord Harris is entirely met in the drafting. It is met in such a complicated way that I cannot explain it to him from the Dispatch Box, but I will do so later. However, the note from the Box states that the point is met entirely and it is indeed a two-way street. I hope my noble friend will feel able to accept my reassurance on the point.

**Lord Harris of Haringey:** My Lords, I would be grateful to my noble friend if he did not attempt to explain it to me. However, if he goes on to explain it to the satisfaction of a lawyer, I shall be delighted.

On Question, amendment agreed to.

**Baroness Walmsley** moved Amendment No. 10A:

Page 38, line 26, at end insert—

"When an individual is included in a barred list IBB must take all reasonable steps to notify the individual of that fact."

The noble Baroness said: My Lords, Amendment No. 10A follows on from a very similar amendment, Amendment No. 54, which I moved in Grand Committee. On that occasion the Minister was kind enough to say that he agreed with the principle of what I was trying to achieve and would consider the matter further. I am now led to understand that this new wording in the amendment may well meet with the Government's approval and I thank him for that indication. However, before he rises to respond and to tell us whether the Government approve of the wording, can he give me reassurances on two small points?

First, will the information sent by the IBB to the person to be put on the barred list state clearly not just that he or she is barred but exactly what activities he or she is barred from, and, secondly, will the recipient have to sign for the letter? In other words, we need to be assured that the letter has been received by the person concerned and is not lying on the doormat at an address which the person lived at three years ago. We need to be quite sure that the person has received the information, because a number of criminal offences will ensue if he or she does not know that they are barred and what they are barred from. I hope that the Minister will be able to clarify those points. I beg to move.

**Lord Adonis:** My Lords, the noble Baroness raised this important issue in Grand Committee. The Government have considered the issue and believe it is right that there should be an explicit duty in the Bill on the IBB to take all reasonable steps to notify individuals when they are included on a barred list. On that basis we are happy to accept the noble Baroness's amendment. The notification to individuals will, of course, say which list they are on and give details of what that means in terms of the areas of work from which they are barred.

However, I cannot immediately give the noble Baroness an answer to the second point. I am not sure whether the "all reasonable steps" referred to in the amendment would include a requirement to sign for receipt of the notification, but I will let her know immediately after these proceedings whether that is the case. But we believe that it is absolutely right that all reasonable steps should be taken to notify individuals. Making that explicit in this way will underline the absolute importance of individuals knowing what their status is.

**Baroness Walmsley:** My Lords, I am most grateful to the Minister and I look forward to his clarification on my second point.

On Question, amendment agreed to.

**Lord Adonis** moved Amendment No. 11:

Page 39, line 17, at end insert—

"( ) The Secretary of State may by order amend sub-paragraph (4) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the sub-paragraph."

The noble Lord said: My Lords, I will also speak to Amendments Nos. 12 to 18, 23, 26, 29 to 32, 36, 54, 58 to 64 and 70. These are all minor and technical amendments, and I circulated a note to noble Lords before Report in which I explained the Government's intention behind them all.

Amendment No. 11 allows the Secretary of State to prescribe in secondary legislation additions to the list of bodies in paragraph 12(4) of Schedule 2, which we discussed in an earlier set of amendments. A person is not able to challenge findings of fact made by these bodies, which include the General Medical Council and the General Teaching Councils for England and Wales, when making representations to the IBB against their inclusion on a barred list. However, the list of bodies may need to change as new bodies are formed and the competencies of the current bodies change. This amendment allows for flexibility to respond to such changes.

Amendments Nos. 12 to 18, 23 and 26 make a minor drafting change to the Bill. "Permission", in the context of permission to make representations or permission to apply for a review, is a more up-to-date term than "leave", and reflects the terminology used in the rules of court.

In respect of Amendments Nos. 29, 36 and 54, it has been made clear to us that the Bill, as currently drafted, may prevent an individual from frequently visiting his child in a children's establishment such as a children's hospital and thereby having contact with other children if the individual is barred or he has not applied to be monitored. Clearly this is not the intention of the legislation, and these amendments seek to correct this drafting error. They ensure that an activity carried out in establishments included in Clauses 18 and 19 and in Schedule 3 is not a controlled or a regulated activity unless it is carried out for the purposes of the establishment.

Amendment No. 30 is a technical amendment to ensure that all inspectors of healthcare establishments that provide treatment or therapy for children are included in the definition of regulated activity relating to children. Without the amendment, only those inspecting NHS bodies are included.

Amendment No. 31 is a technical measure to ensure that paragraph 2(2) of Schedule 3 covers both paid and unpaid employment. Without this amendment, a manager in a charity shop may be required to be vetted if a 17 year-old is to volunteer once a week, or a lawyer may be required to be vetted before a 17 year-old can work-shadow him for a two-week work experience placement. It is important that we do not discourage employers from offering children valuable opportunities of working, and this amendment seeks to ensure that that objective is fulfilled.

Amendment No. 32 restores the full reference to the Care Standards Act 2000, which was lost as a consequence of an amendment tabled in Grand Committee. Amendments Nos. 58 to 64 change

[LORD ADONIS]

references to "information monitor" to "independent monitor". The name of the monitor has been changed simply to avoid confusion with the Information Commissioner. Amendment No. 70 is a technical amendment to remove the reference to being subject to monitoring in relation to a "controlled activity" from Clause 46, the interpretation clause. The definition in Clause 46 refers to Clause 21, which only defines being, "subject to monitoring in relation to regulated activity".

No definition is required for monitoring in relation to controlled activity, as the Bill does not use the term. These, as I say, are minor and technical amendments. I hope they are acceptable to the House. I beg to move.

On Question, Amendment agreed to.

**Lord Adonis** moved Amendments Nos. 12 to 18:

Page 39, line 25, leave out "leave" and insert "permission"

Page 39, line 37, leave out "leave" and insert "permission"

Page 39, line 38, leave out "leave" and insert "permission"

Page 39, line 42, leave out "leave" and insert "permission"

Page 39, line 43, leave out "leave" and insert "permission"

Page 39, line 45, leave out "leave" and insert "permission"

Page 40, line 1, leave out "leave" and insert "permission"

On Question, amendments agreed to.

Clause 3 [*Barred persons*]:

[*Amendment No. 19 not moved.*]

Clause 4 [*Appeals*]:

**Lord Adonis** moved Amendments Nos. 20 to 26:

Page 2, line 18, leave out "on a point of law"

Page 2, line 25, at end insert—

"(1A) An appeal under subsection (1) may be made only on the grounds that IBB has made a mistake—

(a) on any point of law;

(b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based."

(1B) For the purposes of subsection (1A), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact."

Page 2, line 26, leave out subsection (2).

Page 2, line 31, leave out "leave" and insert "permission"

Page 2, line 33, leave out subsection (4) and insert—

"(4) Unless the Tribunal finds that IBB has made a mistake of law or fact, it must confirm the decision of IBB.

(4A) If the Tribunal finds that IBB has made such a mistake it must—

(a) direct IBB to remove the person from the list, or

(b) remit the matter to IBB for a new decision."

Page 2, line 37, leave out "(4)(b)" and insert "(4A)(b)—

"(a) the Tribunal may set out any findings of fact which it has made (on which IBB must base its new decision); and

(b) "

Page 3, line 1, leave out "leave" and insert "permission"

On Question, amendments agreed to.

[*Amendment No. 27 not moved.*]

**Baroness Sharp of Guildford** moved Amendment No. 28:

Page 3, line 4, at end insert—

"( ) If the IBB make a decision not to bar an individual, they shall complete a standard form which will set out reasons why the decision was taken not to bar him and this form shall be sent to the organisation which referred him."

The noble Baroness said: My Lords, this brings us back to the issue of employers, about which the noble Baroness, Lady Buscombe, spoke at some length a short while ago. The purpose of this amendment is to ask for feedback for employers, or others referring individuals to the IBB, about why a decision not to bar an individual was taken. This would give referees an understanding of why that decision was taken and assist with future referrals.

In Grand Committee my noble friend Lady Walmsley proposed an amendment that would have allowed employers to appeal against a decision not to include someone on the barred list. The Minister responded by saying that he was not convinced that it was appropriate for an employer to have the right of appeal against an IBB decision, because he was unclear what new evidence the employer could contribute once the IBB had received representations from all relevant parties—of whom the employer might be only one—and had reached a decision. We accept this and appreciate the Minister's assurances in Grand Committee.

Nevertheless—and I argue for this amendment on behalf of the NSPCC—there is a feeling that there needs to be some feedback to the organisation that referred the case in the first instance, if a decision not to bar is taken. That would give it insight on why the decision was taken and whether it is making appropriate referrals to the IBB. Organisations are not looking for substantial and private information about the case itself. In the NSPCC's experience, under the current system it has referred individuals following its own investigation, only to find that the individual has not been barred and often it gets very little explanation or feedback. More feedback would be very helpful, so that organisations would know when it was appropriate to refer and when not to refer.

The NSPCC has already recommended to the DfES setting up a group of employers and IBB representatives who can examine cases where employers or other bodies have referred people to the IBB who are not then barred. Its purpose would be to help employers understand what they need to do to improve their referrals, and to help the IBB learn more about the context in which these employers work, why they made the referrals and the issues they may need to consider in future. The NPSCC believes that such a forum should be established, as such organisations that have spent a great deal of time compiling information for List 99 or POCA, only to find that the individual referred has not been barred, find it frustrating when they are given no guidance or help on why the referral was not successful.

If the Minister is not minded either to include a requirement of a specific, pro forma response identifying why an individual has not been barred or to set up a forum for employers as suggested by the NSPCC, an alternative might be for the IBB to carry out, after a short while, an internal review where an

employer can ask it for a second opinion. Where an individual has been referred but not barred, the employer could go back to the IBB and say, "We feel there is good reason to bar this person. Could the IBB institute an internal review of the case, perhaps by a different group of officials, to make sure that the original decision was a good one?". I beg to move.

5.15 pm

**Baroness Buscombe:** My Lords, I rise briefly to support the amendment. As the noble Baroness said, where an individual has been considered for the barred list but is not included on the list following an investigation, his reputation could in any event have been seriously damaged. Moreover, an individual faces being ostracised from the community following serious allegations of abuse. It therefore seems only fair that those who have not been barred should have a return from the investigation in the form of written proof of the reasons for their innocence.

**Lord Adonis:** My Lords, this amendment would place a duty on the IBB to inform referring organisations of the reasons for its decision not to bar an individual who was referred to it for consideration. We believe that it is absolutely necessary for employers to be informed of the barred status of an individual and we will use the power in Schedule 2(11) to ensure that this is a requirement of the IBB.

We have given the issue a good deal of further consideration since the debate in Grand Committee to which the noble Baroness, Lady Sharp, referred. We do not consider that it would be appropriate that employers should be given the reasons for the IBB decision. There is a particular reason why we have taken this view. Our concern is that notifying employers of the IBB's reasons not to bar an individual would give employers a false sense of security that the person not barred is in fact cleared to work with children or vulnerable adults. Employer discretion and rigorous recruitment and selection procedures will always be a key element in ensuring that the wrong kinds of people do not get to work with society's most vulnerable citizens. We would not wish that any such false sense of security should be provided to employers.

We appreciate, however, that the amendment has been inspired by concern that referring organisations and employers should know enough about how the scheme works and their role in it to be able to play their part effectively. That, of course, is essential to the success of the barring scheme as a whole. We will expect the IBB to work with employers and other referring bodies to fine-tune the referral system and to ensure that there is good awareness of how the scheme operates. We would expect the IBB to advise referring bodies on the types of information that should be referred, the mistakes that can delay consideration of a case and the kinds of information that should not be referred—all the issues mentioned by the noble Baroness in her opening remarks. The IBB would also provide feedback to referring bodies on patterns of referrals, thresholds for barring and the types of cases that will lead to a bar and those that will not, notwithstanding what I have said about providing specific reasons in individual cases

The noble Baroness also suggested that there might be some form of employers' forum which the IBB could use to engage with employers. While we would not wish this to be specified in the legislation, that seems an eminently sensible suggestion and one which we would certainly bring to the attention of the IBB itself. So I hope the concerns that underpin the amendment have been met. However, for the reasons I have given, we do not wish to accept this precise amendment.

**Baroness Howarth of Breckland:** My Lords, before the Minister sits down—and I had not intended to intervene in this part of the debate—I find that argument an unusual *non sequitur* for the Minister. I wonder who has given him the advice. There seem to be two parts. All employers must have robust personnel and supervisory arrangements that protect their stakeholders from employees who might behave inappropriately. However, as part of that, it seems that transparency would demand that they know why someone has been barred. It is quite clear that that adds to, rather than detracts from, their responsibilities. Any responsible employer would see that not as a comfort but as help in dealing robustly with them. I am therefore rather disquieted by the advice that has been given and am sure that the noble Baroness might want to return to this at another stage. The reason I was not going to intervene was that I do not think that this is something we should see on the face of the Bill. It should come in regulation or guidance.

**Baroness Sharp of Guildford:** My Lords, I thank the Minister for his reply. We understand the problems of revealing confidential information when responding to employers. In that sense, I agree entirely with the noble Baroness, Lady Howarth. It would be quite helpful if guidance from the IBB made quite clear the sorts of information that it requires if people are making referrals to it. The issue of transparency is obviously raised here. It is a difficult issue that we need to think about and perhaps return to. The NSPCC specifically raised with us the issue of the sort of information that is required. We do not understand why, when we provide the wrong information, we sometimes think that we have satisfied the criteria although we do not seem to have done so. Clear guidance should be laid down for the IBB, and it should make clear to those employing people who fall into this category the sort of information that it needs when considering whether somebody should be barred. There should be clarity there.

The Minister's response to the suggestion that there should be an employers' forum also was very positive. I urge him to take that forward and think about it more. With those assurances from him, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[BARONESS SHARP OF GUILDFORD]

Schedule 3 [*Regulated Activity*]:

**Baroness Royall of Blaisdon** moved Amendments Nos. 29 to 32:

Page 42, line 31, after "3(1)" insert—

"( ) the activity is carried out for or in connection with the purposes of the establishment,"

Page 43, line 18, at end insert—

"( ) In sub-paragraph (7)(c) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided)."

Page 44, line 9, at end insert—

"( ) In sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so."

Page 44, line 21, leave out "that Act" and insert "the Care Standards Act 2000"

On Question, amendments agreed to.

**Baroness Royall of Blaisdon** moved Amendment No. 33:

Page 46, line 10, at end insert—

"(da) moderating a public interactive communication service which is likely to be used wholly or mainly by vulnerable adults;"

The noble Baroness said: My Lords, in moving Amendment No. 33, I shall speak also to Amendments Nos. 34, 35, 37, 39, 40, 45, 46, 47, 51, 53, 55, 56, 57 and 71 to 76. This is a group of minor and technical amendments on the coverage of vulnerable adults in the Bill and legislation that is the responsibility of the Department of Health.

We have brought forward Amendments Nos. 33, 34 and 35 in recognition of the fact that at Second Reading my noble friend Lady Thornton pointed out that internet chat rooms for vulnerable adults are not covered by the Bill although they are covered in respect of children. This amendment corrects that anomaly. It will ensure that where chat rooms are targeted at vulnerable adults, as defined in Clause 45, and where someone is employed to moderate the content of that chat room for the purposes of adult protection—that is, identifying and preventing abuse—then that post will come within the definition of regulated activity in relation to adults, and is covered by the scope of the bar.

Amendment No. 37 seeks to ensure that all inspectors working for the Healthcare Commission and the Commission for Social Care Inspection will be included in the definition of regulated activity and, therefore, covered by the scope of the bar. That was always our intention; this amendment puts it beyond doubt.

Amendment No. 39 is a transitional provision. Clause 15 is intended to provide that where a person is already employed by the NHS as his main job, he will be able to undertake temporary postings within the NHS to cover staffing gaps and shortages. This is one way in which the NHS seeks to minimise reliance on expensive outside agency staff. Often such temporary postings may well be for the duration of a shift to cover sickness absence or similar. A person in this situation may have been employed in the NHS for many years before the Bill comes into force, so will not be subject to monitoring. As a result, there needs to be protection against the commission of an offence in these circumstances because the appropriate monitoring arrangements will not be in place. This amendment provides that protection.

In addition, where an NHS employee has been checked in relation to his main NHS employments, Amendments Nos. 45 and 46 ensure that this check remains valid for temporary postings that he undertakes while that main employment continues. This means that the NHS does not have to undertake a new monitoring check each time an NHS employee undertakes a temporary NHS posting which may last for just a few hours. I am sure that noble Lords will agree that the necessity to carry out such a check each time has the potential to undermine the swift and efficient deployment of NHS staff to where they are most needed.

Amendment No. 53 merely corrects Clause 15(2), given that the provisions in it are being repealed.

Amendments Nos. 40 and 47 extend the exemption in Clause 14, which exempts certain regulated activity providers from the obligation to make a monitoring check, to the requirement placed on individuals to be subject to monitoring and to the requirements placed on regulated activity providers to ensure that a person they engage is subject to monitoring. Where there is no obligation on a regulated activity provider to make a monitoring check in the first place, it makes no sense for the individual to commit an offence when he engages in regulated activity in these circumstances without being subject to monitoring. Neither does it make sense for the regulated activity provider to commit an offence if he engages a person who is not subject to monitoring. This is a necessary drafting amendment to give effect to the intention behind Clause 14, which is to exempt certain employers from the requirement to check, and the associated offences, but to ensure that these sectors were able to make such checks. I emphasise that regardless of whether there is a requirement to check, where someone is barred they will be committing an offence by undertaking regulated activity.

An amendment was made in Committee to include those who have created an enduring power of attorney as well as a lasting power of attorney. Amendment No. 51 ensures that the exemption from the requirement to check applies to both equally. In effect, this corrects a drafting omission.

Amendments Nos. 55 and 56 give the Secretary of State the power to make regulations doing two things: first, to amend the definition of controlled activity in relation to vulnerable adults by adding further types of activity that can qualify as a controlled activity in the circumstances set out in Clause 19(2); secondly, to add persons involved in those activities to those who must have regard to guidance relating to permitting people to engage in controlled activity issued under Clause 20.

The current definition in the Bill covers only those working in health and social care, where we know the risks are greatest and where checks will be required. However, we want to retain the flexibility to amend the description of controlled activity, should service provision change in the years ahead. We have made the same provision in relation to regulated activity.

Amendment No. 57 seeks to marry all the references to access to health records in the Bill so that there is true consistency. We prefer the more general term of health records rather than medical records, as this is the term used more widely in reference to information that health services hold about individuals; it has been used elsewhere in legislation, such as the Access to Health Records Act 1990.

Amendments Nos. 71 to 76 are drafting changes made for the purposes of clarifying these provisions grammatically.

I trust that these minor and technical amendments will be acceptable to noble Lords. I beg to move.

5.30 pm

**Baroness Buscombe:** My Lords, I want to ask the Minister a question about the amendments relating to existing NHS staff who are undertaking temporary positions in the NHS in addition to their main employment in order to cover staffing gaps and shortages. Continuous regulation has the potential to seriously stifle organisations such as the NHS, and adding further bureaucracy to the field of recruitment, already suffering shortages of trained staff, is simply counterproductive. We therefore welcome these government amendments, and they will be of practical benefit. However, has the Minister given consideration to other areas of recruitment in this respect; for example, supply teachers or care staff in the private healthcare sector? I am wondering why this provision is limited to the NHS. Is it because the Department of Health drafted this part of the Bill? Is that why consideration has not also been given to, for example, supply teachers?

**Baroness Royall of Blaisdon:** My Lords, I understand that supply teachers are covered in other parts of the Bill. As for workers who are employed by agencies, for example, they will have to be checked and vetted if they are working with vulnerable people, caring for them or undertaking personal, social service-type tasks for them. The NHS is specifically referred to because it is specifically referred to in the Bill. We are tidying up the Bill to ensure that it is absolutely explicit that there will not be a further burden on the NHS at this stage and that checks will be made when necessary.

On Question, amendment agreed to.

**Baroness Royall of Blaisdon** moved Amendments Nos. 34 to 37:

Page 46, line 12, at end insert—

"( ) For the purposes of sub-paragraph (1)(da) a person moderates a public electronic interactive communication service if, for the purpose of protecting vulnerable adults, he has any function relating to—

(a) monitoring the content of matter which forms any part of the service,

(b) removing matter from, or preventing the addition of matter to, the service, or

(c) controlling access to, or use of, the service."

Page 46, line 13, leave out "(a) to (e)" and insert "(a) to (d) or (e)"

Page 46, line 20, after "person" insert—

"( ) it is carried out for or in connection with the purposes of the establishment,"

Page 46, line 29, leave out sub-paragraphs (5) and (6) and insert—

" (5) The exercise of the functions of—

(a) the Commission for Healthcare, Audit and Inspection;

(b) the Commission for Social Care Inspection;

(c) the National Assembly for Wales,

so far as it relates to the inspection of an establishment, agency, person or body falling within sub-paragraph (6) is a regulated activity relating to vulnerable adults.

(6) An establishment, agency or body falls within this sub-paragraph if it is—

(a) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000,

(b) an agency in relation to which such a requirement arises,

(c) a person to whom Part 2 of that Act applies in pursuance of an order under section 42 of that Act, or

(d) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003,

and it provides any form of care, treatment or therapy for vulnerable adults.

(6A) In sub-paragraph (6)(d) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided)."

On Question, amendments agreed to.

Clause 6 [*Regulated activity providers*]:

**Lord Harris of Haringey** moved Amendment No. 38:

Page 3, line 30, leave out "or vulnerable adult"

The noble Lord said: My Lords, this amendment relates to Clause 6, the clause that defines regulated activity providers. As we discussed in Grand Committee and at Second Reading, regulated activity involves hands-on care and the training and supervision of a child or vulnerable adult. A regulated activity provider is someone who has responsibility for the management of that regulated activity. There are exemptions to that definition, set out in Clause 6(3) to (6), which are essentially about people making private arrangements, purchasing care for themselves, a family member or a friend. They would not be regarded as regulated activity providers in the context of this Bill and therefore, although they would have the power to make checks on people who are hired, would not be required to carry them out.

My amendment would make it clear that there should be a greater duty of care on someone who is not personally affected by the decision they are making. In those circumstances the friend or family member who is assisting the vulnerable adult would need to be

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redefined as a regulated activity provider in order for checks against the barred list to be mandatory. I recognise that it is an offence for someone on the barred list to apply for this type of work, but the purchaser would not be obliged to make checks against the list. I believe that that has created a loophole in the Bill. The amendment seeks to make that loophole rather smaller.

It is clear that the measure would place additional burdens on friends and family members—I am sure that noble Lords have seen the briefing from Carers UK on precisely that point—but such people are already under a duty to take reasonable steps to promote the welfare of the person who they are assisting. By clarifying that checks against the barred list should be made in respect of potential staff carrying out regulated activity, the welfare of vulnerable adults is promoted. That is in accordance with the general provision of the Bill.

I understand—I am grateful to my noble friend Lady Royall for the time that she has given to me and other noble Lords to discuss precisely this point—that the Government have listened carefully to stakeholders who are concerned that making checks mandatory for all direct payment users would be an unnecessary and offensive intrusion into private life. However, the amendment is not about the people who have the capacity to hire their own personal support and assistance—it certainly does not suggest that those individuals would become regulated activity providers—it is about those people who are doing it on their behalf because they do not have the capacity to do it themselves. As I have said, it is argued that there should be a greater duty of care where someone other than the person doing the hiring is affected by the decision which is taken.

Clearly, I do not want to suggest that friends and family members are not already taking reasonable steps to promote the welfare of the people they are assisting. I understand that the measure might appear to create additional burdens for them, though it is my belief that the additional burden would be a very small one. As I shall point out in a moment, I believe that it would make their job easier in terms of what they have to do.

Obviously, we should trust those who are closest to vulnerable adults to make the right decisions on their behalf; I accept that. Certainly, it should not be the intention to criminalise family members or friends who are helping someone who lacks capacity to manage his or her affairs, but a barred person would be committing an offence that could lead to a prison sentence if she or he applied to work in a job involving regulated activity. It has been argued that that would be a sufficient deterrent. However, my concern—and I have discussed this with a number of people—is that if a barred person knows that the family and friends of a vulnerable adult are unlikely to take advantage of their opportunity to check against the barring list, that is precisely the family on which they will focus their activities. There is a lot of experience among professionals in the social care field that that is what happens. Those people will gravitate towards that work and those families.

Therefore, I read with great interest the document produced by Carers UK in which it states that the measure would constitute an unreasonable requirement on friends and families of vulnerable adults. Carers UK gives examples which it says are proof that checks should not be needed. It states:

"Jim down the road who has known the family for years and gets on extremely well with the son, regularly takes him out to do a range of activities. He's not paid, but a volunteer. If some of the amendments were successful, the parents would be committing a criminal offence if they did not check that he was not barred from working with vulnerable adults first".

The document continues:

"Judith has a direct payment which she helps her husband manage as he's in the first stages of Alzheimer's Disease. She met Maria through her local Alzheimer's Society support group. Maria's Mum, who had Alzheimer's Disease, died a couple of years ago and now Maria has started to help other families . . . Judith would be committing a criminal offence if she did not check whether Maria was allowed to work with vulnerable adults".

My point is that it is precisely under those circumstances where a family member or a close friend is arranging care for their loved one that they may find it most difficult to reject help from somebody whom they know and with whom they have been working. Although they would have power to make that check, many individuals would find it difficult to go to someone who has already been supportive and helpful and say to them, "Please sign this piece of paper so that I can check whether you are on the barring list". It would be much easier to go to someone and say, "As you know, the law requires me to make this check", rather than, "The law says that I may if I wish to. Therefore I don't trust you". Under those circumstances, we would be strengthening the hand of carers of vulnerable adults. We are giving them an easier option in exercising their judgment and providing the best care for the people concerned.

I was therefore very relieved that another organisation, Help the Aged, explicitly addressed this question and said that it agrees with the line that I believe is important. It states that,

"this would be particularly helpful in supporting the most vulnerable Direct Payments users—those who need assistance in arranging their affairs and, in particular, those whose Direct Payments are operated through a trustee account".

I accept that there may well be points about whether my amendment to remove the three words is technically perfect, but I assume that that is something that can be resolved by Third Reading. My amendment is not designed to criminalise carers. It is designed to give carers an easy way of saying to someone who has made friends with the family and who appears to be generally supportive: "The law requires us to make this check". That will empower carers rather than impose an undue burden on them. I beg to move.

**Baroness Buscombe:** My Lords, I hope that the Minister agrees that it would make sense if I spoke in this grouping to my Amendments Nos. 38A, 50A

and 55A. In my seven years on Her Majesty's Opposition Front Bench, I cannot remember a more difficult issue in relation to deciding what is right. It is such a difficult balance to strike. The noble Lord, Lord Harris of Haringey, spoke eloquently and with a good deal of sense with regard to his amendment. He stated, most importantly, that friends are the often most difficult people to reject when they offer help to someone they know. That rings true and everyone appreciates that the Government are no doubt finding it difficult to strike the right balance too.

My amendments are the result of several meetings that noble Lords have attended since Grand Committee. I was disappointed to have missed the meeting with the noble Baroness, Lady Royall of Blaisden, but I have been fully briefed on that discussion. This cluster of amendments is intended to demonstrate our commitment to ensuring the very best safeguarding standards for those who employ people at home.

Amendment No. 38A is the vital amendment and is designed to achieve two major objectives. First, the amendment and the others that support it would ensure that the duty to check potential direct payment employees would be required only for those third parties who act on behalf of a vulnerable adult. That position is defined in Section 5 of the Mental Capacity Act. My amendment differs on that point from the amendment moved by the noble Lord, Lord Harris of Haringey, which, as I understand it, would mean that all people who employ under direct payment schemes, including those who employ for their own care, would be under a duty to make checks. I agree with the noble Lord that it is much easier blame the law and say, "I'm terribly sorry, but the law requires me to make this check", rather than being put in the difficult position of proposing to a friend or a member of the family the need to carry out that check. However, I am concerned that that is perhaps pushing the balance too far. Of course, it is so difficult to police this issue.

5.45 pm

Secondly, the amendment links up the duty of care in the Mental Capacity Act with the new provisions for care—the barred lists—that the Bill will introduce. It was my concern that an individual providing third-party care would find himself in breach of the Mental Capacity Act by not carrying out a check. It is reasonable to suggest that if a vulnerable adult were to suffer abuse because the person responsible for them as a third party did not make a check, that person could be said to have breached their duty of care. I understand that there was a long discussion on this at the meeting with the noble Baroness, Lady Royall, and cross-table support for the reasoning that a mandatory check would be easier to implement.

I am aware of the position of Carers UK on the suggestion that direct payment employees would be subject to a check, but this amendment does not affect people who provide care entirely for themselves. Rather, it seeks to protect those who can no longer care for themselves. Making a check itself does not reflect in any way on the character of the person subject to checking. That is an important point. But I understand that it may be difficult to say to a potential employee, especially a friend, that you would like to make a check on them to care for your mother or grandmother. Surely it is far easier to say, "I'm sorry, the check is mandatory", and to have the reassurance that that person is a safe bet as a matter of course. I look forward to the Minister's reply as I know that she has been working on the issue with her officials and had promised to come back to me on that point.

**Baroness Howarth of Breckland:** My Lords, the noble Lord, Lord Harris, made the case extremely clearly and I am grateful to the noble Baroness, Lady Royall, for the meeting that was held. I believe, and I am sure that the noble Lord, Lord Harris, would want it clarified, that we were trying to separate out what we meant by a "vulnerable adult". An adult who is able to arrange their own direct payments may have a disability but that does not render them a "vulnerable adult". Many disabled people are very able. They are disabled only in a societal sense because of their surroundings, but they manage their own affairs. In those circumstances we all clearly felt that they should be able to get on with it.

The real difficulty is when people are vulnerable and others are acting on their behalf. Like the noble Lord, Lord Harris, I believe that someone must give real permission. It is a benefit to people. I am interested in the Carers UK argument. Having worked in the field for many years, I know that it is the neighbour you think you knew very well who ends up being the abuser; it is not the monster stranger depicted in the newspapers.

When the Church of England first introduced a regulation that all Sunday school teachers should be checked, which was a little before the regulation was enforced, it developed a whole series of diocesan child protection organisers. There was then a slight outcry in some of the churches. How could these good people need to be checked? The Church is now deeply relieved to do this statutorily because we are talking about volunteers working directly with children. I am sure that if the measure were introduced it would be seen as a benefit, it would take away pressure from families, and we would protect some truly vulnerable adults.

**Baroness Walmsley:** My Lords, I have added my name to the group of amendments in the name of the noble Baroness, Lady Buscombe. As I understand that the amendment moved by the noble Lord, Lord Harris of Haringey, refers only to agents of vulnerable people who are in receipt of direct payment, I also support his amendment. It is the agents who need to have the obligation to do the checks. They are the people who I want to reach whichever amendment we pass. I do not mind which one it is. Perhaps the noble Lord, Lord Harris of Haringey, would like the opportunity to clarify that point.

**Lord Harris of Haringey:** My Lords, I am grateful to the noble Baroness for that invitation. As the House

[LORD HARRIS OF HARINGEY]
knows—I have referred to it at least once today—I pride myself on not being a lawyer. However, my understanding of the amendment and certainly its intention is that it concerns the agents of people who are vulnerable adults rather than vulnerable adults who, in other circumstances, are perfectly able to arrange matters themselves. I intend this amendment to cover people who are acting on their behalf.

**Baroness Walmsley:** My Lords, I am grateful to the noble Lord for that clarification. On that basis, I am right behind him. If he chose to divide the House, I would support him. He is absolutely right: it would empower carers to be able to say, "I am obliged to do this check". I very much agree with the noble Baroness, Lady Howarth of Breckland, that "Jim down the road" is exactly the type of person who may have made himself very friendly and amiable to a family but with malign intent. Such people are very friendly and one would not believe that they had any intention of doing harm. That is how they manage to reach their victims. I believe that the obligation for agents to undertake the check would greatly improve the Bill.

Yesterday, I was very confused by receiving two conflicting pieces of advice on how to vote on the amendment tabled by the noble Lord, Lord Harris, from two very reputable organisations. I think that the advice from Help the Aged makes the points with which I feel most in tune. It has got it right. Carers UK's concerns are absolutely understandable, but I believe they are misplaced—I hope they are. If we were to put something in the Bill to this effect—the intentions expressed by the noble Baroness, Lady Buscombe, and the noble Lord, Lord Harris—then I hope that Carers UK and the people it represents would not feel either insulted or too burdened but empowered to do the jobs they have so generously taken on.

**Baroness Royall of Blaisdon:** My Lords, as the Bill stands, Clause 6(5) provides an exemption from the definition of regulated activity provider in relation to family members or friends who make arrangements for the provision of regulated activity for individuals within their care. Amendment No. 38 would remove that exemption in relation to family members and friends; for example, to ensure that checks are made where care is arranged by a third party. I do not believe that this is a loophole, as mentioned by my noble friend Lord Harris. To accept this amendment would mean interfering in private arrangements, which is something that we wish to avoid. Indeed, one of the underlying principles of the Bill is that Government should not impose requirements on individuals' private lives and on family members or friends of vulnerable adults.

Noble Lords will recall that the noble Lord, Lord Laming, tabled a similar amendment in Committee and we debated the issue at length. I understand that this is an area of concern for many and I welcome the opportunity to give the House further assurances. First, it may help if I provide a couple of further examples that set out why we believe that the exemption is so vital and why we believe that those acting in connection with the provision of care or treatment to their friends and family members who lack capacity should not be included in the definition of regulated activity provider.

The daughter of a lady with dementia may wish to employ a neighbour for a few hours a week to help to take care of her mother. The neighbour may be paid or unpaid, but regardless, that is a private arrangement and we would not wish to interfere with that. Alternatively, a young disabled man may wish to enlist his friend's help in managing his direct payment and that friend may employ another friend or neighbour as a PA to help out with certain tasks. For example, the PA may take the young disabled man swimming or to a cafe for lunch. Again, it is not our intention to interfere in that kind of arrangement.

As the Bill stands, in both those cases it is not our intention that either the daughter or the friend would be regulated activity providers and, therefore, they would not be required to make barred status checks on the individuals whom they employ. However, they would be able to make checks if they wished to do so in both cases. We must work on the basis that the daughter and the friend would act in the best interests of their family or friend and we must, therefore, give them the freedom to decide whether to engage with the scheme. To do otherwise would be to intervene in the type of family or friendly arrangement that was never intended to have legal consequences. I do understand that my noble friend does not seek to impose legal consequences but, as it stands, that would be the consequence.

A key principle of the scheme is that we do not intrude into private and family life. As a result, we do not require parents to check everyone who cares for their children and we do not propose to do the same for the family members or friends of adults. We understand that adults who lack capacity should not be treated in the same way as children, but the Bill as drafted reflects the realities of family life. If all those who assist their loved ones or friends in managing their day-to-day lives in this way were placed in the mandatory sector, it would mean that anyone who failed to engage with the scheme would be committing a criminal offence. We do not wish to risk criminalising those caring for loved ones. To accept these amendments would do exactly that.

As my noble friend Lord Harris and other noble Lords mentioned, Carers UK, an organisation that we all respect enormously, has expressed concern about any amendments that would result in placing legal requirements on family members and friends. It argues strongly against creating additional burdens on the 5.2 million carers who provide unpaid care. It is also concerned that,

"additional burdens would act against Government policy which is seeking to open up choice to disabled people and their families about which services to use",

allowing them to opt not to use large scale providers but to,

"engage the help and services of people known to them, or through advertisement".

The Government recognise the important contribution carers make and want to support them. I understand the points raised about the vulnerability of this specific group of people. It could be envisaged that family members or friends might on occasion take advantage of their vulnerability. I also understand the point made about targeting of those specific individuals. However, I would suggest that this is an area where we have to get the communication strategy right, and it is not just a question of Government but local agencies and organisations such as carers' organisations so that we can build a community of support where the checks are the accepted norm.

The issue of trust raised by noble Lords is key, because we should not seek to destroy the trust that exists between family members and friends. Amendment No. 38A in the name of the noble Baroness, Lady Buscombe, would have a similar outcome, but it would include within the definition of regulated activity provider under Clause 6 all those who act in connection with the provision of care or treatment as set out in Section 5 of the Mental Capacity Act 2005 for family members or friends who lack capacity. This is a huge number of people and the arguments I have made in relation to Amendment No. 38 would apply to Amendment No. 38A.

Amendment No. 50A tabled by the noble Baroness, Lady Buscombe, seeks to remove paragraph (h) of Clause 14(1). This provision exempts those individuals in receipt of a direct payment and those individuals requiring assistance in the conduct of their affairs—individuals who have a lasting or enduring power of attorney, a deputy appointed by the Court of Protection to make decisions on their behalf, or an appointee taking care of their benefit or pension payments. As your Lordships will recall, we debated direct payments at some length in Committee. I understand that this is an area of concern for many and that opinion remains divided in terms of how best to protect individuals in receipt of direct payments. However, I must reiterate some of the arguments I raised in Committee. Direct payments are about giving individuals more choice and control over their lives—empowering them—and any move to place direct payments recipients in the mandatory sector would be met with strong resistance by the recipients themselves. The wishes of those benefiting from direct payments must be paramount when considering the requirements of the Bill.

I would also point out that our approach has received widespread support from those organisations representing users of direct payments. For example, Menghi Mulchandani, co-chair of the National Centre for Independent Living, has stated that compelling people to check potential users against a barred list would deny them the opportunity to take the risks that others are free to take.

6 pm

However, we understand the concerns raised in relation to this group of people and we accept that more could be done, perhaps via the direct payment support services that exist in most local authorities, to support individuals in accessing the scheme. Therefore, we intend to place a duty on all local authorities to inform direct payments recipients about their right to engage with the vetting and barring scheme. We are currently looking at how that might be achieved, and I look forward to sharing the outcome of that exercise with noble Lords at Third Reading. That approach has been endorsed by a number of stakeholders, including Action on Elder Abuse.

I now turn to the exemption for those requiring assistance in the conduct of their affairs. People defined under this subsection are potentially at an increased risk of abuse and therefore it is right that those individuals providing those types of support can be eligible for the central vetting process. However, in many cases, individuals providing that assistance to a vulnerable adult will be family members or trusted friends and, as such, it would not be appropriate, and might be perceived as being offensive, to impose mandatory checking requirements on them. We do not wish to interfere unnecessarily with that type of arrangement. We believe that the decision whether to vet staff should remain with the individual. They will decide whether or not to make a check and we will ensure that they are supported in that decision.

None the less, it will be possible for checks to be made. In addition, the public guardian will be able to run checks where any concerns are raised or where the Court of Protection or the public guardian thinks that such checks are necessary. That is why we want to retain the exemption in this sector.

I turn to Amendment No. 55A, tabled by the noble Baroness, Lady Buscombe. We intend that controlled activity will cover those working in health and social care with vulnerable adults. That will include those undertaking controlled activity in relation to direct payment recipients. However, we are not confident that the Bill as drafted does so, so we are grateful to the noble Baroness for drawing that to our attention. I will come back to noble Lords later with a suitable amendment. On that basis, I ask the noble Baroness to withdraw her specific amendment.

Many arguments have been made this afternoon about vulnerable adults. We have heard the concerns expressed by organisations such as Carers UK and others which take a contrary view. The Government believe that the 5.2 million carers in this country provide an invaluable service to people who need that care and we must listen to carers' associations. It is right to emphasise at this point that the Bill takes us so much further than where we are at present, where vulnerable people are not covered in any way by a barring and betting scheme. Although I accept that the Bill does not go as far as many noble Lords would wish, it is a huge step forward and I therefore ask noble Lords to accept our reassurance that we intend to create an additional further safeguard in relation to

[BARONESS ROYALL OF BLAISDON]
direct payments. We intend that local authorities should be under a duty to inform direct payment recipients of their right to make checks. We are currently considering how that may be done.

I ask noble Lords to reconsider Amendments No. 38 and 38A and not to press them.

**Lord Harris of Haringey:** My Lords, I am grateful to my noble friend for that reply. I must say that I am disappointed with it, especially given the very helpful discussions that we had earlier. Having said that, her proposal that there should be a legal obligation on local authorities to provide advice about the right to make those checks on recipients of direct payments is welcome and sensible.

My concern, however, is not about recipients of direct payments who are able to act on their own behalf. It is entirely right that they should be given all the support and advice that my noble friend offers in her amendment. My concern lies with those people who act on their behalf. People who act on their behalf have a higher duty of care, in my view, than those who are making the judgment for themselves. We all make judgments about how much personal degree of risk we are prepared to take. Quite properly, we are under all sorts of constraints if we are making those judgments on behalf of other people, even other members of our family. That is how the law works in other contexts. Where people are making arrangements on behalf of those who do not have capacity, whose vulnerability means that they are unable to make those decisions, it is important that the statutory obligation to take steps to check people is contained in the Bill.

I am very mindful of the concern expressed by Carers UK. I must say that I think that Carers UK is wrong. It is saying that the mere fact of a requirement is imposing an onerous burden on the individuals concerned. As I have argued—and I have the impression that most of your Lordships who have spoken agree—it is often easier if you have an obligation to act to say to people who appear to be—or are—friends, "This is something that we must do". Even if you have the right and have been advised by your local authority that you have the right to make those checks, it is very difficult to say to someone, "I have the option but, in your case, I have decided to exercise it". That is very difficult for individuals to do. So I think that Carers UK has got that wrong.

Before my noble friends who are Whips get into a state of hysteria, thinking that I am about to divide the House on this matter, I make clear that I suspect that my precise wording does not quite meet the requirements that I have set out. I hope that the Government will think very carefully about what has been said in this short discussion today and will come back in two weeks' time on Third Reading with some more positive proposals that meet the needs.

The Government have three choices. First, they can do something that reduces the criminality on individuals who fail to make the checks. Secondly, they could do something to restrict the number of people who are covered by the provision, so that it really affects those whose capacity is very limited. Perhaps they could do a combination of those two. Thirdly, they could try to persist with the line that my noble friend has followed today.

However, I rather suspect that if they do the latter, an amendment will appear on the Order Paper that may have support from many sections of this House. It will be designed to try to remove the embarrassment that will in practice be found by friends and family who are acting in the best interests of the person whom they love, who will find it very difficult to press someone who may have inveigled their way into their families or friendship. They will find it difficult to say, "Despite the fact that we are not obliged to, we are going to make this check on you". That would make it a lot easier for all those individuals, so I hope that my noble friend will come back at Third Reading with a proposal that either delimits the number of people to whom the provision applies or avoids the situation where people feel that they are unduly criminalised.

On the basis that I am sure that my noble friend will do just that, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 38A not moved.*]

Clause 8 [*Person not engage in regulated activity unless subject to monitoring*]:

**Baroness Royall of Blaisdon** moved Amendments Nos. 39 and 40:

Page 4, line 38, at end insert—

"( ) Where subsection (5) applies to a person who is engaged in regulated activity which is relevant NHS employment for the purposes of section 15(1)(d), he does not commit an offence under subsection (1) if he also engages in any other such regulated activity as mentioned in section 15."

Page 5, line 4, at end insert—

"( ) A person does not commit an offence under subsection (1) if—

(a) the regulated activity is regulated activity relating to vulnerable adults, and

(b) the regulated activity provider falls within section 14."

On Question, amendments agreed to.

**Baroness Walmsley** moved Amendment No. 41:

Page 5, line 11, at end insert—

"( ) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that he did not know, or could not reasonably be expected to know, that he should have been subject to monitoring."

The noble Baroness said: My Lords, in moving Amendment No. 41, I shall speak also to Amendments Nos. 42 to 44, 48 and 49. The whole group is designed to do what the noble Lord, Lord Harris of Haringey, has just suggested as an alternative; namely, to reduce the criminality in the Bill.

Amendment No. 41 would introduce a defence for a person who is engaging in regulated activity without being subject to monitoring and who is charged with an offence. I presume that the punitive framework in the Bill is intended to ensure that those engaged in the vetting processes carry out their duties extremely

rigorously. However, the wide range of regulated activities in Schedule 3 means that many thousands of people who are not directly involved in teaching or caring will be subject to vetting. Of course I agree that every attempt should be made to ensure that people do not engage in regulated activity without being vetted, but the best way of achieving this is to ensure that IBB procedures and processes are clear and definite, not by criminalising those who make mistakes.

Clause 8 makes it an offence to engage in any regulated activity without being subject to monitoring. The only defences to this are if the individual got permission to engage in the activity before the Bill came into force or was involved in a regulated activity "on an occasional basis". This means that a person who, for example, gets work involving child therapy or who comes into frequent contact with children in relevant childcare premises, or who has contact with vulnerable adults in a care home, will commit an offence if they are not subject to monitoring. It is of particular concern that such a strict liability offence can be committed as a consequence of involvement in an activity which is defined by as unspecific a term as "frequent".

At earlier stages of our debates, "five times" was given as a definition of "on an occasional basis". I really do think there is a loophole in the Bill if a serious sex offender would not offend if he engaged in regulated activity just once, twice or maybe three times a year; it takes only once to molest a child. Unless we close some of the loopholes, this Bill could be seen as retrograde. However, I digress.

The defence in the amendment is quite limited. The onus is on the person charged to prove that they did not know, or could not have known, that they should have been subject to monitoring. I accept that this would be quite difficult because it involves proving a negative. It is similar to the defence introduced in Clause 7. However, it differs from that defence in that it offers an alternative; a person can prove that they did not know or could not reasonably have been expected to know. The reason for this is that, when proving a negative, it is extremely difficult to establish that you could not reasonably be expected to know. It will be especially difficult to prove that he did not know whether the person has signed for a letter telling him that he is barred, as we discussed earlier in our debate on Amendment No. 10A, which the Government accepted. But things go wrong, and people need proper opportunities to prove their innocence. My theory is that if it can go wrong, it will go wrong. That was proved to us last weekend. Those of us who read the newspapers will have seen that the CRB branded as criminals nearly 1,500 people who were not criminals; it was a case of mistaken identity. We must ensure that the defences against the rather draconian criminal offences introduced in the Bill are robust and that people have an appropriate opportunity to prove their innocence.

Amendments Nos. 42 to 44 would restrict the offence of the use of a person not subject to monitoring in Clause 10 to situations where a person knows that someone is not subject to monitoring but still permits them to engage in regulated activity. The definition "reason to believe" is far too subjective. What is good reason in one situation is not in another. I believe that it is far too draconian to be left in the Bill, especially in a field where the turnover of staff is high, as it is in some care homes. Someone should know that the person should be subject to monitoring, but is not, before that person commits an offence. The amendments would restrict the criminalisation to situations where a person actually knew that someone was not subject to monitoring but still allowed them to engage in regulated activity.

Amendments Nos. 48 and 49 stem from exactly the same concerns. In this case, we decided to table amendments to Clauses 11 and 12, adding the word "negligently" to ensure that only negligent cases are included in the offences in these clauses. The word "negligence" is well understood in legal circles, and people should be penalised only in these cases and not simply if they make a mistake, or if they are badly trained or badly supervised, which is not their fault.

I attach considerable importance to the amendments, because I believe that they redress the balance of fairness in the Bill. Although I would not in any way want to reduce the rigour of the measures to protect children and vulnerable adults, we should always bear in mind the human rights of those who might be incorrectly penalised and who might inadvertently commit a criminal offence under the Bill. I beg to move.

**Lord Adonis:** My Lords, the amendments seek to ensure that individuals are not criminalised as a result of lack of knowledge or understanding of the requirements on them, or as a result of an oversight.

Amendment No. 41 is intended to ensure that an offence is not committed by an individual who engages in regulated activity without being subject to monitoring where he did not know or could not reasonably be expected to know that he should be subject to monitoring. We entirely understand the noble Baroness's concern about criminalising individuals who do not know or understand the requirements on them. We certainly do not want to criminalise individuals unfairly; indeed, we have given a good deal of consideration to this matter. But I reiterate the commitments I gave to the noble Baroness in a letter following Committee, in which I said that we intend to take every reasonable step to ensure that there is no reason why individuals would be unaware that they were required to be subject to monitoring. We will expect the IBB to ensure that the scheme in place is well understood, and guidance issued before the commencement of the Act will provide further details about what type of activity will be covered by "regulated activity", and about the requirements on individuals to be subject to monitoring and not barred before engaging in this activity.

The IBB and the CRB will put time and resources into an ongoing, widespread communication campaign for employers and employees, including the provision of seminars and training. I take to heart here the

[LORD ADONIS]

remarks made by the noble Baroness, Lady Sharp, on how we can engage more formally with employers to ensure that they are aware of their duties. We will continue to talk to the wide range of stakeholders with an interest in the Bill, as we have already done, and we will consult them where necessary. We will also communicate to individuals through websites and other media about their responsibilities under the new scheme. I should stress that we have already significantly extended the requirements for CRB checks as a result of the announcements made by the Secretary of State for Education and Skills in January.

On 12 May, new regulations came into force that make it mandatory to obtain enhanced CRB disclosures for all new appointments to the school workforce and those who have been out of the workforce for more than three months. These regulations have already come into force, and we are providing substantial information about them on the TeacherNet website and other means of communication with schools.

To take up another point discussed in Committee, we will also provide a facility to advise employers and individuals on interpretation of the Bill's terms and requirements. We envisage that this facility will be provided by the CRB with the support of my department, the Department of Health and the IBB itself. The CRB currently gives guidance on the likely extent to which a particular position is eligible for standard and/or enhanced disclosures. However, as terms are open to interpretation, the status of the CRB's advice is—and will be—only guidance. It will have no bearing on how the courts interpret criminal offences. So, we will work hard to minimise the possibility of employers or employees not understanding the requirements imposed upon them.

Furthermore, the requirement to be subject to monitoring will, in the main, only apply to those individuals engaging in regulated activity with the permission of a regulated activity provider. These providers will be under a duty to check, and will therefore reinforce the message to individuals that they must be subject to monitoring.

I hope that the noble Baroness, Lady Walmsley, will be reassured that we are effectively minimising any likelihood that an individual could engage in regulated activity without understanding the requirement to be subject to monitoring. However, we are acutely concerned about giving a defence in statute of the kind set out by the noble Baroness. The possible effect of the amendment would be to undermine the purpose of the scheme itself, because it could lead to employers and employees giving excuses and prevarication that prevent its effective enforcement. Providing the proposed defence for individuals will create a barrier to enforcing the scheme. It should be accepted that it is likely that the types of individuals who have a criminal record or past conduct that would lead to barring will, by the very nature of the offences, try to avoid applying to be subject to monitoring. Amendment No. 41 may provide an excuse for those individuals to avoid criminal sanctions. We are very anxious not to open up that loophole through the Bill.

Amendments Nos. 48 and 49 are similar in their intention to prevent individuals from committing an offence through a lack of understanding of requirements placed upon them. The first amendment proposes that,

"A regulated activity provider commits an offence",

of permitting an individual to engage in such activity,

"without making an appropriate check",

only where he does so "negligently". The second proposes that,

"The appropriate officer commits an offence",

of failing "to obtain relevant information" relating to a person,

"who is appointed to the governing body of an educational establishment",

only where he does so "negligently". We take the effect of these amendments to be that a person would only commit the offences in question if his actions—that is, his granting of permission or failure to make an appropriate check—were not those of a reasonable person in the circumstances. I expect that the noble Baroness intends here to prevent a small employer, who does not understand that they are under a duty to check, committing an offence for failing to do so.

I hope that the commitments I have made regarding communication with employers and individuals will reassure the noble Baroness that we will be seeking to reduce the chances of an employer committing an offence through ignorance of the requirements placed upon them. As with the proposed Amendment No. 41, the effect of these amendments would be to create a new loophole and endanger the scheme itself. These amendments could well lead to employers giving excuses and prevarication that prevent effective enforcement of the scheme. We do not wish to create a defence for employers that could undermine the success of the scheme.

I turn to Amendments Nos. 42 to 44. These are intended to restrict the circumstances in which an employer or personnel supplier is liable for an offence by employing an individual who is not subject to monitoring in situations where they know that the individual is not thus subject. The amendments seek to ensure that they will not commit an offence if they only have "reason to believe" that the person is not subject to monitoring.

I impress on the House that the inclusion of "has reason to believe" is necessary for the effective functioning of the scheme. Where an employer does an online check which indicates that the individual is subject to monitoring but—perhaps because he is barred, or withdraws from the monitoring process—the individual later ceases to be subject, the intention is that the employer should be notified of that by the Secretary of State. If for some reason the employer is not, then they may receive information from another source such as the police or a regulatory body, and will thus not know that the person is not subject to

monitoring but will "have reason to believe" that he is not. In these circumstances, it is important that the employer does not employ the individual until they know that the individual is subject to monitoring.

For the scheme to succeed, it is important that individuals who are working closely with children and vulnerable adults are subject to monitoring. That will help to ensure that where evidence indicates that an individual presents a risk, to children or to vulnerable adults, they will be prevented at the earliest opportunity from working in regulated activity. Therefore, it is important that individuals engaging in regulated activity are subject to monitoring. The offences created by this clause, with a fine of up to £5,000 for breaches, will be a necessary disincentive for individuals to engage in regulated activity without being subject to monitoring, when working for an employer who is under a duty to check that they are.

These amendments are unnecessary, while having the potential to reduce the necessary bite of the offence created under this clause. We are worried that they might open up loopholes for employers and individuals to engage their duties to be subject to monitoring under the scheme. We hope that the noble Baroness will not press them.

**Baroness Walmsley:** My Lords, I thank the Minister for his reply. Our intention is certainly not to create loopholes in the Bill, but at the same time it is only right that individuals and, especially, employers have the appropriate defences against the criminal offences that they might be charged with under the Bill—when we have people doing their routine work who, as I said earlier, may not have been sufficiently well trained or supervised to know what they should be doing in terms of checks.

I am disappointed to hear the Minister reject the insertion of the word "negligently", because if someone makes a slip through no fault of their own—through lack of training or supervision—and are doing the job to the best of their knowledge and training, then the word "negligently" will not catch them. They will only be committing the offence if they are negligent, a word that is well understood.

I may return to this matter at Third Reading, but I need a little more time to think about it. I am strongly tempted to ask the opinion of the House on at least one such amendment, because the whole issue of the draconian nature of these offences—and the rather poor nature of the defences available to people—is so important.

There are no noble Lords—including the Minister, myself and those on the Conservative and Cross Benches—who want to do anything to weaken the Bill. Despite that fact, we are still cognisant that people's rights should be protected, when doing their job to the best of their ability, by giving them an appropriate level of defence should they be charged with failing to dot all the "i"s and cross all the "t"s when somehow or other the information has not reached them. As I said earlier, if something can go wrong then it will, as has been proved over the weekend. For the moment, I shall not seek the opinion of the House, but I may well return to this matter at Third Reading after further thought and discussion with noble Lords. I beg leave to withdraw the amendment.

Amendment, by leave withdrawn.

Clause 10 [*Use of person not subject to monitoring for regulated activity*]:

[*Amendments Nos. 42 to 44 not moved.*]

**Baroness Royall of Blaisdon** moved Amendments Nos. 45 to 47:

Page 6, line 15, at end insert—

"(5A) A person does not commit an offence under subsection (1) if—

(a) he falls within section 15,

(b) the permission mentioned in subsection (1) commences at a time when B is engaged in relevant NHS employment mentioned in section 15(1)(b) in circumstances mentioned in subsection (5), and

(c) for the duration of the permission mentioned in subsection (1) B continues to be engaged in that relevant NHS employment."

Page 6, line 16, after "(5)" insert "or (5A)"

Page 6, line 17, at end insert—

"( ) A person does not commit an offence under subsection (1) or (2) if—

(a) the regulated activity is regulated activity relating to vulnerable adults, and

(b) the regulated activity provider falls within section 14."

On Question, amendments agreed to.

Clause 11 [*Regulated activity provider: failure to check*]:

[*Amendment No. 48 not moved.*]

Clause 12 [*Educational establishments: check on members of governing body*]:

[*Amendment No. 49 not moved.*]

6.30 pm

Clause 14 [*Exception to requirement to make monitoring check*]:

**Baroness Buscombe** moved Amendment No. 50:

Page 8, line 37, leave out paragraphs (b) and (c).

The noble Baroness said: My Lords, I shall also speak to Amendment No 52, which questions whether this clause should remain in the Bill. Noble Lords may recall our debate in Grand Committee on exemptions, in particular Clause 14(1)(b) and (c), on protecting vulnerable people in prison, mindful that my concerns were not so much with what one might describe as the hardened criminal, but with young adults and offenders who are detained in custody. In introducing this amendment I explained that the report of the Second Joint Chief Inspectors' review on arrangements to safeguard children contains a wealth of information on the subject, covering the needs of both children and young people in custody. The report states that children and young people who commit offences present particular challenges for safeguarding. I also referred to various alarming statistics that highlight the vulnerability of young offenders. In addition,

[BARONESS BUSCOMBE]

I referred to situations whereby communication and contact between agencies charged with protecting these people break down. I said that I believed this Bill to be the perfect opportunity to address this frankly disturbing and important issue.

Unfortunately, I was not happy with the Minister's reply. He responded that:

"The exemption in relation to those services means that they will be afforded the flexibility to specify and undertake vetting requirements relevant and proportionate to their unique services".—[*Official Report*, 3/5/06; col. GC255.]

Why, for example, are young offenders' institutions so different from other residential institutions such as boarding schools or care homes? Of course the rules will be different, but the proximity between those in authority and their residents is quite similar, in which case I find it difficult to accept that we are talking about unique services.

Moving on to the amendment on whether Clause 14 should remain in the Bill, noble Lords will note that I have added my name to that of the noble Baroness, Lady Walmsley, to demonstrate the depth of my continuing concern about the list of exemptions. Since Grand Committee, I have had an opportunity to discuss this issue with the Minister, and our meeting was both useful and constructive. The noble Lord agreed that we ought to know exactly how the system of checking works within the Prison Service. Are there strict rules or guidelines? Do all those who may come into contact with offenders get checked? Let us remember that in Grand Committee I cited the Soham case as an example whereby proximity might not have been expected or presumed.

I understand that the Minister and his team have been researching this issue, for which I am grateful, together with other issues relating to other exemptions listed in Clause 14, and therefore I look forward with interest and hope to his reply. I beg to move.

**Baroness Walmsley:** My Lords, Amendment No. 52 seeks to leave out Clause 14. I wish to highlight the extreme dissatisfaction among noble Lords with different elements of the list set out in the clause—some more, some less, but all give cause for concern. To exempt so many categories of people from being regulated under the procedures in this Bill is highly risky.

I have reason to believe that one of the reasons why the Government are apparently not moving on this matter is the sheer workload facing the IBB and the large number of people who would be dragged into the system if we did not have these exemptions. If that is the case, can the Minister assure us that if these exemptions were taken out, the people who by that means would be brought into the system could be included in a staggered way? In other words, could a provision be brought back at Third Reading to include the people we are concerned about—those working in the prison and probation services, home tutors, alternative therapists, sports and leisure organisers and so forth—to provide that implementation in respect of those groups might be staggered over a period, perhaps up to two years? That response from the Government would be satisfactory and would set our minds at rest.

If we want a rigorous and robust system, as we all do, the people listed in Clause 14 should certainly not be exempted. They should be included because many of them could have unsupervised access to vulnerable people in their own homes. In Grand Committee I used the example of those who place hands on bodies in the course of giving a massage. That is very intimate contact and it would be quite inappropriate to exempt such people from these measures. I hope that the Minister will be able to give us some comfort on this issue.

**Baroness Howarth of Breckland:** My Lords, I support the amendments. As a practitioner, I find this list totally extraordinary. My personal experience concerns situations where people take their clothes off. That gives an absolute invitation to harassment and abuse, particularly of young women with learning difficulties who use alternative therapies or in a number of sporting situations where abuse takes place. Many of the organisations concerned could cite examples throughout this list.

I recognise that the Criminal Records Bureau is pretty overwhelmed. Recently I was told—I hope it is not true—that an organisation with fewer than 100 volunteers could not be checked despite the fact that those volunteers had face-to-face contact with children with a condition that makes them vulnerable. So I realise that there are some real difficulties in the way the system is working. But that is no reason for legislators to behave in a way that does not protect the groups for which this Bill is supposed to provide. Further, I agree with the noble Baroness, Lady Walmsley, that the introduction of these measures could be staggered by the use of regulations.

If the list is left as it is, vulnerable adults will be left open to a whole range of abuse. I hope that the Minister can reassure us on that point.

**Lord Harris of Haringey:** My Lords, I, too, have substantial reservations about this list of exemptions because it encompasses precisely those areas where there is very real vulnerability. I personally am not a great fan of complementary and alternative therapies, though I believe many people are. What all these therapies are about, aside from the frequent requirement to lay hands on individuals as part of the treatment or to work with their minds, is that the person who has put their trust in such a therapist believes, first, in the therapy and, secondly, in the therapist. Not checking those individuals would leave an extraordinarily dangerous loophole.

Subsection (1)(d) refers to,

"an organisation which provides recreational, social, sporting or educational activities".

When I was involved in local authority social services, some of the most difficult cases of individuals causing problems related to children and vulnerable adults arose in those areas. They are precisely the areas where checks of some sort are required.

I understand the concern about the volume of work associated with this provision, and I appreciate some organisations' concern that suddenly they will be required to comply with this. I have to say that I am not at all convinced by the second argument. Many such organisations provide services, particularly those for children, for which checks are already required. This would merely extend the range. The noble Baroness, Lady Howarth, referred to the position of the Church and the checks now made on Sunday school teachers. Organisations are now familiar with these processes. I do not believe that this would be a shocking new development with which organisations would have difficulty.

I understand, too, the difficulties associated with suddenly placing an enormous new requirement on a system that may well be overstretched by all the other things we have talked about during our debates. The way to resolve that is not to produce a list of exemptions, but to recognise the difficulty and ensure that implementation is phased over a period long enough to allow the IBB to get under way and establish robust systems—I am sure that they will not be robust immediately—and to allow organisations for which this will be wholly new and uncharted territory to understand what is required of them.

Although under Clause 14(4) the Secretary of State can amend the list, my concern is that if we simply have a list of exemptions as is contained here, an amendment to the list will happen only once there has been some appalling tragedy or some appalling series of incidents. I would much rather that we approached this, not operating on the basis of this list of exemptions until something goes awfully wrong, but on the understanding that, although this is the direction we need to go in, we should perhaps take a little time to get there.

There should, therefore, be a major change to this list of exemptions, and, when setting an implementation timetable by order after the Bill has been passed, the Government should look very carefully at what is a feasible timetable, both for organisations that have to get used to a new system—I suspect it will not be quite as many as people fear—and for the IBB to get its systems strong enough to cope with what I accept could be a substantial number of incidents.

**Baroness Royall of Blaisdon:** My Lords, Clause 14 lists those regulated activity providers exempted from the obligation of making a vetting and barring check under Clause 11. I know that this is a difficult issue and that opinion remains divided as to the merits of retaining optional checks for certain groups. Indeed, I take note of the extreme dissatisfaction expressed by some noble Lords.

I would, however, reiterate the importance of flexibility in the new scheme. For many sectors exempted under Clause 14, the concept of central vetting will be entirely new. We want to give these sectors the opportunity to phase in checks as appropriate to their individual services, and to give them the freedom to decide internally which members of staff should be vetted. However, we are also clear that we want those sectors within the scope of the scheme from the start, so that checks can be made and people can be barred in these areas, right from the very beginning. We hope to build a culture where checks are made as a matter of good practice rather than through legal force. We will develop comprehensive guidance for those employers and providers operating under Clause 14 which promotes the benefits of the new scheme.

It is also important to bear in mind proportionality issues in relation to this clause. Mandatory checks should be proportionate to the risks presented. We want people to be safe, but we do not wish to impose a blanket requirement that may result in services being withdrawn. As a starting point, we have made checks mandatory in health and social care settings where we know that incidence of abuse is greatest. It may interest noble Lords to note that findings from research undertaken by Action on Elder Abuse indicate that the highest number of abusers was found in institutions such as residential homes, nursing homes and hospitals.

I now turn to paragraphs (b) and (c) of subsection (1), and the amendment tabled by the noble Baroness, Lady Buscombe. Again, this issue was discussed in Committee. The Prison Service and the National Probation Service are two unique businesses, providing a wide range of services and interventions to adult prisoners and offenders through a wide range of staff groups and providers. A blanket approach to vetting arrangements would not sit comfortably within either service's operating arrangements. Therefore these services require the flexibility to specify and undertake the vetting requirements that are relevant and proportionate to their unique business.

Although in the optional sector, neither the Prison Service nor the National Probation Service will seek to disengage from the new vetting and barring scheme. It will be their policy to comply with the scheme in making checks. The vast majority of staff working in close contact with vulnerable adults in both the prison and probation services will be checked, as set out in the legislation. For example, in the Prison Service, staff who have close contact with vulnerable adults in a prison setting—for example, prison officers—will be checked, but staff providing support to prisoners in a group setting may not be checked.

Another important area for consideration regarding the Prison Service is the position of volunteers. The Bill needs to strike a balance between protecting vulnerable people in prison and imposing increased regulation which could ultimately reduce the benefit received by prisoners from voluntary workers. However, I well understand that the noble Baroness, Lady Buscombe, is particularly concerned about the most vulnerable offenders, especially those in young offenders' institutions.

6.45 pm

Both the Prison Service and the National Probation Service already have in place robust procedures for vetting staff, which include criminal history checks,

[BARONESS ROYALL OF BLAISDON]
and these apply to all staff. I reassure noble Lords that these procedures will remain in place for all staff not required to go through the new central vetting scheme.

I remind noble Lords that, as an additional safeguard, we have made provision under Clause 14 to remove exemptions, via delegated legislation, in relation to those groups listed. This will allow time for the scheme to bed down in both the mandatory and optional sectors, and enable us to extend mandatory vetting in response to particular service requirements. I again remind noble Lords that, where someone is barred, it will be an offence for them to undertake any work involving regulated activity in any sector, whether or not a check is made.

I have listened carefully to noble Lords' concerns this afternoon. I would like to reassure them that, since we debated this issue in Committee, I have been working with my advisers and colleagues in other government departments to consider how best this clause can be reworked. I certainly accept the merit of their arguments today, but I am also clear of the need to retain some optional checks for some sectors of the workforce, and I hope that we can achieve a solution that is acceptable to all concerned.

I am particularly grateful to the noble Baroness, Lady Walmsley, for her suggestion that there may be some phased implementation sector by sector, and indeed we could do this under the powers in Clause 47(5). We will explore this further. I am not yet at a point where I can share with noble Lords our thinking on this clause as a whole. There are more discussions to be had with a vast number of government departments.

I hope that noble Lords will be reassured, however, that I have taken on board their comments today and those made in Committee, and I undertake to come back on this clause on Report. I very much hope that the noble Baroness will feel able to withdraw her amendment.

**Baroness Buscombe:** My Lords, before the Minister sits down, could she explain why, for example, in Clause 14(1)(a), complementary or alternative therapy is exempted in particular? I do not understand why that has been plucked out. We hear from her that the incidents of abuse have been found on most occasions to be in the health and social care settings and that that is where abuse is greatest. But that is bound to be the case, because they are in a more public arena. The problem with complementary or alternative therapy is that it is a very private situation, so the opportunity to discover abuse is much narrower. I simply do not understand the logic of this list.

**Baroness Royall of Blaisdon:** My Lords, the reasoning behind the inclusion of complementary medicine in the list of opt-outs is that complementary and alternative therapy encompasses a vast array of services. Many people benefit from these services, and we do not wish to impose regulatory burdens that may not be proportionate with the services they offer. However, I have listened with great sympathy to the arguments made by the noble Baroness today and in Committee. This is a matter of discussion among government departments and I very much hope that we will be able to find a solution that is acceptable to her on Report.

**Baroness Howarth of Breckland:** My Lords, before the noble Baroness sits down, may I ask that she circulates the group's research on elder abuse? Could she tell me whether it covers those with disabilities and those with learning disabilities? Those are very vulnerable groups which may well not have been looked at in the research and I would like to look at the methodology.

**Baroness Royall of Blaisdon:** My Lords, I would be delighted to circulate the research. I cannot answer the noble Baroness's specific question now but I will do so in writing.

**Baroness Buscombe:** My Lords, I thank the noble Baroness for her response, and I appreciate that she and her department are doing all they can to try to resolve this problem. Yes, opinion is divided, but it seems to be divided in the sense that all noble Lords, other than the Government, feel strongly that there is a problem with this list of exemptions.

I shall start with the issue of vulnerable offenders. I am pleased to learn from the noble Baroness that there are robust procedures, including criminal history checks, in place at young offender institutions. Those will continue to apply to all staff. This is an area where some comfort would be gained if the Government could reassure us that truly good systems are in place for those particularly vulnerable individuals. With regard to the grouping as a whole, I get the feeling that the noble Baroness, Lady Walmsley, has hit upon the worry that the system will probably not cope. We hear in the press at the moment—some of it, I hope, exaggerated—that the Criminal Records Bureau is not coping and is having great difficulty and that mistakes are occurring—mistakes that are deeply offensive to those concerned.

I appreciate that it is difficult to strike a balance between trying to be robust and cover all areas as best we can to minimise harm and, at the same time, being practical. All I can say is that I urge the Minister to reconsider some aspects of this list. Yes, flexibility in the new scheme is important. It is also important to ensure that there is some way of phasing in the checks as appropriate. I am nervous of tilting the balance too far in the direction of reducing the freedom of the individual, and I am sure that that is of concern to the Government. At the same time, we are talking about the most vulnerable individuals. I know from my own experience of seeking complementary medicine that one enters into a very private and intimate environment. Even I have felt quite uncomfortable for no reason at all. We are touching upon a very delicate area.

We are lucky to have the expertise of noble Lords who have experienced some of these difficult issues at first-hand, including the noble Baroness, Lady Howarth,

and the noble Lord, Lord Harris of Haringey. I urge the Minister and her team to remain busy in the two weeks before Third Reading. It is not something one would want to divide upon, but I am certainly not yet content. For now, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 50A not moved.*]

**Baroness Royall of Blaisdon** moved Amendment No. 51:

Page 9, line 5, after "(10)(a)," insert "(b),"

On Question, amendment agreed to.

**Baroness Walmsley** had given notice of her intention to move Amendment No. 52:

Leave out Clause 14.

The noble Baroness said: My Lords, the amendment deals with a very serious matter to which we will most certainly return at Third Reading. I thank the Minister for all her efforts behind the scenes. However, I have to express my disappointment that she has not been able to get further with this in time for today's debate. Today we have talked about little loopholes in the Bill. Clause 14 is a great yawning chasm in the Bill, not a little loophole, and is a very serious matter. I hope that what I have just said provides the noble Baroness with the sort of whip she requires to speed up consultations behind the scenes and to do something about this. This House will not be content until she is successful in her efforts.

[*Amendment No. 52 not moved.*]

Clause 15 [*NHS employment*]:

**Baroness Royall of Blaisdon** moved Amendment No. 53:

Page 9, line 28, leave out from "in" to end of line 32 and insert "which the employee engages in regulated activity."

On Question, amendment agreed to.

Clause 18 [*Controlled activity relating to children*]:

**Baroness Royall of Blaisdon** moved Amendment No. 54:

Page 10, line 35, after "person" insert—

"( ) it is carried out for or in connection with the purposes of the institution,"

On Question, amendment agreed to.

Clause 19 [*Controlled activity relating to vulnerable adults*]:

**Baroness Royall of Blaisdon** moved Amendment No. 55:

Page 11, line 24, at end insert—

"(f) such other activity as is prescribed."

On Question, amendment agreed to.

[*Amendment No. 55A not moved.*]

**Baroness Royall of Blaisdon** moved Amendment No. 56:

Page 11, line 27, leave out "medical" and insert "health"

On Question, amendment agreed to.

Clause 20 [*Controlled activity: guidance*]:

**Baroness Royall of Blaisdon** moved Amendment No. 57:

Page 12, line 46, at end insert—

"( ) such other person as is prescribed carrying out an activity prescribed pursuant to section 19(4)(f)."

On Question, amendment agreed to.

Clause 23 [*Information monitor*]:

**Baroness Royall of Blaisdon** moved Amendments Nos. 58 to 64:

Page 14, line 27, leave out "information" and insert "independent"

Page 14, line 28, leave out "information" and insert "independent"

Page 14, line 35, leave out "information" and insert "independent"

Page 14, line 38, leave out "information" and insert "independent"

Page 15, line 10, leave out "information" and insert "independent"

Page 15, line 13, leave out "information" and insert "independent"

Page 15, line 20, leave out "information" and insert "independent"

On Question, amendments agreed to.

Clause 24 [*Part 5 of the Police Act 1997: code of practice*]:

**Baroness Walmsley** moved Amendment No. 65:

Page 15, line 36, at end insert—

"(d) issue conditions to be complied with;

(e) issue a fine to the person"

The noble Baroness said: My Lords, Amendment No. 65 is the same as an amendment that I tabled in Grand Committee, since when I have received a response from the Minister. The amendment was to provide for alternative sanctions against organisations that misuse the list and their ability to use it. I am most grateful to the Minister for his letter of clarification, sent to me as promised. In it he was able to reassure me that an organisation will still be able to apply for an enhanced disclosure via an umbrella body, and that the only facility it will lose is its ability to countersign applications.

Cancellation or suspension of registration—which I had said would not be helpful—will not affect an employer's ability to make an online check of barred status. Could the noble Lord, in responding, tell me whether doing that through an umbrella body would take longer? However, I agree with the Minister's comments in his letter that non-compliance with any provision in the code of practice requires a serious sanction. The probity of information provided to the CRB, and any suggestion that disclosure information is being misused to the detriment of job applications, are serious matters. The CRB should be able to expect rigorous attention to the correctness of information supplied to it. The offending organisation should be suspended or, ultimately, have its registration

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cancelled if it offends against the code of practice in that way. I put these matters on the record out of gratitude to the Minister and in order to clarify the issue. I had tabled this amendment before I received the Minister's letter.

I will probe a little further on one issue. The Bill places a legal duty on a range of bodies to refer individuals who have harmed children, or placed them at risk of harm, to the IBB. This includes, in Clause 27, regulated activity providers; in Clause 28, personnel suppliers in relation to employment situations; and, in Clauses 31 and 33, local authorities, regulating bodies and so on in respect of situations that may go beyond employment and involve conduct or risk of harm in a wide range of settings. In the Minister's helpful letter of 24 April he highlights by way of example other types of referral based on prospective harm. On the second page of that letter he refers to a psychologist reporting a teacher who was not in employment to List 99, following concerns over reported sexual interest in children. The Minister gave the same example verbally in Grand Committee. This case raises an important issue; namely the capacity for medical professionals working outside a local authority and other bodies such as the NSPCC and other children's organisations to refer people to the IBB. It is a highly important issue as the IBB must be able to capture information on those who pose a risk to children or vulnerable adults or who come to the attention of practitioners in a range of ways and settings which may not be covered by the duty in the Bill to refer to the IBB. For example, although a GP as a regulated activity provider would be under a duty to report a member of his staff working in a regulated activity, position or setting who had harmed a child or posed a risk of harm, what about the capacity of the GP to report a patient whose conduct gave cause for concern?

7 pm

I would like the Minister's views on three specific questions. I shall be perfectly happy if he writes to me because I have not been able to show him the courtesy of giving him notice of these questions before today's debate. First, what is the exact legal basis for referrals by bodies and individuals who are not listed in the Bill as having a requirement to refer to the IBB? If the Minister has received any legal advice on this, I would welcome the opportunity to see it. Secondly, if there is not a clear legal basis for this, should the Government not ensure that it is clear on the face of the Bill and that not to do so would run the risk of referrals of this kind from organisations such as the NSPCC being out of order? Thirdly, do the Government accept that the capacity for IBB referrals from a range of other bodies that have a responsibility for children would be an important safeguard and would add to the protections of children that we seek in the Bill?

I would most grateful if the Minister could respond to these matters now or in writing. It seems that the possibility for people to refer to the IBB is very wide—almost anyone could do it. Obviously we do not want just anybody to do it. We need to be clear about who has the knowledge and understanding to be able to do it sensibly. I need to know whether organisations that have such expertise but are outside the duty can so refer to the IBB. I beg to move.

**Lord Adonis:** My Lords, I will respond to the questions of the noble Baroness in writing so that I can give her a very precise answer to her question.

It is of course open to any individuals—indeed, it is a part of their duty as citizens—including the organisations mentioned by the noble Baroness, to refer information that leads them to be concerned about the activities of individuals and their work with the groups covered by the Bill; that is, children and vulnerable adults. The normal course in the first instance would be to refer the matter to the police. The police have procedures, of course, which they follow when such information is referred to them, and the police themselves will make a judgment on whether to refer the information to the IBB. It would be open to individuals to refer such information directly to the IBB, which may in turn choose to refer them to the police.

My understanding of the situation is that if the bodies mentioned by the noble Baroness—they are absolutely *bona fide* bodies—have information in this area that is of relevance to the IBB, they would be able to make such referrals even though they are not under a duty to do so in the sense that they are the employer or a past employer of the individual concerned. But I shall respond to the noble Baroness in writing.

I should also apologise to the noble Baroness that in Grand Committee I was not sufficiently up on the detail of Part 5 of the Police Act 1997, which refers to the CRB code of practice and the reason for the sanctions on registered bodies. Had I been so, I might have been able to meet her points then without the need to do so at this stage. The issue that I was not sufficiently on top of then, but I am now—as the noble Baroness says, I have written to her about this in my letter of 19 May—is the actual role of the registered bodies and the fact that non-registered bodies are not inhibited in their capacity to seek disclosures but simply cannot countersign applications themselves.

The main role of the registered bodies is to countersign applications for enhanced disclosures. This role is very important—I think the noble Baroness and I are now at one on this—and is the reason why we have the sanctions we have. Although the ultimate sanction of withdrawing registration is a very draconian one, the intermediate sanction of suspension is, we think, an absolutely appropriate sanction, rather than, for example, fining such bodies. If the registered bodies do not fulfil their functions competently, the effect can lead to a situation of the sort we saw over the weekend where individuals can be incorrectly notified that they are included in the list or that inquiries are being pursued in relation to them. That occurred because the information supplied in the first instance to the CRB in respect of, for example, date of birth, proper spelling of names and addresses

and so on, was not properly checked. It is often the incorrect checking of such information that leads to the kind of situation we saw at the weekend.

We believe that the role of the registered bodies is of very great importance. The research that we have been conducting on the registered bodies has led us to take this issue still more seriously. Since last September, the CRB has visited 620 registered bodies to examine their compliance with their duties. Of this number, over half—that is, 373 of the 620—were found to be in overall breach of their conditions of registration to the extent that it could adversely affect the integrity of a disclosure certificate and/or the probity of the end-to-end disclosure process. I think the noble Baroness will agree that this is a serious state of affairs. As I say, it goes some way towards explaining the difficulties that the CRB has established in the absolute reliability of the information that it has, with all the consequences that we have seen over the weekend. In that context, it seems to us that the powers to suspend registration—and ultimately to withdraw registration—are appropriate.

Many employers are not registered to countersign applications, and therefore make an application for an enhanced disclosure via an umbrella body that is registered to countersign applications. In the future, there will be fewer registered bodies. At the moment there are about 14,000 such registered bodies but, in order to enhance the professionalism of registered bodies, the CRB intends to reduce that number very substantially. However, it is the intention of this reform that employers who are not themselves registered bodies should still get a swift and satisfactory service from one of those umbrella registered bodies.

I hope that the concerns of the noble Baroness have been met. It is in order to significantly improve the quality of the work done by registered bodies that we are seeking to take these powers. It is important that the registered bodies act with competence. If they fail to do so, it can have profound effects on individuals. On that basis, and with the information I will supply to the noble Baroness about the right to make references of individuals who are not under a duty under the Bill, I hope she will feel able to withdraw the amendment.

**Baroness Walmsley:** My Lords, I thank the Minister for his response. My concerns have indeed been addressed and I beg leave to withdraw the amendment.

Amendment, by leave withdrawn.

Clause 31 [*Local authorities: duty to refer*]:

**Baroness Sharp of Guildford** moved Amendment No. 66:

Page 20, line 7, at end insert—

"( ) When considering a referral under this section local authorities and IBB shall take into account any guidance issued by the Secretary of State for this purpose."

The noble Baroness said: My Lords, the reason for the amendment is to clarify the requirements on referrals to the IBB and to suggest that such referrals should be based on objective criteria and considerations. We have already mentioned those who have a duty to make referrals to the IBB. Among the bodies required to do so are local authorities, under Clause 31, and professional bodies, under Clause 33. The amendment relates to those two clauses.

One of the central purposes of the Bill is to pick up on individuals who pose a risk to children or vulnerable adults either by their current conduct or by the possibility that they may offend in future. There is concern that Clause 31 and—for different reasons and to a lesser degree—Clause 33 are phrased very vaguely. It is important that the impact of the provision is not simply to pull into referral many of the types of cases dealt with by social services departments in respect of individuals who, while they may have harmed children, do not pose a risk. But we also run the risk of having very different interpretation by local authorities of these provisions and overwhelming the IBB with referrals.

These two amendments are about ensuring that there is both a consistent and an appropriate threshold for referrals. The amendment therefore proposes that the Secretary of State is required to issue statutory guidance, both to the IBB and the local authorities, on the types of cases and circumstances that should be referred to the IBB under Clause 31. It also proposes that there should be similar guidance issued to professional bodies under Clause 33. This picks up once again the issues discussed earlier about employers in regulated activities, where the noble Lord was good enough to say that the IBB would be issued with clear guidance so that employers would know when to make such referrals. Local authorities and professional bodies will also need clear guidance as to when to make referrals to the IBB.

On a slightly different issue, will the Minister clarify the thinking behind Clause 31(4)(a). The wording is slightly obscure. The first condition is set out in Clause 31(1) with reference to local authorities:

"A local authority must provide IBB with any prescribed information they hold relating to a person if the first and second conditions are satisfied".

The second condition is set out in subsection(4):

"The second condition is that the local authority think . . . that the person is engaged or may engage in regulated activity or controlled activity".

What does "may engage" mean? It is so vague. This requirement makes up one of the criteria that trigger a local authority duty to refer to the IBB. But is it this year, or next year? Could it be a student at the start of a vocational course who is involved in work in a regulated position? Will the Minister clarify this for us? I beg to move.

**Baroness Buscombe:** My Lords, we support the amendments in principle, but we are concerned that perhaps they are not quite specific enough. In our view, there should be a clear definition of the threshold at which a local authority has a duty to refer.

**Lord Adonis:** My Lords, I hope I can meet the first points made by the noble Baroness by stating categorically that we will issue guidance to local

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authorities and professional bodies so that they are clear about the grounds for the duty to refer information. We will do so for all the reasons that she gave as to the importance of ensuring clarity and consistency of practice nationwide. The guidance will also include advice on when the "harm test" can be said to have been satisfied and, as I set out in the note on the definition of the "harm test" I circulated to noble Lords before Grand Committee, harm will include physical harm, damage to a child or vulnerable adult's emotional or mental state, and harm to a vulnerable adult as a result of financial loss.

Guidance will also be issued on the grounds on which the condition at Clause 31(4)(b)—that the local authority or professional body thinks that IBB may consider it appropriate for the person to be included in a barred list—may be met. This will ensure that local authorities and professional bodies are not under a duty to refer information on the grounds of trivial incidents of harm that would not be sufficient to bar a person.

The guidance will also clarify the meaning of "may engage in a regulated position", which is used at Clause 31(4)(a), the clause to which the noble Baroness has just referred. It is not intended that this condition should effectively include anyone who has the capacity to engage in regulated or controlled activity at some point in the future, nor that a local authority or professional body should make a judgment about a person's likelihood to engage in regulated or controlled activity several months or a year from the time at which it is considering referring information about the person to the IBB. It is intended that this condition should include cases where a person, for example, is seeking employment in regulated or controlled activity—or a person has a significant history of involvement in voluntary work with children and vulnerable adults—and the local authority thinks that he may do so in the future, even though he is not volunteering at the precise moment when the local authority is considering referring information about him to the IBB. I hope that this addresses the point raised by the noble Baroness and limits, as the guidance will do, the very general wording in that subsection.

7.15 pm

The Secretary of State will also prescribe the information that must be referred to the IBB once the conditions for the grounds for referral have been met. As I set out fully in the regulation powers note, which I circulated before Grand Committee, it is envisaged that the information will include certain factual information relating to the case, including an individual's name and other personal details, details of the behaviour engaged in by the individual, copies of relevant documents such as interview notes and notes of evidence, and information about police involvement and disciplinary hearings. I hope that I have given the noble Baroness the assurances that she was seeking and that she will feel that she does not need to press the amendment.

**Baroness Sharp of Guildford:** My Lords, I am very grateful to the Minister for his reply. It does indeed help to clarify the situation. I am glad that the guidance will be issued. I take on board fully the point made by the noble Baroness, Lady Buscombe, that it is important to know what the thresholds are on such an occasion, and I take it that the guidance will clarify this. I also thank the noble Lord for the clarification of Clause 31(4)(a). I understand that the full explanation and the repercussions of this will be set out in guidance. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 33 [*Registers: duty to refer*]:

[*Amendment No. 67 not moved.*]

Clause 39 [*Provision of information: no claim for damages*]:

**Lord Harris of Haringey** moved Amendment No. 68:

Leave out Clause 39.

On Question, amendment agreed to.

Clause 43 [*Damages*]:

**Lord Harris of Haringey** moved Amendment No. 69:

Page 26, line 2, at end insert—

"(1) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of—

(a) the fact that an individual is included in a barred list;

(b) the fact that an individual is not included in a barred list;

(c) the provision of prescribed information in pursuance of any of sections 27, 28, 29, 31, 32, 33, 36 and 37.

(2) Subsection (1)(c) does not apply to the provision of information which is untrue by a person who knows the information is untrue and either—

(a) he is the originator of the information and he knew at the time he originated the information that it was not true, or

(b) he causes another person to be the originator of the information knowing, at the time the information is originated, that it is untrue."

On Question, amendment agreed to.

Clause 46 [*Interpretation*]:

**Lord Adonis** moved Amendment No. 70:

Page 28, line 43, leave out "or controlled"

On Question, amendment agreed to.

**Baroness Walmsley** moved Amendment No. 70A:

Page 29, leave out lines 12 and 13 and insert—

"must be made in accordance with the procedure in section "(Parliamentary scrutiny)."

The noble Baroness said: My Lords, I rise to move Amendment No. 70A, and to speak to Amendment No. 70B, which is grouped with it. The effect of these amendments would be to allow Parliament to amend orders that amend the definition of what constitutes

regulated activity under Clause 5(3), the power to make incidental provision—including modifying any enactment—under Clause 47(2) or regulations made under paragraph 19 of Schedule 2, listing offences or orders for which conviction, caution and so on will lead to automatic inclusion, or inclusion subject to representations on the barred lists.

In Grand Committee, we tabled a different amendment to achieve the same thing. The Government's response was that this was highly unusual. Highly unusual it may be, but unprecedented it is not. So today I have tabled amendments that are virtually identical, with appropriate changes, to the parts of the Civil Contingencies Act 2004 which try to do the same thing: to enable Parliament to amend an order. It is particularly appropriate in this case because we are talking about lists that would be laid before Parliament. We have had sufficient debate and disagreement this afternoon about what should and should not be on lists. There will certainly not always be a meeting of minds as to any future list that might come before us in this way. It might be perfectly appropriate for Members of Parliament to be able to agree to some kinds of activities on a list that might be put before them and to not agree to others. It is important that Parliament should have the opportunity and an appropriate process laid down, which has a precedent in the Civil Contingencies Act, so that it can agree with some items that the Secretary of State might propose and disagree with others.

That is the reason for the change in approach. I accept that the amendment we tabled in Grand Committee was inadequate because it did not give a mechanism by which the matter could be dealt with, should somebody disagree with something on the list, or should a majority of members disagree with something on the list. That is why I have taken the model from the Civil Contingencies Act and re-submitted it with the same objective. I beg to move.

**Baroness Buscombe:** My Lords, I shall speak briefly to the amendment as I believe that I had something to do with the amendment to which the noble Baroness, Lady Walmsley, referred, during the passage of the Civil Contingencies Act. We were doing all in our power to curb some of what we believed to be the draconian powers being introduced by the Government. It was fortunate that when we brought forward a similar amendment with this kind of procedure, the House was full of those wishing to protect the fox, in the form of the Hunting Bill. It is rather amusing that some of the freedoms of this country have been protected because noble Lords were here to vote on the Hunting Bill and went through the Lobbies to vote in our favour on the Civil Contingencies Bill as well.

There are concerns that reserving the list of behaviour to regulation could lead to offences being inappropriately designated. There is a problem here—even the affirmative resolution procedure is a blunt tool for legislative scrutiny, as it does not allow amendment to propose regulations.

I gather there is some difficulty with debating this amendment; it is something to do with our conventions being considered at this time. Therefore, I do not believe that we are in a position to take this amendment much further this evening. That said, I will be interested to hear whether the Minister is able to respond in any way.

**Lord Adonis:** My Lords, my response needs to be in two parts. First, this would be a significant departure from normal practice. It is therefore well beyond my pay grade to be able to meet the wishes of the noble Baroness, Lady Walmsley. I am very grateful to the noble Baroness, Lady Buscombe, for elucidating the circumstances in which the Civil Contingencies Act came to include this provision. Being a new Member, I had not realised that it was all tied up with hunting—everything seems to come back to hunting, in some form or another, in your Lordships' House. However, I am informed that the powers to vary the regulations under the Civil Contingencies Act refer to arrangements for national emergencies such as a terrorist attack or epidemic. These are very serious and wide-ranging powers. It is in that context that the power to vary has been given.

Although I cannot help the noble Baroness, Lady Walmsley, on the wider point, I can reassure her that we will consult very fully on the list of offences which would be included in the provision for automatic barring without representation. I know that that has been a particular concern of hers.

I have already given noble Lords an illustrative list of those offences. In respect of the children's list, they would be offences under the Sexual Offences Act 2003 concerning rape; sexual intercourse with a girl under the age of 13; assault by penetration; rape of a girl under the age of 13; sexual assault of a child under the age of 13; and causing or inciting a child under the age of 13 to engage in sexual activity.

In respect of the vulnerable adults list, the offences would include sexual activity with a person with a mental disorder impeding choice; causing or inciting a person with a mental disorder impeding choice to engage in sexual activity; engaging in sexual activity in the presence of a person with a mental disorder impeding choice; and causing a person with a mental disorder impeding choice to watch a sexual act.

Most noble Lords were satisfied by looking at the illustrative list that we would not be moving into what they would regard as debatable areas in this context but those where there would be a broad consensus. I also assured them that the list will be shorter than the current list of offences, which applies under List 99, where there is no right of representation in any event, so that we would extend the categories of offences where there would be a right to make representations. I repeat that we will be consulting all interested parties, including the teaching unions, the NSPCC and other groups with a keen interest in this area, before we lay the regulations.

Although I cannot, from this Dispatch Box, unilaterally change the conventions of the House, I hope that I can satisfy the noble Baroness that we will

[LORD ADONIS]
engage in very full consultation before these orders are laid. These offences are of the utmost seriousness, and we believe there will be a consensus that they should be covered in the way we propose. There will be a narrower range of offences than currently applies under List 99.

**Baroness Walmsley:** My Lords, I thank the Minister for his reply. Although he cannot satisfy me on the substance of my amendment, I accept what he says about consultation. He has a good track record and we are all very grateful for the way in which has listened to us during the passage of the Bill so far.

I am still unhappy about the way in which these lists will be brought to Parliament, but I accept that there will be rigorous consultation before that happens. I suppose I will have to rely on that. I accept that this House may not have the competence to make this sort of change to a piece of legislation. I think I have made my point, and I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 70B not moved.*]

Schedule 5 [*Amendments*]:

**Lord Adonis** moved Amendments Nos. 71 to 76:

Page 51, line 10, leave out "the person" and insert "he"

Page 51, line 17, leave out "the person" and insert "he"

Page 52, line 20, leave out "the Council may have regard" and insert "regard may be had"

Page 52, line 26, leave out "has been taken"

Page 52, line 36, leave out "the Council may have regard" and insert "regard may be had"

Page 52, line 42, leave out "has been taken"

On Question, amendments agreed to.

## Fishing and Logging Policies

7.27 pm

**Baroness Whitaker** rose to ask Her Majesty's Government how they respond to calls for environmentally sustainable fishing and logging policies.

The noble Baroness said: My Lords, I resist calling this a fish and chips topic, but there is a sense in which fish and the products of forest trees go together. Both are essential to the livelihood and sustenance of very many of the poorest of the poor; the large-scale commercial exploitation of both is harming the environment as well as those livelihoods; but exclusively environmental management of these precious public goods risks impoverishing further those who have little other resource.

There are about 62 million households which depend in one way or another on fishing, and 22 million small-scale fishers. Of the total export value of the world trade in fisheries and aquaculture products of about $60 billion, half accrues to developing countries. It is a major source of foreign exchange for them and a key provider of cheap and accessible nutrition, as well as cash income for over 2.6 billion of their citizens.

But, as we know, overfishing threatens all these gains. I heard many complaints in Senegal, where fishing is the only economic activity which provides decent jobs along the coastal area, about the big rapacious Spanish fishing boats which plundered their valuable and delicious fish, coming close in to the shore on night-time raids—an economic and an environmental threat.

Last March, the High Seas Task Force, chaired by my honourable friend Ben Bradshaw, published research by the Marine Resources Assessment Group which set out the loss to the economies of poor countries from illegal, unreported and unregulated fishing, worth up to $9 billion a year. In sub-Saharan Africa alone, the loss was equivalent to one quarter of their annual fishing exports. And that is apart from the unsustainable pressure put on fish stocks, the destruction of the marine habitat and the insidious incentive to other illegal activity such as smuggling and money laundering which such large-scale evasion of the rule of law encourages, made easier by flags of convenience regimes.

The problem is not so much lack of rules—there are international instruments—as lack of enforcement and of political will. Relatively modest funds would be enough to guarantee the protection of sustainable national fishing industries, for instance, in West Africa and the Mozambique channel, where national governance systems are up to the task. DfID and Defra, working together, have started the ball rolling with an international plan of action. But it all needs to come higher up within the international political agenda and pull in better resources. Particularly, I ask my noble friend what approach the Government propose to the European Union, whose members fish so heavily off the African coast, with over $350 million of subsidy and arguably predatory fish licensing agreements, typical of those negotiated between strong and weak parties.

Logging provides even starker examples of the need for vigorously enforced sustainability that does not disadvantage poor people. Your Lordships have heard before in this House, from the noble Lord, Lord Eden, and others, of the terrifying rate of depletion of the world's forests and of the effects on climate and biodiversity. Pressure groups have campaigned vigorously against their destruction, with some response. Most east Asian governments have signed up to a regional agreement to protect their forests. The deputy treasurer of the Conservative Party has bought a piece of the Amazonian rain forest. There is a new Chinese tax on chopsticks. The European Union has recently promulgated the Forest Law Enforcement, Governance and Trade Initiative, to which the UK Government will donate £24 million over the next five years. Thus there is a range of solutions in prospect. But let us look more closely at some of them. One is to try to prevent any logging in forests. Mr Eliasch, who bought the 400,000 acres of rainforest, closed down the forestry operation and laid off 1,000 Brazilian

workers. Cameroon decided to regulate commercial use of its forest through a statutory permit system, including substitute tree-planting, over 10 years ago. The money raised from the sale of the permits was to go to the development of adjacent rural areas. But laws are one thing and the capacity to implement them quite another.

The DfID solution has built on its own illegal logging programme, commended by an independent review for exemplary working with the EU and for national cross-departmental work with the Foreign Office and with Defra. Some of the significant points in its successor policy are the participation of 25 private sector companies from across Europe and Africa, funds for enforcement and better governance in forest countries, and a recognition of the need to put our own—western—consumer house in order by deterring demand for illegally procured timber.

But the tendency of multilateral agreements is to focus on safeguarding the forest against large-scale commercial exploitation of an unsustainable kind. No one can argue with the importance of that, and it is excellent that there is agreement among five EU governments to adopt procurement policies that favour certified wood. And It is a great pity that the United States does not want to join in.

But there is a risk that those who live in the forests lose out. They will in any case lose employment if bad loggers are driven out, and they will lose their wood if "good" loggers police their patch and drive them away. I have seen poor millet farmers in Mali forbidden, by a very well intentioned NGO project manager, from using a cart to gather firewood. A much better example was the Takieta forest in Niger where the villagers, with the help of SOS Sahel, learn the difference between sustainable cutting of trees and damaging uprooting. There are also many other products of the forest than cut-down trees: there is rope, leaf fibre, gum arabic and medicine from renewable plants. If local harvesting is combined with local processing and manufacture, the value added remains in the community—if the capacity can be built up.

Lack of long-term ownership, often the case for forest-dwellers, is a disincentive to investment in sustainability. In the absence of strong tenure rights, individual, environmental and economic rights need to be maintained. When powerful organisations, be they commercial loggers with modern legal title to land or influential environmental pressure groups, compete with the people who live in the forest, it is easy to see who will win. Forest management presents a conflict of rights, and it is important that a rights perspective is applied, with a conduit for just settlement where rights can be balanced one with another.

Governments need the economic growth that sustainable cultivation of trees can contribute to. People need the jobs and cash that such employment brings. Forest dwellers also need their environment and their other sources of income to be protected. The world needs biodiversity, and the carbon and water storage which depend on it, to be safeguarded. May I ask my noble friend how DfID's newly launched strategy for research on sustainable agriculture will deal with more sustainable, equitable and profitable use of the forests? What will the role of the planned regional research programmes be?

7.36 pm

**Lord Eden of Winton:** My Lords, I am sure the whole House wishes to thank the noble Baroness, Lady Whitaker, for bringing these two important subjects to our attention. I warmly congratulate her on the quality of her speech and the points she raised.

All of us—not just in this House but in this country—need to be reminded why these two subjects are so important to us, and need to be educated on the subject. The BBC is performing a valuable service in that connection. This very evening there is a programme on a whale and another programme, the first of two by Sir David Attenborough, on climate change—very relevant to the subjects under discussion here today. Sir David is asking, in effect, "What on earth are we doing to our planet?". We should all ask that same question.

As the noble Baroness has indicated, we are destroying thousands of acres of rainforest every year. As she said, I introduced a debate on this subject on 13 October last year. I will not go over that ground again, but this debate gives the Minister an opportunity to bring this House up to date on some of the issues that were then raised, several of which the noble Baroness has referred to.

What, for example, after the plethora of committees, is actually happening on the ground? Has a single hectare of rainforest been saved? Have a single government taken active measures to control, if not eliminate, corruption in connection with logging operations? Are the indigenous people now being more involved in the discussion about what should happen to their own dwellings and habitat?

What is happening to, for example, the great apes in Borneo and elsewhere? The orangutans are being destroyed almost to the point of elimination. Are their numbers being brought back to survival level? What is happening—this is perhaps the most important of all—to the much vaunted review by the World Bank of its rainforest logging policies? Has that review ever been completed? Have its policies been changed as a result of the evidence of the damage, notably in the Democratic Republic of Congo, which it actively encouraged? There is a lot to answer for in respect of rainforests.

Most importantly, the noble Baroness talked about fishing. Here, again, the debate is extremely timely for next week in New York there is to be a meeting on the United Nations fish stocks agreement, which is concerned with the management of fish stocks on the high seas. That is the responsibility of regional fishing management organisations. Frankly, the way that responsibility is being discharged is an absolute disgrace.

A report has recently been published by WWF which emphasises that fisheries are not being managed in a sustainable way. How could they be when

[LORD EDEN OF WINTON]
governments connive in the vast over-capacity of authorised fleets; when the over-fishing of stocks is tolerated; and when there are virtually no rebuilding strategies, no safeguards, no precautions, and apparently no concern by those who are doing the fishing? They are indifferent to the consequences of what they are doing and the methods that they are using, which are horrendous. Vast fishing nets, some 60 metres wide, go down to depths of 1,000 metres or more and scoop up anything in the way without discrimination. They are ripping up 100 year-old corals and sponges.

Fishermen use long-line fishing in the open ocean, fishing for tuna and marlin with lines up to 10 kilometres long with baited hooks. We can imagine what happens with several thousand long-line boats in operation throughout the globe, with 3.8 million hooks set globally each night. No wonder loggerhead turtles, which are on the red list of endangered species, are being killed at a rate of about 200,000 every year. The albatross, another endangered creature, is being destroyed at the rate of more than 100,000 every year.

It is now known that there are places in the ocean—rather like watering holes in the Serengeti, where lions, leopards, gazelles, wildebeest and other species congregate at a relatively small spot—which are rich in tuna, swordfish, shark and billfish. Fishermen also know that and that is why they go there. Up to 100 million sharks are caught annually, mostly by accident. Thirty million metric tonnes of fish are thrown over the side of fishing boats every year, damaged, dying or dead. That is truly horrifying, wanton and mindless slaughter.

Mr Simon Cripps, director of WWF's global marine programme, said, very moderately,

"It's got to stop, we've got to do it quickly".

Rather surprisingly, in my view, he goes on to say that there is hope provided we can get management in place. But I add that attitudes have to change dramatically. It has been suggested by Dr Callum Roberts of York University that marine parks or reserves should be established which would be entirely off limits to fishing. If the industrial scale of exploitation goes on, whole fish populations will be destroyed. Fishermen, I learn, are also now using military sonar to hunt in the deep ocean. What is the Government's attitude to that? Sonar causes dreadful disorientation to whales and other cetaceans, and probably the most horrific pain as well.

Talking of whales, today sees the start of the 58th annual meeting of the International Whaling Commission. There is a moratorium on whale fishing, yet 1,400 whales will die this year. The Japanese are now targeting fin whales and Baird's beaked whales. They claim that that is done in the name of scientific research. Frankly, that is a load of bunkum. We know perfectly well that they have an education programme to persuade more people to eat whales. They are also using whales for dog meat. I hope that the Government will ensure that the moratorium on whale hunting will continue to be observed; that it will be more effectively policed and that harsh penalties will be imposed on those who contravene it.

7.46 pm

**The Earl of Sandwich:** My Lords, the noble Lord, Lord Eden, speaks with characteristic passion, as he did when he introduced his debate on the rainforest last October. In that debate I drew attention to the effects of forced labour in Brazil, where agricultural workers are becoming the slaves of the loggers and ranchers and unwitting agents of the destruction of the rainforest. As the noble Baroness rightly said, it is the local people who are so often the last to benefit from the riches that have been taken away.

Today I would like to return to Brazil. I thank the noble Baroness for allowing me to speak in the same context about the thriving sugar industry in the Amazon region. I will describe some of the human costs of Brazil's otherwise acclaimed environmental and energy policies. I acknowledge the help of Anti-Slavery International and research carried out by the Churches in Brazil.

By chance I was in sugar territory in Houston, Texas last month, staying in the rapidly expanding suburb of Sugar Land, where sugar refining has actually come to a halt. Vast sugar plantations are giving way to new apartment blocks, hotels and shopping malls. Producers in the US southern states face increasing competition from Latin America.

By contrast, the sugar industry in Brazil is still booming on account of the demand for ethanol as a home-grown fuel and an alternative to petrol. Today, more than half the country's total sugar harvest ends up in the nation's 30,000 bioethanol petrol pumps. Four out of five new cars now sold in Brazil are equipped to use ethanol, which can cost one-third less than petrol per litre. Oil would have to fall back to $35 a barrel to compete with ethanol in Brazil.

Thanks to advances in engine design, several manufacturers have adapted new cars to "flex-fuel" models, which can alternate between gasoline, pure ethanol or a mixture of both. These accounted for more than 75 per cent of all the new cars sold in one recent month. President Lula is said to be delighted with the energy revolution which is saving Brazil billions in imports of fossil fuel. European Union member states, committed to reducing their carbon emissions by 8 per cent by 2012, are extremely interested in Brazil's experiment since ethanol is free of harmful pollutants such as sulphur dioxide and emits much less carbon dioxide than conventional fuels.

Europe currently lacks the capacity to produce sugar-based ethanol in the quantities that makes biofuel affordable in Brazil and before long we could be major importers. President Bush is now trying to drop import tax on ethanol. Japan is considering a deal to import up to 6 billion litres. With the ever-rising demand for ethanol, the expansion of the industry, both in the scale of sugar plantations and in the rate of production, has become increasingly aggressive. As new plantations have grown, new distilleries and sugar

plants have been installed and there has been a high demand for jobs for migrants. More than 70 new mills are due to open over the next six years.

While this boom has raised employment levels, the Brazilian Churches' research shows that such pressure on production has been harmful to the health of sugar cane workers. Between the 1950s and the 1980s, sugar cane production had already risen from 50 to 80 tonnes per hectare. In the 1960s, the average production per worker was three tonnes of sugar cane per day; today it has quadrupled to 12 tonnes.

That descends on the worker. Even a worker who cuts six tonnes has to walk four kilometres during the day. Having cut the stems off at ground level, he then has to stack them in one long row of sugar cane. The workers are exposed to full tropical sun while wearing heavy clothes to protect themselves against cuts. They suffer from extreme dehydration that causes painful cramps and convulsions.

The ILO estimates that there are some 200,000 migrants employed under forced labour conditions in Brazil. Labour contractors tour the poor suburbs offering work at high wages in remote regions. When the workers arrive at their destination, they are already in debt for transportation, housing and food, so that, even after four months' harvesting, it becomes difficult for them to repay the debts before they return home—let alone support their own families.

According to the Pastoral Land Commission in Brazil, sugar cane is often grown on cleared barren land with the help of huge amounts of fertiliser and is protected with insecticides. The chemicals are washed into the rivers and the ground water. As a result, the drinking water gets polluted, directly poisoning the poorer local population who still use wells and wash in the local rivers. Where sugar cane is planted up to the water's edge, sometimes encroaching on small farms, the chemicals also affect fish and seafood populations in the local rivers and mangrove swamps.

The sugar barons often hold political and feudal positions that require their workers to submit to almost any conditions of labour. Illegal migrants, or *clandestinos*, have the worst deal of all, having no papers or benefits—nor even the right to receive them. While our Department for International Development cannot directly influence the policy of sugar producers in Brazil, surely our embassy can bring such issues to the attention of their government, so that the Churches at least know that there is international support for the rights of those migrant workers—remembering that, as consumers, we are putting pressure on them every day.

Anti-Slavery believes that it is of the utmost importance that restrictions on companies are enforced to safeguard the care of workers, local populations, small private properties and the surrounding environment. Non-governmental organisations are rightly demanding a fairer and more sustainable rate of sugar production that respects the needs of both the workers and the local population, and balances those with the provision of cheaper, environmentally friendly fuel.

7.53 pm

**Lord Hunt of Chesterton:** My Lords, I, too, congratulate the noble Baroness, Lady Whitaker, on introducing this debate. Current government policies, commercial pressures, population growth and urban development around the world are leading to disastrous degradation of vital natural areas, the loss of animals, plants and biodiversity generally, with serious consequences for the world climate and worse effects in particular regions. This is already damaging local economies, people's livelihoods and their health. In other words, the world's development is becoming less rather than more sustainable.

I declare interests as president of the NGO ACOPS and as a professor at University College London.

Articles in the scientific and popular press, and on the web, have emphasised all of the above points. Organisations such as the Natural History Museum, the BBC and CNN now report that only 10 per cent of the big ocean fish remain; that is just one statistic and one could make a whole speech of statistics. Sometimes who says things is equally important. Perhaps the most alarming statement that I have heard was made by David Balton, who should not be confused with Mr Bolton, America's UN ambassador. Mr Balton is the ambassador for the US State Department with special responsibility for fisheries and oceans. Incidentally, I note that the new Secretary of State for the Foreign Office has a special adviser for climate change. Maybe we are moving to the US idea of having ambassadors for particular areas. I strongly commend that. Mr Balton remarked that some parts of the ocean are now biologically dead or dying. He drew attention to strips of the Gulf of Mexico—so it is happening in both developing and developed countries. Parts of east China and other coastlines are equally at risk, including the Mediterranean, the Black Sea and the African coast. The main causes are fertiliser nitrogen pollution down the rivers, which ends up along the coasts. That demonstrates that integrated sustainable solutions require the bringing together of agriculture, urban development, fisheries and energy policy. As we know, all governments find integrated policies very difficult.

The solutions to this and other environmental problems require three parallel actions—scientific explanations, acceptance and solutions. First, it is essential that one should have scientific monitoring, the prediction of future trends and the scientific understanding of the complex interactions that I have mentioned. It is not tenable simply to argue that every acre of forest should be conserved. That would be an extreme application of the precautionary principle. Those areas can be developed to provide food, sugar and fuel. Only rational studies will enable countries to establish what the limits are and the most appropriate methods. An extreme precautionary approach by the developed world is not acceptable to the developing world. As the noble Lord, Lord Eden, pointed out, the dangers of excessive fishing are very serious. I ask the Minister whether the UK monitoring of oceans and fishing is adequate and expanding. At the House of Lords Science and Technology Committee, experts

[LORD HUNT OF CHESTERTON]
from Defra reported that UK research tends to focus on new research topics and is downgrading its role in monitoring. Monitoring is essential if we are to make proper decisions about these critical issues.

The second element of policy is that the existence of environmental problems needs to be accepted—by the Government, by non-governmental organisations, by society as a whole and by business. As other noble Lords have mentioned, that is critical. Perhaps the Minister would consider the role of schools. Links between institutions in different countries are helpful. A conference in Ghana was organised by ACOPS and that country's Government in November, which discussed an interesting programme involving connections between schools in the UK and Ghana, talking about social and environmental issues. If such practices were more widespread, that would be very effective. We have discussed that in this House and perhaps there is some further news to report, which I would welcome. Clearly such attitudinal changes must start at the lowest level in all the countries of the world.

Finally, the essential features of practical solutions are that they first have to be found, then promoted and funded. How is that to be done? Much of DfID's current development policy, which has great merit, is carried out by funding national governments. As Ministers have explained, that has been effective in raising standards of education and health. But from what I have experienced, it is questionable whether the money given to finance ministries ever gets through to many of the environmental projects. Economists generally seem temperamentally opposed to demonstration projects.

It is only through demonstration projects that people will learn, be stimulated and inspired. For example, Mr Sachs, who advised the United Nations on the millennium report, particularly emphasises his millennium villages around the world, where people learn about new methods of agriculture, in matters of fertilisation, planting trees, saving water, and so on. Those are the kinds of projects that are necessary. Now we have a chief scientist in DfID, perhaps he will be participating in those programmes. I know that DfID supports the Earth Resources Institute in New York. Maybe this will be one of the outcomes. This is essential, and I hope that we shall hear more about it. I commend the resolution to the House.

8 pm

**Lord Inglewood:** My Lords, like the other speakers in the debate I begin by welcoming it and thank the noble Baroness, Lady Whitaker, for introducing it. I am sure that we all agree that without environmentally sustainable fishing and logging policies, the world could quite shortly be turned into a pretty sorry place. We do not need to be very perceptive to come to that conclusion, nor to stand up in the House of Lords and tell the world.

Most of us here have aspects of life away from the House; it is the nature of the place. One of mine is that I am a farmer and what in the old House of Lords would have been called a traditional landed estate owner, and is now probably known as a land manager. I am not hands-on, but it is part of what I do. I remember when I was training, my father said, "When you work with the land you must produce running with the grain of nature". We can see plenty of instances of the consequences of quarrying nature rather than simply taking a tithe. Perhaps there is no better example than the fate of the herring fishery in the North Sea. Once you have killed the breeding stock you wipe out the future.

It seems that the invariable problem wherever one goes is that short-term greed gets in the way of long-term good management. It is more or less an invariable maxim of resource management that the short term is damaging. We must not forget that almost the greediest of all are governments and their treasuries.

It is easy from the perspective of the gothic comforts of the Chamber of the House of Lords to be insufficiently sensitised to how this can come about. Unless we apply our minds to identifying the factors at play, we shall never achieve what I call a sustainable system of sustainability.

Much about degradation has already been said, in particular that logging is driven by agriculture, which is intended to improve or at least sustain the basic standards of living. If your family is starving, who gives a damn about the future of the world? Many of those countries where there is much global concern about forests and logging, such as Indonesia and Brazil, or where there is concern about the depletion of the fishing resources, such as in west Africa, are poor. Their argument, which I can understand, is: "It is all very well for you in the rich northern and western countries. You've got rich by destroying the globe and now you want to stop us trying to follow you". It is important for us to understand that point and not simply to laugh it off. We have no real choice but to back our concerns with our money. We in countries such as ours must put our money where our mouth is.

That, almost inevitably, takes one towards that maligned and frequently misunderstood phrase, "partnership", whatever it may mean. We need a framework in which that can be done. We need confidence that if we put our money in, an outcome will result. The noble Baroness, Lady Whitaker, referred to the philanthropist who, she tells me, is vice-chairman of the Conservative Party and has bought some of the rainforest in Brazil to preserve it. If he is putting a large amount of his own money into that, he needs to have the confidence that the government there will not sequester it and cut it down.

An obvious example of this kind of thing in a more general sense at government level is via the mechanism of debt relief. That has been done from time to time, and I entirely commend it. Certainly it is right and proper that aid programmes, whether bilateral or at European Union level, impose conditions. It is important to be sensitive about this because there is always a real risk that the creation of the framework could be perceived as neo-colonialism.

I recall an occasion when I was sitting on the Front Bench opposite and had to go on behalf of Her Majesty's Government to Zambia. Part of my task was to explain to President Chiluba that the way in which he was implementing the aid polices was not quite in line with what had been agreed when the money had been handed over. President Chiluba got the message ahead of me and refused to see me. I can see his point. He did not want a lecture from a young whippersnapper from London.

It is important to realise the significance of the way in which we carry forward some of the projects that we have in mind. If we do not win the hearts and minds of those with whom we have to deal to bring about some of the changes that we want to see, we are bound to fail. In life it is not good enough to be right; you must also be able to persuade your interlocutor that he wants, from choice, to run with the gist of the arguments you are advancing.

One of the keys to making long-term progress is to establish a marketplace where there are incentives to promote good natural resource management and make them sufficiently attractive that they become more attractive to people in those countries than the rewards of simply exploiting and quarrying the natural resources.

This is not merely a matter of government-to-government relations or NGO-to-government relations. It also involves the private sector using its own particular skills and resources, which are of course different from those of the other two parties that I mentioned, and which can contribute significantly to the desirable and needed changes in environmental practices and resource utilisation in many parts of the world. For example, carbon credits can be used to help establish forestry projects in third world countries, which are desirable as long as they are done in the right way with the right kind of species.

But there is also a lesson for countries such as our own. What is "sauce for the goose is sauce for the gander". There is plenty of degradation of various kinds in our own country, in our own seas, and in the use of our own natural resources. We may not have done anything quite as dramatic as destroying rainforests in the United Kingdom, but it is uncanny how many mistakes of the much-derided common agricultural policy can be seen, at least to some extent, replicated in our forestry policy here. Such things need to be addressed as part of a wider project to ensure proper global resource management as a whole, and also to show the rest of the world that we are leading by example.

Capitalism and private business are the greatest force for economic development and change that the world has ever seen. These forces must be harnessed to help solve the problems that we are debating tonight. What will the Government do to try to promote the private sector, much of which is the spiritual successor of those colonial servants who dedicated their lives to other parts of the globe? What about encouraging people once again to leave Britain and to work all round the earth, contributing to making it a better place?

All that will cost. My party is returning to having an interest in those aspects of governance. No longer is it the preserve of the cranky few. Ruskinian economics should be at the heart of the economic debate, not a bolt-on to the periphery. It will cost, and it will probably cost us in this country disproportionately simply because proportionately we have a better ability to pay. We in Britain should recognise that with good grace, and recognise that the expenditure of public money outside the jurisdiction may in the long run be just as much in the national interest as spending it within it.

8.09 pm

**Lord Palmer:** My Lords, I am sure that the noble Baroness, Lady Whitaker, had no idea how wide-ranging this subject would become. We have been to Brazil, and I ought to declare an interest as a forest owner as a residual beneficiary of a plantation in the West Indies on the island of St Lucia. I congratulate the noble Baroness most sincerely on securing the debate.

I was deeply moved by the speech of the noble Lord, Lord Eden, and wish that he had been on David Attenborough's programme tonight.

Some very poignant and important points have been made. I hope this debate gains an enormous amount of publicity. My noble friend Lord Sandwich made a stirring speech, all of which was music to my ears. I must declare an interest as president of the British Association of Bio Fuels and Oils. I share his tremendous fears that, at the end of the day, to meet the renewable transport fuel obligation we shall probably have to import biofuels from countries such as Brazil, which he mentioned.

My noble kinsman, the noble Lord, Lord Hunt, asked about the monitoring of fishing quotas. I too would like to ask the noble Baroness, Lady Royall, whether she can assure us that we are getting on top of that. Having been all round the world, I have another interest to declare. For my sins, I have served two stints on Sub-Committee D of the European Union Committee, which has dealt with reports on sustainable fishing. Having also served three stints on the Refreshment Committee of your Lordships' House, I still have strong links with many friends I made while involved with the Refreshment Department. Currently, your Lordships' House is tendering for the supply of fish to ensure that your Lordships have the best possible quality and at the most affordable price. I ask the noble Baroness to do all that she can to ensure that whoever is selected to supply fish to your Lordships' House is able to guarantee that supplies, wherever possible, come from sustainable sources.

8.11 pm

**Lord Chidgey:** My Lords, I add my congratulations to the noble Baroness, Lady Whitaker, on bringing this issue before the House tonight. She gave us a powerful exposé of the extent of illegal activities in

[LORD CHIDGEY]

these areas and the need for reasonable, manageable resources to enforce the existing conservation measures.

Each contribution tonight has added to the knowledge of this House and to the scope of the debate. There have been too many excellent contributions for me to comment on them all. Perhaps I can add my own experience briefly before I move on to the substance of the debate. I can imagine nothing quite as dramatic as the first time I flew over the west African rainforest and saw the trees stretching to the horizon for 360 degrees. Sadly, some 20 years later, when, as a parliamentarian, I retraced my steps, instead of unbroken rainforest from horizon to horizon, I saw that it is now patchy and there are areas of savannah, scrub and bush. It is no longer the virgin rainforest that I had seen in my formative years.

I agree with the noble Baroness about the importance of fishing in a country such as Senegal, where there are literally tens of thousands of single-person fishing industries—I am talking of people who fish from canoes in the open sea and by which they sustain their families, provided that the factory ships have not been along the week before and scoured the sea of anything that swims. I agree with her entirely on the importance of that.

I should declare an interest as I want to comment on some of the work of the Royal Institute of International Affairs, Chatham House. As a paid-up member, I suppose that qualifies as an interest.

I am sure that the Minister will be aware of the development of the High Seas Task Force (HSTF), which was set up as a result of a call for action on illegal and unsustainable fishing at the world summit on sustainable development in 2002. Noble Lords may know that the task force was developed in 2004 and presented a final report, *Closing the net: Stopping illegal fishing on the high seas*, in March this year. A consultation workshop was held at Chatham House to discuss the UK action plan for implementing the recommendations of the task force. The UK action plan will comprise three strands, with the United Kingdom taking an international role in facilitating and promoting the adoption of the High Seas Task Force measures.

The three strands are: first, taking a leadership and facilitation role for all HSTF measures for the next two years through our own co-ordination unit; secondly, undertaking work for specific measures; and, finally, taking action internally to implement the task force measures within the UK or overseas territory fleets or overseas territory waters. Although we are fairly early in the programme, it would be helpful if the Minister could provide us with an update and perhaps a progress report.

Turning to the impact of illegal logging, or the sustainability of logging, the demand from consumer countries potentially helps to drive illegal logging activities in the producer countries. That fact has been recognised since the beginning of an international focus on illegal logging. In 1998, G8 countries agreed, as part of a G8 action programme on forests, first, to assess their internal measures, particularly public procurement policies, and then to aim to control illegal logging and international trade in illegally logged timber.

In 2005, Ministers at the Forest Law Enforcement and Governance conference, in St Petersburg—where they get these titles from I do not know—came out with an important statement. They were,

"convinced that all countries that export and import forest products [including timber and timber products] have a shared responsibility [to undertake action] to eliminate illegal exploitation of forest resources and associated trade".

That is a very important statement. Governments can pursue a range of options to reduce their contribution to illegal logging overseas. They can try to exclude illegal products by setting up border mechanisms to prohibit imports, by using procurement policy to create protected markets for legal products only, and by using their own legal framework more aggressively to target importers of illegal products.

That brings me to the concept of licensing. The immediate problem with licensing is how to distinguish between legal goods and illegal ones. Exporting and importing countries may not be aware that they are handling illegal products and, even if they are, often the standard shipping documentation is all too easy to doctor.

The European Union has provided us with a solution: to establish a licensing system with partner countries. The heart of the EU action plan on Forest Law Enforcement, Governance and Trade (FLEGT) rests on the negotiation of voluntary partnership agreements with producer countries. The timber licensing system is similar, in effect, to systems already in place in international agreements such as the Convention on International Trade in Endangered Species (CITES) or the Kimberly Process, for example, on conflict diamonds. Unlike those, however, the licensing system is being built up through a series of bilateral agreements. Inevitably, there are a number of significant unknowns in the development of the FLEGT system.

These important unknowns should be placed on the record. I hope that the Minister can give the Government's view, and that there will be some progress and answers. The unknowns I am talking about include the number of countries that will sign up to voluntary partnership agreements and thereby join the scheme. I believe that preliminary discussions have been positive, but producer countries will need to be convinced that the benefits of the licensing system, which gives access to EU markets, will outweigh the costs of the process.

Another unknown is the impact of the scheme. Is it possible that exporters in producer countries will prefer to avoid the EU market and simply send their products to alternative outlets such as China, which is now a major importer of timber? Another unknown is: how easy will it be to evade the scheme? The fact that some producer countries may not join the scheme—at least initially—provides a route through which illegally produced, and therefore unlicensed, products

from the voluntary partnership agreement countries can enter the EU. The last unknown is how rapidly the scheme can evolve.

Finally, I want to raise some points on the legality of logging, the timber importing process and the overlapping sustainability issues. First, on timber procurement, I think it is fair to say that the United Kingdom leads in the European Union in most respects, but we need evidence of how well it is being implemented by government purchasers. It excludes social criteria; for example, the rights of forest communities, as a component of sustainability, which seems odd. The Government have argued that that is because of the EU procurement rules, but other countries are doing that; in particular, the Netherlands, France and Denmark, so I do not see what our problem is here. The same policy of licensing needs to spread through to local government and our devolved administrations as soon as possible. I would like to know what the Government are doing to help that process.

The Government are aware that we are doing a lot of good things in this country, but we have a problem that the majority of the EU countries are not following suit, and we need some action from countries such as Spain, Italy, Portugal, Sweden and Finland, which are major importers of timber. Finally, what action are the Government contemplating in working out how to plug the loopholes in the FLEGT timber licensing scheme?

8.20 pm

**Lord Astor of Hever:** My Lords, I congratulate the noble Baroness, Lady Whitaker, on securing this debate. As the noble Lord, Lord Palmer, said, it has been a wide-ranging one with knowledgeable contributions from all sides of the House on issues that have serious worldwide ramifications in environmental, human rights and developmental terms. My noble friend Lord Eden rightly said that those issues are of the utmost importance. When we consider the calls we make on our counterparts in the developing world to uphold standards of good governance, transparency and accountability, it is vital that we should be able to lead on these issues by our own example. This is no different when we look at the natural resource sector, be it forestry, fishing, oil or minerals.

The recent controversial European fishing deal with Morocco, the World Wildlife Fund criticism of the failure to control deep-sea fishing, the International Fund for Animal Welfare's renewed campaign against commercial whaling in Japan and the Convention on International Trade in Endangered Species ban on trade in caviar and other products from the sturgeon at the start of this year are only a few examples that emphasise concerns surrounding unsustainable fishing and the significant impacts both here and aboard. It is a topic that needs to be tackled head on before we completely decimate the world's fisheries, destroy marine habitats and kill billions of unwanted fish and other marine animals.

My noble friend Lord Inglewood gave the good example of the herring stock in the North Sea. My noble friend Lord Eden mentioned the WWF report, which stated that,

"unsustainable fishing is predominantly caused by poor fisheries management and wasteful destructive fishing practices ... as a result the future of the fishing industry is under threat, as are already endangered marine species and habitats, and the livelihoods and food security of millions of people".

Environmentally, bycatch has been responsible for the death of over 300,000 small whales, dolphins and porpoises each year, pushing several species to the verge of extinction. My noble friend Lord Eden mentioned loggerhead turtles, which are very much endangered. More than 250,000 of them and the critically endangered leatherback turtles are caught annually on longlines set for tuna and swordfish. Twenty-six species of seabirds, including 17 albatross species, are threatened with extinction because of longlining, which kills more than 300,000 seabirds each year.

Within this context is our own fishing industry. The UK fleet landed 654 tonnes of sea fish with a total value of £513 million in 2004. In addition, we imported some £1,473 million worth of fish, and exported fish and fish products to the tune of £881 million. We have a substantial fish processing industry of around 573 businesses, which employ some 18,180 people. The Government admitted in their strategy unit report, *Net Benefits,* that the,

"current systems of UK and EU fisheries management will not ensure long-term, sustainable commercial fish stocks".

Indeed, the common fisheries policy has failed to conserve fish stocks and protect the livelihoods of fishermen. The noble Lord, Lord Whitty, admitted that the CFP had not faced up to the real difficulties of conservation and ensuring the fair sharing of the burden.

This is not leading by example. What steps have Her Majesty's Government taken to assess the current fish stocks and encourage sustainable fishing practices with the use of refined equipment and techniques to reduce the incidence of bycatch? How are they ensuring the affordability of such equipment and the training for various techniques? We on these Benches believe that the best way to ensure sustainable fishing is to allow the nation's fishermen to run the industry on a local basis; and also within a strategic framework set by national Government in which the priorities should be the restoration of the marine environment and the rebuilding of the industry managed on a day-to-day local basis.

On a larger scale, what response have Her Majesty's Government undertaken in light of calls that regulators have failed to respond to the expansion of bottom trawling in deep waters? What representations have they made to support the provision of more teeth to these regulators and the WWF recommendation that the United Nations should review fishing on the high seas and strengthen the resolve of regional authorities to deal with states that flout agreements? I would also appreciate it if the noble Baroness could

[LORD ASTOR OF HEVER]
outline the Government's stance on Japan's continual and increasing violations of the 20-year ban on whaling, which has been mentioned.

I now turn to the issue more commonly known as "conflict timber". Thanks to the invaluable work of organisations such as Global Witness and the Environmental Investigation Agency, the link between natural resources, especially illegal timber, and human rights issues has been exposed; as have the hidden costs such as declining biodiversity, soil erosion and increased risk of fires as seen in the infamous south-eastern haze nine years ago.

The human rights angle has been highlighted in the recent trial of Gus Kouwenhoven in The Hague who admitted that revenues from Liberia's illegal logging industry were used to import weapons, despite the UN arms embargo. Similar links were exposed regarding the funding of the Khmer Rouge, which began to disintegrate once international pressure forced the Thai Government to close their border to its illegal logging trade. Conflict timber has also been identified as a significant source of revenue for violent conflict in Burma and for supporting the Mugabe regime in Zimbabwe.

I commend the lip service that Her Majesty's Government have undertaken on the issue, but I remind the House that the UK is the biggest importer of illegal wood within the EU, which itself is responsible for £3 billion of lost revenue to producer countries. This lost revenue is vital to help developing countries stand on their own feet and manage their resources in a more environmental manner. Why bother if the market price for sustainable timber is consistently being undercut by cheaper illegal wood? It is vital that we maintained joined-up government on the issue, both in terms of preventing the import of illegally harvested timber and supporting the implementation of forest law enforcement, training and awareness projects through DfID and EU programmes in the source countries.

What steps have Her Majesty's Government taken to ensure that imported timber, especially for government projects, is sourced only from sustainable managed reserves that can be properly traced, especially when it is imported through third countries such as China? What pressure have the Government put on the international community to promote laws in the EU and the US specifically to prohibit the import and sale of illegally sourced timber and wood products? What representations have the Government made to the authorities in Indonesia and other source countries to prosecute financial crimes relating to illegal logging and to criminalise the illegal sawmill bosses and owners, following the recent criticism by the Indonesian Minister responsible for logging? What projects do we support that encourage appropriate training and remuneration for forestry inspectors to help to prevent temptation in the form of bribes?

These two issues merit separate debates. However, it is clear that there are strong themes running through both which emphasise the importance, both politically and environmentally, of natural resources and the role that they play in human rights and development issues. The current levels of effective policing in the developing world of forestry and fishing issues are not enough.

8.31 pm

**Baroness Royall of Blaisdon:** My Lords, I, too, am grateful to my noble friend Lady Whitaker for securing today's debate and giving us all the opportunity to discuss and raise awareness about environmentally sustainable fishing and logging policies. As she and other noble Lords have graphically demonstrated, both fisheries and forests are essential to the livelihood and sustenance of the poor, but also to wider global sustainability.

There are powerful pressures on the world's fisheries and forests. Developing countries are faced with growing demands on their resources from rapidly expanding domestic and international markets. At the same time, the need to manage and protect these resources in a sustainable way—for the long-term benefit of poor countries and for the global environment—has never been more pressing.

My noble friend Lord Hunt raised the question of education and the role that schools might play in raising awareness in the UK and in developing countries. I am delighted to inform noble Lords that there are some excellent government initiatives that have linked schools in the UK with schools in developing countries. They interact via the internet, webcams, and so on. I will certainly provide noble Lords with further information.

The economic, environmental and social impact of the fishing industry is a key element in the fabric of the UK's coastal waters and communities. The industry is part of the social fabric of many coastal communities and has an important contribution to make to the well-being of the marine environment, which includes achieving sustainable fisheries.

Defra's five-year strategy highlights the need to put sustainable development into practice. Embedded in the strategy are its key marine fisheries objectives. These include: ensuring clean, healthy, safe, productive and biologically diverse oceans and seas; and a fishing sector that is sustainable, profitable and supports strong local communities, managed effectively as an integral part of coherent policies for the marine environment.

The Government also recognise the importance of fisheries to developing countries. International trade in fish amounts to $60 billion a year, half of which has its origins in developing countries. The value of fish exports is greater than the combined values for tea, coffee, cocoa and sugar. I find that quite staggering.

Sustainable fisheries can make a significant contribution to economic growth and poverty reduction in the developing world but, in many countries, this contribution is limited by problems of poor management, as recognised by the noble Lord, Lord Astor. Pressures are being generated by high demand for fish products in rich countries, by high levels of poverty and increasing numbers of people

having to resort to fishing to sustain a basic livelihood—and, in some cases, by developed countries subsidising their fleets to move into the waters of poorer countries.

Illegal fishing is causing particular problems. DfID-funded research has found that $9 billion a year is lost to illegal fishing internationally and that a major part of that cost is borne by poorer countries. Defra and DfID are working closely to implement an international plan of action to tackle illegal fishing. In sub-Saharan Africa alone, the value of illegal fishing is $1 billion per year.

However, not all is doom and gloom. Success stories such as Namibia show the way forward. There was a 39 per cent rise in GDP contribution from fisheries between 1990 and 2000. Political commitment and good management led to control of illegal activity, resulting in increases in productivity, revenues and jobs. I am pleased to report that my honourable friend Gareth Thomas recently had discussions with the Namibians about developing a regional approach, along the lines of the Forest Law Enforcement, Governance and Trade Regulation. If such an initiative were developed by African regional groupings, DfID would consider financial support, but I assure the noble Lord, Lord Inglewood, that that would be an Africa-led initiative. They would be in the driving seat and we would be there supporting them; it would not be a sort of neo-colonial initiative.

In the long run, the contribution of sustainable fishing to the economies of developing countries can be realised only if rich countries take into account the impact of their policies on developing countries. DfID and Defra are working to ensure that there is coherence in international fisheries policy as it relates to developing countries.

My noble friend Lady Whitaker asked about the Government's approach to the European Union, whose members fish heavily off the African Coast. We have been working to ensure that the EU pays increasing attention to coherence between the Community's fisheries objectives and EU international development objectives—for example, by promoting the need for greater scrutiny of fisheries agreements to ensure that they are equitable and benefit the developing countries concerned. The European Commission is committed to participating in the international action plan to take forward the recommendations of the High Seas Task Force and to tackling illegal fishing, especially through ensuring rigorous monitoring and surveillance of its own fleet operating under fisheries agreements. I can assure my noble friend Lord Hunt that monitoring continues to be of the utmost importance.

The noble Lord, Lord Chidgey, asked for an update on the action plan for fishing. Defra and DfID are now establishing a joint unit to implement the plan. This week, a team is at the UN to promote wider involvement in the action plan. Furthermore, we are in discussion with the Government of Namibia, as I have just reported .

In passing, I mention what the Government are doing to promote the private sector, a question asked by the noble Lord, Lord Inglewood. DfID is promoting business-to-business links between European and African timber companies through the Timber Trade Federation—I have moved on to timber. It is also working with a group of progressive European timber companies to improve forest management. Finally, it is working with the private sector in the UK to promote sustainable fisheries.

Developing countries will also need the capacity to manage their resources if they are to secure their share of the benefits from these resources. The Government are prepared to offer support to help countries to develop that capacity, and to help them to negotiate better terms in their relations with the developed countries of the world. I note the concerns expressed by the noble Lord, Lord Palmer, and I will certainly ensure that these are brought to the attention of the House authorities. I am sure that we would all warmly support what he is endeavouring to achieve.

I now move from fish in our own restaurants to chips and, in doing so, I pay tribute to the noble Lord, Lord Eden, for his untiring efforts to sustain the rainforests. He asked what, among other things, we were doing for indigenous populations. I assure him that the UK is working in partnership with a number of countries and a wide range of organisations to protect the livelihoods of forest-dependent poor people, including indigenous peoples, and to ensure that benefits from commercial logging support them and the development in their communities. DfID is working to ensure that indigenous peoples in the Democratic Republic of Congo have a voice and can secure benefits for local people from the activities supported by the World Bank.

The pressures on the world's rainforests, more than half of which have already been lost, are enormous. Much of the logging is both illegal and unsustainable. Poor countries suffer the most. Illegal logging loses governments billions of dollars in lost revenue and distorts markets and trade. It promotes corruption, undermines the rule of law and sometimes funds armed conflict. It also has environmental consequences, as many noble Lords have pointed out, including the loss of habitats and biodiversity. Climate change studies suggest that deforestation is responsible for about 20 per cent of man-made carbon dioxide emissions. The UK Government provide support to forestry in developing countries through DfID, Defra and the FCO. The main support, through DfID country programmes, averages £18 million per year. The FCO supports sustainable forest management through its global opportunities fund, and Defra supports work on biodiversity through the Darwin initiative.

I regret that I omitted to respond to the noble Lord, Lord Eden, about sonar devices in fishing and their implications for whales. The Government are aware of the potential damage from developments in sonar initiatives. They are funding research to try to understand better the impact of such new technologies, and will establish a policy to address the problem once there is a clear understanding of the interactions with marine mammals.

[BARONESS ROYALL OF BLAISDON]

DfID's current work is focused on addressing the policy, governance and market failures that drive illegal and unsustainable logging. Its support for improved forest governance, law enforcement and trade and for stronger civil society engagement in policy making is helping to promote sustainable logging policies in timber-producing countries such as Indonesia and Ghana. It also contributes substantial funds to the development of international forest policy through the World Bank, the UN's Food and Agriculture Organisation and the Global Environment Facility. Last year, the UK was host to G8 Environment and Development Ministers, and we reached agreement on some important policy commitments to reduce demand in G8 countries for illegally logged timber.

There was other progress in 2005. Under our EU presidency, the EU Forest Law Enforcement, Governance and Trade Regulation, which the noble Lord, Lord Chidgey mentioned, was adopted. We will now be able to enter into agreements with timber-producing countries and provide them with assistance to tackle illegal logging and to reform their forest policies, governance and trade. DfID will spend £24 million over the next five years to support this work. I think that the noble Lord asked for an update on where we are on the EU regulation and how many countries have signed up to it. I cannot give him a reply at present. It is very early days, but I undertake to inform all noble Lords in writing as soon as we have any progress.

As I mentioned, this year we will continue to work with the private sector to encourage responsible business practices that favour legal timber, and we will build on the successes of the UK's timber procurement policy and the commitment of central government departments to procure products made from legal and sustainable timber. My noble Friend Lady Whitaker referred to DfID's newly launched strategy for research on sustainable agriculture. This includes: a programme to use more research to help to validate and promote the best innovations from previous DfID-funded research; four regional research programmes—three in Africa and one in Asia—which will work on regional priorities in close partnership with existing regional organisations; and a joint-funded programme with UK research councils to ensure that basic research is promoted and adapted for use in developing countries. None of these elements takes a sectoral approach, and naturally we consider sustainable agriculture to include the management of forest resources. It is likely that sustainable forest resource management will be prioritised to some extent within each element.

The noble Earl, Lord Sandwich, spoke of the dire conditions of workers involved in ethanol production in Brazil. The Government are indeed aware of the dreadful condition of those workers, but the Brazilian Government have publicly stated that they want to eradicate such practices before the end of their term, and have prepared legislation to confiscate farms that practice slave labour. Our Government raise with the Brazilian Government the importance that we attach to addressing these and other human rights concerns in Brazil. That was done most recently in April when my noble friend Lord Triesman called on Brazil's special secretary for human rights.

The challenges related to environmentally sustainable fishing and logging are enormous. It is absolutely clear that, in the long run, the contribution of both sustainable fishing and logging to the economies of developing countries can be realised only if the rich countries take into account the impact of their policies on developing countries, and if the latter have the capacity for sustainable management of their own resources. I trust that the initiatives I have outlined today demonstrate that we are committed to working on both fronts, and are making progress.

House adjourned at sixteen minutes before nine o'clock.

# Grand Committee

*Wednesday, 24 May 2006.*

The Committee met at fifteen minutes to four of the clock.

[The Deputy Chairman of Committees (LORD LYELL) in the Chair.]

## Animal Welfare Bill

*(Second Day)*

**The Deputy Chairman of Committees (Lord Lyell):** The usual housekeeping rules apply for Grand Committee. There are no Divisions and we will go through each amendment. If there is a Division in the Chamber while we are sitting and speaking, the Committee will adjourn as soon as the Division Bells are rung—or, in my case, as soon as I see that they have been rung—and we will resume after 10 minutes.

**Lord Kirkhill:** I apologise for interrupting but I wondered whether I might crave the indulgence of the Committee for a moment. Yesterday, I averred that I had said in a phrase "circus animal trainer" and I held to that. The noble Earl, Lord Peel, pointed out to me that I had not used the word "circus" before "animal trainer". Having checked *Hansard*, I see that that is the case and the noble Earl and is therefore entirely due an apology from me, which I give him.

**The Deputy Chairman of Committees:** The Grand Committee will no doubt be very grateful for the bilateral conversation between the noble Earl and the noble Lord, Lord Kirkhill. I hope that we may proceed today with language that is as mild as possible.

Clause 8 [*Fighting etc*]:

**Baroness Byford** moved Amendment No. 33:

Page 5, line 33, at end insert "unless that person is reporting an animal fight to the police".

The noble Baroness said: Clause 8 deals with the subject of fighting. In moving Amendment No. 33, I shall speak also to Amendments Nos. 34 to 38. As constructed, Clause 8(1)(d) would allow a person to talk freely about a fight that had taken place on the grounds that, by doing so, he could not be accused of enabling or encouraging attendance at the fight. That would allow him to persuade some people that such a fight was good entertainment and that it would be worth making an effort to discover the time and place of the next one. To those who organise these events, persuading a potential audience is preliminary to taking their money for attendance. We on these Benches feel that any form of publicity is to be discouraged, and talking about a specific fight, whether past or future, should be an offence.

Too often, the police capture a criminal only to find that the Crown Prosecution Service declines to take the case on the grounds that it would be hard to meet the full requirements of the charge. Unless someone willing to testify in court heard something such as, "It's great entertainment. You should come and see for yourself", surely it would be difficult to charge anyone under this paragraph. By leaving out the qualification of intention, it should be easier to charge someone after arresting a member of the audience and discovering who provided the details of the event.

I turn to Amendment No. 34, which relates to page 5, line 39 of the Bill. If anything designed for animal fighting cannot be used for any other purpose, possession should be a sufficient reason for a charge. Things adapted for use in an animal fight are unlikely to be found in people's possession unless they intend to use them for a particular purpose for which they have been altered. That will be so particularly if they are caught in the vicinity of a fight around the time that it takes place or perhaps in the company of others who are known to take part. Leaving out the intention phrase will make it harder for those arrested to use it as a loophole through which to escape the charge. It should also enable the police to complete an investigation and present their case to the Crown Prosecution Service without having to play the part of a jury. It is fairly straightforward to prove possession of a particular article. The proof of intention is less hard-edged and, in our view, better left to the court.

Amendment No. 35 is a probing amendment designed to elicit the intended meaning of the paragraph. If I build a garage for housing a car and then, as happened with some of the garages when the 1987 hurricane ripped off their roofs in the south east, I fill it with household rubbish, could it be successfully claimed in court that I had intended it for storing rubbish? If I have a barn that I use for half the year for storing hay bales and then allow the odd animal fight in it, could I be successfully prosecuted for keeping it—keeping is the important word—for use in an animal fight? Does the wording in the Bill actually mean more a case of knowingly allowing the premises that the accused owns or rents to be used for an animal fight? As the paragraph stands, would proof depend on there having been more than one or even two occasions on which an animal fight had been held in the premises in question?

Amendment No. 36 relates to video nasties. The existence of a video nasty, whether of animals or people, is bad enough; possession, knowing what it contains, is reprehensible and should be prosecuted wherever it is discovered. We contend that the need to prove also that the possessor had intended to supply it to someone else is far too stringent. Our cinemas and television screens are used constantly to project scenes of fighting that range from the news of Iraq to classical depictions of the American frontier struggles and the rivalry between criminal gangs here and elsewhere. Presumably those who take part in the reconstructions are willing to do so. Those who appear involuntarily on the news reels, it is hoped engage our sympathies and reiterate the horrors of war.

Animal fights engineered so that they may be captured on film do not involve the consent of the participants. Basic survival instincts may ensure that they attack rather than flee. To facilitate a fight that

[BARONESS BYFORD]
would not otherwise have taken place is, however, nauseating and reports that animals trying to escape are herded up and returned to the fray cause revulsion among all of us. The filming of the proceedings is disgusting and should be punished most severely. The possession of a copy of the film should be prosecuted and punished sufficiently to discourage others from supporting the trade. There should be no get-out clause in the law, such as is contained here.

I turn to Amendment No. 36. We cannot believe that a Bill intended to improve standards of animal welfare can even consider excluding cruelty that takes place outside this country. Nor can we agree that possession of a film of animal cruelty should be legitimised if it can be proved that the fight took place before the commencement of the Act. Were the authorities to obtain a copy of a film covering a fight that took place before commencement, I would not expect them to prosecute the film crew or the fight organisers unless they could do so under different legislation. I do not, however, see how possession of a film can be excused on grounds of the date of the disgusting activity it contains.

The final amendment in the group is a probing amendment designed to find out what is meant by the words of this subsection and in particular the qualification concerning the limits imposed by Schedule 2 to the 1972 Act. I beg to move.

**The Countess of Mar:** On Amendment No. 36, what would happen if some organisation such as the BBC took an undercover film of dogfighting, cockfighting and badger baiting and showed it on television? Would they be stopped from doing that when it was in the public interest to know that these things were going on?

**Baroness Farrington of Ribbleton:** As noble Lords are aware, the clause to which Amendment No. 34 refers was subject to fairly substantial redraft on Report in another place in order to ensure that this most important offence catches all those people we want to catch for their involvement with this abhorrent activity. Ensuring we get this clause right remains a priority for the Government and, I know, Members of the Committee.

However, we cannot agree with the drafting that the noble Baroness has suggested in Amendment No. 33. It seeks to remove the qualification that information about a fight must be provided,

"with the intention of enabling or encouraging attendance at a fight",

before it will be an offence. It is crucial that this element not be deleted; otherwise it would catch a person who simply tells a friend that he has heard that there was a fight in a public house on the previous night and that he thinks that it is disgusting. The offence would be far too wide if it caught such people. The act of providing information is entirely neutral to whether the person providing it is promoting, publicising or otherwise supporting the fighting.

We appreciate the noble Baroness's concern that there may be situations, such as reporting a fight to the police, where the provision of information could have the arguable intention technically of encouraging attendance at a fight. That gives too literal an interpretation to the phrase "intending to encourage attendance". In reality, the person reporting the fight is intending to prevent it from happening. We cannot envisage a situation in which such a person would be prosecuted.

Amendment No. 34 seeks to widen the offence of possessing equipment for use in connection with an animal fight by removing the requirement that it must be possessed with intent to use it as such. With respect to the noble Baroness, we do not agree that such an extension would be appropriate. There may be situations in which it is entirely lawful to keep an item designed or adapted for use in an animal fight. For example, a pub landlord may have cockfighting spurs on his wall as a curiosity or a country museum may have them in a display cabinet. If there is no intent to use those items in connection with an animal fight, we see no reason for criminalising the act of simply possessing them.

As the law stands, an intent to use the items for animal fighting must be proved. The Cockfighting Act 1952 explicitly requires that,

"the court be satisfied that he had it in his possession for the purpose of using it or permitting it to be used as aforesaid".

I am not aware that there has been any difficulty in securing convictions under this Act, such that there is a need to widen the offence when we bring it under the Bill.

I am slightly surprised by Amendment No. 35, which seeks to remove the offence of keeping premises for use in an animal fight. I noted the examples given by the noble Baroness, but the act of keeping premises for use in animal fighting has been an offence since the Town Police Clauses Act 1847, Section 36, which Section 1 of the 1911 Act reflected. We believe that it has served us well. We have heard no arguments that it should be removed: in fact quite the contrary. An explicit offence was added to Clause 8 on Report in another place. It is there on the basis that a person who keeps a fighting pit in his garage might not have caused a fight to take place yet, and there may be insufficient evidence of an attempt to do so. However, unlike the noble Baroness's garage, the very act of keeping a fighting pit indicates some level of involvement in animal fighting. Unlike keeping equipment, there can be no other lawful purpose for keeping premises in such a condition. On that basis, the act of simply keeping premises for use in animal fighting is an offence under this clause.

I turn to the other amendments in this group to which the noble Baroness spoke. We appreciate that the new offences relating to recordings of animal fighting were passed without the opportunity for debate in another place, so I understand that there may be residual concerns about this clause.

I emphasise at the outset that the Government are strongly of the view that recordings of criminal activities are, in general, adequately addressed by

existing provisions, including the Video Recordings Act 1984, the Obscene Publications Act 1959 and the Sentencing Guidelines Council's recommendations that recording be considered an aggravating factor in existing offences. We do not wish to undermine the general schemes provided for in existing legislation by introducing piecemeal recordings offences across the statute book.

However, we were persuaded during discussion in another place that animal fighting is an isolated subculture of which recordings are an integral part, and that to stamp out animal fights, we need also to address specifically and separately the problem of their being recorded. As a general rule, we as a society do not criminalise recordings simply because they record an illegal activity—noble Lords have referred to this. However, the particular circumstances surrounding the subculture of animal fighting justify exceptional treatment. Given this position, we accepted also that such recordings may not always be covered under the present law or the Bill as introduced. In an increasingly technological society, the person doing the recording might not always be present at the fight, although they are likely to be. The recordings might not meet the obscenity threshold for the purposes of the Obscene Publications Act and may generally not constitute a commercial activity for the purposes of the Video Recordings Act. However, I must stress that this is an exceptional offence which is intended to address this very specific, narrow issue.

When agreeing to consider this specific issue, my honourable friend the Member for Exeter made it very clear that the Government do not consider a simple possession offence, of the kind suggested by Amendment No. 36, to be justified in the case of animal fighting. There is only one other area where simple possession is an offence and that is child pornography. There is no justification for putting animal fighting on the same footing as child pornography, which is treated in a wholly exceptional way in this respect. We agree that it is repugnant to watch such material. However, there is plenty of repugnant material in existence the mere possession of which is not criminalised. The creation of a possession offence is a very serious step which we would be prepared to consider only if there were absolutely no other means to deal with the evil. In this case, we are confident that targeting the supply, publication and showing of such recordings should effectively disrupt the production and distribution of this material. We are therefore not persuaded that extending the criminal law to cover those who nevertheless possess it is justified.

The amended fighting offence criminalises possession where an intention to supply, and thereby feed, the subculture of animal fighting can be established. We understand that organisations such as the RSPCA have expressed concern about whether it would be possible to prove an intention to supply, but I would ask noble Lords to note that the offence in the Bill does not require that the intended supply be for commercial purposes. It is therefore wider than the current offence in the Video Recordings Act and should not therefore cause the same evidential difficulties. We are content that this is sufficient to address the evil that was of particular concern in another place—I know that that concern is shared by your Lordships—namely, the non-commercial supply of recordings in whatever form and their publication via the internet.

Amendment No. 37 seeks to remove the restriction on this offence which confines it to recordings made in Great Britain after the Bill enters force. The restriction to Great Britain has been included because of the difficulties inherent in taking the kind of universal jurisdiction proposed by this amendment. There are problems with animal fights being legal in other countries; for example, bullfights in Spain, dogfights in Pakistan or cockfights in certain Pas de Calais villages. This Bill is about the welfare of animals in this country, not the welfare of animals in other countries. We cannot presume to criminalise recordings of activities that are perfectly legal in the place where they were filmed.

There is also European law to consider; in particular, the television without frontiers directive restricts our ability to prevent television broadcasts into the UK unless they meet the threshold of causing harm to minors. Our offence exempts broadcasting to ensure full compliance with this directive, but there is a risk that if we were to include scenes that do not meet the tests in the directive within the scope of the offence, thereby preventing recordings made abroad from being distributed in the UK while letting the same material be broadcast from abroad, we could be accused of acting in a discriminatory manner under EU and ECHR law.

The restriction to recordings made after the Bill enters force has been included to ensure that, where people have recordings of historical interest—for example, a country museum might have such a recording—it will be outside the scope of the offence. We appreciate that this might be an initial hindrance to prosecutors, as, in the first few years after the Bill enters force, it could be a reasonably onerous evidential burden to discharge. We thought about it, but consider it more important to ensure that historical material has protection in the longer term. Removing this provision would only make a difference in the first few years after the Bill enters force.

In speaking to the last amendment in this group, I apologise for the length of the reply. I am trying to be as comprehensive as possible, particularly given the circumstances in which the matter was considered—or not—in the other place. Amendment No. 38, which the noble Baroness said was a probing amendment, seeks to delete Clause 8(6). We understand why an explanation of this subsection is being sought, but apologise in advance because that explanation is going to be fairly technical. We have made it clear in subsection (7) that the definition of a "recording" covers the transfer of electronic files, to ensure that the internet is covered by the offence. In regulating the internet, we are obliged to comply with the requirements of directive 2000/31/EC, the e-commerce directive, which is aimed at ensuring the free

[BARONESS FARRINGTON OF RIBBLETON]
movement of "information society services" in the EEA. I foresee a debate on Report in the House of Lords, with certain quarters raising the European dimension.

This directive, and its implementation, is complex and technical, and it is likely to be reviewed by the European Commission in 2007. We therefore concluded, after careful consideration, that it would be more appropriate to deal with its implementation under the European Communities Act 1972 than in the Bill. Clause 8(6) has been included because one of the directive's requirements is that we extend the offence to cover information society service providers who are established in the UK, but who operate—for example, by publishing—in another EEA state. Subsection (6) will ensure that where we do this, we can apply the same penalties to them as to anyone else committing the offence. Without this subsection, such providers could evade the more serious penalties of the Bill by operating in other EEA states.

The clause would not catch BBC journalists making a documentary about animal fighting. For the information of the noble Baroness, Lady Byford, there is no need to prove that the premises have been used for fighting. Showing that the premises exist for that purpose is sufficient for a prosecution.

I apologise for the length of my reply, but it is important to be as comprehensive as possible before we go on to later stages of the Bill because we all share the same objectives. Should Members of the Committee require any further information between now and Report, I will be happy to arrange for them to get it. On the basis of this reply, I hope the noble Baroness will withdraw her amendment.

**Baroness Byford:** I am grateful to the Minister for responding so fully to these opening amendments. It was important that we sought clarification on them. Her explanation was very full, so I will need to read what she said.

I should have said that Amendment No. 35 was a probing amendment. I was trying to establish exactly what the Government view as being the sort of place in which an animal fight would take place. They take place in different places: fields, barns or anywhere. We raised that amendment in case one had a barn that was used for a fight. I assume that nine-tenths of the barn would be used for ordinary farming practices. I am afraid I do not have great knowledge of bull pits, but I understand that they can be erected fairly quickly and easily. We were trying to define the thinking of the Government on that.

**Baroness Farrington of Ribbleton:** I speak without advice. I take the noble Baroness's point that many premises can be used or put up temporarily for this purpose. I understand from conversations in the north of England that there are buildings that have cockpits specifically designed for cockfighting. I see that a Member of the Committee could ask whether this would be the sort of thing one might find in a garage by looking at the underside of a vehicle. If there is anything I can add to help the noble Baroness, I shall write to her.

**Baroness Byford:** It was not me in a garage at that stage, but it was an example I gave. It could have been in a barn.

I shall not delay the Committee. I am sorry if the noble Baroness thought that we were widening the scope because we want to make sure that this section is as tight as possible in order to end these activities. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendments Nos. 34 to 38 not moved.*]

Clause 8 agreed to.

**Baroness Miller of Chilthorne Domer** moved Amendment No. 39:

After Clause 8, insert the following new clause—

**"PHEASANTS AND PARTRIDGES**

(1) The person responsible for an animal to which this section applies commits an offence if the animal is kept otherwise than in accordance with this section.

(2) An enclosure in which any pheasant is kept for the purpose of producing eggs must be of a kind which provides a minimum of one square metre of floor surface area per bird.

(3) Pheasants shall only be kept in a laying pen described in subsection (2) for up to a maximum of six months in any one year.

(4) After the laying period, pheasants which are not released into the wild must be moved to a separate enclosure which provides a minimum floor surface area of two square metres per bird.

(5) An enclosure in which any partridge is kept for the purpose of producing eggs must—

(a) be of a kind traditionally used for the keeping of partridges (commonly known as a partridge box), and

(b) provide a floor surface area of no less than 0.55 square metres per bird.

(6) Partridges shall only be kept in a box as described in subsection (5) for a maximum of six months in any one year.

(7) After the laying period, partridges which are not released into the wild must be moved to a separate enclosure which provides a minimum floor surface area of one square metre per bird."

The noble Baroness said: Amendment No. 39 relates to the "prevention of harm" section of the Bill and relates to something that is happening in the game-shooting industry. In moving this amendment, I stress the importance of game shooting to rural areas in economic and conservation terms: in farm diversification, the encouragement of wildlife and making good economic use of field margins, small copses and so on. I recognise the importance of the game-shooting industry, and this is a small part of what is happening within it. This matter has been brought to my attention by the British Association for Shooting and Conservation, which has a wide membership within this industry.

4.15 pm

The amendment is designed to address a recent but serious abuse that has crept into the game-shooting industry. It is, after all, an industry that began with the

shooting of wild birds and there was never an intention, until extremely recently, that it would become akin to factory farming, using a battery system to rear the next generation of birds. My amendment seeks to provide standards for the housing of laying pheasants and partridges which are kept for egg production.

Few premises would be caught by the amendment because most people in the industry do not use anything that could be called "battery cages" for laying. But where they are used, up to nine female birds could be confined in a small area. The cramped conditions are likely to cause stress in the birds and they prevent the birds from exhibiting their natural behaviour patterns. That is one of the five freedoms that the Bill seeks to promote. They can also lead to all kinds of abhorrent behaviour such as pecking and, in extreme cases, even cannibalism. Feather loss and illness are frequent in battery cages and they have a higher mortality rate. Those are problems which we came across in battery cages used for laying chickens. One of the big success stories of recent years is that in the demand for free-range eggs, battery chickens, through market forces, are being phased out. It would therefore be unfortunate if in another part of the industry they were being phased in.

The British Association for Shooting and Conservation has come out strongly against the use of battery cages. Its council resolution of March 2005 states that,

"Battery-type cage laying systems for pheasants and partridges are incompatible with the values of BASC and the future of game shooting".

The association then makes a number of points about what the game-shooting industry should be about and what its members strongly feel. It is most concerned that the use of battery cages could bring the industry into disrepute, which would be most unfortunate.

Anticipating the Minister's reply, he might say that a further study is needed to examine exactly what size of cage is reasonable for a pheasant or a partridge, given the five freedoms that we have discussed. However, I am looking for a statement from him that a battery system is not acceptable. I beg to move.

**Earl Peel:** Given that the Bill is primarily enabling, it would seem contrary to its purposes to make specific provisions on the face of it, particularly when issues are to be dealt with under approved codes of practice. Furthermore, the Government have made clear that they intend to introduce a code of practice for the welfare of game birds.

I acknowledge that the noble Baroness, Lady Miller, has raised an important issue and I condemn any improper rearing practices. Moreover, I appreciate her comments about gamekeepers. Too often, in my view, they are castigated as being inappropriate in the countryside, but those of us who have dealings with shoots and gamekeepers in rural areas know only too well the important contribution they make to conservation and biodiversity.

The noble Baroness mentioned that BASC has taken it upon itself to raise this issue. However, my information is that it has done so unilaterally, without consulting the other organisations involved. That is regrettable, because if proper consultation had been allowed to take place, these problems could have been resolved. I declare an interest as president of the Game Conservancy Trust. It, together with the CLA, the National Gamekeepers' Association and, perhaps most importantly in this instance the Game Farmers' Association, feels that research needs to be done on this matter and has specifically come forward with the recommendation that it should be referred to the Farm Animal Welfare Council to look not just at rearing density but at raised laying units.

We must also bear in mind that raised laying hens are used extensively abroad. I do not have the exact figures, but I know that a high percentage of the reared game birds released in this country are imported. The noble Lord, Lord Rooker, will by now be aware of my concerns on imported stock coming into this country which do not match the standards imposed on our own producers. I suspect that import controls on game birds coming into this country are unlikely to be imposed under the EU and WTO rules. No doubt the Minister will give me some guidance on that. We could therefore have the unsatisfactory situation in which controls are imposed on our farmers and game rearers—I thoroughly endorse such moves if they are appropriate—but it would be ridiculous if imports could come in from abroad which did not comply with the same rules. I hope therefore that the Government will resist the amendment and allow proper research to be carried out. It will go some way to determining the nature of the relevant codes of practice.

Finally, under Clause 12 which deals with regulations to promote welfare, the noble Baroness, Lady Miller, has an amendment which will ensure that regulations made under subsection (1) shall be made on the basis of scientific evidence. I thoroughly endorse that proposal, but I believe that it should apply also to the rearing conditions of game birds. I hope that the Minister will resist that and rely on research that will ultimately determine the problem.

**Lord Christopher:** It is difficult not to have sympathy with the amendment. On the other hand, as the noble Earl, Lord Peel, indicated, the issue of bird shoots goes much wider. The noble Earl mentioned imports and I see the odd French partridge which did not get shot wandering about. But how many are returned to France dead, to be eaten? More importantly, how many are just shot and buried? There are many allegations about that, and it is an unacceptable face of countryside activity.

**Earl Peel:** The noble Lord makes an important point. I can tell him categorically that all the major shooting organisations have investigated the burying of game and we can find no evidence to substantiate the claim. It is a rumour that has been circulated and the noble Lord made it an important point. However, I can assure him that to date the evidence does not exist.

**Lord Christopher:** I am glad to hear that, but the test that should be applied is not in this proposal. It lies in

[LORD CHRISTOPHER]
the number of birds which are provided to be shot and the number of people who are paying to shoot. My impression is that there are a number of people whose interest is not in pheasants, but in their preference for a live target. I hope we can have some assurances that the code will cover the waterfront here and that it will be followed. Otherwise, as I said in the debate last week, this will be another farming activity which lacks the sympathy of the public. It is important that the rural community counteracts that.

**Lord Lipsey:** I have the great good fortune to live in the middle of a pheasant-shooting estate. When the guns came up at the start of the season, the lady who previously owned the house used to lie down in the road and say, "You can't come through here". She was a lady of specific tendencies, but she did not add to her local popularity by her particular approach to the shoot. Certainly, on observing it, I have no objection in principle to the sport. It gives a great deal of pleasure to people, including to us when we get the odd brace from the shoot. I therefore do not have a problem with the proposal in principle.

However, having listened closely to the noble Earl, Lord Peel, and coming from greyhound racing, an industry which has had problems with welfare, I believe that the shooting fraternity has been a little slow to get on to the concern caused by some of its practices particularly in breeding. I may be over-interpreting the noble Earl, but when I hear him talk about further research I hear the bells beginning to ring. We need more than research; we need action against some of the interesting documents we have all received from the lobbyists about what is happening.

I have no wish to prevent the activity, but I cannot support the amendment because the great virtue of waiting and having things incorporated in codes of practice is that it will give the shooters the chance to put their house in order before we decide precisely what legislative inhibitions, if any, are placed upon them. I hope that the message will go out from the Committee that we all share the noble Earl's concerns, so well expressed, and the determination of the official shooting lobby that something should be done. We are looking to see action accompanying the words we have heard so as to obviate the necessity for heavy-handed government intervention.

**Baroness Miller of Chilthorne Domer:** For clarification, I want to ask the noble Earl, Lord Peel, a question. He spoke about scientific evidence, but I understand that advice to shooters on the minimum recommended density was published by the Game Conservancy Trust based on years of experience. I imagine that that advice was given on the basis of tried and tested methods over years.

**Earl Peel:** I do not know the technical answer. The Game Conservancy Trust, through the veterinary expertise of Chris Davies, has done a great deal of work on this and has put forward clear recommendations. I can only assume that the recommendations put out by the trust are being adhered to by its members. I have not heard of cases where they have not done so. I am sorry that I do not have the figures or the information with me, but the noble Baroness makes a good point.

**The Countess of Mar:** I am curious about how the proposal will work. The noble Baroness, Lady Miller, made a comparison between domestic chickens used for laying eggs and pheasants. While domestic chickens lay sterile eggs, presumably the pheasants and partridges are required to lay fertile eggs because they are for breeding. What happens to the cock pheasants if the hen is kept in a cage for six months? Is the cock pheasant put in with the hens every now and again? Anyone who has observed hens in a run with a cockerel will know that he is very active.

4.30 pm

**Earl Ferrers:** I have not had the privilege of participating in this Bill before, and I hope your Lordships will forgive a minor intervention. I feel concerned not only about the amendment, but about the Bill as a whole. There seems to be a general desire nowadays in everything, particularly with the European Community and with the Government, to—what might be described as—interfere with everyone.

I have not found any particular reason to think that it is necessary to put controls on people who rear pheasants. I have lived in the country all my life, and I have been a shooter, although I do not do it any more. One enjoys the countryside, but one is conscious of the fact that more and more legislators—both the Government and the European Union—are putting clamps on people and telling them what to do. They must do this or that. Even my noble friend Lord Peel says that there must be more research. That is the sort of shorthand that we use when we want to put something on the backburner. I wonder whether we are overdoing all this. What is the advantage of putting all these restrictions and controls on people? Merely that those involved will have to look more and more to what the statute says about what they are allowed to do and what they are not allowed to do. Nowadays, if you kill pheasants you have to abide by certain regulations on what you do and do not do. Now it occurs, particularly in the amendment, that if you are going to rear birds they must be in a certain area and they must be subject to certain restrictions. I fear that this is a ghastly intrusion into people's lives for no benefit at all. I hope that we will resist that temptation.

**The Duke of Montrose:** I pick up in some ways the sentiment of my noble friend Lord Ferrers. I declare having at one time bought in pheasants poults for rearing, although I have not done so for many years now. We are at a very interesting part of the Bill. So far, we have considered the general powers and the docking of dogs' tails. Noble Lords will be aware that the Minister in another place made his attitude perfectly clear in Committee. He said:

"I am determined ... that we will not turn the Bill into a Christmas tree and start hanging lots of our favourite baubles on it".—[*Official Report*, Commons, Standing Committee A, 17/1/06; col. 83.]

That to my mind makes his reasoning perfectly clear, in that as it stands it gives the Government powers to achieve through secondary legislation almost anything to do with protected animals that they want to do.

Noble Lords will have noticed in the report of the Delegated Powers and Regulatory Reform Committee that in fulfilling the purpose of promoting the welfare of farm animals, the powers are not just about prescribing welfare standards but are sufficiently wide to prohibit or restrict well-established activities, described in the report as,

"well-established activities, such as horseracing, greyhound racing, keeping of game birds and managing circuses".

The noble Baroness, Lady Miller, is trying to put something specific in the Bill, and if by doing so she is ensuring that government powers are to be circumscribed in this area, on these Benches we would have rather more sympathy with her effort. The trouble for us is that the amendment is trying to lay down specific management criteria in an area where science and understanding are developing. The advice of the Delegated Powers and Regulatory Reform Committee is not to have too much technical, procedural and administrative detail in the Bill. There is certainly room for more up-to-date technical information and generally accepted criteria to be included in a revised version of the amendment, but it would surely be better if the purpose was to mark out areas where the Government should not be interfering too much, without coming back to us for measures in primary legislation.

**Baroness Farrington of Ribbleton:** In response to the noble Earl, Lord Ferrers, the title of the Bill is "Animal Welfare", so it approaches the issue from that point of view. In response to the noble Duke, the Duke of Montrose, we are determined to ensure that we work, as far as possible, on the basis of evidence.

In response to the noble Countess, Lady Mar, I am afraid that I am not aware of the nocturnal and daytime antics of the male cock pheasant, even though I declare an interest, as a close member of the family camped out near a pheasant shoot where a cock bird arrived fairly frequently. What it got up to, however, I do not know. If I get any more information, I will tell the noble Countess. I realise that a serious point is made that, if they are being kept for breeding purposes, there obviously has to be a degree of access.

The amendment of the noble Baroness would have the effect of setting minimum space requirements for adult game birds kept for breeding purposes, and make it an offence for anyone to breach the minimum standard. It would prevent the use of some types of cages for the production of pheasant and partridge eggs. We understand and sympathise with the purpose behind this amendment but believe, along with other noble Lords who have spoken, that it would be a mistake to include a clause like this in the Bill because it would be too inflexible. There is little scientific evidence of what is required for good game bird welfare and views could change in coming years. I note the point—and am sure that the organisations themselves will rectify it between now and Report—that the Game Farmers' Association and other organisations have not expressed views on this.

We are not prepared to ban laying units and battery cages at this stage. We share the concerns of the League Against Cruel Sports, Animal Aid and the British Association for Shooting and Conservation over the use of cage systems, and want to ensure that anything used to house game birds provides appropriate welfare for the birds. There is no ban proposed on the face of the Bill, but we will address this issue when considering the code of practice. The working group is due to start work to complete the code in the autumn. It will probably be ready towards the end of 2007; we are waiting for the results of research on certain management techniques before a code can be completed. We intend to issue, through secondary legislation, a code of practice covering general management, which would also cover such matters as aggression control and intensive methods of rearing.

The industry has already provided advice, as some noble Lords have recognised, on the use and enrichment of such cages in their own code of practice. We intend to introduce a statutory code of practice to reinforce this. We anticipate that, in combination with the welfare offence, this will deal with the issue in the most flexible and effective manner. But if the evidence is that it does not, then I remind noble Lords—particularly the noble Baroness, Lady Miller of Chilthorne Domer—that it would be possible to regulate under secondary legislation.

The question of imports was raised by the noble Earl, Lord Peel. Around 40 per cent of pheasants reared come from France as eggs or day-old chicks, although there is also a small trade in six to eight week-old poults. Approximately 90 per cent of red-legged partridges are imported, the majority from France but also Spain and Poland. It is not possible to regulate rearing practices abroad, or to have general import restrictions under EU law. I hope that answers the point raised about standards across the EU. We expect the study into the use of bits and spectacles in the rearing of game birds to be produced soon.

I have tried to cover all the points raised. We understand the concerns, but share the concern referred to by other noble Lords that we should act on the basis of scientific evidence, recognising the value of the voluntary code being produced to deal with the concerns of the noble Baroness.

**Baroness Miller of Chilthorne Domer:** I thank all noble Lords who have spoken and the Minister for her reply. The previous occasion on which I debated animal issues in the Moses Room with the noble Earl, Lord Ferrers, was during the passage of the Fur Farming (Prohibition) Act, and it is a pleasure to debate with him again.

Not least of the reasons that we should become involved with this issue is that game meat is marketed to consumers as wild, natural and free range. I do not think that consumers imagine when buying their wild,

[BARONESS MILLER OF CHILTHORNE DOMER]
natural and free-range pheasants that they start life by being kept in the equivalent of battery cages. That is one reason; we do not have time to go into the others.

I say to the noble Duke, the Duke of Montrose, that we can address well established activities while debating this Bill—that is what every amendment does—but I recognise that secondary legislation will be the right route for this amendment to take.

I understand that only 25 out of 2,000 French farms are using the caged method. In establishing the best animal welfare standards in the world—one thinks of veal, pigs and so on—we have tended not to look abroad for the lowest common denominator but to lead the way. I hope that we will do so also in this area.

I hope that representatives of the industry will get together and reach a happy conclusion before the Government regulate. However, should regulation be necessary, I hope that the Government will bear in mind what I think the Minister said in response to Amendment No. 2, which was that pheasants are essentially wild birds. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 40 not moved.*]

**Baroness Miller of Chilthorne Domer** moved Amendment No. 41:

After Clause 8, insert the following new clause—

**"SALE OF ANIMALS ON THE INTERNET**

(1) The appropriate national authority shall by regulations make such provision as the authority thinks fit for the purpose of regulating the sale of animals on the internet.

(2) Without prejudice to the generality of the power under subsection (1), the regulations shall, in particular, make provision with regard to persons who are involved in such sales but who are not themselves responsible for the animals concerned.

(3) For the purposes of this section, selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

(4) Power to make regulations under subsection (1) includes power—

(a) to provide that breach of a provision of the regulations is an offence;

(b) to apply a relevant post-conviction power in relation to conviction for an offence under the regulations;

(c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;

(d) to make different provision for different cases or areas;

(e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;

(f) to make incidental, supplementary, consequential or transitional provision or savings.

(5) Power to make regulations under subsection (1) does not include power to create an offence triable on indictment or punishable with—

(a) imprisonment for a term exceeding 51 weeks, or

(b) a fine exceeding level 5 on the standard scale.

(6) Regulations under subsection (1) may provide that a specified offence under the regulations is to be treated as a relevant offence for the purposes of section 22.

(7) Before making regulations under subsection (1), the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(8) In this section, "specified" means specified in regulations under subsection (1).

(9) Regulations under this section—

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."

The noble Baroness said: The amendment addresses an issue that is referred to in the regulatory impact assessment for the Bill. It states that online pet shops require a pet shop licence in exactly the same way as normal pet shops. The amendment probes the parallels between online pet shops and normal pet shops.

The Government have stated they intend to introduce a code of practice on internet sales. Will this code of practice have any statutory force? I assume that it will have. Will it ensure that website owners of auction sites, swap shops and chat rooms take responsibility should they promote or facilitate the trade in live animals?

The amendment covers both the sale of animals in online pet shops and the wider internet trade through third parties, which takes place on auction sites, for example. It is certainly a growing area of activity. I seek assurance from the Minister that these perhaps-less-direct examples will not escape from the remit of the Government's thinking. Would internet service providers be deemed responsible under Clause 3 and therefore be held to account for any suffering caused by their activities?

The International Fund for Animal Welfare's report, *Caught in the Web*, is based on a wide study of this problem area. The study found more than 9,000 animals and wildlife products for sale online in just one week. More than 70 per cent of the animals concerned were species protected by international law. So this is not a minor issue; it is very important. More than 140 live primates, including chimps and gorillas , were found to be for sale, together with a Siberian tiger and giraffes.

Perhaps this subject captures the imagination less than circuses and so on because it is a bit technical, involving a lot of IT, and it is invisible compared with real-life sales in public places. For that reason, I also included in my amendment the suggestion that regulation should be made by affirmative resolution so that this subject is scrutinised by Parliament in order to try to keep up with developments in technology.

In summary, I seek an assurance from the Minister that the rules will be made to coincide with the regulations on pet sales, as promised in the regulatory impact assessment. I beg to move.

4.45 pm

**The Countess of Mar:** The noble Baroness talked about pet shop sales and pet sales but there has also been a fairly recent development in the sale of pedigree farm animals—sheep, cattle and pigs. With the closure of a lot of markets, this has been a wonderful facility

because people can see the animals on the internet and buy them in that way. I should like to know whether that is to be regulated, as indeed the markets are.

**Baroness Byford:** I thank the noble Baroness for bringing this amendment before us today. It was debated at great length in another place and we seek further clarification on it. First, when the Minister responds, can he tell us whether certain international restrictions are already in being with regard to internet sales? I do not know what happens abroad and whether people make use of the facility in different countries.

Secondly, as the noble Baroness has told us this afternoon, the Government intend to introduce a statutory code. Will such a code cover sites that facilitate trade by selling information and not just sites that sell animals directly? Obviously there is a difference between passing information over the internet, which is possible and might well be a good thing, and just selling on the internet. That is not clear in the amendment.

I understand that the codes of practice under Clause 14 are not legally binding, and that is why the new clause seeks to address the internet trade through regulations rather than a code of practice. I also understand that, according to Annex B of the regulatory impact assessment, the Government are intending to introduce a regulation to license pet shops, including internet pet shops, in 2007. However, Annex B makes no mention of the code of conduct which the Minister, the noble Lord, Lord Bach, mentioned at Second Reading. Following on from that, do the Government intend to introduce a statutory code of conduct on internet sales, and will such codes apply to sites that act as the middle man and manage the sales as opposed to those selling directly?

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** I hope to give the clarity that the noble Baroness requires but, in some ways, the answer to her question on internet sales is yes and no, and I shall explain why. Obviously we are aware that concern has been expressed about the selling of animals via the internet. In some ways, sales are affected by the inability to see the animal prior to purchase. As the noble Countess said, it is possible to see the animal, but you have to know that that is the animal you are going to purchase. In respect of farm animals, particularly cattle, you would know which animal it was because it would be registered and numbered.

Under the current law, a person might well be required to have a licence to sell animals over the internet. That would apply if he had premises at which he carried on the business of selling animals and advertised those animals for sale on the internet. An example would be a pet shop that had diversified somewhat and was selling animals over the internet as part of its business. If that were the case, it could be required to have a licence.

We want the licensing and regulation to continue when we introduce new regulations on commercial selling. However, it is not our intention to introduce licensing or regulations for those who merely advertise, whether on the internet or in a newspaper, but do not keep animals. We want to work with the interested parties to see whether we can make effective and proportionate regulations in this area and, once we have worked out the draft regulations and code of practice, we will fully consult all concerned.

Subsection (6) would allow the local authority to apply for a warrant to enter premises to search for evidence in connection with possible offences. However, I can assure noble Lords that, when the regulations on the selling of animals over the internet are made, such a power will be available through paragraph 9 of Schedule 1 to the Bill. To that extent, the necessary provision is included in the Bill, although I accept that it is buried in a schedule.

The Government recognise the need to have in place regulations which strengthen the welfare safeguards when pet animals are sold commercially. I suspect that that brings me to an answer that I do not have as I do not think that we were talking about farm animals, for which different sets of rules would apply. The answer that I have concerns pet animals.

Regarding the code of practice on sales, our preference is for a voluntary code at first. I think that we have to go down that route in the first instance because we are likely to get more co-operation and the process is likely to be quicker. Of course, the operation of the code would then be monitored.

As I have pointed out, the advertising of pets over the internet is not covered by the current law unless people are keeping premises at which they keep animals. If the animals are not kept on the premises, there will not be any licence or regulations. Therefore, the internet provider will not have any responsibility in that regard because the person in question is not keeping animals. If he was keeping animals, we could get at him through another route.

The noble Countess asked me about pedigree farm animals. If a farmer keeps pedigree animals and offers them for sale over the internet, he is likely to come within the provisions to be made under secondary legislation. However, at the moment this is open to discussion and has not been decided. I hope that that gives the clarification that the noble Baroness was looking for, bearing in mind the long debate that took place in the other place.

**Baroness Miller of Chilthorne Domer:** I thank the Minister for his reply. I say to the noble Countess that I had no intention of bringing farm animals within the remit of this amendment. I shall read carefully what the Minister said. I think I understand which parts of his reply are yes and which are no but I shall need to check that in *Hansard*. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Byford** moved Amendment No. 42:

After Clause 8, insert the following new clause—

**"GREYHOUND WELFARE**

(1) Where racing tracks are not regulated by the relevant practising body, they shall be required to be so under this section.

(2) For the purposes of this section, the relevant practising body is such body as from time to time the Secretary of State may by statutory instrument specify.

(3) The relevant practising body shall issue guidance subject to approval by the appropriate national authority which provides for—

(a) independent veterinary attendance at race meetings,

(b) welfare protection for retiring racing greyhounds,

(c) the identification of greyhounds employed for racing purposes,

(d) the licensing of kennels, and

(e) the maintenance of tracks."

The noble Baroness said: Following our earlier comment about too much legislation and too much Christmas-treeing, I almost hesitate to move this amendment. But we are in Committee and this is very much a probing amendment, although it concerns a very serious issue that faces a particular part of this form of entertainment, as one might call it in its widest sense.

My honourable friend Mr Philip Hollobone raised this issue in another place. I understand that of the 30,000 greyhounds that race each year, some 7,500 disappear. When my honourable friend moved his amendment, he linked it to the Gambling Act 2005, and, as noble Lords will have noticed, we have chosen a different approach. We read the response from the Minister in the other place and realised that trying to move an amendment relating to the Gambling Act was not appropriate, but the issues are still there.

The issues that need to be addressed by the greyhound industry are complex, and I believe that they are inseparable from the whole question of greyhound welfare. Without good health and high greyhound welfare standards, the industry will lose credibility and respect, which could in turn seriously damage the industry as a whole. While the National Greyhound Racing Club welcomes the duty of care that is in the Bill, it remains seriously concerned about the welfare of greyhounds that race on unregulated tracks. The Minister in another place suggested that the welfare offence would improve greyhound welfare, and I am sure that would be true to a certain extent, but it would only apply once an animal has suffered. We want to stop suffering before it happens.

The amendment would implement changes in the culture of greyhound racing in the industry. While the majority of the tracks—I believe some 31—have signed up to the greyhound industry's rules as drawn up by the National Greyhound Racing Club, there remain between 13 and 17 unregulated tracks, which are not subject to the same stringent rules as their regulated counterparts. It is that culture that the amendment seeks to change. The regulated tracks are subject to the rules of racing established by the National Greyhound Racing Club. Those regulations include identification and registration, so that retiring greyhounds can be traced back to individual owners and trainers. In the event of a missing greyhound, the National Greyhound Racing Club's infrastructure is set up to punish those who fail to stick within the rules of racing by having the offenders withdrawn from regulated practice.

In another place, my honourable friend said that the Environment, Food and Rural Affairs Select Committee is unconvinced by the argument that the greyhound racing industry should be allowed until 2010 to regulate itself and improve its own welfare standards. The points listed under subsection (3) of the amendment demonstrate the categories needed to be covered by regulation of the industry. Those categories are currently fulfilled in the National Greyhound Racing Club's regulations and they have stood up to challenges in high courts. The first two subsections would ensure that there was no need to set up a new body. The industry self-regulates effectively at present, and it is keen to extend to unlicensed racetracks the high standards that it has set. As the Minister in another place stated:

"We have not ruled out regulating greyhound tracks if self-regulation proves not to work".—[*Official Report*, Commons, 14/3/06; col. 1408.]

I would be grateful if the Minister, when he responds, can assure us that Her Majesty's Government will be able to come back with further information on Report. I beg to move.

**Lord Lipsey:** First, I declare an interest as chairman of the British Greyhound Racing Board. That is clearly a direct, pecuniary interest that is shared by few others, but I have taken advice from the House authorities, who have confirmed that it is all right for me to speak on the subject and offer the Committee my best advice. I will not table any amendments nor vote on any at subsequent stages. I hope that—given that greyhound racing is Britain's third largest spectator sport, which is a little know fact—I may be forgiven if I speak for slightly longer than Back Benchers normally would on this very important issue.

My only doubt about the excellent speech made by the noble Baroness, Lady Byford, was that the figure of 7,000 out of 30,000 dogs disappearing is not accurate. It has been put about for a long time, and it is largely greyhound racing's own fault because we never published figures that are properly auditable as to the true situation. I expect to be able to produce such figures in the very near future. Roughly 10,000 dogs retire off official tracks each year. Some 3,500 are directly rehomed by the retired greyhound trust. That figure has multiplied by several times over the past few years. A lot more are taken home by their owners and live a comfy life on their sofas, and anyone who has had a greyhound knows that there is nothing better than a greyhound on the sofa. A number of others stay with their trainers. There are some who are not suitable for rehoming because they have a temperament fault—most greyhounds are wonderful but you get the occasional one—and they are euthanised. But the idea that they are disappearing into a dark hole or a black pit with stones around their

legs is a myth—at least, from the point of view of the official greyhound industry, although I should point out that it is partly our fault that the myth exists.

5 pm

The noble Baroness, Lady Byford, hit the nail on the head in moving this amendment. It is my considered belief that the problems of greyhound welfare today lie chiefly with the independent tracks. I got into greyhound racing only because I had a retired greyhound and joined the Retired Greyhound Trust when I took the job as chairman of the board, largely because I was interested in doing something about greyhound welfare. Partly out of sheer terror that the Houses of Parliament might abolish our sport and partly due to the fact that most people in greyhound racing genuinely love their dogs, as Dennis Turner, a past chairman of the All-Party Greyhound Group, will confirm, there has been a huge change not just in the facts but in the culture. I raised this matter in the House of Lords in 2001, and I have a full briefing, which I think was sent to all noble Lords, but anyone who is interested is welcome to a copy.

Now, practically any sensible suggestion put forward for improving greyhound welfare is adopted almost immediately by the industry. We have protected the independence of vets on tracks; we have hugely increased the funding going to the Retired Greyhound Trust; every track must now have proper air-conditioning for the dogs in its kennels; and every track has a welfare officer responsible for greyhound welfare—usually the most senior official at the track. The situation has changed substantially.

I am always willing to hear criticism of what goes on at the 31 official tracks. We immediately look at any sensible criticism and consider what, if anything, needs to be done. I think that many of my friends in the animal welfare lobby would recognise that. I do not believe that there is now a serious welfare problem for dogs running on official tracks.

However, the 17 or so independent tracks are a problem, although that may be slightly unfair. We recently carried out a survey of the independent tracks and I should say that standards vary hugely. At the top end, some of the tracks do not fall that far short of the standards at official tracks. They have vets' rooms and vets in attendance, for example. The main difference is found in the type of racing that takes place. At an independent track, the dog turns up in the owner's car, whereas at an official track, it turns up in the trainer's van. But that is not what matters; it is the standard of welfare and not the way in which it is delivered that is important.

So at a few of those tracks the standards are not bad, but at some the standards vary from poor to appalling. When you read a case in the paper about greyhound cruelty, it can nearly always be tracked back to an independent track. For example, many noble Lords will have seen the recent report to the Welsh Assembly on greyhound welfare which highlighted terrible and ghastly cases of abuse of dogs in south Wales. At the time that the report was written, there were four independent tracks but no official tracks in south Wales. That gives a hint of the situation. I do not want to be unfair to my friends at the independent tracks. They are notably of an independent frame of mind and some robustness and I do not want to end up at the bottom of a pond with a stone around my leg myself.

However, the problem lies at the less good tracks and it has to be tackled. Many independent tracks do not have vets in attendance; many have dogs racing under nicknames so that you cannot trace them afterwards; and many dogs are transported or left in cars without proper air-conditioning. Many racing surfaces are unsatisfactory. I have seen a track where dogs race down to the first bend along a very sharp incline with a bent inside running rail. It is a very bad track for any dog to run on, and the injury rate would reflect that.

I have no doubt about the long-term solution. Most of these tracks are hanging on only by the scruff of their neck. The average attendance at the tracks that we surveyed was 180, and you find at some of them a primitive scene that will not last much longer. They are going out of business—they cannot compete in the modern leisure age. Therefore, inevitably and quite rapidly they will go out of business. Indeed, of the 17 that we surveyed, two went out of business between our starting the survey and finishing it. That is the rate of decrease in numbers that has been occurring. It is very sad for the people concerned but it is not sad for the dogs.

The preferred solution of the British Greyhound Racing Board is that independent tracks that are up to it should convert to official tracks. To some extent, that would mean changes in their code and practices but nothing that they should resist. Indeed, we have two shining examples. A few years ago, Kinsley in Yorkshire converted from a "flapping" track to an official track. It has recently won a BAGS contract, which means that it has to be really well run. In 2005, Pelaw Grange in County Durham made the change. I was there recently. Jeff McKenna is a great man and he has converted the track from being independent. For the first time in the history of greyhound racing, we are prepared to make grants available to help tracks to make the transition, and we will send experts to tell them exactly what they need to do. It is made as simple as possible, and that is the long-term solution.

In the mean time, what do we do about independent tracks? At present, the situation is under consideration by a Defra working party—the Greyhound Welfare Working Group—on which representatives of both welfarists and the greyhound industry sit. We go to a great deal of trouble to work alongside the moderate welfarists—not the kind of people who spat at my guests at the annual greyhound dinner. I think we all agree that we are very keen to work with moderate welfarists and to talk things through in an attempt to reach solutions.

The present approach under the Bill is that secondary legislation will embody a code of practice which reflects principles and standards set out in the greyhound charter. That charter is the product of the

[LORD LIPSEY]
Greyhound Forum, which meets tomorrow and is a joint body of welfarists and the greyhound industry, so it is not an industry "fix". It is chaired by Clarissa Baldwin of Dogs Trust, who will be known to many noble Lords. The code will be subject to public consultation and approval by negative procedure of both Houses. The charter will be subject to industry self-regulation, which, as the noble Baroness said, is currently carried out by the National Greyhound Racing Club. There are ways of ensuring that this regulation is open to discussion and involves a role for the forum as the body to which industry self-regulation gives account. I think that that is a reasonable model of how self-regulation under the Bill can work to provide better standards without too much bureaucracy.

Even without the amendment of the noble Baroness, Lady Byford, and even if we had that secondary legislation, independent tracks will be in deep trouble. They have to change or die. The code of practice under the Bill is taken into account in criminal actions in the courts in deciding whether cruelty has occurred. Let us suppose that an independent track does not have a vet in attendance, as is the case at most of them. Let us also suppose that a dog is injured there and suffers, as can happen if there is no vet in attendance. If a prosecution is brought, the promoter has no defence unless he has a vet at the track. He will not be able to afford to pay a vet, who could cost £200 a night at a greyhound track. If the track joins the NGRC code—the official code—we will pay for that vet, but if it remains independent, it will not be able to afford a vet and will be in danger of breaking the criminal law, which not many of them know about.

Although I shall not labour this, I also think that the Gambling Commission has a role here because it will not allow betting to take place at races where dogs are called Fido, Fast Jack and so on, when the previous week they had different names. In such circumstances, there cannot be open gambling and, without gambling, there would be no independent tracks.

Beyond the sanctions that will exist naturally in the Bill, the Greyhound Welfare Working Group will shortly consider how the regulation that applies to official tracks can be extended to the independents. The amendment moved by the noble Baroness, Lady Byford, points out one possible way, but there is a variety of ways. However, the Committee can rest assured that they will end up properly regulated. At least, that is the case so far as concerns the greyhound industry, and I hope that it is true of Ministers as well.

In conclusion, we owe a great debt to the noble Baroness for putting forward the amendment. She has gone to a lot of trouble to get to grips with this subject and has enabled us to debate it. We in the greyhound industry and sport will work with the Government to ensure that the secondary legislation under the Bill achieves what the amendment was designed to achieve and ensure that the problem of the independent tracks is dealt with once and for all.

**Lord Soulsby of Swaffham Prior:** I strongly support this amendment. I will be brief. Due to the efforts of the noble Lord, Lord Lipsey, greyhound welfare has improved enormously, which was not the case some years ago. When the noble Lord, Lord Kimball, was chairman of, I think, the British Greyhound Racing Board, he asked me to set up a veterinary advisory committee to do what we were doing for the racing industry; namely, the Veterinary Advisory Committee of the Horserace Betting Levy Board. Unfortunately, that never came off. There was a whole series of issues that could have been taken up, but the governing body of the British Greyhound Racing Board was not in agreement with that. I am delighted to see that things have moved on greatly in those intervening years.

Without going into great detail, I would suspect that there are still quite a number of issues that need to be attended to which affect the welfare of greyhounds when they are racing, such as the maintenance and structure of tracks. More particularly, while the majority of retired greyhounds are well looked after, there are cases of appalling treatment of greyhounds and they are discarded like unwanted goods. Without more ado, I strongly support the clause proposed by the noble Baroness.

**Lord Bilston:** As a former chairman of the All-Party Parliamentary Greyhound Group, I should pay a genuine tribute to my noble friend Lord Lipsey for his excellent stewardship of the British Greyhound Racing Board. He has transformed the whole ethos of that board and the greyhound industry generally. We owe him a great debt of gratitude, and long may he continue to give his service to, as he said, a very important sporting industry in the UK.

Does the noble Baroness, Lady Byford, agree that the regulation of independent, unlicensed greyhound tracks is of vital importance if real progress on greyhound development and welfare is to be achieved?

**Lord Kirkhill:** I very much support the amendment. I am conscious of the fact that my noble friend Lord Lipsey has made significant improvement. But the information that I receive from time to time suggests that the welfare of retired greyhounds, in particular, is entirely inadequate. There are a lot of ruthless owners and ruthless disposals of greyhounds, and great carelessness in the continued well-being of many greyhounds once they finish racing. That issue has not been properly addressed by the greyhound racing authorities.

**Baroness Miller of Chilthorne Domer:** We on these Benches are grateful to the noble Baroness for tabling this amendment. Given all the expertise around the Committee, there would be no point in my adding anything further.

**Lord Rooker:** I was almost going to say the same, but I have got my notes and my brief. I pay tribute to the expertise around the Committee, in particular the work of my noble friend Lord Lipsey who has given excellent leadership to the board since he took up his position. We believe that the regulated sector is making strong advances in welfare, but I do not think that anyone is saying that it is perfect. We are very keen

for self-regulation of the National Greyhound Racing Club sector, if at all possible. However, that would take place only if all concerned were satisfied that open and auditable self-regulation was possible. That is why we are very encouraged by the way in which industry and welfare representatives have been working on Defra's greyhound welfare working group. I understand that it will meet again tomorrow. At its previous meeting on 25 April, the group made tremendous progress in deciding how industry self-regulation might work, including how it might be extended to the independent tracks. So real progress is being made. The board and the club already regulate and issue guidance in the areas mentioned in the amendment. However, the Government would have a power under Clause 14 to issue codes of practice to offer further guidance if it was considered necessary.

5.15 pm

We acknowledge concerns about the ability of self-regulation to extend to independent tracks, but as my noble friend has just said, while those tracks vary, their economic lifeline is not long. We want the working group to be given a chance to consider the best way to regulate independent tracks and make recommendations. In some ways, that is what I am asking the Committee to do. The work is under way.

I fully accept that we have no real facts and figures about retired greyhounds. My noble friend Lord Bilston gave some information and is collecting further information, which he said he would have available in the near future. However, when one looks at the numbers of dogs racing, and the numbers entering and leaving competition each year, one has to worry about what happens to them. That is a factor.

Our goal is for all greyhound racing to have the same high welfare standards, whether under National Greyhound Racing Club's rules or not. We will endeavour to introduce regulations under the Bill in any situation where self-regulation is not possible. We are committed to doing that. We prefer the self-regulation route, but, if it is not possible, we will introduce regulations. The regulatory impact assessment commits us to doing that by 2009 if necessary. I am new to all this and have not been party to all the previous discussions, but I take "doing it by 2009" to mean that you start a lot earlier. I make it clear that we shall not sit back and wait till 2009; we want to see what happens well before then. However, the good progress that has been made by the working group gives us confidence. I would be very happy to provide colleagues with an update on progress on or before Report. It may be on the floor of the House, but I would prefer to do so in a note before then. The noble Baroness requested that when she moved the amendment.

This issue is on the move as we make the legislation. It is very important, therefore, that we provide the best updates possible as we go through the various stages of the Bill. A note in writing before Report would have much to commend it, not least that it would inform our debate at that stage. We will see whether any difficulties exist, because we want to be fully accountable.

**Baroness Byford:** I am very grateful to the Minister for his response. I take the point that he would like the Defra working party to be able to continue its work. He and, I suspect, the rest of us, hope that it will be able to achieve its objectives through self-regulation. Perhaps I may add a rider. The Minister said that the Government might introduce codes of practice if they needed to do so by 2009. I was glad to hear him say that he would review that earlier. If we cannot find a solution that is satisfactory to us all, I will perhaps look on Report for some form of review system being put in place so that the whole issue is looked at. I do not want to take up every point that was made, but I am grateful to all noble Lords who spoke.

My first foray into this issue was in 2001, when the noble Lord, Lord Lipsey, introduced a debate on greyhounds, in particular on their retirement. I am somewhat alarmed that even the National Greyhound Racing Club does not have figures about the number of dogs unaccounted for at the end. I would have thought that it should have that in its system. I hope we shall know a little more next time.

On the question of unlicensed racing tracks, finding those figures would be very difficult. One does not know who is participating, how many dogs are running and how many dogs are no longer running at the end of the season. I remember that in 2001, we had a long debate about the possibility of rehoming some of those dogs. The noble Lord, Lord Lipsey, said again this evening that certain dogs cannot be rehomed and have to be put down. One must be realistic and accept that. Perhaps their experiences in the period when they were racing make them unsuitable. I am always delighted to hear that dogs are rehomed wherever possible. I am grateful to the Minister for his positive response. But there is work for the racing board between now and Report to try to bring us up to date and get that information to the Minister, who will, no doubt, search Defra's experience. I am particularly concerned about unlicensed tracks. I shall not go through the detailed explanation that the noble Lord, Lord Lipsey, gave.

I have never been to greyhound racing, but I would like to see it continue because it gives enormous pleasure to many people. A lot of people go along for the betting and perhaps it does not matter who is running—but that is an unfair side-swipe, although it is true. On the other hand, if we are to have animals racing—in this case, dogs, not horses—we want to ensure that standards of care on the track when they are racing, in getting there and in retirement are adequate, or better than adequate. The horse racing industry is heavily self-regulated. I know from people who have competed in one-day or three-day events that there are strict rules in the horse world about having vets and doctors present. I am grateful to all noble Lords who have spoken and to the Minister for his response. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[BARONESS BYFORD]

Clause 9 [*Duty on persons responsible for animal to ensure welfare*]:

**The Duke of Montrose** moved Amendment No. 43:

Page 7, line 7, at end insert "in which to live, play and exercise"

The noble Duke said: The purpose of this amendment is to ensure that animals kept as pets have the space necessary for rest and relaxation. A golden retriever or an Alsatian kept by a single person in a fourth-floor flat formed from the top of an old flour mill might have plenty of room to walk, stretch out and play with a rubber bone, and it might have immediate access to open country to run free. However, the same animal in a Parker Knoll, standard, fourth-floor flat in a council block may be extremely constrained. If it has to share the flat with a family, it may also be subject to noise and movement all around.

Other animals also require adequate space and some peace and quiet. A newspaper column written by a vet or an animal expert will often contain advice concerning the conditions in which to keep pets; whether rabbits, hamsters, guinea pigs, cats or dogs. Included in the recommendations will be good advice on whether to get a companion for an existing animal, on the volume of cage space required and the amount and type of play to be provided. All that is in addition to the strictures on food, water, hygiene and medical care. Considering the wording of this section, we did not feel that,

"to exhibit normal behaviour patterns"

covered the situation that gave us cause for concern. I beg to move.

**Baroness Miller of Chilthorne Domer:** I support the sentiment behind the proposal and the exploration of the issue, but I wonder whether the word "play" is a touch anthropomorphic. However, I have not amended the amendment; if I had, I might have proposed, "live, sleep and exercise", because for a lot of animals living in unfortunate conditions the inability to sleep as they would choose is probably as severe a punishment as anything. The concept of playing is probably covered by the word "exercise", but that is a small quibble. The noble Duke raises a very interesting point.

**Lord Rooker:** I am very careful, as I am conscious that I am still new in your Lordships' House, but I think that the noble Duke made a slight slip of the tongue on which I shall dine out for quite a while. He was giving us the contrast between the retriever in a flat converted from an old mill that had a lot of space and, as he called it, the Parker Knoll council fourth-floor flat. I think that he meant the Parker Morris standard flat. I shall say no more than that, because he is absolutely right—although Parker Morris standards were good standards. We should never have moved away from them in public sector social housing.

Amendment No. 43 would qualify the circumstances in which it is necessary to take steps to meet an animal's need for a suitable environment. Noble Lords will be aware that when the draft version of this Bill was published for consultation, the clause referred to the need to provide the animal with a suitable environment "in which to live". On reflection, we removed the qualifier "in which to live". We did this because it meant that the welfare offence would not require owners to provide their animal with a suitable environment in other situations, for example while in temporary accommodation or during transportation.

Regrettably, the amendment repeats those omissions. The animal might have a perfect environment in which to live, exercise and play but not have a suitable environment while it is being transported. Similarly, the obligation might not extend to providing a pregnant animal with a suitable environment in which to deliver its offspring.

I hope that that satisfies the noble Baroness on the reasons why the provision changed and why we could not support her amendment—because it would allow those other situations to arise.

**The Duke of Montrose:** I am grateful to the Minister for his explanation. It is very interesting to realise that the Government at one time considered some of the factors that we have tried to replace. We may want to look again at what the Minister said and the reasons he gave for not going down that line. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 44 not moved.*]

**Baroness Miller of Chilthorne Domer** moved Amendment No. 45:

Page 7, line 17, at end insert—

"( ) For the purpose of subsection (1), a person shall have regard to whether an animal is—

(a) of a domesticated species; or

(b) of a non-domesticated species,

and exercise that regard in satisfying his duty of care to the animal."

The noble Baroness said: Clause 9 is the heart of the Bill, because it outlines the five freedoms that are necessary for the welfare of any animal. My amendment would draw a distinction between the needs of domesticated and non-domesticated species.

Yesterday, we had several discussions about the definition of "wild animals", and I am grateful to Members on the Conservative Benches for tabling an amendment on that subject. Implicit in the debate was the fact that the needs of wild animals are very different from the needs of domesticated animals. The Minister explicitly recognised the difference in the debate about circuses. However we decide finally to define "wild", we should make sure that the Bill includes the underlying assumption that wild animals come with needs that are qualitatively and quantitatively greater than those of domesticated animals.

I have chosen to distinguish between domesticated species and non-domesticated species rather than between domesticated and wild, because this emphasises that the behavioural traits of an animal are not just a matter of nurture; they are also in its nature.

As the noble Countess, Lady Mar, said yesterday, they are "in its genes". That means that there are important considerations for animals of non-domesticated species, whether or not they have been reared in captivity. That is the difference between a domesticated animal and an animal living in a domestic situation. The former are physically and genetically disposed to being kept animals; the latter are not—even if they have been brought up among humans they are still "non-domesticated".

5.30 pm

Under Clause 2, an animal will be protected by the Bill's cruelty provisions if it is of a kind commonly domesticated in the British Isles, and is under the control of man or not living in the wild. Implicit in that is a threefold distinction which must be made in the Bill. First, a domesticated animal; secondly, a non-domesticated—wild, as it is currently referred to—animal kept in domesticated circumstances; thirdly, a non-domesticated animal in the wild.

The Bill does not, of course, apply to the third category, as we debated yesterday. But my amendment highlights the fact that the needs of the second category—non-domesticated animals in a domestic situation—are equivalent to non-domesticated animals in the wild. Their needs are considerably greater than the needs of domesticated species when it comes to, for example, exhibiting natural behaviour. It is a major lacuna in the provision of the Bill that this distinction is not drawn out.

This morning, I explained my amendment to the RSPCA because I did not think that it had fully understood the need for this distinction. It has come back with a statement, which I hope the Committee will not mind if I read out; it has not had time to fully brief everyone. It is not very long:

"The RSPCA supports the principle of these amendments. The needs of animals need to be assessed differently as wild animals have specific requirements which are more difficult to meet in captivity. Most wild animals do not become domesticated by virtue of being kept or bred in captivity and should continue to be considered wild for the purpose of assessing their needs."

That is the essence of my amendment. That distinction will then inform every aspect of the Bill. It is hard to get through Clause 9 and debate exactly what we mean under subsection (2)(a) to (e) without drawing this distinction.

In the course of the Fur Farming (Prohibition) Act 2000 passing through Parliament, for example, a University of Cambridge submission found that, even after 70 years of selective breeding and captivity, mink could not be called a domesticated species. That was fully accepted by the Government. This amendment would therefore require that this fundamental distinction be drawn for the welfare needs of all animals. It would ensure that the provisions of the Bill have the intended effect in every case, not just in the case of domesticated species. I beg to move.

**The Countess of Mar:** I support the noble Baroness, Lady Miller, in her amendment. However, there is yet another group of animals being left out: farm animals kept in domestic premises. I remember a lady coming to try to buy a lamb from us because she wanted to take it for walks and keep it in her sitting room. We refused to let her have it, for obvious reasons. Lambs are meant to be out in the fields and, eventually, to be eaten or breed.

We have a neighbour who keeps sheep, with between 14 and 24 rams in a field of three and a half acres. He neglects them, and has been fined for not looking after his animals properly. Every year, we have to get them out when they get fly-blown and, in the winter, when they are not fed. They are full-blown rams and, in the autumn when they ought to be with ewes, he gets away with not looking after them properly because he says that they are pets. I know that the RSPCA and the trading standards people get incredibly frustrated by this behaviour. People keep pigs in houses as well. Pigs are not meant to be in houses; they are meant to be rooting about outside. We need to make that distinction as well.

**Baroness Byford:** I shall not elaborate on what the noble Baroness said, but she is right to ask for greater clarification and recognises that the needs of wild animals are greater than those of domesticated animals—in certain circumstances, I would add. The noble Countess, Lady Mar, raised a very important point with the question of those who consider their animals as pets. I distinguish those people from those whom I consider to be hobby farmers, because a lot of hobby farmers show animals such as Dexters and deal with them with a proper, farm-like approach. So we have a very wide range here and I do not envy the Minister in having to make a response. We have distinguished between wild animals with their needs, domesticated animals with their needs, pets which are actually farmed animals but are kept as pets, and the genuine hobby farmers, whom I would class as farmers anyway. I look forward to the Minister's response.

**The Countess of Mar:** I hate the phrase "hobby farmers". Hobby farmers do not exist—they are either farmers or they are not farmers.

**Baroness Byford:** I accept that, but in some ways it is difficult to define someone who has only five or six animals, although the Minister may be able to do so. The noble Countess would have them count as farmers—so we will have more farmers.

**Lord Rooker:** There is another group—domestic individual members of a non-domesticated species. I shall try to deploy the argument around that and show that the amendments do not add anything to the Bill.

I understand the concern expressed by the noble Baroness in proposing her amendment. For example, a giraffe that is born and raised in a zoo is treated as having the same needs as a giraffe on the plains of South Africa. Even though it might, individually, be considered to be a domesticated animal, it should still be treated as non-domesticated under the Bill because of the species that it belongs to. The species of an animal will be an inherent consideration in

[LORD ROOKER]
ascertaining its needs under Clause 9(2) for the purpose of determining whether those needs have been met.

We cannot envisage a situation in which a court could consider an alleged welfare violation in respect of such animals without taking their species into account. It is impossible to ascertain what their needs are without having regard to the fact that they are of a species that is not commonly domesticated in the United Kingdom. To pursue our example, how could a court determine whether a giraffe's needs had been met without having regard to the fact that it was a giraffe? So the species must be taken into account.

I appreciate that the noble Baroness is trying to establish an element of additional protection for what we might call domestic individual members of a non-domesticated species. She wishes to ensure that their needs are not taken to be limited simply by virtue of the fact that they were born and raised in captivity. In veterinary terms, there might be some dispute about whether an animal that is captive born and bred has the same needs as a wild member of the same species, but I do not see how we can go down that road.

Instead, I reassure the noble Baroness that the Bill does not make distinctions between captive and wild-born members of the same non-domesticated species. The distinction in Clause 2, based on species commonly domesticated in the British Islands, operates throughout the Bill. It is a distinction based on the species as a whole and not on the circumstances of an individual animal. So, if a court were considering whether an animal was domesticated, it would not simply look at whether the individual animal was born and raised in the British Islands but would ask whether it was of a species that is commonly domesticated in the British Islands.

On that basis, I reassure the noble Baroness that the giraffe will not be considered a domesticated species simply because it is captive-born in a zoo. Its needs might well be the same as its wild counterparts. What will amount to reasonable steps under Clause 9(1) to meet those needs may be different, because I do not think that a court would consider it reasonable to expect the owner of a zoo premises to provide savannah-type surroundings for his giraffes by direct analogy with the wild-born members of that species. However, the issue of what the giraffe's needs are is distinct from the issue of what steps are required to meet them. Certainly, the Bill acknowledges that its needs should be ascertained according to its species and according to its circumstances and not only to the extent that they are relevant to its needs.

All pets and farmed livestock are covered by the Bill and there is no need for a further split in the definitions. I hope that that reassures the noble Countess.

**The Countess of Mar:** The Minister cleared the matter up for me in his first few words. It is simply that we need to be able to say that the Bill covers everything.

**Baroness Byford:** Can the Minister, in adding to the list, consider the position of alpacas and llamas? At the moment, they are outside being considered as farmed animals, although there are a lot of alpacas in our country. I know that when the foot and mouth outbreak occurred, there was great concern because people did not know where the alpacas and llamas were—particularly the alpacas. I think that it was a Mr O'Connor who contacted me at the time with the concern, which I passed on to the Minister's predecessor, that there were lots of alpacas around that could well be carrying disease but there was no registration or knowledge of where they were. That is not relevant to this clause but it gives me a chance to raise the matter. Certainly, with regard to disease and disease control in the long term, the issue of alpacas and llamas should be taken into account, which I do not think is currently the case.

**The Countess of Mar:** I can add goats to that list, because a lot of people keep a couple of goats in their back garden and they are not registered.

**Lord Christopher:** I can add, too, that castrated alpacas are now being widely sold as family pets and are being kept as such.

**Lord Rooker:** They are considered under the Bill whether they are farmed or wild, but the noble Baroness raises a separate issue relating to disease control, prevention and registration. I shall make it my business to find out about that and report back. It is ancillary to the Bill. Those animals are covered equally in respect of the Bill but that is not the point. The point that the noble Baroness raised is a separate one about arrangements for disease control and the location of livestock.

**Baroness Miller of Chilthorne Domer:** I thank the Minister for his reply. I shall certainly read very carefully what he said and will weigh it up and see how it works when we come to debate Amendment No. 51, which concerns primates as pets. That will allow us to test in reality whether Clause 9, as currently drafted, has got to the heart of the problem. So I am holding in reserve whether I come back to this issue on Report to test it against some of the other amendments. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 46 not moved.*]

Clause 9 agreed to.

Clause 10 [*Improvement notices*]:

**Baroness Byford** moved Amendment No. 47:

Page 7, line 41, at end insert—

"( ) The recipient of an improvement notice may, within 21 days of its issue, lodge with the inspector's appointing authority a statement of the provisions that he feels are unreasonable; and such a statement will not preclude attempts to meet those provisions but may be taken into account at any subsequent court proceedings."

The noble Baroness said: Clause 10 deals with improvement notices. With the leave of the Committee, on behalf of the noble Lord, Lord Soulsby of Swaffham Prior, I shall speak to Amendment No. 48 as well.

Clause 48 defines "inspectors". It includes a subsection that protects an inspector from legal proceedings against acts that the court is satisfied were done in good faith and were based on reasonable grounds. We support the concept of improvement notices and consider that they will be an important part of any inspector's armoury. We feel, however, that if the inspector is to be indemnified against court claims, there should be a balancing right for anyone in receipt of an improvement notice to enter a plea against its severity, cost or timeframe. We do not believe that the plea should interfere with the execution of the improvement notice but it should be drawn to the attention of the court in any later proceedings.

5.45 pm

We also consider that appointing authorities should not be placed in the position of having to take court action for failure to comply with an improvement notice only to find that the court agrees with the defendant that it was overly stringent or otherwise unreasonable. The receipt of a statement laying out provisions that are felt to be unreasonable should act as a warning to the authority. Equally, the absence of such a statement may be considered by the court as tacit acceptance of the reasonableness of an improvement notice.

The amendment provides an important right to respond to unreasonable demands in an improvement notice and for these to be taken into account by a court. It may also serve an important function in preventing perhaps over-zealous inspectors setting limits on what is or is not reasonable. My noble friend Lord Soulsby of Swaffham Prior wanted to add a provision to this part of the Bill stating that it would be an offence to fail to comply with an improvement notice. I beg to move.

**Lord Rooker:** I shall deal with the amendments in reverse order. Amendment No. 48 proposes that we should adopt in the Bill a similar approach to that in existing farm animal legislation for both farmed and non-farmed animals, making it an offence not to comply with an improvement notice. That situation was explored at the time of the previous legislation. Clause 10 is the result of a request from the honourable Member for Leominster in the other place; that is, those accused of an offence under the Bill should be told in a statutory improvement notice how they have broken the law. Obviously this is new material and the Government have looked at introducing it.

I am glad that certain colleagues in the House are not present. They may wish that they were, although we would be here all night. We have been strongly advised that since the passage of the Human Rights Act 1998, this approach may require an appeal process. We have discussed the situation with the draftsmen of the legislation but appeals are not appropriate in this context. That is the difficulty. They are impractical when the time period involved in an improvement notice is frequently short—perhaps 24 hours when dealing with water and feed. They are also resource-intensive. Prosecutors may have to go to magistrates for an appeal hearing and again for the prosecution. The appeal process is easily abused by those who deliberately want to be obstructive.

Without the possibility of an appeal being written in, it was not feasible to make non-compliance with the notice an offence, as the amendment proposes. As I say, because of the Human Rights Act, there has to be an appeal process. Therefore, we propose instead that, where a person complies with the notice, he will have a shield against a prosecution under the welfare offence. That gives effect to what most people would expect to be the consequence of an improvement notice in any case, and it is in keeping with the spirit of the Bill of encouraging responsible ownership rather than imposing sanctions. So it is approached from the other direction.

We have some sympathy with Amendment No. 47, but we do not think that it adds to the Bill. The proposed amendment takes into account the impracticality of an appeal procedure and proposes instead a system for formally lodging a complaint against a notice. There may be situations in which the recipient of an improvement notice feels aggrieved by the notice's contents and wants to do more than simply refuse to comply. The recipient may, at any time, write to the issuing authority and complain about the contents of the notice. He may complain to the inspector in person at the time that it is issued. Of course, in any subsequent proceedings under Clause 9 he may argue in his defence that he did not commit a welfare offence and that the contents of the improvement notice were unreasonable. Nothing in Clause 10 affects the person's ability to do that.

The amendment seeks to put the ability to complain on a statutory footing, but we do not think that that adds anything of substance. The recipient either complies with the notice, in which case there will be no subsequent court proceedings, or he chooses not to comply, in which case it will be open to him to challenge the contents of the notice in any subsequent court proceedings, whether he has lodged a complaint with the issuing authority or not. We do not see that the statutory footing adds anything, other than administrative burdens for the issuing authority to deal with.

However, adding a provision such as this to the Bill could—I say only "could"—prejudice the defence of those who do not lodge a complaint at the time that the notice is issued but wish to rely on the notice being unreasonable in subsequent proceedings. The implication might be that the notice must have been reasonable because they did not object to it at the time. So it may cause a further problem. If we have the drafting and the legality right, the amendments do not add anything to the Bill. As I have said, a person who receives a notice has rights to complain and register a protest, none of which is taken away by Clause 10. The amendment does not add anything, so I hope that the noble Baroness will withdraw it. Obviously, she may want to come back on it, but I have given those caveats

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because it could have a bad effect on the person receiving the improvement notice if we follow the wrong route.

**Baroness Byford:** I am grateful to the Minister for his response. On Amendment No. 48, to which I spoke on behalf of my noble friend Lord Soulsby of Swaffham Prior, I will obviously have to let my noble friend read what the Minister has said. The Minister referred to the discussions in another place. I remember that my honourable friend Bill Wiggin was very anxious that, when notices were issued, people should have a chance to improve and react to the inspector's recommendations. As the Bill stands, from what the Minister has said, if a challenge is made, it would obviously be before a court. Would the individual farmer or whoever was challenging—obviously not the inspector—end up with costs? In our original suggestion, I do not think that that was necessarily the result. I will read carefully what the Minister has said. Between now and Report we will think about whether the point is worth pursuing. The Minister recognised the points that we were making and the concerns that we expressed. I am quite happy to take it away and to try to come back with something, unless the Minister has something that he would like to add.

**Lord Rooker:** The cost point is very important. I would like to give an answer. There would be costs, but they may be recoverable.

**Baroness Byford:** Presumably the costs would be recoverable only if the person won the case.

**Lord Rooker:** Yes, I am assuming that that is the case.

**Baroness Byford:** I assume that. I will certainly read carefully what the Minister has said. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 48 not moved.*]

Clause 10 agreed to.

**Baroness Miller of Chilthorne Domer** moved Amendment No. 49:

After Clause 10, insert the following new clause—

**"PET THEFTS**

(1) A person commits an offence if he steals a protected animal.

(2) A person guilty of an offence under subsection (1) shall be liable to—

(a) imprisonment for a term not exceeding 51 weeks, or

(b) a fine not exceeding £20,000,

or to both."

The noble Baroness said: This amendment is intended to probe whether the Government think that the punishments available for pet thefts are adequate, since the theft of pets is growing. Does the Minister have any statistics on the level of pet theft and is it a recordable crime? I believe that it is classed as a similar crime to the theft of a video recorder or television. The maximum sentence is six months imprisonment or a maximum fine of £5,000. I have chosen a different penalty, for the sake of tabling an amendment.

For many people, pets are extremely important. To classify them as equal to, for example, a television, does not reflect the reality of the situation. Given the value of some stolen pedigree pets, I wonder whether, emotionally and financially, the penalties that can be imposed are sufficient, which is why I have tabled the amendment. I beg to move.

**The Duke of Montrose:** I am grateful to the noble Baroness, Lady Miller, for moving this amendment and for clarifying the situation regarding pet thefts. Presumably, the usual law of theft applies. If someone takes an animal with the intention of depriving the owner of his property, he or she is liable to a fine. The problem that arises with this amendment is that animals do not just stay in one place, unlike a television set. Where would you stand with a dog who follows you home or a cat who has kittens in your garden shed? Would you be taken to have deprived the owner of the pleasure of the animal's company? There are some difficulties which need to be ironed out.

**Lord Rooker:** In summary, I think that I will horrify the noble Baroness by saying that if this amendment should be accepted, it would reduce the maximum penalties for theft of an animal. I will explain why. It is already an offence to steal an animal that someone owns, which we do not want to duplicate on the statute book. That is one of the lessons we are always given: do not legislate for the same thing twice. You will make money for lawyers and will get it wrong. Not all protected animals will necessarily be owned. They may just be under someone's temporary control. Therefore, it can be meaningless to talk about "stealing" in relation to something which is not owned by anyone.

Aside from whether the Animal Welfare Bill is the correct place to set penalties for offences of theft, it is not right to suppose that the amendment would have the effect of increasing the penalties. Theft is triable either way. It can be tried summarily in the magistrates' court or it can be committed to the Crown Court. If it is tried in the magistrates' court it could carry a maximum fine of £5,000 and a sentence of not more than 12 months' imprisonment for one offence; that is, 51 weeks under the new custody plus arrangements. If it was tried or sentenced in the Crown Court, the sentence could be significantly higher, with imprisonment for up to seven years. I realise the financial difference between the magistrates' court and what is in the amendment. For serious offences that go to the Crown Court, we need to keep that maximum penalty. The noble Baroness was probably right to explore it, if only to put it to rest.

**Baroness Miller of Chilthorne Domer:** I thank the noble Duke, the Duke of Montrose, for highlighting a problem that sometimes creates great divisions between neighbours. When a much-loved cat seems to

prefer the people next door, it can be very offensive. I thank the Minister for clarifying the position. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Miller of Chilthorne Domer** moved Amendment No. 50:

After Clause 10, insert the following new clause—

**"OFFERING ANIMALS AS PRIZES**

(1) A person commits an offence if he offers or gives an animal to another person as a prize.

(2) Subsection (1) does not apply where the prize is offered or given in a family context."

The noble Baroness said: This amendment seeks to make offering pet animals as prizes to anyone an offence. The Bill deals with pets as prizes only for people under 16 years old. Although I recognise that Clause 11 is a good start, introducing this new clause would extend that. My amendment is taken from the Scottish Animal Health and Welfare Bill, which makes it an offence to offer a pet as a prize to anyone except in a family context; for example, between siblings one might offer—although I cannot imagine why one would—a hamster as a prize for the best-kept bedroom or something of that sort, which is an inter-family instance.

I have also given notice of my intention to oppose the Question that Clause 11 stand part of the Bill because, as it is written, it is inadequate. The RSPCA points out that it could allow a minor accompanied by a 16 year-old to win an animal as a prize. The comparison that has to be made is that when one walks into a pet shop, particularly now that we have the Bill, the owner will talk through the responsibilities of owning a pet and will give guidance about what taking ownership of it means. That would be the case whether one is an adult or a youngster. However, when an animal is offered as a prize, there is no guidance. Adults could equally get caught up in the moment and find themselves with some unfortunate animal—a fish, a hamster or whatever—that they do not want but have been given as a prize. Would stallholders offering such prizes to adults be given the same level of responsibility as shop keepers? Would they need a signature from the winner to say that the recipient of the prize is able to look after the animal, which many pet shops already require? Indeed, animal sanctuaries check the conditions of the home to which an animal goes. Some local authorities have already decided to move beyond the point envisaged in the Bill. They do not allow pets to be offered as prizes at any events they licence. The Pet Advisory Committee suggests that giving animals as prizes to anybody should be banned. The Bill should follow its advice. I beg to move.

6 pm

**Lord Bilston:** I rise to oppose this amendment tabled by the noble Baroness, Lady Miller of Chilthorne Domer. It prohibits goldfish at funfairs and other venues. The amendment has caused great concern to the Showmen's Guild of Great Britain and to the All-Party Parliamentary Group on Fairs and Showgrounds who have, for many years, represented the interests of the historic guild, which was founded in 1889. Currently more than 20,000 people are employed in funfairs, and many of them would be adversely affected if this rather politically correct, "nanny state" amendment were accepted. I strongly suspect that there must be a large number of parliamentarians in both Houses who in their childhood proudly carried a goldfish home, placed it in a suitable container and nurtured the fish thereafter, often for many years. I certainly did and so did most of my school friends. We always took the prize of a goldfish very seriously and gratefully.

Fifty years ago, the Showmen's Guild of Great Britain passed a resolution to its constitution ensuring that all its members looked after the welfare of goldfish. It covers keeping them in a suitable container and passing them on to the winning competitor in an appropriate container. That duty of care is enshrined in the constitution. In addition, every time a goldfish is awarded, the winner is a given a copy of a leaflet drawn up especially by the RSPCA headed "Care of Goldfish". The leaflet details how to care properly for the goldfish and how to provide it with a proper home. The appropriate container also carries this advice, with similar wording to that on the leaflet.

The award of a goldfish as a prize at a funfair is part of our British tradition and culture. The Showmen's Guild of Great Britain strongly enforces its responsibility for the welfare of goldfish, and it believes passionately in encouraging the general public to help in the development of good habits in caring for pets more generally. I hope that with those reassurances the noble Baroness will withdraw the amendment.

**Lord Pendry:** I absolutely agree with my colleague, as a fellow member of the Showmen's Guild, that this is killjoy stuff. I do not think that people outside this House will think that we are doing anything other than depriving youngsters of a particular joy that many of them have enjoyed over many years.

As a boy in my home town of Ramsgate, I won a prize of a goldfish in the Merrie England amusement arcade. I assure noble Lords that we cared for that goldfish over many years. When I did my national service my family looked after that goldfish, and when I came back it was thriving as a result of their care. I believe that we demean ourselves in this place when we start talking along the lines of the amendment. Only yesterday, I was talking to one of our colleagues in this House who said that when his daughter went to university he said, "We better get rid of the goldfish", and his wife said, "No, we cannot do that". Again, they looked after the goldfish to the point when the daughter came back from university and it was thriving. To the best of my knowledge, that pet is still part of the family. The amendment is really overdoing it. I hope that the noble Baroness will, on reflection, recognise that she is proposing something that runs against the grain. Youngsters in this country who

[LORD PENDRY]
enjoy having a goldfish would feel deprived if we were to go down this line. I plead with her to withdraw her amendment.

**The Duke of Montrose:** It has been interesting to listen to noble Lords and their convictions. I wonder whether the noble Lord, Lord Bilston, will consider moving his amendment, because it seems to me that the prohibition on goldfish exists in the Bill as it stands, let alone in the amendment. We have five amendments grouped with this amendment, and I will go through them fairly rapidly if noble Lords will contain themselves for a moment.

On Amendment No. 53, the wording in the Bill means that an animal retailer only commits an offence if he sells an animal to someone whom he has good reason to believe is under 16. The amendment would make it an offence to sell an animal to anyone under 16 unless the retailer had some good reason for believing that the person concerned had already reached his 16th birthday. Hence, he may have seen the young person produce a card authorising the purchase of tobacco at a local supermarket—not so much nowadays—or he may have been assured by another adult that the young person is over 15.

Amendment No. 54 relates to the parts of the Bill that lay down that a person has ultimate responsibility for any animal in the possession of a youngster for,

"whom he has actual care and control".

We feel that it is not sufficient to exonerate the vendor simply because the potential owner is accompanied by someone over 16. Today's young persons are streetwise and accomplished at achieving their aims and objectives and it is hardly surprising in a culture that envelops them in aims and objectives from an early age. However, it is up to us as law givers to ensure that we do not make it too easy for them to circumvent our intentions. As I understand this section, the intention is to ensure that animals do not end up as currency in the hands of people too young to have the knowledge or degree of control necessary to protect them. If that is the case, Clause 11(4)(b) needs to be tightened up.

Amendment No. 55 implies that the Government could condone the internet in becoming the preferred method of obtaining animals. We fear the possibility that if this happens, it may even worsen the position whereby youngsters purchase pets without parental permission. How is someone who makes his living from selling animals to ensure that an internet transaction has the permission of a third party? How is he to ensure that any third party giving permission has actual care and control?

There is a sense that the Bill is aimed at people who own and care for animals and will set stringent conditions for them. But it allows a degree of laxity to those who make money out of trading animals. The sale of tobacco or alcohol is age-related, but the traders are subject to much stronger controls than are mooted here. We would be glad if the Minister would look again at the wording of this subsection in particular with a view to avoiding any unintended consequences.

Finally, Amendment No. 56 was mentioned by the noble Baroness, Lady Miller, and its intention is to probe precisely what is meant by "in a family context". Let us suppose that young William is living with his mother, that mum is no longer married to dad and that dad offers to white rats as a prize for passing an exam. Will that be permitted under this wording? Does "family" have the same meaning as "relatives" in the context of local government and parliamentary probity?

**Lord Hoyle:** I, too, am a member of the Showmen's Guild and I had also better declare my well known respect for the welfare of animals and their rights. I completely agree that the issue goes far wider than goldfish, but perhaps we can frame a suitable amendment that incorporates that. Many pets could be presented as prizes, not just goldfish which are part of the fairground tradition. I need not go over what was said by my noble friend about such pets being kept in containers and a leaflet being drawn up by the RSPCA and given to fairground operators. Having aired the matter, we need to go away and table a suitable amendment on Report, while not attempting to wreck the intention to protect the welfare of animals generally and tighten up on age limits. We are all concerned to ensure that an animal goes to a caring home. We will go away and look at it.

**Lord Lipsey:** I am a bit of a showman, but not a member of the Showmen's Guild. However, I support the points that have been made, in particular by my noble friend Lord Hoyle. The clause and the amendment are aimed at dealing with a serious problem. I would be much less keen if people were giving adults, and certainly children, greyhounds. The point being made so eloquently is that goldfish do not come into it.

I was once responsible for an act of gross, although inadvertent, cruelty to a goldfish because we won one at the fair, I put it in my car and I could not find it when we got home. I later took off on an 800-mile round trip up north and three weeks later we found it under the driver's seat—in fine condition. It lived for many happy years in a bowl and later in a pond in my garden. Goldfish are obviously more robust than some of the animals we might consider.

If I might just finish on a serious point; this is an important and serious Bill. It must attract public consent for every word that is in it, because it cannot all be enforced by law; it has to be a commonsense Bill that is trying to improve cruelty standards. Here, we are starting to mess about with people winning goldfish in bags, many of whom will learn from that what it is to look after an animal. I do not think that the suffering of goldfish rates very high on the Richter scale of animal suffering. If you start extending the Bill to that kind of absurdity, you are changing into an Earl Ferrers and saying that the law is getting into everything. Having heard all that has been said, I ask

my noble friend the Minister whether he can promise today to come back on Report with something that prevents the real evils that the Bill is trying to prevent, but saves our goldfish.

**Lord Bilston:** Well said.

**Lord Pendry:** Hear, hear.

6.15 pm

**Lord Rooker:** I was going to say, "Perhaps I may dive to the rescue", but that is a pun too far. I have never thought of my noble friend Lord Bilston—frankly I cannot get used to calling him that, as for 30 years I have known him by another name—as politically correct. I am not surprised that he is here today. I am not sure whether the noble Baroness, in moving her amendment, appreciated that this hit squad of goldfish protectors, including one ex-boxing champion, would be coming to the rescue. I do not think the rescue is necessary, as far as the Bill is concerned. The noble Duke made a valid point under Amendment No. 53. I need to take a further look at the drafting of this subsection, as I am concerned that we may have placed an unreasonable burden of proof on the prosecutor in cases where animals are being sold or given as prizes to underage children. We will take that away and have a look at it.

Amendment No. 54 seeks to ensure that a child must be in the care and control of a person over the age of 16, rather than merely be accompanied by a person over 16, before he is allowed to receive an animal as a prize. The intention of this amendment appears to be to ensure that the accompanying adult would have to be, for example, a parent, guardian, or someone to whom the parent or guardian had clearly delegated responsibility. That would bring subsection (3) into line with the principle in subsection (5), where the person with actual care and control of the person receiving the animal as a prize must have consented to the arrangement.

We understand the motivation behind this amendment. However, we consider that it would be disproportionate and would lead to unreasonable state interference. The amendment might place an unreasonable demand on the stallholder, who would be expected to reach a conclusion about the relationship between an adult and a child every time that a child competed for a prize. We are trying to strike a balance between the need to prevent animals being acquired in a casual and careless manner and the need to allow innocent activities such as winning a goldfish at a funfair, which is a quite innocent activity.

Amendment No. 55 removes subsection (5)(a). The purpose of subsection (5) is to cover the sorts of competitions which are run, for example, in a horse magazine to win a pony. These competitions often test a person's knowledge of horses and horsemanship, and they are normally entered by people who have a responsible attitude to horse ownership. Those under 16 should not be able to win such competitions unless they have the consent of a responsible adult. Subsection (5)(a) makes provision for these types of competitions, which are not done face to face, while subsection (5)(b) ensures that the person offering the prize has reasonable cause to believe that a child under 16 entering the competition has sought agreement from their parent or guardian.

As an aside, on the question I was asked about whether if parents are divorced can a father give his son a pet rat in a family context; yes, little Johnny can have a pet rat from his father, and that would be in a family context. That is perfectly okay; pass an exam and win a rat. I do not think that many schools will suggest that at exam time, but it is perfectly reasonable, and yes, he can he have it.

I turn to Amendment No. 56. The purpose of Clause 11(6) is to allow an animal to be offered as a prize by one family member to another. We do not want the state to regulate exchanges between family members; that is not what we are about. I wish that the noble Earl, Lord Ferrers, had remained. He made some points which were not valid. We are not seeking to regulate the conduct of individuals in the way in which he seemed to be interpreting the Bill.

Amendment No. 52 would ban completely the giving of animals as prizes, except in a family context. I have explained why I do not consider the ban to be necessary. I look forward to the noble Baroness explaining why she does consider it to be necessary to the massed ranks of the goldfish protection squad who are assembled at the back of the Room.

Amendment No. 165 would give "sale" a far broader definition in the Bill than is appropriate. In the Bill, "sale" has particular relevance in two sets of circumstances; first, under Clause 11, where it relates to the sale of animals to children under the age of 16; secondly, in the provision for the disposal of animals that have been taken into possession for the various reasons specified in Clauses 20, 35, 44 and 45. The amendment would prevent such activities as the hiring of ponies to children and ban the swapping of animals which are already protected by this Bill.

The Bill grants the courts the power to sell animals which have been taken into possession because they are in distress, or whose owners have been deprived of the right to own them, or in relation to a disqualification order which has been breached. It is at the discretion of the courts to dispose of such animals in accordance with the provisions in the Bill. It is highly unlikely in these circumstances that a court would seek to hire out the animals. The possibility of such animals being exchanged or bartered simply does not arise. On that basis, I urge noble Lords to withdraw their amendments. As I have said, I will look again at Amendment No. 53.

**Baroness Miller of Chilthorne Domer:** That was a lively debate. I am glad that, by tabling my amendment, I enabled the "hit squad"—if I may use the Minister's collective noun for his noble friends—to share its views with us. Before today, I had not received any representations either from Showmen's Guild or the APPG. Had I done so, I am sure that they would have learnt that I am certainly not a killjoy and had no intention of being one. We heard all the happy stories

[BARONESS MILLER OF CHILTHORNE DOMER]
about how the fish lived happily ever after, but we have no evidence about all the fish that are flushed down the loo the next day because they are a nuisance or about any other animal that is otherwise disposed of in an unhappy way. All the evidence of a happy thereafter for pets which have been offered as prizes is purely anecdotal.

However, a serious issue remains. We do not demean ourselves by debating it—nor is it just a matter of political correctness—because the Government are seeking to put a substantial onus on pet shops. They are seeking to set a standard for pet shops which I think that they will be unwilling to impose on their noble friends who run fairs and shows. I nevertheless recognise the constructive offer of the noble Lord, Lord Hoyle, to consider tabling an amendment on this matter. I look forward to discussing with him what form it may take. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Miller of Chilthorne Domer** moved Amendment No. 51:

After Clause 10, insert the following new clause—

**"PROHIBITION ON KEEPING CERTAIN ANIMALS**

(1) The appropriate national authority shall by regulations prohibit the keeping at—

(a) domestic premises, or

(b) other premises,

of any animals of a kind specified in the regulations, which shall include primates.

(2) For the purposes of subsection (1)(b), "other premises" means premises of such other type described in regulations, which shall not include zoos licensed under the Zoo Licensing Act 1981 (c. 7).

(3) Regulations under subsection (1) must be for the purpose of securing the welfare of animals.

(4) In considering the premises, the appropriate national authority shall have regard to the extent to which adequate provision for the welfare of animals of the kind in question could be and is likely to be made."

The noble Baroness said: This amendment moves us to a very different area. We perhaps touched on it when were discussing whether we should class all animals in the same category or whether two categories—domesticated and non-domesticated—should be specified under Clause 9.

The purpose of Amendment No. 51 is to probe the Government on whether there should be a prohibition on keeping certain animals. Amendment No. 75 would insert a new clause that deals with the licensing of keeping primates. The reason to table the amendment is that currently most pet primates are not licensed. Some species are required to be licensed under the Dangerous Wild Animals Act 1976, but Defra itself found in 2001 that there was an 85 per cent non-compliance rate with that requirement. That begs the question as to what the Government will do under the Bill to deal with that situation.

In principle, we are not dealing with the fact that the animals are dangerous, nor with conservation, although that is a powerful argument in itself. My aim is to ensure that this Bill, which deals with animal welfare, includes the potential for increased protection for animals with needs beyond those of domestic breeds. That was exactly what we debated under Clause 9.

I have introduced two different amendments on the subject, because there are clearly several different ways of dealing with the matter, and it would be good to know from the Minister which route, if either, he would be more inclined to take. Amendment No. 51 is the broader of the two; it would require the Government to make regulations. Therefore, it is in the spirit of the Bill—I am not attempting to hang anything on the Christmas tree. It would make regulations prohibiting the keeping of primates, with the exception of zoos, for example. It would also grant the Government the power to prohibit the keeping of other animals if they thought over time that a certain class of animal might not be suitable as a pet, such as big cats—although, again, I accept that they are caught under the Dangerous Wild Animals Act 1976.

Amendment No. 75 is more specifically about primates and would require the issue of a licence for keeping primates, with strict conditions. I have tabled the amendments to reflect the fact that of all animals, perhaps primates above all, have the sort of enhanced needs that we have been debating. They are highly intelligent, very social beings, which cannot easily be provided for outside their natural habitats. The Monkey Sanctuary Trust has to pick up the very unfortunate effects of people who take on a primate and then find that they cannot deal with it; it deals with animals that often come to it in a highly traumatised state. Such groups have reminded us that primates can live a very long time and their needs will alter over that time; they may go through puberty or become aged primates. At each stage of their life, like human beings, they have different needs.

The RSPCA reported in 2004 that it had been called to rescue 430 primates in just a few years. The Government stated their intention not to use the Bill to make bans on welfare grounds, but it may be reasonable to ask where, if not in this Bill, would be an appropriate place for regulation?

Even those species that would seem to be comparatively simple to keep may have needs that are not obvious and suffer in ways that are visible only to an expert eye. For example, marmosets and squirrel monkeys are some of the most commonly kept primates. Their needs seem quite simple, akin perhaps to those of a domesticated animal, until we take into account that they are itinerant, tree-dwelling animals that roam around in groups of up to 50. That is the sort of requirement that cannot easily be met when an animal is kept as a pet in the company of humans.

This year, when I was on holiday in Costa Rica, I sat and watched the Howler monkeys and the white-faced monkeys in their family groups in the wild. The point was very strongly brought home to me just how sociable with each other those animals are, which leads you to think that when an animal such as that is kept in a solitary condition, with only humans for

company, who presumably do not search through its fur for nits in the same way and do not encourage their pet to search their hair for nits, that animal is deprived of its normal activity. That would only be one example—but seeing how often that happens in the wild, it could be said to be the behaviour that makes them feel comfortable and with which they are at home. Simply spraying them with flea powder would not come into the same category of enabling them to behave normally.

The Government have proposed a code of practice to regulate the ownership of primates. I am not sure that it would solve the problem, because it would not be legally binding and would not identify who was keeping the animals. My amendment tries to highlight the particular needs of these animals and it asks the Minister whether the one-size-fits-all approach is likely to enhance the protection that this Bill should offer to them. I beg to move.

6.30 pm

**Lord Brooke of Sutton Mandeville:** My noble friend Lord Ferrers earlier prefaced his observations on Amendment No. 39 by saying that this was his first contribution to the debates in your Lordships' House and in Grand Committee on this Bill. I say "ditto", but hope that my contribution will be mildly informative rather than mildly remonstrative.

Some years back, I sat next to a man at a dinner party. Katherine Whitehorn's father, who once taught me, encouraged us to ask strangers what they did, as a person was less likely to be boring if you asked them what their occupation was. And so it turned out on this occasion. The man next to me owned a smallholding of 35 acres near Bath on which he kept animals for sale. I remember little of the conversation—though I remember cross-examining him at length—save the fact that zebras had to have under-floor heating.

I also asked him about competition. He said that he had only two competitors—one in a small house in Northampton, and one in a council flat in Lambeth—but that only small animals were kept on their premises. I asked whether they could look after me if I wanted an elephant. He said that they certainly could, but only as an incidental agent in the transaction. It was an insight into a private world of which I had no previous inkling and some difficulty in imagining. The man I sat next to has since died, so I am not in any way affecting his welfare by referring to him on this occasion.

**Baroness Byford:** I understand the noble Baroness's heart-tugging concerns about primates. Primates are like us in so many ways. However, the thought of reciprocal nit-picking is a stripe beyond which I would perhaps be prepared to go.

The noble Baroness said that the codes of practice would not be legally binding. I will be interested to hear the Minister's response to that. Does the Minister have any information on rescuing primates? The noble Baroness referred to the Monkey Sanctuary Trust. Does that cover all primates or monkeys alone? Is the keeping of primates a bigger problem than some of us perhaps think?

Perhaps I may go down memory lane with my noble friend Lord Brooke of Sutton Mandeville. Many years ago, we competed in gymkhanas on scrubby ponies. In those days, a fancy dress competition would take place. Bearing in mind the conversation which we had about circuses only yesterday, it may be distasteful to say that we went as circus performers. My sister was decked out as the ring master. Two of us sat behind her on the pony. We represented everything that went on in the circus. The reason I mention this is that we had a monkey which came along with us. He was all right to start with, but grew fed up after we had done one or two shows and decided to bite us. So we had to replace the monkey with a dog. The dog used to come along and quite enjoy it.

That sounds pretty flippant, but I do not mean it to be. It was years ago, and the monkey was well looked after by the family. However, clearly it did not like having to take part in that activity. I wonder about the way in which primates are kept and used, in the broadest sense, and what knowledge the Government have on things that affect the keeping of primates. Will the Minister be able to give us more direction on the numbers of primates that are kept and how many fall into difficulties?

**Baroness Farrington of Ribbleton:** This amendment proposed by the noble Baroness, Lady Miller of Chilthorne Domer, introduces a further power for national authorities to prohibit the keeping of certain animals at certain premises, with the exception of zoos. As the noble Baroness expanded, it refers specifically to primates. I assure Members of the Committee that Clause 12 contains sufficient power to make regulations concerning those matters, should it be considered necessary to do so.

Amendment No. 75, new Clause 10, proposes the introduction of a licensing system for the keeping of primates. This new clause would make it an offence to keep a primate without a valid licence, although there would be exemptions for zoos, establishments certified under the Animals (Scientific Procedures) Act 1986, circuses and pet shops. The power to regulate the keeping of certain animals by licence is in Clause 13. We are aware of the views that many people hold, to which the Committee has referred, on the keeping of primates as pets.

There are thought to be approximately 3,000 primates kept by individuals in Great Britain. The Government have already acknowledged that problem. The wildlife species conservation division of Defra is considering responses to a public consultation to look at the feasibility of using measures under Article 8.2 of CITES to limit the keeping of primates by private individuals to specialist keepers on the basis of conservation provision. The consultation is complete, and colleagues in the global wildlife division of Defra are looking at the responses. It would be inappropriate to pre-empt the outcome of the consultation by taking unilateral action on this matter. We would prefer to

[BARONESS FARRINGTON OF RIBBLETON]
await a review of the results of the CITES consultation to ensure that there is a proper, unified approach to Government policy in this area.

The welfare offence will be backed up by appropriate codes of practice for the types of animals concerned. We hope that the code of practice will be available and drafted by the end of the year. It may be considered that only specialist keepers will be able to comply with the code fully. The code of practice is guidance, but, in addition, it can be evidence of an offence or a defence to a criticism of an offence, depending on whether the code has been complied with. Our thinking is that secondary legislation under the Bill is the most appropriate vehicle, but we consider that a detailed code and the welfare offence team together are sufficient. There are other exotic species that also end up in sanctuaries, ranging from alligators to parrots. Primates and other creatures often go to specialist sanctuaries, but it is not always possible for them so to do.

We intend as a priority to develop a detailed code for the keeping of various primate species that are likely to be held in captivity. Ultimately, we aim to restrict the keeping of primates to zoos, scientific institutions and specialist keepers. I hope that I have covered the points that were raised by the noble Baronesses. I am unable to respond in full to the noble Lord, Lord Brooke of Sutton Mandeville, except to observe that he has some interesting dining partners. I hope that the noble Baroness will feel satisfied with my reply. If she wants to raise further points before Report, I will be only too happy to respond.

**Baroness Miller of Chilthorne Domer:** I thank the noble Lord, Lord Brooke of Sutton Mandeville, for his eloquent contribution. It was a relief not to hear him remonstrate with me. I thank also the noble Baroness, Lady Byford, for her contribution. I was increasingly cheered by the Minister's reply as it went on. She seemed to begin by asking whether it was necessary for the Government to take action, but by the end of her reply I think that she said that the Government were going to take some action.

I have a couple of queries. If this code is introduced and only specialist keepers are able to keep primates, there will be a considerable time lag for the thousands of primates which are being kept at the moment and which will live for several further decades. I presume that the code would apply only to new keepers of primates or to pets being newly acquired. Obviously, some primates would be kept for 30 or 40 years by people who might not be considered appropriate under the new code.

**Baroness Farrington of Ribbleton:** I have learnt one thing in your Lordships' House; that is, never to answer technical questions about where a law will and will not apply. I will most certainly write to the noble Baroness about it.

I am advised that there are no grandfather rights. The duty of care will take immediate effect. The noble Baroness may be satisfied by that proper legal advice. I was not aware that the term is "grandfather rights".

**Baroness Miller of Chilthorne Domer:** I thank the Minister. That is very helpful. Institutions such as the Monkey Sanctuary Trust will have to bear it in mind, because it might have a greater influx of creatures.

The Minister briefly mentioned parrots. I do not want to go into parrots because I could speak for a long time, but they, too, are a very sociable species that exists in flocks in the wild. I certainly encourage the Government to check against Clause 9(2)(c) when considering the welfare of all those creatures for which sociability is a key issue.

I was cheered the Minister's response, which I shall read. In the meantime, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[*Amendment No. 52 not moved.*]

Clause 11 [*Transfer of animals by way of sale or prize to persons under 16*]:

[*Amendments Nos. 53 to 56 not moved.*]

Clause 11 agreed to.

**The Duke of Montrose** moved Amendment No. 57:

After Clause 11, insert the following new clause—

**"PET FAIRS**

(1) A person commits an offence if he sells an animal in the course of a pet fair.

(2) A person commits an offence if he arranges a pet fair or knowingly participates in making, or carrying out, arrangements for a pet fair.

(3) In this section, "pet fair" means an event—

(a) which is open to the public (whether on payment or otherwise),

(b) at which animals are sold (or which is held with a view to the sale of animals) as pets,

(c) where any such sales are made (or are to be made) by more than one person who is making (or will be making) such sales in the course of the carrying on by him of a business of selling animals as pets, and

(d) where the selling of animals is within the purposes for which the event is held (or is to be held) or is permitted (or is to be permitted) by the organiser of the event.

(4) But where a business consists wholly or mainly of the keeping or selling of animals, an event held in the ordinary course of that business at premises ordinarily occupied for the purposes of that business is not a pet fair.

(5) For the purposes of this section—

(a) "selling" an animal includes—

(i) offering, exposing or displaying it for sale,

(ii) exchanging it, or offering, exposing or displaying it for exchange, and

(iii) transferring or agreeing to transfer ownership of it in consideration of entry by the transferee into another transaction,

provided that, pursuant to any such sale, exchange or transfer, there is, or is intended to be, a physical transfer of control of the animal on the day of the event, either at the place where the event is being held or in the immediate vicinity thereof;

(b) the sale of an animal "as a pet" includes its sale for private captivity or private husbandry, but does not include its sale for any purpose relating to agriculture."

The noble Duke said: In moving the amendment, I shall speak also to the amendments that are consequential on it. The eight amendments in this group address one issue. Pet fairs, or commercial shows as they could be described, are a serious thorn in the side of animal welfare in this country. A recent MORI poll produced revealing figures: 68 per cent of those polled believed that exotic animals should not be sold at markets, while 4 per cent believed that they should.

The conditions that are rife at large commercial pet fairs leave much to be desired in terms of welfare and good practice. Reports of the highly restrictive containment of reptiles, amphibians and birds are numerous. The associated transport and handling disturbance contributes to the stress placed on animals in those situations, and the proximity of large numbers of animals contributes to the rapid spread of disease. As a result, people who purchase from these fairs are faced with the risk of buying a diseased animal. Due to the fact that they are itinerant, a consumer may make a purchase at a pet fair one day and, the next day, the fair will have gone and there will be no responsible person at the venue to whom they can address the problem. Yet surely the most pressing concerns are the risk of the spread of diseases such as avian flu and the risk posed to biosecurity.

6.45 pm

Amendment No. 167 addresses the proposed repealing of Section 2 of the Pet Animals Act 1951. That section, as amended in 1983, is headed,

"Pets not to be sold in streets, etc",

and provides that:

"If any person carries on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market, he shall be guilty of an offence".

As noble Lords may be aware, as originally enacted, Section 2 had provided that:

"If any person carries on a business of selling animals as pets in any part of a street or public place, except at a stall or barrow in a market, he shall be guilty of an offence".

The reason for the enactment of Section 2 in 1951 is therefore clear. It was to make it a criminal offence to sell animals as pets in public places, but still to allow the selling of animals from market stalls. As a result of that enlightened reform, the sight of surplus puppies, kittens and other animals being sold out of a cardboard box at the roadside has thankfully become a distant memory, even for those old enough to remember the years before 1951. It is almost impossible to understand why anyone would want that to reappear.

Amendment No. 57 is tabled as a support to this. It is not our wish to introduce a complicated way of achieving the effect of Section 2 of the Pet Animals Act 1951; it is our wish simply to reinstate it. The first amendment is designed not to include pet shows at which animals are exhibited. Some of those shows make sales of animals, but it is my understanding that, at such meetings, less than 10 per cent of the birds are for sale, and that sales can be dealt with through the club secretary. That avoids the problems of impulse buying from large commercial fairs, and of the hard-to-trace itinerant fairs.

The history behind the Pet Animals Act 1951 is a vital consideration for the future of the welfare of animals in the commercial sector. The enactment of the 1951 Act did not prevent continued public disquiet at the conditions in which pet animals were sold; in particular, at the conditions in which animals were being sold from market stalls. I am sure that some noble Lords will recall the cages and pens in the markets in Club Row in Tower Hamlets, Portobello Road and elsewhere.

Accordingly, in 1983, Parliament amended Section 2 of the 1951 Act to remove the exception allowing market trading in pet animals. The amendment did not, of course, prevent private hobbyists from being able to gather and exchange animals. Only commercial sellers, those who were,

"carrying on a business of selling animals as pets"

could ever come within the prohibition. A great of deal of this was due to the tireless efforts of my noble friend Lady Fookes, who was then in another place, which led to the amendment becoming law.

The reasons for the amendment, which received widespread support in both Houses, included, according to *Hansard*, the following points. First, there was a strong belief that the welfare of pet animals could not be adequately provided for in the temporary setting of a market stall. Secondly, there was concern about impulse buying. Indeed, as I have already mentioned, the pitiful conditions in which animals were being sold from market stalls was itself thought to be responsible for many impulse purchases. Thirdly, there was concern about animal and human health. The commercial selling of pet animals from outlets that lacked the permanency of a pet shop or breeder's premises was thought particularly likely to lead to the spread of infections and disease.

What is more, there appears to be no reason why if those reasons were valid in 1983 they should not be equally valid today. I remain unconvinced as to why Section 2, a hard-won and popular ban which has been in place for over 20 years, should, "cease to have effect", as the Bill currently provides. These are important questions in the context of a Bill which Her Majesty's Government have described as a modernising and consolidating measure. It is my understanding that Her Majesty's Government will bring forth secondary legislation at a later date. Introducing regulations that will form a major part of animal welfare policy but that are not subject to the same level of scrutiny as the rest of the Bill is not entirely appropriate.

[THE DUKE OF MONTROSE]

While the Bill provides that a licensing regime for pet sellers shall be brought in, and that the licensing regime provided for by Section 1 of the 1951 Act will only then be repealed, the Bill does not include a similar limitation on Section 2. That would leave a legislative window, which would result in an immediate return to the selling of pet animals on the streets and in market stalls. Not only is this oversight likely to give rise to strong disapproval by the public, it is more than that: this is central to the welfare of animals traded in commercial circumstances. I would be grateful for reassurance from the Minister that the timing of the introduction of regulations will be rectified, at the very least, and that the 1983 amendment to the 1951 Act will not be abolished. I beg to move.

**Baroness Miller of Chilthorne Domer** moved, as an amendment to Amendment No. 57, Amendment No. 58:

Line 7, leave out paragraphs (a) to (d) and insert "in a public place where commercial exchange of animals takes place not including activities of pet shops on their own premises.

(3A) In this section, "pet fair" does not mean—

(a) an organised one day event (a table show) open only to members of a society where no exchange of animals takes place that conforms to any relevant code of practice,

(b) an organised one day event (an inter-society table show) by one or more local societies open only to members of a society where non-commercial exchange of animals between members may take place that conforms to any relevant code of practice, or

(c) an event in a public place (a society open show) open to all where non-commercial exchange of animals may take place and some commercial sale of items relating to the keeping of animals but no commercial exchange of animals."

The noble Baroness said: The noble Duke, the Duke of Montrose, had a bit of luck because the hit squad from the Showmen's Guild left before he began to talk about itinerant pet fairs, otherwise he might have been accused of being too politically correct and a killjoy as well. It is lucky that the noble Lords have gone, because possibly the same remarks—as well as those made by the noble Earl, Lord Ferrers—would apply to his amendment. Good luck to the noble Duke; I agree in spirit with his amendment. My amendment to his amendment is to explore and draw out some of the distinctions that need to be made. Indeed, he referred to a 10 per cent rule under which trade was allowed to take place and that would not contravene what should be banned.

My amendments distinguish between pet fairs—public events for the commercial sale of animals—and pet shows. I have three amendments in this group. Amendment No. 171 is the shortest and the last, and it is designed to do what the noble Duke intends; that is, to prohibit pet fairs. It would delete the repeal of the Pet Animals Act (Amendment) Act 1983, which said that anyone carrying out the business of selling animals as pets would be guilty of an offence. The application of the amendment has so far been inconsistent, and the Government have stated that they would like greater clarity on the matter. It would probably be better to confirm the measures already in place than to introduce new rules that do not discriminate between different types of events. In fact, there has already been some success as a result of the 1983 Act, as several local authorities do not allow pet fairs any more. I believe that there will be a court ruling on the matter on 12 June, so it may be that by Report we will have some more up-to-date information.

The noble Duke mentioned welfare problems, and there can be poor animal welfare events with irresponsible sales. We have debated biosecurity over the past year, because of avian flu, and we need to take great account of that. I go back to the issue of fish, even though we touched on goldfish during the "pets as prizes" debate.

It is easy to overlook the welfare of fish, because perhaps they are not as cuddly as kittens. As many as 10 per cent of fresh water fish and almost all the marine fish destined for the aquarium are wild caught. That is not only a very likely an unsustainable trade but it is also bad in terms of animal welfare. Many harvesters of fish use cyanide over coral reefs to stun the fish—and, indeed, many fish die. Even more die or contract diseases at fairs, when there is no chance that an average member of the public will be able to distinguish between a wild-caught and a captive-bred fish.

I emphasise that there is certainly a place for animal shows. I am very grateful to the Federation of British Aquatic Societies, which helped me draft the definitions in my amendment between the different sorts of shows. It is very important that those differences are brought out and emphasised, because some of the most lively events at a village or community level take place in village halls. They are something that the community very much enjoys and we absolutely do not want to restrict them in any way, provided that they observe the reasonable codes of welfare. As a model, the Federation of British Aquatic Societies has a great deal of guidance on exactly what should take place at shows that it runs. If the Government felt that it would be helpful for other shows to have a model for any species that were not well covered, those codes would be well worth looking at. Amendment No. 58 would ensure that the smallest shows would not be captured under a blanket ban but would be more appropriately dealt with.

In conclusion, it is important to distinguish in the Bill between large commercial events that are in themselves more likely to be harmful to animal welfare, and hobbyist events that are run particularly with the aim of improving animal welfare and sharing knowledge between enthusiastic keepers who have absolutely no intention of making a commercial gain but have a good day out enjoying themselves.

**Lord Rooker:** I shall do my best to respond. On some of the issues raised, particularly the reference to earlier legislation, I hope that I shall be able to explain exactly what we are doing, because there have obviously been degrees of misunderstanding about what is proposed.

Amendment No. 76 would direct the relevant national authority to require all pet shows to be registered under Clause 13. As with Amendment No. 57 and the associated amendments, it would also prohibit those events at which animals were sold for commercial purposes, or pet fairs as they are known. Amendment No. 58 would amend the definition of a pet fair contained in Amendment No. 57, so it includes only the commercial exchange of animals in a public place otherwise than in a pet shop. The Government do not propose to regulate pet shows when there is no commercial selling of animals involved. They could range from small local events to which children take mice to, at the other extreme, Crufts dog show. The Government are not aware of any serious concern about such events and in the absence of any evidence that they pose a welfare problem it would be inappropriate to recommend to Parliament that they should be registered. That is our considered view at the present time.

With regard to pet fairs, when animals are sold commercially, the Government set out their proposals in the regulatory impact assessment that accompanies the Bill. A pet fair is defined as an event that involves the commercial selling of animals. We consider that there is evidence of welfare problems at some pet fairs and that it is therefore necessary for them to be regulated through local authority licensing. The precise details have yet to be worked out but, when our proposals have been finalised, they will be subject to widespread consultation. We do not believe that pet fairs cannot meet acceptable standards, so we do not propose a ban.

However, I want our proposed licensing regimes to addresses welfare problems in a proportionate and effective manner. The combination of a specific regulatory regime for events with a commercial trading element, together with a code of practice also covering lower-risk events, will ensure that acceptable welfare levels can be achieved and maintained. This will provide a flexible regime that can be amended without resort to primary legislation. If, in the light of experience, the evidence suggests that certain types of pet fair or activities are not compatible with acceptable welfare standards, we can of course prohibit them, or those particular activities, through secondary legislation under Clause 12. We do not have come back to primary legislation.

7 pm

There is an implication in the amendments of suggestions for the definition of a pet fair, and the sort of events that would not fall into it. Between now and Report, we will look at these proposals in detail when considering the regulations under the Bill. It is worth looking at.

I was asked a specific question about the 1983 amendment to the 1951 Act. The main intention of the Pet Animals Act (Amendment) Act 1983 was to ban the sale of animals at outdoor markets and street markets. Extracts from *Hansard* refer to outdoor markets which operated on a purely commercial basis, and a Home Office circular issued at the time referred to "street markets" specifically. The pet fairs that we know today did not take place in the same numbers or format when the 1983 amendment was passed. Given the varying interpretations of local authorities, this area of law is in need of clarification. We have seen no evidence to suggest that pet fairs are inherently and insurmountably cruel, such that they should be banned. But we agree that some types of pet fair, particularly those involving commercial transactions, require regulating to ensure acceptable standards.

We would only introduce such regulation following public consultation, as I said. We currently favour introducing a licensing system for those events where commercial trading of animals takes place. There are potentially four types of event. First, there are sales days with both hobbyists and commercial traders present. We note that "commercial" is defined as animals sold in the course of a business; this is important, because animal welfare groups hold the view that any sale of an animal—by hobbyists, for example—is commercial. Such events would require a licence.

Secondly, there are sales days with no commercial traders. They are usually member-only events and are generally not open to the public: they would not require a licence. Thirdly, there are competitive exhibition shows, which have no commercial traders and may or may not be open to the public: no licence. Fourthly, there are competitive exhibition shows with traders. Some of these shows invite a trader along to sell animals to help with the cost of hiring a hall. They are often open to the public. Here, a licence would be required because of the commercial element. I hope that that sets out the situation in a way helpful to Members of the Committee.

The repeal of the relevant parts of the Pet Animals Act (Amendment) Act 1983 will not take place until regulations on pet sales become law; the timing does not need to be rectified. Things will mesh together. This is a fairly complicated area of the law and the Bill, but I hope I have explained it in a satisfactory manner that gives clarity and that Members of the Committee are helped forward to Report stage.

**Baroness Miller of Chilthorne Domer:** Before the noble Duke comes back, that explanation was very helpful. The definition of what is commercial and what is not is exactly what those people who lobbied me want to have laid down very clearly; so I thank the Minister.

**The Duke of Montrose:** The Minister has given us a useful exposition on the business of distinguishing what constitutes a show, a club or a sale, which is absolutely vital. The efforts of the noble Baroness, Lady Miller, in asking that all shows should be registered, was one way of doing it, which might have been intensely complicated. One could see that, as she was saying, we did not wish to include local fairs and local agricultural shows and so on, which would all have to be registered. There may be a method along the

[THE DUKE OF MONTROSE]
lines that the Minister is suggesting that will produce sufficient distinctions. We all want to go away and look more at the fine tuning of the position—

**Lord Rooker:** Before the noble Duke finishes, when I read out those potential four types of event it was all very well me reading from a note, which was typed up, with aspects in bold. There is clarity. This is no criticism of *Hansard*, far from it, but it does not always come out like that. I will get this note, set out as it is for me, copied for noble Lords, because the clarity of the four types will be much better and more apparent reading it as I have it in front of me than it will be set out in the columns in *Hansard*.

**Baroness Byford:** Can I add to what my noble friend said? The difficulty that we have, as referred to by the noble Baroness, Lady Miller of Chilthorne Domer, is that the court case is outstanding. The difficulty is in the use of the word "commercial". If that court case is upheld, even the hobby fairs will have to open to the public, and the general public in paying a fee to come in make it a commercial fair. That is the point that I am trying to get at; my noble friend has done so very well. I thought that I would add a little further. First, it is the court case, and, secondly, it is the use of the word "commercial", even defined in the great clarity that the Minister gave.

**Lord Rooker:** The noble Baroness will understand that I cannot possibly comment in advance of the court case decision; that would be totally inappropriate. We have to take that as it comes.

**Baroness Miller of Chilthorne Domer:** I beg leave to withdraw the amendment.

Amendment No. 58, as an amendment to Amendment No. 57, by leave, withdrawn.

**The Duke of Montrose:** I beg leave to withdraw the amendment.

Amendment No. 57, by leave, withdrawn.

Clause 12 [*Regulations to promote welfare*]:

**Baroness Miller of Chilthorne Domer** moved Amendment No. 59:

Page 8, line 27, leave out from "regulations" to end of line 31.

The noble Baroness said: In Amendment No. 59, we move on to Clause 12 and the issue of just how much should be enacted by secondary legislation and not in the Bill. This was touched on quite a lot yesterday. Clause 12 allows the Government to make any regulations that,

"the appropriate national authority . . . thinks fit for the purposes of promoting the welfare of animals for which a person is responsible, or the progeny of such animals".

Clause 13 has similarly wide powers to require licensing or registration. For us, one fundamental problem with the Bill is that it relies too much on secondary legislation. That is why the Government have been forced to provide such a wide power. I absolutely recognise that it enables situations as yet unforeseen to be dealt with, and it enables something to stay on the statute book and be relevant for dealing with situations over time. I am sure that is what the Minister will say. However, we explored the issue yesterday that when secondary legislation comes in at the moment we are only able to approve it or, in incredibly rare circumstances, disapprove it. By debating it, sometimes it might end up being changed slightly, but in effect we are giving the Government *carte blanche* to bring in secondary legislation of any sort that they feel is appropriate. Against the background of that happening in so many other Bills, it makes us feel very disquieted.

In the Bill, the power is also such that regulations could affect people who are not responsible for the animal. The legal advice stated that there is no requirement that restrictions imposed by regulations can be imposed only on the responsible person. I am sure that that is not the Government's intent, but it is difficult to see exactly where responsibilities might be placed by secondary legislation unless we draw the parameters in the Bill very tightly.

The Minister in another place said that he was determined that we should not turn this Bill into a Christmas tree—it has already been quoted. But he has left us with a skeleton with no flesh on it at all. Curtailing the radical breadth of powers in this clause will not be a problem if the basic debates of principle are dealt with in the Bill, as we would be much happier if they were. I beg to move.

**The Chairman of Committees (Lord Brabazon of Tara):** I should point out to the Committee that, if this amendment is agreed to, I cannot call Amendments Nos. 60 to 63.

**Baroness Byford:** I will speak to the Conservative amendments in this group. Before doing so, however, I will follow up on the comments of the noble Baroness, Lady Miller, on the broad delegated power in this clause and Clause 13. I am sure the Minister will no doubt have had the Delegated Powers and Regulatory Reform Committee's 18th Report, Session 2005–06, brought to her attention. In paragraph 5, the committee states:

"Clause 12 contains a very broad delegated power. It enables the Secretary of State (England) or the NAW (Wales) by regulations to 'make such provision as [they think] fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals'. Regulations by the Secretary of State are subject to affirmative procedure".

In paragraph 7 on page 2, the committee goes on to say:

"The power is not just about prescribing welfare standards. It appears to the Committee to be sufficiently wide to prohibit or restrict (for the stated purpose) well-established activities, such as horseracing, greyhound racing, keeping of game birds and managing circuses".

I draw this to the attention of the Committee. I will not quote further; the Minister will no doubt be well aware of it herself.

I turn to our amendments. Amendment No. 60 would leave out the word "promoting" and insert "improving". In a sense, this is a probing amendment. The word "promoting" has a connotation of publicising,

obtaining support for, increasing acceptance of, or encouraging the popularity of, a concept or a product. We feel that any Animal Welfare Act should also aim to improve the situation in real terms. It should incorporate assessment, achievement, monitoring and control, and its effect should be noticeable.

Animals are, with a few exceptions, subject to man's control. In an era when other areas of control are increasingly under scrutiny and humanity is measured in terms of care, should we not legislate for animals in a similar vein to that of young people and children? At a time when slavery has been outlawed, children may not be used as live chimney cleaners and women are no longer husbands' chattels. Should we not improve animal welfare rather than simply promote it?

Promotion campaigns are measured in terms of the proportion of the target population that recognises an advertisement or understands the basic meaning of a word or phrase. There is also the connection between the recognition of a brand name and the sales of a branded product. We are loathe to see animal welfare treated in such a way, and would prefer to see successes measured in terms of a fall in the number of prosecutions for cruelty, for example, the number of animals abandoned and, over time, the number of improvement notices issued.

We understand that this could be achieved simply by legislating against animal ownership, but we are keenly aware of the benefits, demonstrated over the past few years, that animals, and companion animals in particular, bring to the old, the lonely and the unwell, let alone those of us who are hale and hearty. We also believe that children brought up with animals and taught to care properly for them learn to accept responsibility and to look beyond their own needs.

We believe that the additional regulations will impose further burdens, and often costs, on individuals. Such regulation should be necessary to ensure the highest welfare standards and, as such, should be based on the best available science. That theme runs through our amendments. In view of the enormous powers of secondary legislation under the Bill, we believe that an important safeguard should be built in against future abuse. It would be unacceptable for regulations to be introduced for any reason other than improving welfare, especially if in future there were a hidden agenda.

Perhaps I may refer to Amendment No. 61 in the name of my noble friend Lord Lucas, who is not here. The amendment would leave out from "promoting" to the end of line 29 and insert the words "compliance with the provisions of this Act".

Our Amendments Nos. 62 and 63 say much the same thing but they differ in two ways. The first carries through the idea that the regulations should be designed to improve animal welfare rather than simply promote it. It is stronger in that it binds the Secretary of State to use scientific evidence as the basis for the regulations. There would be no room for the department to take a view and legislate accordingly. It is also perhaps the only amendment that would allow the Secretary of State to include the manufacturers of animal foods and proprietary medicines in the regulations that he may make. The second amendment is couched in terms of promoting animal welfare, and it leaves it to the department to decide whether the scientific evidence on which the regulations are based is strong enough to render the regulations necessary.

We believe that the consultations under the Bill and the evidence on which the appropriate national authority relies should be open and transparent. It should not be enough for the national authority simply to state that it is satisfied that the evidence supports its actions; it should make that evidence available. We would like that to be in the public domain.

Amendment No. 65 is a probing amendment and would leave out subsection (c) of Clause 12(2). On the face of it, this country does not need any more bodies to deal with animal welfare—there is a whole range of them out there. It is always possible that, perhaps as a result of the effects of climate change, a body of people will decide to start a charity for a specific reason. Noble Lords will laugh but I am reminded here of Mrs Tigglewinkle and those lovely people who do so much for hedgehogs. I know that there are other rescue societies that work only with specific breeds—for example, Dalmatian Rescue. They tend to be quite small, unlike nationally based organisations, such as Cats Protection, the RSPCA, the RSPB, the Donkey Sanctuary and so on.

There are also many British animal charities that work only overseas. Several, for example, work with mules and donkeys in the Middle East and the Indian sub-continent. In these cases, the workers are tending the ills of animals and also educating their owners to care better for them. This has the dual effect of reducing animal suffering and, at the same time, improving animals' effectiveness in pulling ploughs, carrying wood or drawing water. With this amendment, I am asking the Minister to outline the type of establishment that the Government might feel is necessary to give advice about animal welfare. Will the Minister also explain in what ways the Government feel that the advice given, either to themselves or to the public at large, by existing bodies is deficient?

We believe that the power is wholly unnecessary. As I said earlier, there are already a significant number of scientific and expert bodies in existence to advise the Government on matters of welfare—for example, the State Veterinary Service and the Farm Animal Welfare Council.

Amendment No. 66 also deals with the question of science and science evidence. Can the Minister assure us that any one or more bodies established under Clause 12(2)(c) with,

"functions relating to advice about the welfare of animals",

will be an independent expert body which will base its advice on sound and objective science?

The second point is one of transparency. Where consultations are made under the Bill, can the Government guarantee that the evidence taken as

[BARONESS BYFORD]
correct during the consultation will be subject to scrutiny before it is accepted as the basis of regulation? I think that I have spoken to all our amendments.

**Lord Brooke of Sutton Mandeville:** I speak as a member of the Delegated Powers and Regulatory Reform Committee, although I am not speaking on its behalf. My noble friend the Duke of Montrose alluded to our comments earlier this afternoon on Clauses 12 and 13, and the noble Lord, Lord Rooker, defended the principle of Clause 12 yesterday, as reported at col. 175 of *Hansard*. I am in a slightly privileged position because I have a copy of the letter of the noble Lord, Lord Rooker, as Minister in charge of the Bill, to our chairman, the noble Lord, Lord, Lord Dahrendorf, which we will of course be publishing.

I have read the report of the House of Commons EFRA Committee (HC 52-1) on the draft Bill, but I gather from the Printed Paper Office that there is no printed government response to that report, so our committee had to rely solely on the department's Explanatory Memorandum when we considered the Bill. As all are agreed, and as my noble friend and the noble Baroness, Lady Miller, have said, the power in Clauses 12 and 13 is wide. I shall not read out paragraphs 11, 12, 35 and 38 of our report in the interests of time, but we felt that those were the defence of the principles of Clause 12, although they did not, in our view, make out the case for the width of the power.

Before coming on to the Minister's letter, dated 15 May, when he was still expecting the Bill's Committee stage to be taken on the Floor of the House, I want to quote a brief passage from paragraph 153 of the EFRA Committee report, which also found the Government's position unconvincing. If I may, I shall quote half a dozen lines:

"The mainstay of current animal welfare legislation, the Protection of Animals Act 1911, has been in force for nearly a century; the present draft legislation may well be in force for a similar period of time. Who is to say how the appropriate national administrations may seek to exercise [this] . . . delegated power in another 50 or 100 years? Again, if Parliament delegates the power in question in a clear and appropriate way in the first place, there should be reduced scope for future abuse of the delegated power".

We had not received a government response at the time we wrote our own report, in paragraph 8 of which we said:

"In justification of the power in clause 12, the memorandum refers to the existing powers under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (memorandum paragraph 35). That section enables regulations to 'make such provision with respect to the welfare of livestock for the time being situated on agricultural land as [Ministers] think fit'. We consider this an insufficient justification: the range of animals covered is much narrower and, since the power concerns agriculture, it is exercisable in an area where there are likely to be the constraints of European Community regulations".

I want to quote one sentence from the Minister's letter to the chairman. It is in the ante-penultimate paragraph of the letter:

"It is clear that your Committee have concerns on extending existing powers from non-farm animals to other animals such as pets, but without such powers as requested, this widely supported Bills' intentions will not be deliverable".

That letter was signed by the Minister. I appreciate that there may be a typographical error in the reference to non-farm animals, but, unless there is, I do not think that the sentence that I quoted is a fair comment on what we said.

Finally, the Defra consultation committee report could be called in aid in principle to support my noble friend's Amendments Nos. 60, 62, 63, 67 and, *mutatis mutandis*, the amendments tabled by the noble Baroness, Lady Miller.

**Baroness Farrington of Ribbleton:** I shall begin by continuing on the point raised by the noble Lord, Lord Brooke of Sutton Mandeville. The Delegated Powers and Regulatory Reform Committee reported on the Bill in its report that was published on 27 April. Today, it noted the letter dated 15 May in which the Minister provided further information to explain the importance of the delegated powers under Clauses 12 and 13. The noble Baronesses raised the Delegated Powers Committee in passing, but the noble Lord, Lord Brooke, raised it in more detail. It is appropriate to bring the concerns of the Committee to the attention of Members of this Grand Committee. The Minister's letter will be published in the Delegated Powers Committee's report and will be available in the Printed Paper Office tomorrow. It gives greater explanation about the need for search powers, without which many of the improvements in the Bill compared with the 1911 Act would be lost. Clearly, the noble Baronesses and the noble Lord will not be able to consider all the information now, but we look to forward to discussions, if needed, on Report. There could be a meeting of the two Front Benches between Committee and Report, if they would find that helpful. It is important to place that on the record. We do not expect the noble Baronesses to respond to that in the particular circumstances and timing.

One of the most important features of the Bill is that it is flexible enough to respond to future circumstances. It will allow us to keep our animal welfare laws and enforcement practices up to date more easily than the previous legislation did. It will extend the flexibility that has served farm animal welfare so well for the past 40 years to non-farmed animal welfare.

I shall speak first to Amendment No. 59. Noble Lords will be aware that the published draft contained an extensive list of situations in which it would have been possible to exercise this power. On the advice of the EFRA Committee and in the interests of simplicity, we have removed many of these from the final Bill, as they are clearly included in the power in Clause 12(1) without the need to specify them individually. Further, retaining the detailed list risked jeopardising the generality of the power, and to return to such a detailed list would be a backward step.

We do not consider that it would be desirable to have a list of instances in which the power can be used and to remove the ability to use the power in any other circumstances. Even with the comprehensive list of examples that we included in the published draft there would almost certainly have been gaps. We would not

want to be put in a position where a serious welfare problem is brought to our attention but we are unable to act in the most appropriate manner because of the circumscription of the power.

Our objections to Amendment No. 64 illustrate this point well. The amendment would ensure that the Government have the power to regulate the use of electronic training aids on dogs. We have no plans at present to regulate in this area. I think it is important that the appropriate national authority has the power to do so and I can confirm that Clause 12 already contains such a power. However, if we were drafting this Bill just 20 years ago, few people would have thought it necessary to include a power to cover electronic training aids, as they were barely used in this country. Equally, we do not know what potential welfare concerns will exist in 10, or even two, years from now. That is why it is right that we have a flexible power to act rather than a rigid, constrained power that is frozen in the concerns of the present without the adaptability to respond to developments in future.

7.45 pm

Turning to Amendments Nos. 65 and 66, we have not removed all of the listed examples, as there are some important powers that might not otherwise be covered by the wording in Clause 12(1). These are therefore still listed as examples of how that power could be used. One of them is the power that Amendment No. 65 seeks to delete and that Amendments Nos. 66 and 67 seek to constrain.

It is important that the Government retain the power to make provisions about the establishment of bodies to advise on animal welfare. It is right that advisory bodies can be, and often are, created administratively. However, we believe that a future Government may see real benefits in establishing a body on a statutory footing. The Government could then, with Parliament's approval, make provisions about, for example, its remit and membership, but could distance itself from its day-to-day operation. This could therefore, where appropriate, allow for the establishment of a more independent advisory body, which is what Amendment No. 66 seeks to create. I do not think it would be sensible to restrict such bodies to advising only on scientific matters. While a large proportion of any such advice may well be of a scientific nature, we do not see any benefit in restricting the role of the bodies in such a way.

I understand the concerns of the noble Baroness, Lady Byford, and I know that her colleagues in the House of Commons expressed concern that people with no ties to organisations such as the RSPCA might be appointed to an advisory body. We consider those concerns misplaced. In the first place, the appropriate national authority could be held accountable for the people it appoints to such a body and for the functioning of that body. Secondly, to say that members of a group must be fully independent of Government, animal keeping, or any other animal interest would entirely defeat the purpose of having a body to offer advice. We suggest that very few people who have something useful to contribute would not have some connection to animal welfare interests. Furthermore, the required consultation, pre-legislative scrutiny and parliamentary debate as part of the affirmative procedure will ensure that any proposals to establish a body are fully debated in an open and transparent fashion.

The proposal in Amendment No. 61 to restrict the power to only those measures aimed at improving compliance with the Act would severely limit this clause's crucial flexibility. We have been clear all along that there are some activities that the provisions on the face of the Bill alone might not adequately regulate. The debate that has taken place on matters such as wild animal acts in travelling circuses and the use of electronic training aids, which we discussed yesterday, has shown the need to make legislation that genuinely promotes welfare by keeping abreast of changes in attitude, scientific developments and knowledge. That is not going to happen just from insisting on rigid compliance with what is already set out in the law. Further regulation in the form of licensing or registration might be necessary to ensure that appropriate animal welfare standards are met. In other cases, a different type of regulation might be necessary. Any regulation proposed under this clause would be subject to approval by both Houses of Parliament under the affirmative procedure.

I noted that the noble Baroness, Lady Byford, referred to Amendment No. 60 as a probing amendment. We are concerned that the term "improving" could require the identification of a specific problem that requires improvement before regulations can be made. It might also suggest that regulations can be made only if everyone subject to the regulations improves the standards that they currently apply. The word "promote" recognises that not everyone will need to improve their standards in order to comply with the regulations, but those regulations are needed for those who need to improve their standards.

Amendments Nos. 62 and 63 are unnecessary. The Secretary of State and the National Assembly for Wales would always take such scientific evidence as there is into account when making regulations. Best practice in policy making already dictates that. In line with better regulation principles, we do not feel that it is desirable to legislate for something which, in practice, already happens and will continue to happen. Further, by emphasising the use of scientific evidence, we risk restricting the factors that the appropriate national authority could take into account when deciding whether to regulate. It may not, for example, allow the social or economic consequences of a regulation to be considered.

On Amendment No. 68, following the same principles of better regulation, we do not consider it desirable to commit to laying before Parliament an analysis of the evidence. All new proposals for secondary regulations will be accompanied by regulatory impact assessments which will, where appropriate, contain an assessment of all the evidence that the Government considered.

[BARONESS FARRINGTON OF RIBBLETON]

Finally, we are more than happy to consider Amendment No. 74. We acknowledge that the EFRA Committee of another place recommended that a duty to consult be introduced to the clause, allowing regulations to promote welfare which, at the time, included the power to introduce licensing and registration. We introduced that duty, but when the licensing and registration power was separated out, the duty to consult in this clause was not carried over. We will, of course, consult fully on all procedures anyway; Cabinet Office guidelines and general best practice in policy making require it. While consultation would happen anyway, we acknowledge that Parliament might prefer that there was a statutory obligation to consult. I hope that the noble Baroness will feel able to withdraw her amendment and will bring forward an amendment to this effect on Report.

I am sorry to have taken so long, but this is an important area and it is important to have that information on the record. I hope it will be helpful. I repeat that should it be helpful to hold a meeting between Committee and Report to cover the different areas that, from their body language, I noticed that neither noble Baroness was particularly happy about, the Minister would agree.

**Baroness Miller of Chilthorne Domer:** I thank the Minister for her lengthy and detailed reply. It was helpful. She correctly picked up the bits that were we unhappy with—some of them, I think, in common. It will be a fruitful area for discussion. Given the time of night, I shall not reply in more detail. I am glad that the Minister is able to say that Amendment No. 74, at least, should appear in the Bill in some form and we look forward to those discussions between now and Report. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

**Baroness Byford** had given notice of her intention to move Amendment No. 60:

Page 8, line 28, leave out "promoting" and insert "improving"

The noble Baroness said: I have already spoken to this amendment in the earlier group, but I would like to say three quick things to the Minister. In responding to the general premise in the debate on the clause and the regulatory committee, she said that these powers were needed, but emergency powers can always be achieved. If we have outbreaks of disease, emergency powers are achieved, so I do not agree with her on that. On deregulation and the use of secondary powers, yes, we can consider them. However, I say again what I said yesterday: we can have a debate on them, but we cannot alter them. Therefore, I am grateful to the Minister for the offer of getting together between now and Report to consider this further and shall not move the amendment.

[*Amendment No. 60 not moved.*]

[*Amendments Nos. 61 to 68 not moved.*]

Clause 12 agreed to.

**Lord Rooker:** I think this is a convenient moment for the Committee to adjourn until Wednesday 14 June at 3.45 pm.

Committee adjourned at twenty minutes before eight o'clock.

# Written Statements

*Wednesday 24 May 2006*

## China: GB-China Centre

**The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Lord Triesman):** I am pleased to announce the Government's continued support for the Great Britain-China Centre (GBCC) through a grant-in-aid by the Foreign and Commonwealth Office after a recent review.

The GBCC has been a centre of expertise on China, with a particular focus on human rights, labour reform and improving the rule of law in China, since 1974. It can contribute unique skills and access to fulfilling these important functions. The centre also provides support for parliamentary and other exchanges with China. The GBCC is a non-departmental public body (NDPB) sponsored by the Foreign and Commonwealth Office through an annual grant-in-aid of £300,000.

The Foreign and Commonwealth Office commissioned a review of the GBCC in mid-2005. The aim of the review was to examine whether the function provided by the GBCC was required, and whether the centre's existing form as a NDPB was the best option for delivery.

During the consultation period following the review, many honourable Members expressed their views to the Government on the valuable role of the GBCC in promoting sensitive issues such as labour reform and the rule of law in China. It was judged that the arm's-length approach of the GBCC brings value-added benefit that cannot be achieved by government. In light of these responses and subsequent work by the GBCC and officials of the Foreign and Commonwealth Office to correct the management and control weaknesses identified in the review, the Government have decided to maintain the GBCC's NDPB status.

The follow-up work to the review has ensured that the GBCC now has stronger financial controls, a better alignment of the centre's work with government policy on China and improved management oversight. Ministerial agreement to these new measures brings to an end the process initiated by the review. The GBCC now looks forward to further consolidating and expanding its position as a centre of expertise on China, widening its project base and diversifying its funding sources, including from the EU, UN and the private sector.

Throughout this period, we have appreciated the constructive and co-operative approach of all members of the executive committee and staff of the GBCC. The Government welcome the conclusion of the review and look forward to continuing to work in partnership with the GBCC on China.

## EU: Budget 2006

**Lord McKenzie of Luton:** My honourable friend the Economic Secretary to the Treasury (Ed Balls) has made the following Written Ministerial Statement.

The Statement on the 2006 Budget of the European Communities (EC Budget), entitled *European Community Finances* (Cm 6770), has today been laid before Parliament. This White Paper is the 26th in the series. As in the past, it covers annual budgetary matters and includes details of recent developments in European Community financial management and in countering fraud against the EC Budget. It also describes the EC Budget for 2006 as adopted by the European Parliament, and details the United Kingdom's gross and net contributions to the EC Budget for calendar years 2000 to 2006 and financial years 2000–01 to 2007–08.

## Legal Services Bill

**The Secretary of State for Constitutional Affairs and Lord Chancellor (Lord Falconer of Thoroton):** My honourable friend the Parliamentary Under-Secretary of State has made the following Written Ministerial Statement.

On 17 October 2005, I informed this House of the publication of *The Future of Legal Services: Putting Consumers First* White Paper setting out the Government's proposals for the regulatory reform of legal services in England and Wales. I am pleased today, just seven months later, to be publishing the draft Legal Services Bill for pre-legislative scrutiny, as the first step in delivering on those proposals. Copies of the draft Bill and accompanying regulatory impact assessment will be placed in the Libraries of both Houses.

The draft Bill sets out our detailed plans for the creation of a strong independent oversight regulator, the Legal Services Board, which will ensure that front line regulators discharge their duties effectively. In addition, legislation will provide the LSB with a wide range of powers including those to authorise and de-authorise front line regulators and quickly to bring unregulated legal services under its remit through secondary legislation to best protect consumers' interests. Our proposals also provide for the creation of an independent Office for Legal Complaints, which for the first time will remove the handling of legal complaints from the legal professions. The OLC will help to foster greater consumer confidence and result in quick and fair redress.

The draft Legal Services Bill also sets out arrangements to facilitate alternative business structures, which would enable different kinds of lawyers, and lawyers and non-lawyers, to work together on an equal footing. These structures will allow legal services to be delivered in new ways, promoting greater competition and innovation and enabling providers better to respond to the demands of consumers. A range of safeguards will be put in place to protect consumers and demand high standards.

In taking forward these proposals the Government have continued to engage with key stakeholders. The Consumer Advisory Panel, comprising representatives of main consumer bodies, has contributed significantly to informing and shaping the proposed reforms. In addition to the consumer panel we have, throughout the process, maintained effective engagement with all stakeholder groups including the legal professions, consumer organisations and the general public.

The draft Legal Services Bill will be subject to pre-legislative scrutiny by the Joint Committee that has been constituted for that purpose, which will report by July 2006. This timeframe provides an opportunity for Parliament to take evidence and consider the detail of the proposals and make recommendations through the Joint Committee's final report.

These proposals are complex and important and I believe that it is right that Parliament should have the opportunity to scrutinise them in draft form. I look forward to receiving the Joint Committee's report.

## Roads: M6 Toll

**Lord Davies of Oldham:** My right honourable friend the Secretary of State for Transport (Douglas Alexander) has made the following Ministerial Statement.

The M6 toll road was privately financed, built, and is now operated by Midland Expressway Ltd (MEL) under a concession agreement signed by the then Secretary of State for Transport in 1992.

Having borne all the financial and development risk associated with the construction of the £900 million M6 toll, Macquarie Infrastructure Group (MIG)—the owners of MEL—are proposing to refinance MEL's debt, recognising the revised risk MEL now bears as operator of the road, which has been open to traffic since December 2003.

I am pleased to record that MIG have agreed to fund £112 million of road improvements in the West Midlands from their total refinancing resources.

This reinvestment will fund improvements to the slip road access from the M42 to the southern end of the M6 toll, and will cover the costs of construction, operation and maintenance of a new road from the M54 and Telford to the M6 and the M6 toll.

The need for this link was identified in the West Midlands Area Multi-Modal Study (WMAMMS), to improve access to and from the M54 corridor and Telford, and the Highways Agency has been undertaking detailed work with a view to developing a scheme for entry to the targeted programme of improvements.

The new road should open to traffic around 2012 (subject to the usual statutory processes), helping to free up current bottlenecks and to improve road travel through the region.

# Written Answers

*Wednesday, 24 May 2006.*

## Afghanistan: Army Radios

**Lord Marlesford** asked Her Majesty's Government:

Which units of the British Army currently serving in Afghanistan are equipped with the Bowman radio system; which units do not have that radio system; and whether there are any units in Afghanistan still using the Clansman radio system. [HL5846]

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Drayson):** All British Army units currently operating in Afghanistan do so with the Clansman radio system and elements of Bowman. Secure communications are also provided by a TacSat military system, which is compatible with US and other NATO forces operating in southern Afghanistan.

## Anti-social Behaviour: Northern Ireland

**Lord Laird** asked Her Majesty's Government:

How many anti-social behaviour orders have been issued in Northern Ireland since their introduction; for what; when; and where. [HL5651]

**Lord Rooker:** The relevant authorities have notified the Northern Ireland Office of 13 anti-social behaviour orders in Northern Ireland.

The orders were made to protect people from behaviour that caused or was likely to cause harassment, alarm or distress. The relevant authorities have reported that eight of these orders were made in 2005 and five in 2006.

| *Area* | *Number of Orders* |
|---|---|
| Ballymena Borough Council | 2 |
| Dungannon District Council | 1 |
| Larne District Council | 3 |
| Magherafelt District Council | 1 |
| Newry and Mourne City Council | 1 |
| Belfast City Council | 1 interim |
| Coleraine Borough Council | 2 interim |
| Derry City Council | 2 interim |

## Armed Forces: Helicopters

**Lord Garden** asked Her Majesty's Government:

What are the current average and maximum periods of detached duty for operationally qualified Chinook, Merlin, Puma and Sea King aircrew over a 12-month period; and how these periods compare with desired harmony levels. [HL5555]

**The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Drayson):** The average and maximum periods which operationally qualified support helicopter aircrew of the Royal Navy and Royal Air Force spent on detached duty away from their parent air stations in the year ending 31 March 2006 are shown in the following table.

*Days spent on detached duty during the period 1 April 2005 to 31 March 2006*

| *Aircraft type* | *Average* | *Maximum* |
|---|---|---|
| RAF Puma | 68 | 204 |
| RAF Merlin | 140 | 203 |
| RAF Chinook | 125 | 179 |
| RN Sea King | 148 | 225 |
| RAF Sea King | 41 | 88 |

Defence strategic guidance contains harmony planning assumptions of which there are two components: separated service assumptions derived from analysis of historical norms and judgments by each service principal personnel officer of the harmony needs of their personnel and force structure planning assumptions.

The separated service assumption for the Royal Navy is that an individual should spend no more than 660 days away from home over a rolling three-year period while force structure planning assumptions state that fleet units should spend no more than 60 per cent. of time deployed in a three-year cycle, although for support helicopters RAF force planning assumptions apply.

The Royal Air Force separated service assumption is that an individual should spend no more than 140 days away from home in a rolling 12-month period while force structure planning assumptions state that RAF units should operate on a cycle of four months on operations followed by and interval of 16 months.

These figures exclude RAF and RN search and rescue (SAR) helicopters with the exception of 78 Squadron in the Falklands where two crews are provided at any one time to provide 24 hour, 365 days a year, deployable SAR cover for Commander British Forces South Atlantic Islands.

## Aviation: ADS-B

**Lord Rotherwick** asked Her Majesty's Government:

Whether they are considering the automatic dependent surveillance-broadcast (ADS-B) system for aviation. [HL5674]

**Lord Davies of Oldham:** The Civil Aviation Authority (CAA) is currently seeking Cabinet Office approval to consult on a "Proposal to amend the Air Navigation Order 2005 for the purpose of improving the technical interoperability of all aircraft in UK Airspace". The consultation will examine various systems, including ADS-B.

## Badgers

**Lord Hylton** asked Her Majesty's Government:

What is their justification for continuing the protected status of badgers in England and Wales in view of the large increase in the number of badgers and the absence of natural predators. [HL5828]

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** The badger benefits from legal protection introduced to outlaw cruelty towards animals; for example, the Protection of Animals Act 1911, which among other things made the baiting of animals illegal, and the Wild Mammals (Protection) Act 1996, which made certain specified acts of cruelty illegal.

In addition, there are legal restrictions on the range of methods that can be used to kill or take badgers. This protection was introduced to outlaw inhumane and/or indiscriminate methods of control. The key legislation in this respect is the Wildlife and Countryside Act 1981. Some of these restrictions apply to all animals, while others apply only to animals, such as the badger, listed in Schedule 6 to the Act.

There have also been specific laws to protect badgers. These were introduced as a welfare measure to combat illegal badger baiting and also as a conservation measure in response to declines in badger numbers in the 1970s and 1980s. Badgers and their setts are fully protected under the provisions of the Protection of Badgers Act 1992, which consolidated previous statutes. However, the 1992 Act does provide for the department to issue licences to interfere with badgers or their setts to prevent, among other things, serious damage to land, crops or property.

Although this protection may be unique for a non-endangered animal, it reflects the concern the Government have about the gratuitous acts of cruelty that badgers have been subjected to in the past.

## Conventions: Joint Committee

**Lord Barnett** asked the Chairman of Committees:

Whether all papers submitted to the Joint Committee on Conventions will be published immediately on receipt. [HL5946]

**The Chairman of Committees (Lord Brabazon of Tara):** This depends on decisions which the Joint Committee has yet to make. I understand the matter will be considered at its next meeting, and I will write to Lord Barnett when I know the outcome.

## Disability: Blue Badges

**Lord Dubs** asked Her Majesty's Government:

What action they are taking to ensure that the parking concessions for disabled people with blue badges are the same in the London Boroughs of Westminster, Kensington and Chelsea, Camden and the City of London as in other parts of the capital. [HL5544]

**Lord Davies of Oldham:** The Blue Badge Scheme of parking concessions for disabled people has never applied to the Cities of London and Westminster, the Royal Borough of Kensington and Chelsea and part of the London Borough of Camden due to concerns about the particularly severe problems with traffic flow and pressure on parking space in these parts of London. This exemption, however, came under scrutiny during the most recent review of the scheme and the Disabled Persons Transport Advisory Committee (DPTAC, the department's statutory advisers on the transport needs of disabled people) recommended that it be removed. Consequently, research is being undertaken to look at the grounds for the exemption to see if it can still be justified. The research is due to be completed later this year.

## Health: Research

**Baroness Finlay of Llandaff** asked Her Majesty's Government:

What research has been supported following the Department of Health's call for research into long-term neurological conditions; and what is happening to projects approved for funding, but not yet supported. [HL5785]

**The Minister of State, Department of Health (Lord Warner):** The recommendation of the long-term neurological conditions research initiative's external advisory group was that six research projects should be supported at a total cost of £1.5 million. The Department of Health has accepted the recommendation and will be funding the following projects:

*Needs and experiences of services by individuals with progressive neurological condition and their carers: a benchmarking study*, Professor Ray Fitzpatrick, University of Oxford, Cost: £250,761

*Integrated services for people with long term neurological conditions: evaluation of the impact of the National Service Framework*, Professor Gillian Parker, University of York, Cost: £334,837

*Support for carers, particularly those with multiple caring roles: an investigation of support needs and cost of provision*, Professor Lynne Turner-Stokes, Kings College, London, Cost: £287,827

*Long-term involvement in fitness enablement study* Dr Helen Dawes, Oxford Brookes University Cost: £243,889

*Defining the palliative care needs of people with late stage Parkinson Disease, Multiple System Atrophy and Progressive Supranuclear Palsy*, Professor P Nigel Leigh, Kings College, London, Cost: £228,676

*Transition to adulthood: the experiences and needs of young men with Duchenne Muscular Dystrophy and their families,* Professor John Carpenter, Health and Social Care Research Centre, Bristol, Cost: £155,378

## NHS: Dentistry

**Lord Rana** asked Her Majesty's Government:

What steps are being taken to ensure people have reasonable access to National Health Service dental services in Northern Ireland. [HL5614]

**Lord Rooker:** I am satisfied with the level of dental provision in Northern Ireland both in terms of availability and accessibility. The Health Service provides a full range of dental services through general dental practitioners, the community dental service and the hospital dental service.

There is approximately one general dental practitioner for every 2,400 people in Northern Ireland. This compares to one practitioner for every 2,773 people in England, Scotland and Wales.

A new Primary Dental Care Strategy has been developed which sets the oral health agenda for the next 10 years. It identifies the oral health needs of the Northern Ireland population, determines desired outcomes and identifies areas where oral health can link into the wider health agenda.

The strategy has been developed around the local commissioning of services, where commissioners would be responsible for the delivery of primary care dental services to their population in keeping with local needs. One of the main recommendations is that access to appropriate dental care should be available to everyone.

Consultation on the draft strategy has ended and it is expected to be published in the summer.

## NHS: Dentists

**Lord Rana** asked Her Majesty's Government:

How many dentists resigned from the National Health Service in Northern Ireland in (a) 2005; and (b) the first three months of 2006. [HL5613]

**Lord Rooker:** The number of dentists who have resigned from providing health service dentistry is not exclusively available. However, the count of dentists who had been providing health service dentistry within Northern Ireland but who have ceased doing so in (a) 2005 and (b) the first three months of 2006 is provided below. The reasons for ceasing to provide health service dentistry will include retirement, death, moving out of Northern Ireland or moving to private practice.

(a) During the 2005 calendar year there were 41 dentists who were removed from the Northern Ireland dental list and who did not return to that list by January 2006.

(b) During the first three months of 2006 there were nine dentists who were removed from the Northern Ireland dental list and who did not return to that list April 2006.

## NHS: Non-EU Doctors

**Lord Rana** asked Her Majesty's Government:

How many non-European Union doctors are currently training in (a) the United Kingdom as a whole; and (b) Northern Ireland; and what steps are being taken to ensure that they are able to complete their training, in view of new Department of Health immigration rules for non-European Union doctors. [HL5615]

**The Minister of State, Department of Health (Lord Warner):** The following table shows the number of doctors working in the National Health Service in England, who qualified in a non-European Union country. Information relating to Scotland and Wales is the responsibility of the devolved administrations.

In Northern Ireland, there are currently 370 non-European Union doctors in training.

*General and Personal Medical Services and Hospital, Community Health Services (HCHS) All Doctors in training by specified Country of Primary Qualification group*[1,2,3]

| | | *Numbers(headcount)* | |
|---|---|---|---|
| *England as at 30 September 2005* | *All Countries of Qualification* | *of which:* | *Non-EU Countries* |
| All Doctors[2,3] | 119,017 | | 33,033 |
| | *of which:* | | |
| | All Doctors in Training | 45,965 | 17,078 |
| All HCHS Medical Staff[2,3] | | 83,073 | 27,371 |
| | *of which:* | | |
| | Registrar Group | 17,657 | 6,477 |
| | Senior House Officer | 21,109 | 9,157 |
| | House Officer & Foundation Programme Year 1 | 4,635 | 562 |
| All GPs[1] | | 35,944 | 5,662 |
| | *of which:* | | |
| | GP Registrars | 2,564 | 882 |

[1] All Practitioners includes Contracted GPs, GMS Others, PMS Others, GP Registrars and GP Retainers

[2] Excludes medical Hospital Practitioners and medical Clinical Assistants, most of whom are GPs working part time in hospitals

[3] Excludes all dental staff. Information about country of qualification is derived from the General Medical Council. For staff in dental specialties, with a General Dental Council registration, the country of qualification is therefore unknown.

*Source:* The Information Centre for health and social care Medical and Dental Workforce Census The Information Centre for health and social care General & Personal Medical Services Statistics.

The Department of Health has put in place transitional arrangements to ensure that doctors currently in post are allowed to complete their programme.

Doctors from outside the European Economic Area who have graduated in the United Kingdom will have up to three years to complete their foundation training. Once the foundation course has been completed, doctors will need to meet the normal requirements of the immigration rules.

## North/South Implementation Bodies

**Lord Laird** asked Her Majesty's Government:

In percentage terms, what is the total number of employees in the implementation bodies in Northern Ireland broken down by religious background. [HL5605]

**Lord Rooker:** As of May 2006 the community background of the Northern Ireland-based staff that work in the north/south implementation bodies is set out below in percentage terms.

| | |
|---|---|
| Protestant | 33% |
| Roman Catholic | 63% |
| Non-Determined | 4% |

## Northern Ireland National Stadium

**Lord Laird** asked Her Majesty's Government:

What is the cost to date of preparing and promoting the site at the Maze as a national stadium for Northern Ireland. [HL5654]

**Lord Rooker:** The Government are seeking to explore the potential to develop the entire site and commissioned a masterplan on this basis. Any expenditure incurred to date at the Maze/Long Kesh relates to the regeneration of the whole site rather than to any specific project.

## Northern Ireland: Festivals

**Lord Laird** asked Her Majesty's Government:

Further to the Written Answer by the Lord Rooker on 10 May (*WA 139*) concerning the Smithsonian Institution's Folklife Festival in 2007, what Ulster-Scots activities have been offered for inclusion in the festival by the Northern Ireland Department for Culture, Arts and Leisure. [HL5754]

**Lord Rooker:** I refer to my previous Answer 10 May (*WA 139*).

The Department of Culture, Arts and Leisure passed on the list of recommendations it received from the Ulster-Scots Agency to the Smithsonian's curator.

## Parliamentary Ombudsman

**Lord Lester of Herne Hill** asked Her Majesty's Government:

Further to the Written Answer by the Lord Bassam of Brighton on 29 March (*WA 126*), on how many occasions since 1997, and in respect of which specific recommendations, the Learning and Skills Council has refused or omitted to give effect to the recommendations of the Parliamentary Ombudsman. [HL5697]

**The Parliamentary Under-Secretary of State, Department for Education and Skills (Lord Adonis):** This is a matter for the Learning and Skills Council (LSC). Mark Haysom, the LSC chief executive, will write to the noble Lord with this information and a copy of his reply will be placed in the House Library.

## Political Parties: Funding

**Lord Lester of Herne Hill** asked Her Majesty's Government:

What is the reason for the delay in answering the Question for Written Answer by the Lord Lester of Herne Hill tabled on 28 March (HL4991) about confidentiality clauses in loan agreements to political parties. [HL5728]

**The Parliamentary Under-Secretary of State, Department for Constitutional Affairs (Baroness Ashton of Upholland):** The noble Lord's Question tabled on 28 March [HL4991] was answered on 17 May 2006. The reason for the delay in answering was because the issue of confidentiality clauses in loan agreements to political parties was one which was still under consideration by the Government, in the context of new provisions relating to the regulation of such loans which were subsequently tabled to the Electoral Administration Bill on 26 April.

## Prisons: Maze

**Lord Laird** asked Her Majesty's Government:

Whether they have any plans to demolish in total the former prison site at the Maze. [HL5687]

**Lord Rooker:** A number of buildings have already been demolished and others on the site have been listed or have received statutory protection. No decisions have been taken by Government to demolish any further buildings.

## Public Spending: Northern Ireland

**Lord Laird** asked Her Majesty's Government:

What was the total spending of each Northern Ireland department during the past financial year; and how this compares with the funding allocated to each department. [HL5747]

**Lord Rooker:** Details of expenditure for 2005–06 relating to Northern Ireland departments is not yet available. Information on performance against budget will be available in June of this year once provisional outturn data have been received and analysed.

A copy of the information will be placed in the Library of the House when available.

## Revenue and Customs: External Legal Advice

**Lord Forsyth of Drumlean** asked Her Majesty's Government:

Further to the Written Answer by the Lord McKenzie of Luton on 13 March (*WA 202–3*), what assessment they have made for the latest year for which information is available on the cost of external legal advice received by HM Revenue and Customs, allocated between advice received on (a) taxation, and (b) other matters. [HL5781]

**Lord McKenzie of Luton:** I answered an identical Question from the noble Lord on 29 March, *Official Report*, col. *WA 149*.

## Schools: Religion

**Lord Avebury** asked Her Majesty's Government:

What statutory rights are available to particular faith groups to challenge the content of a locally agreed religious syllabus. [HL5832]

**The Parliamentary Under-Secretary of State, Department for Education and Skills (Lord Adonis):** RE syllabuses for all maintained schools except religious-based voluntary-aided schools are set by the local authority through the agreed syllabus conference (ASC), subject to advice from the standing advisory councils for religious education (SACRE). The SACRE and the ASC comprise teachers, the local authority and representatives from religions and denominations which broadly reflect the make-up of the local area.

The local authority must convene an agreed syllabus conference for the purpose of reviewing the syllabus. If the majority of groups on a SACRE ask the local authority in writing to reconsider its agreed syllabus, it must convene a conference for that purpose.

If a concern or complaint about a locally agreed syllabus cannot be resolved informally, the formal complaints procedure of the local authority or particular school should be followed. Any complainant who remains dissatisfied after the complaint has been fully considered under those arrangements can make a complaint to the Secretary of State.

## Taxation: Avoidance and Evasion

**Lord Patten** asked Her Majesty's Government:

Whether they will clarify their use of the terms "tax avoidance" and "tax evasion". [HL5850]

**Lord McKenzie of Luton:** These terms lack any single or universally applied legal definition and their meaning will depend upon the context in which they are used.

The term "tax evasion" refers to reduction of tax liability by illegal means.

The term "tax avoidance" is usually used to refer to an inappropriate reduction in tax liability and was described by Lord Nolan in the following terms:

"The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his tax liability".

## Taxation: Income Tax

**Lord Forsyth of Drumlean** asked Her Majesty's Government:

Further to the Written Answer by the Lord McKenzie on 14 March (*WA 221*), what assessment they have made of the number of people who are subject to income tax and have (a) one employment; and (b) more than one employment during the year, for the latest year for which figures are available. [HL5805]

**Lord McKenzie of Luton:** Information on the number of taxpayers by number of employments is not readily available except at a disproportionate cost. However, the table below provides the number of employees (by number of jobs) whose total gross weekly earnings exceeded their weekly personal allowance in autumn 2005.

*Autumn (September-November) 2005*

| *Employees whose total weekly earnings is above their weekly personal allowance* | *Number (thousands)* |
|---|---|
| Employees with one job | 21,830 |
| Employees with more than one job | 580 |

Income tax liabilities are based on total annual income. Therefore these figures should be used as a guide only since all employees with gross weekly earnings above their weekly personal allowance at a given point in time are not necessarily taxpayers for the year as a whole, and similarly, all employees with gross weekly earnings below their weekly personal allowance at a given point in time are not necessarily non-taxpayers for the year as a whole.

The estimates have been provided by the Office for National Statistics and are based on the quarterly Labour Force Survey (LFS). The figures represent a snapshot, are seasonal unadjusted and are based on gross weekly earnings as reported in the survey.

## Taxation: National Insurance

**Lord Forsyth of Drumlean** asked Her Majesty's Government:

For the latest year for which figures are available, what assessment they have made of the increase required to the contribution rate of class 4 national insurance contributions so as to make the contribution rate for the self employed (including class 2 and class 4) the same as class 1 national insurance contributions after taking into account the reduced entitlement to benefits of the self employed; and [HL5765]

For the latest year for which figures are available, what would be the increase required to the contribution rate of class 4 national insurance contributions and the corresponding reduction to class 1 national insurance contributions so as to make the contribution rate for the self employed (including class 2 and class 4) the same as the employee after taking into account the reduced entitlement to benefits of the self employed and leave the overall revenue raised constant. [HL5766]

**Lord McKenzie of Luton:** Estimates of the cost of reduced national insurance contributions for the self employed—not attributable to their reduced benefit eligibility—were published in April and were £1.7 billion for 2004-05 and £1.9 billion for 2005–06. These figures are shown in the table at the following link at www.hmrc.gov.uk/stats/taxexpenditures/1_5_apr06.xls.

These estimates are particularly uncertain due to their complex nature and so the following further estimates that are underpinned by them should be treated with caution.

In order to make self employed national insurance contributions (class 2 and class 4 contributions) the same as class 1 national insurance contributions paid by employees and employers after reflecting reduced benefit eligibility, taking the above figure and simply varying existing NIC rates, the main class 4 rate would need to be increased by 6.2 per cent.

In order to maintain revenue neutrality while matching contribution rates of the self employed to those paid in respect of employees after reflecting reduced benefit eligibility (again taking the above figure and simply varying existing NIC rates) the main employee's (primary) class 1 contribution rate would need to lowered by 0.3 per cent. and the main class 4 contribution rate raised by 3.1 per cent.

These figures are for UK contributions in respect of 2005-06 and are consistent with Budget 2006 projections.

These estimates exclude any behavioural response to the changes, which could be significant given the magnitude of the change.

## Taxation: Personal Allowance

**Lord Forsyth of Drumlean** asked Her Majesty's Government:

For the latest year for which figures are available, what assessment they have made of the cost of (a) raising the personal allowance to £7,500; (b) raising the personal allowance to £7,500 and eliminating the 10 per cent. rate of income tax; and (c) raising the personal allowance to £7,500, eliminating the 10 per cent. rate of income tax and restricting the personal allowance to providing relief at a maximum of 22 per cent; and [HL5768]

For the latest year for which figures are available, what assessment they have made of the cost of (a) raising the personal allowance to £10,000; (b) raising the personal allowance to £10,000 and eliminating the 10 per cent. rate of income tax; and (c) raising the personal allowance to £10,000, eliminating the 10 per cent. rate of income tax and restricting the personal allowance to providing relief at a maximum of 22 per cent. [HL5769]

**Lord McKenzie of Luton:** The information for 2006–07 is provided in the table.

| *Additional cost from:* | |
|---|---|
| Increasing all personal allowances to £7,500. | −£14.1 billion |
| Increasing all personal allowances to £7,500 and abolishing the 10 per cent. starting rate[1] | −£7.7 billion |
| Increasing all personal allowances to £7,500, abolishing the 10 per cent. starting rate[1] and restricting the personal allowance to providing relief at a maximum of 22 per cent. | −£6.5 billion |
| Increasing all personal allowances to £10,000. | −£28.0 billion |
| Increasing all personal allowances to £10,000 and abolishing the 10 per cent. starting rate[1] | −£22.5 billion |
| Increasing all personal allowances to £10,000, abolishing the 10 per cent. per cent starting rate[1] and restricting the personal allowance to providing relief at a maximum of 22 per cent. | −£20.4 billion |

[1] Only the starting rate band on earnings and savings is absorbed in the basic rate band, tax rates on dividends remain unchanged.

The estimates are based on the 2003–04 Survey of Personal Incomes projected forward to 2006–07 in line with Budget 2006 assumptions.

The figure excludes any estimate of behavioural response to the tax changes which could be significant given the scale of the changes.

**Lord Forsyth of Drumlean** asked Her Majesty's Government:

Further to the Written Answer by the Lord McKenzie of Luton on 15 March (*WA 229–30*), what assessment they have made of unifying the age-related personal allowances at the level of those aged (a) 65 to 74, and (b) 75 and over, for the latest year for which figures are available; and [HL5803]

Further to the Written Answer by the Lord McKenzie of Luton on 15 March (*WA 229–30*), what assessment they have made of unifying the age-related married couples allowances at the level of those aged (a) 65 to 74, and (b) 75 and over), for the latest year for which figures are available. [HL5804]

**Lord McKenzie of Luton:** The information is in the table.

| *Policy option* | *Yield/Cost (£million) (+ve is an Exchequer yield)* |
|---|---|
| Harmonise age-related personal allowances to the level of the allowance for those aged 75 and over | −55 |
| Harmonise age-related personal allowances to the level of the allowance for those aged 65 to 74 | +35 |

| Policy option | Yield/Cost (£million) (+ve is an Exchequer yield) |
|---|---|
| Harmonise married couple's allowances to the level of the allowance for those aged 75 and over | |
| Harmonise married couple's allowances to the level of the allowance for those aged less than 75 | +3 |

*Note:* Married couples where the eldest partner was born before 6 April 1935 are eligible for the married couple's allowance and since 5 December 2005, this has also applied to Civil Partnerships. Tax relief for this allowance is restricted to 10 per cent.

The information in the table is based upon the 2003–04 Survey of Personal Incomes projected forward to 2006–07 in line with March 2006 Budget assumptions.

## Transport: Concessionary Bus Fares

**Lord Lea of Crondall** asked Her Majesty's Government:

How many local authorities in England operate concessionary bus fare schemes which allow local residents to cross district council boundaries on a single journey to a convenient local town; how many do not operate such a scheme; and whether they will take steps to ensure a consistent national approach to this issue. [HL5626]

**Lord Davies of Oldham:** The Department for Transport does not have full details of all of the local bus concessionary fare schemes in operation from 1 April 2006. There is a great deal of variation in what local authorities provide beyond the statutory minimum. They may offer cross-boundary concessionary bus travel to older people and disabled people, or some other form of enhancement to the statutory free off-peak local bus travel scheme, at their discretion. To determine the range of schemes provided, the department carries out occasional surveys of local authority concessionary travel provision. The most recent survey reported in 2003. The department will also carry out a new, comprehensive survey of local authority schemes later this year. The results are due to be published in the autumn.

## Water Supply

**Lord Dykes** asked Her Majesty's Government:

When they will next raise British and European-wide drought problems at a meeting of the European Union Council of Environment Ministers; and what issues, such as water consumption, restriction of usage and reservoir enhancement, they will include in such discussions. [HL5813]

**The Minister of State, Department for Environment, Food and Rural Affairs (Lord Rooker):** At present there are no issues related to drought on the provisional agenda for the next Environment Council on 27 June. UK Ministers have no proposals to raise drought as an issue for discussion at the current time.

**Wednesday 24 May 2006**

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# ALPHABETICAL INDEX TO WRITTEN ANSWERS



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