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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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House of Lords

Tuesday, 12th March 2002.

The House met at half-past two of the clock: The CHAIRMAN OF COMMITTEES on the Woolsack.

Prayers—Read by the Lord Bishop of Bristol.

Cyprus

Lord Wallace of Saltaire asked Her Majesty's Government:

What steps they are taking to promote the entry of a reunited Cyprus to the European Union.

The Minister for Trade (Baroness Symons of Vernham Dean): My Lords, we believe that the best chance of a reunited Cyprus joining the European Union lies in supporting the current United Nations-brokered settlement talks in Cyprus. We and other member states are therefore working to support that process and the noble Lord, Lord Hannay, the Government's special representative, is active in that respect.

Lord Wallace of Saltaire: My Lords, I thank the Minister for that Answer. Does she recognise that the amount of time that has been lost as a result of the break in the UN-sponsored talks in the past 18 months means that they are a long way behind the accession negotiations and that it will be hard work to ensure that the two negotiations are within sight of each other when the accession negotiations conclude by the end of this year?

Will she accept that, if we are to ensure that the talks make rapid progress, active diplomacy is needed by the British Government and their new partners not only in the two halves of Nicosia but also in Athens and Ankara?

Baroness Symons of Vernham Dean: My Lords, I agree that it was unfortunate that the talks did not get underway in any real sense until the beginning of December. The noble Lord is right that the accession talks which Cyprus is undertaking with the EU are making good headway. However, now that the talks between the two sides—between Mr Denktas and Mr Clerides—are underway, good progress is being made.

I would not like the noble Lord to think that the EU or the United Kingdom Government were standing back. As I have indicated, the noble Lord, Lord Hannay, is actively involved in the process. Although neither the EU nor the United Kingdom can be a mediator or broker, we take an active part in advising on the way forward.

Lord Corbett of Castle Vale: My Lords, will my noble friend reiterate the views of Her Majesty's Government and the rest of the European Union that the accession of Cyprus to the EU does not depend

upon reunification of the island, much as members of both Cypriot communities and others elsewhere want to see that?

Baroness Symons of Vernham Dean: My Lords, I agree entirely with my noble friend. However, the United Kingdom strongly supports the discussions underway between the two sides in Cyprus. We also strongly support the accession of Cyprus to the EU. But let me say categorically that neither we nor the European Union believe that such coming together in Cyprus is a precondition for accession. That was made abundantly clear at the Helsinki European Council, but for the purposes of further clarity I repeat that now to your Lordships.

Lord Kilclooney: My Lords, can the Government explain what incentive there is for Greek Cypriots to reach a settlement on the island when at the same time we are telling them that they can enter the EU without a settlement? Secondly, on the principle of the freedom of movement of persons, is it not inconsistent that in the EU we might have a member nation, the centre of which is patrolled by a United Nations peacekeeping force maintaining the peace between the two parts? Finally, would the Government be better advised to follow the example of the upper house of the Netherlands parliament and decide not to support accession until there is agreement on the island?

Baroness Symons of Vernham Dean: No, my Lords, emphatically not on the last point—emphatically not. Of course it would be better for the two sides to reach agreement and I believe that the statement of the two leaders, Mr Clerides and Mr Denktas, following the 4th December meeting, made clear that the talks in the United Nations framework at the invitation of the UN Secretary-General and with the help of the special adviser, Mr Alvaro de Soto, were talks in which they were prepared to engage in good faith.

The Secretary-General has requested that we do not discuss publicly the detail of the negotiations—either past negotiations or those currently underway. I believe that that request should be respected. Of course there are difficult issues and we all understand that. However, we have a specific request from the Secretary-General on this issue and I hope that the difficulties which the two sides face will be successfully resolved.

Lord Howell of Guildford: My Lords, does the Minister agree that, while the division of Cyprus must not be allowed to get in the way of progress in the accession talks to the EU, the accession talks and the EU issue must not be allowed to get in the way of the glimmerings of successful talks at last moving ahead between the North and the Government of Cyprus?

Secondly, if by some miracle after many years the talks make progress, are we standing ready to offer every possible assistance as regards the legal,

[LORD HOWELL OF GUILDFORD]
administrative and restitution issues and the meetings of vast complexity which will arise if reunification at last begins to move ahead?

Baroness Symons of Vernham Dean: My Lords, I agree that we should give all possible help. We have given a very good earnest of that intention in that one of the best diplomatic brains in the country—in the shape of the noble Lord, Lord Hannay—is already involved. His standing is generally acknowledged and your Lordships do defer to the noble Lord, whom I can see blushing very prettily in his place at the moment. I agree that the accession talks should not get in the way of the talks between Mr Clerides and Mr Denktas. I am happy to say that the accession talks are well advanced. Seven chapters remain to be resolved, but the talks are making excellent progress.

Lord Pilkington of Oxenford: My Lords, in echoing what has been said around the House, will Her Majesty's Government ensure that some sympathy is shown to the Turks, who suffered considerably in the 1970s *coup d'état*? Some regard should be paid to the fact that the problems in Cyprus were, to a large extent, created by the Greek Cypriot community which staged the *coup d'état* in the early 1970s. I do not wish to dwell on history, but Her Majesty's Government should pay regard to it because history has a nasty habit of coming back.

Baroness Symons of Vernham Dean: My Lords, attention should be paid to both sides of this difficult question. The workable solution needed cannot be imposed by outsiders. It has to be agreed by the two sides to the discussion and put to the two communities in separate referendums. There is no question of either community being forced into anything. I hope that it is a reasonable assurance to the noble Lord, Lord Pilkington, that not only the two political sides but the two communities must agree any settlement that is made.

Marine Mammals

2.44 p.m.

Lord Montagu of Beaulieu asked Her Majesty's Government:

What steps they intend to take to reduce the number of marine mammals illegally killed in nets and trawls in British waters.

Baroness Farrington of Ribbleton: My Lords, research funded by the department has helped to demonstrate where particular problems involving marine mammal casualties occur in international fisheries managed under the common fisheries policy. To resolve this problem, action is required by the Commission. This is why my right honourable friend the Fisheries Minister has written to Commissioner Fischler explaining the trials on separator grids which the Sea Mammal Research Unit will be undertaking

on our behalf. He has also called on the Commissioner to be ready to take action to address the problem of cetacean bycatch in EU fisheries through gear adaptations and other restrictions.

Lord Montagu of Beaulieu: My Lords, I thank the noble Baroness for that Answer. Although I understand they are not compulsory, what conclusions have been drawn from the recent research project? As to the new net trials, with the season drawing to a close, when will the trials begin and when will the results be known? Similar schemes have not worked in New Zealand. Since 1st January, no fewer than 1,000 dead dolphins have been washed up on the shores of France and England. What measures have been taken to warn the public of the hazard of putrefying dolphins on the beach transmitting disease?

Baroness Farrington of Ribbleton: My Lords, as to the noble Lord's final point, I have experienced the stench of rotting dead seagulls, and the smell of putrefying dolphins would make it unlikely that anyone would go near enough to them to constitute a health hazard. It is to be hoped that immediate action would be taken by local environmental health authorities to remove anything that was considered to be a health hazard.

As to the action being taken, since 1990 the UK Government have funded a scheme to investigate, through postmortems, the reasons for strandings. Alongside this, extensive research has been undertaken into bycatch problems with dolphins. That research has demonstrated that there must be international action. Trials of separator grids in the offshore bass fishery are currently under way. I cannot tell the noble Lord exactly when the trials will be completed, but the results will inform on-going work in the lead up to the review of the common fisheries policy.

Lord Hardy of Wath: My Lords, I am grateful to my noble friend for that reply. Can we be sure that the Government are sufficiently aware that the effect of pollution and legal activity is already a severe threat to the viability of the small marine mammal populations around Europe and our own islands and that illegal actions make matters a great deal worse?

Baroness Farrington of Ribbleton: My Lords, there is no evidence that the deaths which have occurred have been due to any illegal action by fishermen. That is not to underestimate the importance of supporting the habitats regulations of 1994 and the Wildlife and Countryside Act 1981 were anyone deliberately to kill a cetacean. Fishermen are involved, in great detail and very willingly, in the current separator grids trials in the bass fishery. This will help to inform future policy. As I said, there is no evidence at all that fishermen are in any way deliberately killing cetaceans.

Lord Campbell of Croy: My Lords, can the noble Baroness confirm that British fishermen are doing nothing illegal when, in the course of their legitimate

operations, they find marine creatures such as dolphins unintentionally caught and drowned in their nets, usually drift nets?

Baroness Farrington of Ribbleton: My Lords, I can confirm that to the noble Lord, Lord Campbell of Croy, in regard to British fishermen. We have no evidence that other fishermen are in any way acting illegally. That is why the industry is co-operating in the work that is taking place, particularly in the pelagic water levels, such as the sea bass fishing level, which appear to be the most specific and harshly identified threat to dolphins.

Baroness Miller of Chilthorne Domer: My Lords, will the Minister join with me in congratulating the fishermen in Looe, in Cornwall, on their strong promotion of line fishing? Does she believe that consumers buying fish receive sufficient information as to exactly what "dolphin friendly" means?

Baroness Farrington of Ribbleton: My Lords, I suppose that on one level the noble Baroness would expect me to say that the most "dolphin friendly" approach would be not to take the fish at all. I am sure that, as with other food production, consumers want up-to-date and accurate information on origin. I share the noble Baroness's support for the commitment of those fishing in the Celtic Sea in their attempts to overcome a serious problem in terms of the dolphin population.

Baroness Byford: My Lords, has the Minister taken into account research by the New Zealand Government on the use of special netting in an attempt to reduce the number of sea lions in the catch? Is such netting suitable for trials here; indeed, are we using the same type of trial nets? Some of the experiments were set up in 1990. That is a long time ago. Twelve years on, we are still catching hundreds of dolphins. Does the Minister agree that now is the time to examine the broader question of discarded fish? I understand that 25 per cent of our catch is discarded. Is it not time that the Government took action?

Baroness Farrington of Ribbleton: Yes, my Lords, we all regret that this happens. We will support any successful action introduced to prevent unnecessary slaughter of fish stocks. Research indicates that the bycatch occurs in fisheries to which other EU vessels have access. Therefore, it is important that any action taken is at EU level. Under the terms of the relevant common fisheries policy legislation, any UK requirements could apply only to UK fishermen.

In terms of the work that is being done, yes, those involved in the research project are fully aware of the research undertaken in New Zealand. The work is of two types: one deals with sonic warning, which can only be effectively used to protect dolphins in the case of nets which are static; in the case of nets at the sea bass level and the pelagic level, it is important that the

grid net trials continue. My understanding is that those grid nets have been developed with the benefit of a knowledge of the work being done in New Zealand.

Middle East

2.53 p.m.

Baroness Williams of Crosby asked Her Majesty's Government:

What representations have been made to the Government of Israel to cease attacks on the property of the Palestinian Authority, which is essential to its obligation to maintain law and order in its territory.

The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Baroness Amos): My Lords, we are greatly concerned by Israeli destruction of Palestinian Authority infrastructure and urge Israel to cease this action. It undermines the authority of President Arafat and the Palestinian Authority's efforts to dismantle terrorist networks, and disrupts Palestinian economic, social and humanitarian development. Following discussion by Ministers at the EU General Affairs Council on 28th January, the EU presidency has formally protested to Foreign Minister Peres over Israeli destruction of EU-funded infrastructure.

Baroness Williams of Crosby: My Lords, in a situation where much of the infrastructure of the Palestinian Authority paid for by the European Union has been destroyed—a situation which is sickeningly and terrifyingly getting out of control, with both sides breaking United Nations resolutions and in some cases threatening the whole nature of human values—I suggest to the Minister with great respect that that Answer does not reflect the extreme urgency of the situation. We are looking at a situation becoming so extreme that it could risk a regional world war. In addition, any extension of the war to Iraq could bring about an intensification, and indeed a breach of the anti-terrorist coalition. Will the Minister consider suggesting to the Prime Minister and to others who will be attending the Barcelona summit that the time has come for an EU/United States/friendly Arab power intervention? Sometimes, in situations like this, neither country can move, yet it is desperately necessary for the world, for Israel and for the Palestinian Authority that someone brings this terrible situation to an end.

Baroness Amos: My Lords, the Government are profoundly concerned at the continuing violence in the Middle East. At least 92 Palestinians and 20 Israelis have been killed in the past five days alone. We understand the intense political pressures on the Israeli Government to respond to repeated suicide bombings, and our condemnation of terrorism in all its forms is unequivocal. We look to the Palestinian Authority for a 100 per cent effort to deal with the terrorism. However, a strategy aimed at inflicting maximum pain

[BARONESS AMOS]

on Palestinian civilians is not acceptable. It is not an effective basis on which to build peace. I agree with the noble Baroness that we need to bring all the pressure to bear that we can. We are doing that through our own efforts through the European Union. The United States is also engaged. But none of us underestimates the gravity of the situation.

Lord Wright of Richmond: My Lords, I strongly endorse the wording of the Question. Does the Minister agree that there can be only an extremely negative impact on the international coalition, and on Muslim and Arab opinion generally, as a result of our apparent readiness to engage in discussions on an invasion against Iraq—apparently on the grounds that it has contradicted or ignored Security Council resolutions—when that is in contrast to our apparent inability and unwillingness to apply real and effective pressure to restrain Prime Minister Sharon from his appalling behaviour, his flouting of international law and Security Council resolutions and his disproportionate and provocative retaliation against Palestinian attacks?

Baroness Amos: My Lords, I think that I have made it absolutely clear that we are profoundly concerned at the continuing violence and urge both sides to look for a peaceful solution. We are committed to the Tenet plan and the Mitchell plan. We cannot ignore the threat that Iraq poses to the international community, but, as my right honourable friend the Prime Minister made clear yesterday, no decision has been taken to launch military action.

Lord Janner of Braunstone: My Lords, does my noble friend agree that the only hope for the Middle East is if the parties are prepared to return to the negotiating table? Does she accept that attacks by both sides must stop if that is to happen? Has she considered the attacks by suicide bombers and other terrorists, unrestrained by the Palestinian Authority, before the attacks referred to by the noble Baroness? Does she consider that the suicide bombings occurred, and still occur, because the Palestinian Authority cannot prevent them, or could prevent them and does not wish to?

Baroness Amos: My Lords, I hope that I have made myself absolutely clear. The British Government consider that the actions taken by the IDF in the past week have been excessive and counter-productive. But we also feel that the Palestinian Authority must make a 100 per cent effort to curb the actions of the armed extremists and prevent cease-fire violations. Both parties should de-escalate the situation, exercise restraint and start the work of consolidating the cease-fire and implementing the Tenet security workplan. There is also some hope in the Saudi initiative that has been proposed.

Lord Howell of Guildford: My Lords, while the curtailment of Saddam Hussein and any possible attack

on Iraq is—as the Americans have made clear—some considerable time away and calmness and measured responses are needed on that front, I am sure that the Minister agrees, as we all do, that the hideous downward spiral of violence between Israel and Palestine is immediate and horrific, and that we must mobilise every effort to find a way forward. Does she agree that the Saudi Arabian plan seems to have a core of common sense to it? Is it supported by Her Majesty's Government? Does she agree that Ariel Sharon's concession that he will now no longer hold out for seven quiet days before he negotiates is worth building on? Finally, does she agree that in addition to anything that we may do through the European Union, we should use our own prestige, which is not inconsiderable, to build on the possible glimmer of hope that those two developments now provide?

Baroness Amos: My Lords, I absolutely agree that we must mobilise every effort. We welcome the Saudi initiative, as I have said before. Crown Prince Abdullah has a vision of full peace between Israel and Arab states before withdrawals. That is a glimmer of hope in the current crisis.

Gibraltar

3 p.m.

Lord Waddington asked Her Majesty's Government:

Whether they have sought an undertaking from the Government of Spain that, in the event of the people of Gibraltar rejecting in a referendum any joint proposals put forward by Britain and Spain, Spain will respect that decision of the people of Gibraltar and will treat Gibraltarians as they are entitled to be treated and not interfere with their rights of free movement.

Baroness Symons of Vernham Dean: My Lords, the Government of Spain are fully aware of the public statements made by my right honourable friend the Foreign Secretary and other Ministers that in the event of the people of Gibraltar rejecting any joint proposals put forward by Britain and Spain, Her Majesty's Government will continue to stand by the people of Gibraltar politically, legally and morally. This is not a matter for negotiation with Spain.

Lord Waddington: My Lords, I thank the noble Baroness for her reply. Is she aware that the Government have tended to give the impression that they are more interested in building a firm alliance with Spain within the European Union than with looking after the legal rights of the people of Gibraltar in a British possession? The communiqué after the meeting in Barcelona referred to more telephone numbers, but not to free movement across the border. Would it not have been better to have made absolutely plain to Spain that there would be no chance whatever of the people of Gibraltar agreeing to a deal so long as harassment at the border continued? Would it not

have been better to have made plain at that stage that if harassment continued, we would have no option but to commence proceedings in the European Court under Article 227?

Baroness Symons of Vernham Dean: My Lords, the noble Lord should not underestimate the importance to the people of Gibraltar of the increase in the number of telephone lines available. Having so few lines has been a considerable difficulty for them. The increase from 30,000 to 100,000 is very welcome. I am afraid that I cannot agree with the noble Lord that the Government have given the impression that he imputes to us. My right honourable friend the Foreign Secretary has gone out of his way to say that Her Majesty's Government will stand by the people of Gibraltar. I quoted his words exactly when I said that we would stand by them legally, politically and morally. The Government stand by that.

Of course, it must be common sense to our friends in Spain, as it is to us, that in order to get any referendum on joint proposals through, there must be attractions for the people of Gibraltar. They must see that it is in their interests. What happens in a referendum will be the great test. That is the ultimate safeguard for the people of Gibraltar.

Lady Saltoun of Abernethy: My Lords, have the Government ever considered returning the sovereignty of Gibraltar to Spain in return for a long and renewable lease at a peanut rent? Has that suggestion been made to either Spain or Gibraltar?

Baroness Symons of Vernham Dean: My Lords, as I am sure the noble Lady knows, we are bound by the terms of the Treaty of Utrecht. Stepping outside the terms of that treaty is enormously difficult. I have often heard it suggested that, given how old the treaty is, we should not be bound by it. However, if we were to step aside from one part of the Treaty of Utrecht, we would thereby be giving up our rights in Gibraltar by another means. That would be as unacceptable to the people of Gibraltar as would giving away their rights through any sort of negotiation without a referendum. The position is clear. We are making progress with the negotiations and they will be put to the people of Gibraltar, but they must be put within the constitutional framework, which includes the Treaty of Utrecht.

Lord Brett: My Lords, is the Minister aware that, notwithstanding the assurances given, there is great concern on the Rock—so much so that there is to be a general strike on Monday of next week? Trade unions representing a spectrum of employment in Gibraltar are taking that action because of their concerns. A delegation from the Gibraltar Trades Council will be visiting the United Kingdom next week. Will the Minister receive that delegation to hear from its members at first hand and to repeat the assurances that she has given to the House?

Baroness Symons of Vernham Dean: My Lords, I am aware that there is a great deal of concern on the Rock

about the negotiations. We all understand that. The issue of Gibraltar has been a matter of enormous difficulty to the people of Gibraltar and to the governments of Spain and the United Kingdom for 300 years. That is why it is so important for us to pursue the negotiations, which, I remind the House, were set up under the Brussels arrangements, which were put into place by the Conservatives in 1984. My noble friend asks whether I would receive a delegation. It is the business of my right honourable friend the Minister for Europe to receive such a delegation, but should my right honourable friend be out of the country or unable for another reason to receive the delegation, I shall indeed do so.

Lord Blaker: My Lords, if the proposals for joint responsibility between Britain and Spain are to be carried forward any further, I suggest that the Government might study the example of the British-French condominium of the New Hebrides, now Vanuatu, which I had the privilege of bringing to independence 20 years ago, to see whether any lessons can be learnt from that rather unsatisfactory example.

Baroness Symons of Vernham Dean: My Lords, there are many examples of how different governments have dealt with our former territories. The problem with Gibraltar is that its position is virtually unique—I know that that cannot be right; either it is unique or it is not. I believe that it is unique because of the position of the Treaty of Utrecht. As I tried to point out to the noble Lady, Lady Saltoun, a few moments ago, because of that treaty we cannot cede independence to the people of Gibraltar, because the terms of the treaty mean that once we relinquish our rights in Gibraltar, they revert automatically to Spain. Although there are many interesting examples of what has been done by a number of countries, including our own experience of dealing with our territories, the position of Gibraltar is unique.

Consolidated Fund (No. 2) Bill

Brought from the Commons, endorsed with the certificate of the Speaker that the Bill is a Money Bill, and read a first time.

Police Reform Bill [HL]

3.8 p.m.

The Minister of State, Home Office (Lord Rooker): My Lords, I beg to move that the House do now again resolve itself into Committee on this Bill.

Moved, That the House do now again resolve itself into Committee.—(Lord Rooker.)

On Question, Motion agreed to.

House in Committee accordingly.

[The CHAIRMAN OF COMMITTEES in the Chair.]

[LORD ROOKER]

Clause 44 [*Persons acting in an anti-social manner*]:

Viscount Bridgeman moved Amendment No. 270:

Page 38, line 28, after "orders)," insert "based on a complaint from any member of the public affected by the anti-social behaviour in question."

The noble Viscount said: The amendment would restrict the power of a constable, when acting on a complaint about someone behaving in an anti-social manner, so that he could gain access only if a member of the public who was affected by the anti-social behaviour in question had complained. I beg to move.

Lord Rooker: The amendment looks seductive, but we all know that anti-social behaviour can take many forms, sometimes involving the neighbours, or children of neighbours, of the person who is getting the rough end of the stick. Many people might think that any upstanding citizen would complain about that, but I do not think that that is so, simply because when the perpetrators live close to the victims they can intimidate them and make sure that the complainant knows that they know that the complaint has been made.

If police officers were reliant on a complaint being made before they could exercise the power, that would severely limit its effectiveness. I freely admit that anti-social behaviour orders got off to a slow start but they are certainly moving ahead now. The changes proposed in the Bill, and in the amendments I shall bring forward later, will enable them to have a much wider effect. We must enable police officers to intervene where they believe that anti-social behaviour is causing, or is likely to cause, distress rather than solely when there is a complaint. Seductive as the amendment is, I hope that the noble Viscount will not press it.

Lord Dholakia: A large number of neighbourhood watch schemes exist across the country. From time to time many of them liaise closely with police forces. If the amendment is not accepted, I believe that they will be ruled out as regards effectively lodging a complaint of anti-social behaviour.

Lord Corbett of Castle Vale: Circumstances arise, especially late at night but not only then, in which anti-social behaviour takes place within view of a constable. However, no member of the public may be about at the time to make a complaint. It would be totally unacceptable for the police to have in a sense both hands tied behind their back in those circumstances and to be unable to take the action expected of them to nip that anti-social behaviour in the bud.

Lord Borrie: It is a great pity that the noble Viscount, Lord Bridgeman, did not expand on his remarks. I was struggling to get into the Chamber and was not in my place. Therefore, I ask the Committee's indulgence for intervening at this somewhat late stage. I had hoped that the noble Viscount, Lord Bridgeman, would explain the amendment as the comments of my

noble friend Lord Corbett, the noble Lord, Lord Dholakia, and the Minister surely make clear that a victim, although being the most appropriate person to complain, often does not feel up to it or is too nervous. However, a police constable may have seen everything that happened. Why should not the matter be left at that instead of being confined in the way the amendment suggests?

Lord Renton: So far as I remember, the offence of behaving in an anti-social manner was introduced for the first time in our law by Section 1 of the 1998 Act. The question whether Clause 44 will operate as the Government hope must depend upon any interpretation that the courts have already given to Section 1 of the 1998 Act. Can the Minister give any indication of what has happened under that head?

3.15 p.m.

Lord Rooker: I say to the noble Lord, Lord Renton, that in later amendments—their numbers escape me at the moment—the Government propose to extend anti-social behaviour orders across boundaries and make them travel with the person concerned. At that point I shall make a much more extensive speech about anti-social behaviour *per se*. So far, fewer than 500 such orders have been issued. They are becoming extremely successful, but I am aware from experience in my former constituency that they got off to a slow start.

Lord Mackenzie of Framwellgate: Does the Minister agree with me that the whole purpose of the anti-social behaviour order was to remove the difficulty of witnesses giving evidence in cases of anti-social behaviour? Anything that neuters that objective—as the amendment does—should not be proceeded with. Clearly, the police are independent witnesses, as it were. My understanding of the purpose of the anti-social behaviour order was that it should become easier to prosecute offenders without necessarily relying totally on the evidence of the people involved, for example, witnesses and the people living next door. The amendment seems to me to require those people to get involved again. In a sense it negates the whole purpose of the original anti-social behaviour order.

Lord Bradshaw: That intervention is unhelpful. The greatest danger the police face is witnesses will not be willing to come forward to support an anti-social behaviour order because they fear intimidation. If people were willing to give such information to a police officer, they would constitute valuable witnesses. They should be encouraged to come forward.

Viscount Bridgeman: I have been interested to hear the contributions. With the leave of the Committee, I wish to speak of our intention to oppose Clause 44 standing part of the Bill. I shall be interested to hear the Minister's comments on that. I understand that the measure we are discussing is a new departure and that hitherto decisions on behaviour of this kind have been taken by the courts rather than by constables. The measure puts a large onus on constables. I was

interested to hear what the noble Lord, Lord Bradshaw, said about the necessity of, and the desirability for, witnesses to come forward wherever possible.

Lord Elton: I am slightly confused as to what we are doing. Amendment No. 270 and the Question that Clause 44 stand part of the Bill are not grouped. I imagine that we shall have a separate debate on the Question that Clause 44 stand part of the Bill. If we are rather surprisingly to roll the two matters together, some Members of the Committee may want to repeat or embellish what they have already said. However, I imagine that when the Minister has replied again, my noble friend will withdraw Amendment No. 270 and we shall then discuss the Question that Clause 44 stand part of the Bill. Am I right?

Viscount Bridgeman: That is correct. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

On Question, Whether Clause 44 shall stand part of the Bill?

Viscount Bridgeman: I have already spoken briefly on this matter. It is our contention that this should be a matter for the courts rather than constables. I note that later the Minister will speak at length on anti-social behaviour. I shall be interested to hear his comments.

Lord Rooker: It may be for the convenience of the Committee if I mention some points on Clause 44, but they are not the more substantive points I indicated to the noble Lord, Lord Renton, which will be discussed on Amendments Nos. 298A, B, C, D, E and F.

Clause 44 is included in the Bill as we know that anti-social behaviour blights lives and communities. We have already extended the range of tools to tackle such behaviour. There are new powers to curtail the activities of people who indulge in persistent anti-social behaviour. The courts have a wide range of sentences available.

Clause 44 is one of a number of provisions in the Bill for extending the armoury of powers to combat anti-social behaviour more effectively. The new power for a police officer to require a person acting in an anti-social manner to give his name and address will mirror the similar power to be afforded community support officers and accredited community safety officers. This will enable joint operations to be mounted by a mix of police officers, Specials and a designated or accredited person. The ability to ask for the name and address of a person believed to be acting in an anti-social manner—that is, in a manner that causes distress, harassment or alarm to one or more people—will enable them to identify the persons involved rather than relying on a visual identification. The fear of crime, which has been a thread throughout our debates in Committee, and the effects of anti-social behaviour can prevent witnesses coming forward, particularly if they have to live next door to the “yobs” who

intimidate them with their aggressive behaviour. The ability to identify those youths has obvious benefits in addressing anti-social behaviour. The mere fact of a police constable requesting that information may be enough to disperse the group and snuff out the anti-social behaviour in the bud. That has not been done before and we are determined to reduce the incidence. The proposal involves a modest extension of our powers in respect of anti-social behaviour orders. I reiterate that the power will be available to constables and to community support officers, which we have already discussed.

Clause 44 agreed to.

Lord Marlesford moved Amendment No. 270A:

After Clause 44, insert the following new clause—

“POWER TO SEARCH FOR FIREARMS

If a police constable has reason to believe that a person or persons in a particular area may be carrying firearms, he may arrange—

- (a) for the area to be sealed off; and
- (b) for the searching for firearms of any people or vehicles in that area, by whatever means he considers appropriate.”

The noble Lord said: My amendment has a very simple purpose. It is to assist the police to detect and remove guns before they are used. And by “used” I do not mean before someone is shot; that, thank goodness, is still a very small part of gun crime, although the figures are rising in a most alarming manner. By “used” I mean before someone is threatened with a gun in a criminal act.

It is, of course, a probing amendment. I do not expect the Minister to leap up and say, “The amendment is exactly what we want and we shall include it in the Bill right away”. Equally, I do not expect the Minister to say that there are already quite sufficient powers to stop and search and that the amendment is unnecessary. It is likely that the Home Office briefing, initially at least, will have been along those lines because the Home Office does not welcome outsiders’ ideas on how to deal with crime. To Home Office officials, Members of Parliament are just as much outsiders as any other interfering member of the public. But I hope that the Minister is made of sterner stuff than that. There are of course powers to stop and search if a police officer thinks that someone may be carrying a firearm, but that is not what my amendment is about.

My amendment would do two things. First, it would send a message that the Government are deadly serious about the criminal use of firearms and that they are determined to take any action that will reduce it by making the possession of a gun—real or replica—on the streets a very risky undertaking for the person carrying the gun. Secondly, when and where there is reason to think that someone in a particular area may be carrying a firearm, the amendment would give the police the power to seal off the area and make a rapid scan. The area might be a street, part of a street, a club, a cinema or a platform or some other part of a station; in other words, any public place to which the public are admitted. I recognise that the amendment’s wording in

[LORD MARLESFORD]
that and other respects is probably imperfect. However, I hope that its suggestion receives serious consideration.

In the case of pedestrians, the use of hand-held metal detectors would be an obvious, largely foolproof and uninvasive method of detection. The searching of cars would obviously be harder and might be less effective. I also recognise that when those carrying guns become aware of a police operation, they may seek to dump the guns. That, in many cases, should enable the police to recover the guns, which, after all, is the primary object of the exercise.

The use of the powers would take time to develop. Although my amendment refers to "a police constable", the decision to seal and search would in practice almost certainly be taken at a much more senior level. All of that would be for chief officers to develop in their own areas. In due course, the techniques would be honed towards perfection for particular areas and problems. I am confident that police authorities would use their imagination, initiative and intelligence to develop the effective use of the power that my amendment would give them.

We also have to take into account the recent announcement by the Home Secretary about new police procedures to record stop and search. The only way in which that could be effective in practical terms would be for some people to have some form of machine-readable identity documents. The serious and growing threat to our inner cities from gun crime now requires dramatic action to get the guns and to reassure a very worried public.

There can be no greater testimony to the seriousness of the problem than that given by the Labour Member of Parliament for Hackney, North and Stoke Newington, Ms Diane Abbott. Less than two weeks ago—on 28th February—she secured an Adjournment debate on gun crime. If I may, I should like to quote a little of her speech. She said,

"gun crime is casting a terrible shadow over my constituents. Hackney residents . . . are genuinely frightened . . . One stretch of road in Clapton in my constituency is known as murder mile.

My constituents are frightened of waking up to find a corpse outside their house . . . People pull guns in Hackney because of a dispute over a girl or merely to demonstrate how hard they are . . . Walking the streets of Hackney and elsewhere in London, we have the young man who is steeped in a gun culture. He is routinely armed and will use his gun not just to pursue a specific criminal activity but in domestic disputes, to show how tough he is and because he has lost his temper with someone in a nightclub".—[Official Report, Commons, 28/2/02; cols. 939-940.]

She went on to say:

"The police believe strongly that we need to raise the minimum sentence for possession of a firearm . . . We are talking about young men who swagger about all day long with firearms . . . If people knew that they would do a minimum of five years if they were found with a gun, they would be deterred from holding guns for others".—[Official Report, Commons, 28/2/02; col. 942.]

It is to deal with that chilling description, from someone who knows what she is talking about and who represents a part of an inner city in which this is a real problem, that my amendment seeks to make a contribution.

We also have to learn from the United States, a country in which, sadly—due to a misplaced comma in the original constitution—gun law still rules in many areas. In New York, however, the tough regime of Mayor Rudolph Giuliani has meant that since 1994, 90,000 guns have been seized from the streets and shootings have plummeted by more than 74 per cent. Those of us who visit the Big Apple know that New York has gone from being the murder capital of the world to being the safest large city in America. Those noble Lords who have visited New York will have noticed that cabs no longer routinely have bullet-proof glass between passenger and driver.

Thank God we are not starting from anything like the level of gun crime that Mayor Giuliani inherited. But in New York gun crime is declining; in Britain, we are moving in the wrong direction. It is to changing that trend that my amendment is directed. I beg to move.

Lord Dixon-Smith: I rise to support my noble friend's amendment and to express the hope that the Government will consider the matter seriously. The Bill offers us an opportunity to do something about this problem. Bills of this nature that create such an opportunity do not often come along.

My noble friend said it all—that this is a problem that causes fear, anger and frustration in the community. It is no satisfaction to anyone that hardly a day goes by without one reading of a gun crime being committed somewhere—all too often in London, but London does not have a monopoly on such offences.

This is a serious matter and the amendment would require some additions. For example, one would definitely need to be able to search property in addition to "people or vehicles". The Home Secretary has, in a sense, already moved in that direction when he re-opened the question of stop-and-search powers. It is possible that the administrative burden that he has imposed on it will mean that, in practice, the police are reluctant to use it because of the time that they have to spend filling out the forms that result from using the power.

However, that is a separate matter. We are considering the ends. We certainly support the ends for which everyone is calling. I hope that the Minister will find it practical to consider this issue helpfully before we reach a later stage of the Bill.

3.30 p.m.

Lord Dholakia: From these Benches we lend support for the amendment. It relates to a matter of serious concern to anyone who has opened the newspapers, particularly the *Evening Standard*, and has read the series of articles written about crime in London. The extent of gun crimes, which create so much insecurity among various communities, causes great concern to a large number of people. I believe that the noble Lord was right to draw attention to what Diane Abbott, the Member of Parliament for Hackney, said. Anyone who sees the photographs of the dead people will

understand the extent of black-on-black crime in London, which is also a matter of serious concern and, to a great extent, is limited to young people.

I ask the Minister whether we require an amendment to the Bill in order to put in place what the amendment seeks to achieve or whether it is possible, under the regulatory powers of the Home Secretary in relation to stop and search, to extend the provision in a way that would incorporate the noble Lord's suggestion. If that is not possible, then I hope that the Minister will reconsider the matter seriously so that a more suitable amendment can be tabled for the Report stage, which we shall reach soon after Easter.

Lord Elton: I support the proposal with some hesitation because I find it difficult to believe that such powers do not already exist. If they do not, they certainly should.

Earl Attlee: I rise briefly to support my noble friend. I have a great fear that the police are losing control on this issue. My noble friend mentioned metal detectors. Can the Minister say what part back-scatter X-ray technology might have to play? I believe that Customs and Excise is using it at ports. Could it be used on the streets, perhaps as a random search facility for vehicles and pedestrians?

Lord Mayhew of Twysden: I believe that my noble friend has done the Committee a service in bringing this concept before us. He frankly acknowledges that the wording is not definitive. But I hope that the Minister will tell us to what extent, if any, these powers exist under present legislation. I should have thought that perhaps the first limb is already open to a police officer, but I am sure that it would be of great assistance to us all if the noble Lord could deal with that point.

The problem in relation to the power to search is, as we all know, that people do not like being searched, even if they are not carrying anything that would get them into trouble. Therefore, a balance must be struck between powers to search and respect for people's freedom in that regard.

My noble friend vividly drew attention to anxiety in London, in particular at the rising incidence of gun crime. I believe—it would be interesting to know whether the Minister supports this—that the public are now prepared to accept a proportionate diminution of their freedom in the light of this extremely worrying and dangerous development. To that extent, I support what is behind my noble friend's thinking, particularly in the second part.

It would be very helpful to know whether New York, whose example is cited so frequently nowadays, has a similar power in its range of legislation. Perhaps the Minister or my noble friend will be able to help us on that point.

In conclusion, as someone who had the privilege of serving in the Home Office, albeit something like 20 years ago, perhaps I may stand up for that department. I disagree with my noble friend in the

uncharacteristically harsh observations that he made about the Home Office being against any kind of innovation, particularly if it comes from outside or from a member of the public. I never found that in my time. Although I have cudgelled my brains in the past couple of minutes, I cannot think of an example.

Lord Carlisle of Bucklow: I support what my noble and learned friend Lord Mayhew said. As a member of the trade union of ex-Ministers in the Home Office, I believe that one must question the views of my noble friend Lord Marlesford on this matter. I do not believe that the officials are quite so obstructive as he said. That apart, I considered that the rest of his speech was admirable in every way. It was unfortunate that he added that remark.

Surely we all accept that crime involving the use of arms is not only the most serious and terrifying offence but, at present, it appears to be the most worrying to people who live in suburban areas. I am sure that the Minister will agree that this is a matter in which it is right that the Government look at existing powers. Perhaps, as my noble and learned friend Lord Mayhew said, we already have those powers. But I hope that the Minister will say that, if we do not have them at present, he will find out whether the existing powers are adequate to stop people carrying guns and threatening and terrifying the lives of others.

Baroness Sharples: I support the amendment moved by my noble friend Lord Marlesford. I wonder whether the noble Lord will now consider the introduction of a smart identity card. Surely that would be of great assistance to the police in any search that they may have to make.

Lord Peyton of Yeovil: I, too, support my noble friend Lord Marlesford in his modest and sensible amendment. It allows me to reflect for a moment on the habit of modern governments of stopping law-abiding people doing what they want to do and which they could well go on doing without harming anyone. At the same time, governments turn away from the phenomenon whereby criminals are open in their possession of guns but whereby the police, according to what the amendment seeks to achieve, are at present powerless to do anything about it.

Unless the Minister says that the police already possess those powers, I can see no possible reason why the Government should not accept the amendment or something very similar to it; otherwise, it would seem to be another indication of the dotty way in which we continue to raise our hands in horror and alarm at what is happening but do nothing about it and put elaborate fetters on the one set of people—namely, the police force—who might be able to do something if they were given the powers.

Viscount Slim: Sadly, the Minister was not present when we debated in your Lordships' House the taking away of firearms from those who were licensed to hold them. I shall not weary the noble Lord, but I spoke at considerable length in debate on that subject.

[VISCOUNT SLIM]

I believe that we have now reached such a state that no one knows how many illegal weapons are in this country. Is it half a million, or is it a million or more? Today, it is very easy to obtain a weapon if one is so inclined. As I see and hear it, the public perception is that the Government, as, indeed, did the previous government, take only a half-hearted view of this matter and that they are not really grappling with the problem. I urge the Minister to accept that the time has come when we must be strong and bold. We must take note and pass laws that make the use of weapons by criminals a matter that they will regret when they are caught or when the weapon is taken. Let us have proper legislation and not the ongoing half-hearted approach.

Lord Bassam of Brighton: The noble Lord, Lord Marlesford, has sparked an encouraging debate on this issue for which I pay tribute to him. As ever, his prescient approach has anticipated some of my lines of defence. I also congratulate him on that. At one point we were in danger of developing a Home Office fan club. Ex-Ministers of the Home Office may have a vested interest in developing that and those who currently occupy Home Office ministerial posts will be pleased to hear about it too.

The debate has been balanced and proportionate—one of my favourite words. The noble Lord, Lord Marlesford, is right that firearms are one of the scourges of our generation. It is understandable that we should consider ways in which to tackle the problem. Of necessity, it is right that your Lordships' House should consider what extra powers may be required. A battery of measures are available to the police, for which I pay tribute to previous governments, in particular the government that was in place in the 1980s and the 1990s. They put in place powers that deal with the problems by which we are currently confronted.

No representations have been made that our current legislation is wanting or failing in regard to the necessary powers for the police. That is a key point to take into consideration. The noble Viscount, Lord Slim, is right that we need to look at gun control and firearms legislation to view the categories of dangerous weapons and to address the problems of firearms in the streets at source.

Noble Lords were keen that I advise on powers that are currently in place and available to the police. I shall go through some of them. The police already have powers to search people and vehicles for offensive weapons under Section 1(2) of the Police and Criminal Evidence Act 1984 and Section 60 of the Criminal Justice and Public Order Act 1994. Sections 1(2) and (3) of PACE provide constables with the power to search any person or vehicle or anything which is in a vehicle for stolen or prohibited articles where they have reasonable grounds for suspecting that stolen or

prohibited articles are to be found. A prohibited article includes an offensive weapon and an offensive weapon is clearly defined in Section 1(9) of PACE as,

"any article—

(a) made or adapted"—

I believe that that covers the point made by the noble Lord, Lord Marlesford—

"for use for causing injury to persons; or

(b) intended by the person having it with him for such use by him or by some other person".

Section 60 of the 1994 Act provides the power under which uniformed police officers may be authorised to stop and search pedestrians or vehicles and their occupants for offensive weapons or dangerous instruments.

Under Section 44 of the Terrorism Act 2000 there are powers available to the police to stop and search pedestrians and vehicles within a specified area for the purposes of countering terrorism. A person in those circumstances can be stopped and searched without reasonable suspicion. The powers are time-limited, but usually they are authorised by an officer of ACPO rank. Under Section 33 of the Terrorism Act an officer of at least superintendent rank can designate an area as a cordoned area where he considers it expedient for the purposes of terrorist investigation.

Under Section 47(1) of the Firearms Act 1968 a constable can require the handing over of a firearm and any ammunition for examination so that he may ascertain whether a firearm is real or imitation, what type of firearm it is, whether—if it is not apparent—it is loaded, or whether the ammunition is suitable for use in the firearm.

Our particular concern about this amendment is that it would provide far-reaching powers and it would enable the police constable to arrange for an area to be sealed off simply on the basis that he reasonably believed that a person was carrying a firearm, irrespective of whether there was any imminent danger. In that sense it goes too far. I return to the use of the word "proportionate". We need proportionate powers and we believe that previous governments have legislated for that. From our contact with the police we understand that they are happy with the current range of powers that are in place. They do not see any need to extend them further. They believe that they are about right. Like the Government, they appreciate the widespread public concern over such matters.

The noble Lord, Lord Marlesford, is right that we need to send out a powerful, united message about the creeping nature of the gun culture. I am grateful to him for drawing attention to the important debate raised by Diane Abbott in another place. The noble Earl, Lord Attlee, raised the issue of metal detectors. We are aware that powers are in place to ensure that guns are detected, particularly at ports, by the use of metal detectors. I am uncertain how useful those powers may be if extended to the police service in the way that the noble Earl suggested. Logistically I believe that that would be rather difficult. The noble Earl raises a point that is worthy of consideration.

Another issue raised was ID cards. The Government intend to issue a consultation paper on this matter later in the year. No doubt careful consideration will be given to that and to the nature of any form of identification card, smart card or whatever. That may well have a bearing on this issue and assist the police. Of course, we want to ensure that the consultation is carefully managed and that we take on board a broad range of views.

On a comparator being sought between stop-and-search powers here and those available to New York police officers, in the time available I have not been able to undertake the serious research that the matter demands. I am happy to look at that point because it is an important one. In New York there have been considerable successes in countering the gun culture. We can always learn from others.

I thank the noble Lord, Lord Marlesford, for tabling the amendment. It is an important point. We constantly keep such matters under review and he was right to raise it now. However, we believe that adequate powers are in place. Over the years they have been added to and we consider that they are effective for the purpose. To date there is no additional pressure from the police service to widen those powers. They believe that what they have to work with is fit for the purpose.

3.45 p.m.

Lord Peyton of Yeovil: I hope that the noble Lord will forgive me if I say that when he rises to his feet he does not always give rise to strong feelings of hope within me. On this occasion, adjectives like "encouraging", "balanced" and "proportionate" applied to the debate start a burgeoning seed of hope in me. However, in rather a hurry he resorted to his brief, as one might have expected, and it was quite—if I can use a polite word—calming.

His perfectly courteous dismissal of the points made by my noble friend is rather a pity. I am not satisfied with his assertion that the police are not interested. I hope that he will take the matter back to the police and tell them of some of the points raised in this debate, which were designed to be helpful. As the noble Lord said, they are balanced, encouraging and proportionate—a wonderful mixture. Having crowned my noble friend's amendment with those wonderful words, he should move a little way towards accepting something along these lines.

Lord Renton: In view of my long experience in criminal courts, I, too, support the amendment. I do so on the broad principle that, where possible, it is better to have prevention rather than cure. The amendment aims at prevention. But we need to be careful about one point. My noble friend used the expression "particular area". It could be a very large or very small particular area. I hope that he has in mind the very small particular area because that is the only way in which the provision would be enforceable. When the

Government consider the matter further and put down their own amendment, I hope that they will define the "particular area".

Lord Elton: I think that I have been studying the noble Lord, Lord Bassam, for longer than my noble friend Lord Peyton.

Lord Peyton of Yeovil: How do you know?

Lord Elton: I have come to a different and more accurate conclusion. I have observed that he always begins his replies to those who have taken part in the debate with the most courteous compliments on their skill and oratory and the clearness of their thinking. That is always a preparatory to disappointing them. Therefore, I am not hopeful when he utters those terms.

However, on a more serious note, I had thought that his grounds for resistance might be that there was a perfectly simple set of circumstances and powers already in place. We were given a matrix of interlocking and incomplete powers. Secondly, I thought that he might well and with truth say that frisking people for loaded weapons is a dangerous business and one needs to give a little more thought to how it is to be done before one legislates. I should have thought that such consideration could be given between now and the next stage, or in another place. I had thought that there would have been a good deal of enthusiasm for what my noble friend sought.

I was a little worried when the Minister said that at least they had heard nothing from the police to say that they wanted more powers. I was only partially reassured when the Minister said that he understood from the police that they needed nothing more. Have they been presented with the amendment and asked whether it is a provision they could do with? I think that we would be influenced by the answer. If the police have not turned it down and they could do with more powers, let us get those powers to them quickly. My noble friend has suggested a very good way of doing that.

Earl Attlee: The Minister touched on the 1968 Act. He referred to the police attitude to the 1968 Act and other powers. Is the Minister convinced that the 1968 Act meets all our requirements? I believe that the 1968 Act is a complete mess.

Lord Dholakia: The Minister generously explained the existing appropriate provisions. Is he able to write a note to that effect to those who participated in the debate? The situation described by the noble Lord, Lord Marlesford, exists despite the powers which exist at present. Perhaps the noble Lord could identify whether those existing powers are adequate to deal

[LORD DHOLAKIA]
with the situation described. If they are not appropriate, it is possible for us to come back to the issue on Report.

Lord Elton: If the noble Lord will forgive another intervention, I hope that the Minister will not cite the anti-terrorism Act because my noble friend is talking about criminal rather than terrorist activity.

Lord Bassam of Brighton: Those further interventions have been helpful. They have given me the opportunity to explain further. During my responses, I rehearsed some of those powers. I am happy to set out a full rehearsal of the various powers. I am sorry I was unable to satisfy the noble Lord, Lord Peyton. I have been trying hard to make him happier during my time at the Dispatch Box. I shall continue perfecting my style. Perhaps at some happy time in the future I shall get there. I am happy to rehearse the powers and make the notes available to those noble Lords who have taken part in what I genuinely consider to be an important and useful debate.

With regard to the police attitude towards the amendment, it is not usually our task to go to the police and ask them specifically what they think about an amendment from an opposition Peer, tabled as late as it was. Perhaps the noble Lord might have thought it useful to consult with them as well. We shall happily take another view on it with the representative bodies of the police service but in the past we have not identified it as a specific problem. It has not been identified as a problem by the police service. We understand that the police believe that they have adequate stop and search powers. The amendment relates to areas as well; that is where the noble Lord is coming from. Although we believe that we have got it about right, we are always happy to have another look. One should always keep these matters under review not least because it is a compelling issue and a profound problem. The timing of Diane Abbott's debate in another place was well meant and effective.

Lord Condon: The spirit of the amendment is well put. The debate has illustrated the concerns about gun crime. If it helps noble Lords, I believe it is the view of the police service that there is an adequate menu of powers in relation to gun crime. Powers are not the real concern. The police are concerned that there may not be strong and sufficient partnerships within communities for condemnation of gun crime to lead to a willingness to give evidence against known carriers of guns within communities. That is linked to perhaps an absence of police confidence at present in their abilities to carry out stop and search in certain circumstances in certain areas. That in itself is linked to concerns about resourcing. Perhaps I may risk repeating what I have said previously, with regard to New York comparisons: London, 26,000 police; New York, 42,000 plus. Resourcing is as vital a concern as powers for stop and search. Finally, I refer to the relationship of sentencing being a force for good in preventing further gun crimes.

This well placed amendment has stimulated a timely debate. The question was asked whether the police are content with their menu of powers. The answer is broadly yes, although they are as concerned as noble Lords about the growth of gun crime.

Lord Ackner: Perhaps I may make a brief intervention. First, with regard to the technique of the Minister in commending everybody's performance and then saying that it was unnecessary, that is a well-known judicial technique in giving judgment. You know immediately that you have been praised that you have lost the case, and it is a nice way of doing it.

Secondly, I commend the Minister on recognising that which his department usually fails to recognise: that the powers that it frequently requests are already provided. That is shown frequently where extra powers of punishment are provided. Articles have been written indicating that the powers which are being sought vigorously have existed for years. I respectfully agree that the Home Office should provide in the Library a full particularised inventory of the sources, the legislation, which provides the powers which are being sought. If it is then apparent that powers exist, the statute book should not be burdened with further unnecessary repetition.

Lord Marlesford: I am most grateful to the Minister for his reply and to noble Lords from all sides of the Chamber who have taken part in the debate and, in general, supported the thrust of my amendment.

I am perfectly prepared to accept that the powers for stopping and searching individuals and vehicles for guns already exist. That was only the second part of my amendment. The Minister interestingly pointed out that the powers to seal off an area in order to do that exist only under the terrorism legislation and therefore where terrorism is suspected.

I suggest that the people of this country, particularly those in the cities, and all ethnic groups—let there be no doubt about that—are deeply concerned. They would welcome powers to deal with gun crime which are as great as those for dealing with terrorism. It is not terribly comforting merely to be aware that a section of this, that or the other Act is available to fight gun crime, when gun crime does not appear to be being fought and when one reads about guns increasingly being used. Very often nowadays people actually have first-hand, or at least second-hand, experience of such incidents.

Of course I am prepared, ready and expect to withdraw the amendment. However, subject to what transpires from what is put in the Library, I believe that I have identified a lacuna in that the powers to seal off an area are confined to terrorism. I think that they should also be available in dealing with crime. Therefore, I hope possibly to bring back a more appropriate amendment at a later stage. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

4 p.m.

On Question, Whether Clause 45 shall stand part of the Bill?

Lord Elton: I use this opportunity to ask the Government how the new independent custody visitors system relates to the old system which was set up under the Scarman report for lay visitors to police stations? Both systems have one principle aim, which is to either bolster or restore public confidence in the way that the police handle those who are charged with crimes. The lay visitors have now become tokens rather than forces for good. I stand to be corrected on that.

Paragraph 256 of the Explanatory Notes published with the Bill states:

"Custody visiting to police stations provides a means by which volunteers from the community who are independent of the police and the criminal justice system ..."

Clause 45 states that the visitors will be appointed by the police authority. So where the police authority has a public profile—the Lawrence inquiry exposed that in most metropolitan areas, other than London, the police authority has none—the visitors are likely to be identified with the police. In the metropolitan area the recent birth and rather different composition of the police authority may give it a certain stature. But the experiment of producing these people will fail to achieve a degree of public confidence—if that is the purpose—if more is not done to connect the visitors with the public rather than connect them through the police authority.

In the past the noble Lord and his colleagues must have thought about this matter long and hard. I apologise for not giving prior notice of the matter. Of course I shall understand that any possible defects in the reply will be due to that. I await the noble Lord's reply with interest.

Lord Dholakia: I want to take the opportunity to say how much we welcome custody visiting finally being placed on a statutory basis. All police authorities consider that having proper custody visiting arrangements in place is an important aspect of their role in safeguarding the interests of the community. When I worked at the Police Complaints Authority a great concern of a large number of people, particularly the complainants, was that in many cases information was not available as to precisely what was going on in police custody. Having a system of checks and balances, particularly in relation to the statutory arrangement, is indeed a good thing. It certainly has our support.

Lord Rooker: The noble Lord, Lord Elton, need not apologise for speaking on Clause 45 stand part. We are in Committee. I welcome the opportunity.

The noble Lord, Lord Dholakia, has, in a way, made my point. The central change would be to put custody visiting on a statutory basis. Effectively it will become a compulsory matter for police authorities. Not all police authorities—anyone who has listened to the

debate over the past three or four days would think that they are all little guardian angels—are perfect, never make mistakes and are all fully committed. Life is not like that. It would become compulsory for every authority to provide and organise a scheme for independent custody visiting.

There is a contradiction in what the noble Lord, Lord Elton, said about who appoints the custody visitors. Once the police authority appoint these people they will in no way be connected with the police or the criminal justice system. We believe that we can get good voluntary, independent people usefully to serve the system in that way. My own experience is that the system has been welcomed by the police in my former constituency. Importantly, putting the matter on a statutory basis will raise the status of the visitors. There will be a code of practice to provide for consistent standards across England and Wales.

Inappropriate procedures, such as people visiting on their own, would be dealt with in a code of practice. Therefore, we can get some commonality of rules. That is an important aspect. I make no complaints about visits that have been made or the actions of existing visitors. We can deal with situations where some inappropriate procedures have varied between police forces or police authorities. Above all, the statutory basis will raise the profile and competence of people in the system. It will be governed by independent people from the local community.

Lord Elton: I am most grateful to the noble Lord. I wish this move well.

Clause 45 agreed to.

Clauses 46 and 47 agreed to.

Earl Attlee moved Amendment No. 271:

Before Clause 48, insert the following new clause—

"SALIVA TESTS

(1) The Road Traffic Act 1988 (c. 52) is amended as follows.

(2) After section 6 (breath tests) there shall be inserted—

"6A SALIVA TESTS

(1) Where a constable in uniform has reasonable cause to suspect—

- (a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has a drug in his body or has committed a traffic offence whilst the vehicle was in motion;
- (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with drugs in his body and that that person still has a drug in his body; or
- (c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion;

he may, subject to section 9 of this Act, require him to provide a specimen of saliva for a saliva drugs test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a constable may, subject to section 9 of this Act, require any person who he has reasonable cause to believe was driving or attempting to drive or in charge of the vehicle at the time of the accident to provide a specimen of saliva for a saliva drugs test.

(3) A person may be required under subsection (1) or (2) above to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under subsection (2) above, and the constable making the requirement thinks fit, at a police station specified by the constable.

(4) A person who, without reasonable excuse, fails to provide a specimen of saliva when required to do so in pursuance of this section is guilty of an offence.

(5) A constable may arrest a person without warrant if—

- (a) as a result of a saliva test he has reasonable cause to suspect that that person has committed an offence under section 4 of this Act; or
- (b) that person has failed to provide a specimen of saliva for a saliva drugs test when required to do so in pursuance of this section and the constable has reasonable cause to suspect that he has a drug in his body;

but a person shall not be arrested by virtue of this subsection when he is at a hospital as a patient or the drugs have been prescribed by a medical practitioner.

(6) A constable may, for the purpose of requiring a person to provide a specimen of saliva under subsection (2) above in a case where he has reasonable cause to suspect that the accident involved injury to another person or of arresting him in such a case under subsection (5) above, enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

(7) Subsection (6) above does not extend to Scotland, and nothing in that subsection shall affect any rule of law in Scotland concerning the right of a constable to enter any premises for any purpose.

(8) In this section "traffic offence" means an offence under—

- (a) any provision of Part 2 of the Public Passenger Vehicles Act 1981 (c. 14);
- (b) any provision of the Road Traffic Regulation Act 1984 (c. 27);
- (c) any provision of the Road Traffic Offenders Act 1988 (c. 53) except Part 3; or
- (d) any provision of this Act except Part 5."

The noble Earl said: I should think that this morning the Minister was wondering how on earth I had managed to get this issue on every broadsheet newspaper and on the front page of the *Daily Mail*. The truth is that the Minister need not worry. The first that I knew about this development was when I heard it on the news at breakfast time.

I originally drafted and tabled the amendment for our discussions on the Transport Act 2000. If any Member of the Committee is not convinced on that point, he or she should look at the *Journal of your Lordships' House*, where I had to go to get the drafting for my amendment. I did not move it at the time for reasons that might have come from an episode of "Yes Minister".

Society generally now takes a very dim view of drink-driving. There is no sympathy for a convicted motorist. However, many motorists are unaware of the effects of drugs—illegal or prescribed—on their driving ability. Millions of people take drugs, such as anti-depressants, painkillers, antihistamines and cough mixtures, all of which can have a sedative effect. Yet, most of these people probably think that it is totally safe for them to drive.

Many people lack knowledge with regard to the legal position in relation to drug-driving. In law drug-driving is considered as serious an offence as drink-driving. Section 4 of the Road Traffic Act 1988 states:

"A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence".

The law makes no distinction between illegal and prescribed drugs and does not state a limit for drugs levels as it does for alcohol. That is understandable given that there are numerous drugs but only one type of alcohol. I hope that the Minister does not use that argument to justify doing nothing about drug-driving.

According to my briefing from the BMA, the use of illegal drugs by the younger generation is frequent and increasing. Nearly half of 16 to 24 year-olds in England and Wales are reported as having used cannabis at least once. The Committee will be aware that that age-group experiences the highest fatal accident rate. Furthermore, 39 per cent were reported to have taken hallucinogens. There were fewer taking other drugs. According to a separate survey of club-goers in Scotland, 69 per cent had taken cannabis while 85 per cent had at some time driven after taking illegal drugs.

The impact of some prescribed drugs and treatments, such as sedatives, anti-depressants and even eye-drops is relevant also. Although patients are warned of their side effects, for example, drowsiness and impaired vision, research shows that they tend to ignore the advice of doctors, pharmacists and even information leaflets. Having said that, illegal drugs are a much more serious problem because of the uncertainty of the strength of the doses taken and the fact that the drug dealers do not often provide an information leaflet. The Minister and the police should be careful in how they approach the problem of therapeutic drugs.

The wider implications of drug taking are beginning to emerge. Recent research shows an increasing incidence of road traffic accidents involving people who have tested positive for drugs that may have contributed to the cause of the crash. The Transport Research Laboratory carried out tests to detect alcohol and drugs in people involved in fatal collisions between 1985 and 1987, and again between 1996 and 1999. The results showed that over that decade there was a fourfold increase, from 3 to 12 per cent, in people who tested positive for cannabis, with the detection of illegal drugs overall having increased from 3 to 18 per cent. The only qualification is that the tests are not directly comparable.

The known effects of cannabis are impaired co-ordination, visual perception, tracking and vigilance. Impairment is also shown when subjects are tested under simulated driving conditions. Studies report that in the majority of fatal crashes involving people with detected levels of cannabis, the effects are compounded by alcohol. Alcohol alone or in combination with cannabis increases impairment, the accident rate and accident responsibility.

The amendment is based precisely upon Section 6 of the Road Traffic Act 1988, but, in addition to breath tests for alcohol, I suggest saliva tests for drugs. It is important to understand that the existing Section 6 and my amendment do not provide the necessary evidence for a conviction but are an objective test, allowing a police officer to arrest a suspect in order to further investigate a suspected serious offence. At

present, the police breath test for alcohol anyone who has been involved in a road traffic accident. Sometimes it is obvious that the driver is "on something", although he may be able to blow a clean breathalyser bag. Some drugs impair the mind only, adversely affecting judgement and anger control.

The Minister may be tempted to suggest that the necessary equipment has not yet been fully developed. However, if the Minister agrees the principle of my amendment and returns with an even better one, manufacturers will be prepared to expend more effort and money on perfecting that equipment if it does not meet the required standard. In addition, it is significant that the UK is a leader in developing the technology. I beg to move.

4.15 p.m.

Lord Dixon-Smith: I rise to support another noble friend, who has shown remarkable timing in bringing forward the amendment. I hope that the Government will, at the very least, study the amendment. I must admit that I am not quite certain of the technology that is mentioned in the Bill. A saliva test might prove that someone had taken drugs, but I am unsure whether it would necessarily prove that someone had not. It would not therefore be entirely adequate for the purpose my noble friend Lord Attlee intends.

Drugs are a serious problem, particularly in certain sections of the community. The issue should be examined seriously. Even if it is not technically practical to proceed at the moment, a study is merited so that we can act as soon as we are certain that the technology is appropriate. To introduce a new part to the legislation, based on the hope of technology being developed, would not be the right approach. However, the issue is sufficiently grave in society to merit a serious study.

Lord Faulkner of Worcester: I hope that the issue can be examined, but, like the noble Lord, Lord Dixon-Smith, I agree that it should not be included in this Bill. I declare an interest as president of the Royal Society for the Prevention of Accidents. We are concerned at the increased incidence of drugs use in fatal road accidents. The evidence shows increased use of illegal substances, contributing to a greater proportion of deaths. It is therefore important that the Government take seriously the question raised by the noble Earl, Lord Attlee. I do not know whether a saliva test is the best method. Like Lord Dixon-Smith, I am not sufficiently expert. However, the question of the effect of drugs on driving performance is important and should be further examined.

Lord Bradshaw: I too do not know whether a saliva test is effective. Additional to drug use is the question of impairment through illness. In September I had the misfortune to have a slight stroke, from which I recovered fully. However, the first thing the medical practitioner told me was that I was not to drive for at least four weeks. The practitioner has no statutory backing; he simply told me that. We should have regard to the many drivers whose faculties are

probably impaired. I hope that the Minister will respond by saying that the Home Office is behind the idea of education, that a person should not drive with drugs in his body, or while otherwise impaired, and that research is needed to find out which drugs impair people's ability to drive safely.

We are inclined to support the amendment, but, as I said, we cannot say for certain whether the saliva test is practical. However, we shall be most interested to hear the Minister's reply.

Lord Monson: The noble Earl's amendment is an excellent one in principle. I cannot agree with the noble Lord, Lord Faulkner, that this is not the right Bill for it. What better occasion can there be? If we have to wait for primary legislation, then we may have to wait for months or years.

As has been said, aspirin and paracetamol are surely drugs yet they do not adversely affect driving ability. In fact, in so far as they reduce somebody's headache they may improve driving ability. Similarly, illegal drugs such as amphetamines, if taken in small doses, would actually improve somebody's reaction time and would not adversely affect their driving ability. Nevertheless, in principle, Amendment No. 271 is an excellent one and I hope that the Government will give it serious consideration.

Lord Elton: The papers are full of suggestions that the Government are now going to be more tolerant of certain drugs. That means that there will be many more of them inside drivers and it makes me think that this is a very good time to introduce this legislation.

Lord Rooker: In response to a point made by the noble Lord, Lord Bradshaw, it is true that there is a good deal of ignorance as to what people can do in terms of driving. Some people think that, once they have obtained their licence and can drive, they can get on with it. I have experience in the past couple of years of having to go to the Post Office and of seeing a form there—DV100 or something. That form contains a list of medical conditions. Anyone who has suffered from or had treatment for any of those conditions is committing a criminal offence if he continues driving.

I was utterly ignorant of that fact until I saw it in writing. It ought to be more commonly known. It is not just a question of a doctor saying, "I do not think you should drive". In some cases they have to point out, "By the way, it is a criminal offence for you to drive. You need to tell Swansea what has happened and they may want your licence back for a period". So a good deal of ignorance exists in that regard.

We recognise the excellent intentions behind this amendment. The noble Earl rightly identified the need for the police to deal with the problem of drug driving. The Association of Chief Police Officers, the Department of Transport, Local Government and the Regions and the Home Office have been working on the best methods of addressing this issue. This is not a situation where I am saying that everything is okay and we are satisfied. We are on the case.

[LORD ROOKER]

The main objection to this amendment is that simply showing that a driver has drugs in his body is often not sufficient to achieve a conviction for drug driving. To do that it is necessary to show the court that the ability to drive is impaired by the drugs. The presence of a drug, as identified by a saliva test, does not do that.

I am almost reluctant to use this example after what the noble Lord, Lord Elton, said, but I just put it on the record. I am not an expert and therefore must take advice on these matters. The most prevalent drug abused—cannabis, which I am sure the noble Lord is not on at the moment—is traceable in the body for four weeks or more, long after it can cause impairment. So there is a major issue which needs to be addressed in that regard. We agree with the police that, at the present time, the best way of detecting impairment is with the drug recognition techniques and the field impairment testing. The drug recognition techniques allow the officers to assess more easily a driver's impairment by the physical signs—dilated or constricted pupils, facial itching or slurred speech. The field impairment tests are divided attention tests which allow the police to assess a driver's concentration and ability to perform simple tasks, which an unimpaired driver should have no difficulty performing.

I fully accept that these are low-tech tests. But they have been validated in the detection of impairment. At the present time the police can only request a driver to perform a series of impairment tests before deciding whether or not to arrest. We are currently considering giving the police powers to make that a requirement. I cannot say whether that will be at the next stage of this Bill in your Lordships' House. But we are in the early stages of this Bill and I cannot be more precise.

We are also looking at provisions which will allow for the future development of an approved type of roadside drug screening device. So work is continuing in that respect. Amendment No. 271 does not require the device used by the police to carry out the drug test to be prescribed and to be of a type approved by the Secretary of State. That may be a nit-picking point but the noble Earl will understand that it would be necessary to have that on the face of the Bill. The approval process would give an assurance to the courts and the public that the device in question is accurate, robust and reliable.

We are sympathetic to some of the intentions behind the amendment but we cannot accept it. Some practical issues need to be addressed before we can move forward on certain points. I hope I have indicated to the Committee that on those points we are moving forward with the police and the other government departments involved.

Earl Attlee: I am grateful for the Minister's response to this amendment. I was suggesting an objective test for the police officer to be able to decide whether or not he could arrest the motorist and take him to the police station in order to take a blood sample. The blood sample could then be analysed and the police could obtain an expert witness to say whether or not the motorist's driving would be impaired.

The Minister referred to the difficulties with cannabis in that it can stay in the body for quite a long time though the driving of the motorist is not impaired. However, saliva does not easily show cannabis. So if cannabis is detected, it is probably detected from the smoke in the mouth which would indicate that the motorist had recently been taking cannabis. It is a small point. But the other point to remember is that cannabis is not the only problem. I refer to drugs which can affect a motorist's anger control; in other words, his propensity to engage in road rage.

However, I am encouraged by what the Minister said in relation to other approaches to this problem. I hope we can do something before we send the Bill to the other place. If we fail in that, perhaps the other place will see fit to introduce something. However, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 48 agreed to.

Clause 49 [*Specimens taken from persons incapable of consenting*]:

Viscount Bridgeman moved Amendment No. 272:

Page 41, leave out lines 17 and 18 and insert—

"(d) the constable has reasonable grounds to believe that the incapacity of the person is attributable to medical reasons."

The noble Viscount said: In moving Amendment No. 272 I shall speak also to Amendment No. 278. These amendments refer to one of the conditions under which a constable may make a request to a medical practitioner for him to take a specimen of blood from a person incapable of consenting; that is, if it appears to that constable that that person's incapacity is attributable to medical reasons.

We contend that this clause, as presently drafted, is obscure. The constable would seem to be entitled under the new power to commit what would otherwise be an assault on a suspect on the basis of what might be a wholly unjustified belief in incapacity for medical reasons. The new clause requires the officer to have reasonable grounds for the belief that the incapacity is indeed due to medical reasons and not to some other cause. I beg to move.

Lord Rooker: The noble Viscount is commendably brief. But this is a serious issue that has exercised many Members of the other place in recent times, particularly following road traffic accidents where the driver may be unconscious but someone else has been killed. The driver is in no condition to give consent for blood samples to be taken and therefore one would not know what the blood contains.

I accept that the proposed amendments reflect the existing wording of the Road Traffic Act, which refer to the constable making a requirement to give a breath specimen having,

"reasonable cause to believe that for medical reasons a specimen of breath cannot be provided".

The exact wording of this provision was chosen carefully after consultation with the British Medical Association. So the provision with regard to breath

tests refers to the obvious phenomenon such as a mouth injury. On the other hand, to assess a person's general medical state and its effect on his capacity in the circumstances envisaged under this power—he could be delirious—would be more difficult and would require a degree of medical knowledge. A constable would not have that expertise and so could not base his judgment on reasonable grounds. However, it could appear to him that a person's medical condition rendered him incapable of consent—that is to say, unconscious. That is the provision that we have chosen.

For the avoidance of doubt, I would say that the medical condition and safety of an unconscious person would, at all times, be a paramount consideration. I want to make that absolutely clear. However, after tragic road accidents, in which people are killed, there can be problems with getting the necessary information about whether the driver was under the influence.

4.30 p.m.

Viscount Bridgeman: I thank the Minister for that reply, in the light of which I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Viscount Bridgeman moved Amendment No. 273:

Page 41, leave out line 34 and insert—

“(b) to store the same at the place where the person from whom the sample has been taken is being treated.

() The sample shall be kept in a secure storage facility at the place where the person from whom the same has been taken is being treated and no person shall have access to the sample without the consent or the permission of the suspect from whom it was taken.”

The noble Viscount said: In moving this amendment I shall speak also to Amendment No. 279. This is a question of practicalities. The new provisions are radical, because they entitle the police to take intimate samples without the consent of the subject. For that reason, the power should be carefully drawn and limited, as far as is possible without defeating the aim of the provision. It is likely that the subject will be unconscious when the sample is taken. To avoid the risk of any later challenge to the integrity of the sample, we should provide that, if a specimen is taken, it should not be delivered up to the police, after being split or otherwise, but maintained by the hospital authority until the subject is capable of consenting to its use and making arrangements for tests. The subject should know that the sample has been taken.

There is a further consideration. What is the purpose of handing it over to the police, if the police cannot use it until the subject's consent has been sought? I beg to move.

Viscount Simon: My amendment, Amendment No. 276, mirrors almost exactly part of the amendment to which the noble Viscount has spoken. I cannot add to that.

Lord Swinfen: I shall raise one point about the amendment. The sample should be kept not only in

secure storage but in a place where it will not deteriorate or its chemical properties change, for any reason.

Lord Rooker: The amendments rightly seek to prevent tampering with blood samples or analysis of them without the driver's consent, by requiring them to be kept at the hospital where the driver is. We have no evidence that tampering is a problem at present. Tampering by analysing without consent would be pointless, as the results would not be admissible in evidence anyway.

Subsection (4) of the new Section 7A already explicitly ensures that the sample cannot be used without the consent of the driver from whom it was taken. If the sample is to be used in evidence, the driver is party to that. By then, he will not be unconscious—in other words, he will be in a position to give consent. There would be a long evidential chain between the taking of the sample and the presentation of the results, post-analysis; it would not be just a day after the event. If the blood samples are sent to the forensic science laboratory for analysis, every step of that chain can be accounted for, if challenged in court.

It is crucial that the Forensic Science Service runs systems that are fully compatible with the requirements of the court, both for the defence and the prosecution. That is fundamental, so that the courts can rely on what they are told has happened to the samples during their analysis in the forensic science laboratory, including questions about whether they have been moved from room to room and who was responsible for them. All that information is recorded for the safety of the process in court. It would be unnecessarily complicated—and could result in cases being dismissed on a technicality—to require the breaking of that chain, by compelling hospitals to be in charge of the evidence.

The Forensic Science Service has advised against storing drivers' blood samples in hospitals. The practical difficulties for the hospitals would be considerable. I know that they have refrigerators and laboratories, but I assure noble Lords—particularly all the former Home Office Ministers present, who have, no doubt, been to the forensic science laboratories—that hospitals and forensic science laboratories are entirely different operations. We are dealing with a substance that must be locked in. We must be sure that everyone has absolute confidence in the procedure.

The amendments would also change and corrupt the practice of separating the driver's medical care from any possible prosecution. The British Medical Association is absolutely opposed to that. We should think more than once before proceeding down that road. So that we do not repeat ourselves in our discussion of other amendments, I must point out that the specimens taken will be divided into two. One will be made available to the driver and his representatives,

[LORD ROOKER]
if they wish to get a second opinion. It is important to see how that works. I hope that that will satisfy the noble Viscount.

Viscount Bridgeman: The Minister has given a helpful reply and some useful information. In the light of his assurance that the Forensic Science Service is confident of its ability to maintain the integrity of the samples and his assurance that that system has the support of the British Medical Association, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Deputy Chairman of Committees (Lord Murton of Lindisfarne): I call Amendment No. 274. If the amendment is agreed to, I shall be unable to call Amendment No. 275, owing to pre-emption.

Viscount Bridgeman moved Amendment No. 274:
Page 41, leave out line 41.

The noble Lord said: Amendment No. 274 relates to a small point, but we consider that the line is inconsistent with subsection (6) of the same new clause. The offence is committed not by a mere failure to give consent but by a failure to consent "without reasonable excuse". The warning before the request to use should be framed in the same terms. I beg to move.

Lord Rooker: I hope that I can satisfy the noble Viscount. All the amendments in the group relate, essentially, to the same issue.

I accept that it is an innovative clause. I am also sympathetic to the underlying motive for the amendments as regards removing the suspect's absolute right to refuse consent for a blood sample to be used. The amendments would prevent the possibility that suspects would evade more serious charges by refusing to allow their sample to be analysed. However, when the new procedure for testing unconscious drivers for alcohol was devised, it was designed to match as closely as possible the procedure now in place for dealing with conscious drivers. Accepting the amendments would mean that, although conscious drivers could refuse consent, so that there could be no analysis results, such results would be available for unconscious drivers. That would be a difference in treatment. The unconscious driver would, in effect, have fewer rights than a conscious suspect.

Addressing that inconsistency would require a further amendment depriving conscious drivers of their right of refusal. That would be operationally difficult, especially if force had to be used, and would not be supported by the Association of Chief Police Officers. It would also raise serious human rights issues that we have taken care to avoid by the proportionate proposals in the Bill.

I hope that, seen in the round, the set of procedures for taking samples from drivers or other persons—it will not necessarily be only drivers—who are not capable of consenting in the kind of circumstances that

we have discussed ensure that they are fully protected. Their health is a paramount consideration, at all times, when the samples are taken. The health of the unconscious person is absolutely crucial. The be-all and end-all is not taking the sample: it is looking after the medical condition of an unconscious person. That is the number one priority. I want to make that clear. Nevertheless, if the information can be made available, it will solve a lot of distressing problems later on, some of which have already been brought to the attention of noble Lords.

Viscount Bridgeman: I thank the Minister for his reply. We shall read it carefully. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 275 to 277 not moved.]

Clause 49 agreed to.

Clause 50 agreed to.

Clause 51 [*Equivalent provision for offences connected with transport systems*]:

[Amendments Nos. 278 to 281 not moved.]

Clause 51 agreed to.

Clause 52 [*Vehicles used in manner causing alarm, distress or annoyance*]:

Viscount Simon moved Amendment No. 282:

Page 46, line 31, at beginning insert "Subject to subsection (8A) below,"

The noble Viscount said: Before the House was formed into a Committee I advised my noble friend the Minister that I did not intend to move this amendment. That is because those who asked me to table it asked me at 1.30 p.m. not to speak to it. However, I shall speak to Amendment No. 290 standing in my name. Clause 52 addresses the problem of the doctored noise exhaust systems and the entertainment systems, if I may use that word, going "boom, boom boom". In these enlightened times there are those who might well regard emergency vehicles as a source of annoyance, especially those living on main routes to or from a fire station, hospital or police station. Amendment No. 290 seeks to exclude emergency vehicles from the clause. I beg to move.

Lord Bassam of Brighton: Perhaps it would help if I explained the purpose of Clause 52. The clause gives the police the powers they need to tackle the anti-social use of motor vehicles to which the noble Viscount referred. Each decision by the police to exercise those powers will obviously turn on the facts they find when confronted with that situation. We take the view that rather than laying down blanket exemptions on the face of the legislation, we should trust the police to exercise their discretion operationally as to when seizing a vehicle would be appropriate.

As a consequence we do not expect the police to exercise their powers to stop and search in respect of emergency vehicles being used for legitimate purposes or others who may be using their vehicles to deal with

a genuine emergency. We believe that we have the matter right as it is and we do not see any particular need for the amendment, although clearly the noble Viscount has moved it in an attempt to be helpful.

Viscount Simon: I thank my noble friend for his reply. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Viscount Bridgeman moved Amendment No. 283:

Page 46, line 33, leave out "or 34" and insert "4, 5, 34 or 103(1)(b)"

The noble Viscount said: In moving this amendment I shall also speak to Amendment No. 285. As currently drawn, the new provision gives a power to seize in respect of the acts falling within Section 1, to which the noble Lord, Lord Bassam, has referred, whenever they may have been committed after the Act came into force.

One asks why the question is so wide. If the new provision, which will have a real impact only on the owner of a car that is free from hire purchase obligations, has to be included, what is the possible justification for the provision of no time limit for prior acts grounding the right to seize? It has to be limited in some way and we suggest that four weeks is a reasonable period. I beg to move.

Lord Bassam of Brighton: We have some sympathy with these amendments. We concede that they would usefully add to the circumstances in which a police officer would be able to stop and to seize a motor vehicle. But Clause 52 is about strengthening police powers to tackle the problem of motor vehicles, particularly cars and motorbikes, being used in a manner which causes nuisance or distress to others. It is for that reason that we intend to limit the powers to situations where a police officer believes that an offence under Section 3 of the Road Traffic Act is being committed, which is where a vehicle is being driven on a public road without due care and attention or proper consideration for others or where it seems that there is an offence under Section 34 of the Act, which is where the vehicle is being driven illegally off-road—for example, on private land—without the landowner's permission.

The sort of mischief that we are aiming to get at is the use of public roads around housing estates as illegal race tracks or the riding of motorbikes across public parks, village greens or the countryside. That is exactly the kind of mischief with which many of us in public life, particularly in local authorities, have been desperate to deal for a long time. It has given me pain and concern in the past as no doubt it has to the noble Lord, Lord Dixon-Smith, as a representative of the local government world, in the past.

Drink and drugs driving, driving contrary to a disqualification and uninsured driving are altogether more serious matters and go well beyond the nuisance that we are concerned with here. We believe that the police already have the powers that they need to tackle these offences. It is already the case that where a driver

is suspected of being over the drink-drive limit—for example, after failing a roadside breathalyser test—or being suspected of driving while disqualified, then the police will take the necessary steps to ensure that the person does not continue to drive on a public road.

The motor insurers recently established a database, which the Government fully supported. We believe that it will lead to a significant reduction in uninsured driving as the police are now able to query insurance details immediately from the roadside. Police inquiries to the database are currently running at about 22,000 per day. That is a staggering statistic. We believe that Amendments Nos. 283 and 284 confuse these quite separate matters.

I turn to Amendment No. 285. We are not convinced about the wisdom of setting an arbitrary time limit to the application of the police powers provided by subsection (2) of the clause. Subsection (2) allows the police officer to exercise the power to stop and, where appropriate, to seize a vehicle where it is not, at that time, being driven in a manner that subsection (1) is intended to catch. That is because the powers in subsection (1) are what one might describe as being of an immediate nature. The officer must have reasonable grounds for believing that the vehicle is being used in the offending manner.

Inevitably, there will be circumstances where the police officer cannot exercise the powers at the time that the mischief is being done; for example, where the officer is on foot and the vehicle simply roars away from him at high speed. In such circumstances, the officer must be able to exercise the power at a later stage when the person concerned has been apprehended. We believe that that is important in achieving the purpose of the clause and in ensuring that the new powers act as a real and effective deterrent.

What is the purpose of setting a time limit for this? We would of course expect that the powers in subsection (2) should be exercised as soon as possible after the event in question. That is a reasonable assumption to draw. But that may not always be possible. To ensure that we do not add anything here which may subsequently amount to unforeseen or unnecessary barriers to the effective and sensible practical operation of these important new police powers, we consider it right to leave open-ended the question of time limits for the exercise of the powers in subsection (2), rather than to set some arbitrary time limit which would be the effect of this amendment. We want to get at the offence and the time limit could prevent effective police action in achieving that objective. I am sure that the noble Viscount sees the good sense of that argument.

Viscount Bridgeman: I wish that I could agree unconditionally with the noble Lord, Lord Bassam. Noble Lords on all sides of the Committee share his concerns about the nuisance that vehicles can cause. However, we are not convinced about the removal of the time limit. We shall study very carefully the noble Lord's remarks in *Hansard*. In the meantime, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[VISCOUNT BRIDGEMAN]

[Amendments Nos. 284 and 285 not moved.]

Viscount Bridgeman moved Amendment No. 286:

Page 46, line 44, leave out paragraph (b) and insert—

“() power to take possession of the motor vehicle and remove it to a police property centre or car pound;”

The noble Viscount said: This amendment seeks to clarify whether the Government are seeking to acquire too much power in respect of the removal of vehicles. Surely that only needs to be confined to removing the vehicle *pro tem*. On the face of it, the provision seems to suggest that there is something akin to a power to seize and to sell the asset. I presume that that is not the Government's intention. I would welcome the Minister's reassurance. I beg to move.

Lord Borrie: The noble Viscount has not referred to the other amendments with which this is grouped, so, I, too, shall confine my remarks to Amendment No. 286. The noble Viscount has not explained why he wishes to substitute for the word “seize” the phrase “take possession of”; indeed, they may have the same meaning. If the word is altered, then, consequentially, the words in subsection (4) will also need to be changed. The noble Viscount seeks to confine the removal of a vehicle to,

“a police property centre or car pound”.

I suppose that the latter are the most obvious places to take such vehicles, unless they are full. I am not sure whether we can really deal with this amendment on its own when there are others with which it has been grouped.

Lord Hardy of Wath: I wish to refer to the points I made during consideration of the Countryside and Rights of Way Act 2000. Two or three years ago I watched young children being allowed to ride motorcycles—and, sometimes, people old enough to have more sense and doing so in a dangerous manner—on the public highway as well as open country at great risk to themselves and to others as they were not insured.

I took the view then that the law did not provide the authorities with an adequate response to the problem. Several children in Yorkshire have died during the past few years through this activity. It is essential to send out a suitable message, which I believe is in the Bill. I suspect that the noble Viscount's amendment would be seen as weakening the Bill's intention. I am pleased that the Government have put effort into dealing with the problem, and I would not wish to see the effect in any way diminished by such an amendment.

Viscount Bridgeman: I am grateful to the noble Lord, Lord Borrie, for pointing out that I did not speak to Amendments Nos. 287 and 288, which refer to the power to enter private property. We consider that these powers should be drawn as narrowly as possible. The new wording would require the constable to hold an objectively reasonable belief as to the whereabouts of the vehicle before entering private

property to search for it. That is particularly important where the private property may not be that of the vehicle owner. The aim of Amendment No. 288 is simply to avoid an argument as to whether the part of a property where the vehicle is thought to be situated falls within the statutory power.

Lord Borrie: My noble friend Lord Hardy of Wath has made an important point which bears on a controversy in which I have previously been involved with the noble Viscount. When he seeks to insert phrases like “reasonable cause to believe” and “make an objective test”, he is hobbling the police officer involved. It is quite unnecessary. This is not some major interference with civil liberties; it is a very sensible power. If the constable believes that the car is in a particular place, why should he not exercise the power either to “seize” it, according to the Bill, or “take possession” of it, which is the preferred wording of the noble Viscount?

Lord Bassam of Brighton: The noble Viscount, Lord Bridgeman, has been helpful in his description of what he seeks to achieve by way of these amendments. I shall try to be equally helpful in my response, especially on Amendment No. 287. We are not convinced that Amendment No. 286 would add anything to the Bill or that it would provide additional clarification. The amendment would replace “seize” with the words “take possession of”. It may be mere semantics, but we are not convinced that it would make the point of the clause any sharper. We believe that the clause is perfectly fit as it stands and that it adequately describes the new police powers. I welcome the support from my noble friend Lord Hardy of Wath, whose campaigning on these issues is well known. It is a nuisance that we urgently need to tackle, and I am pleased that we are now able to do so.

We believe that it is right for the clause to say no more than that the police should have the power to remove the vehicle in question. How the police arrange for that removal and where the vehicle is taken are, arguably, matters of detail. We shall set out such detail in supporting regulations, which is where the noble Viscount needs to turn his attention.

The regulations will be made under the provisions of Clause 53. They will cover detailed issues, such as the power of a constable to seize vehicles, the method of removing/seizing vehicles, the provision of secure storage arrangements for vehicles, the time periods before which and within which various actions can and must be taken, the identification of the vehicle owner, the manner of serving notice on the owner/keeper of the vehicle, the conditions (including means of identification) for reclaiming the vehicle, the fees to be charged to reclaim the vehicle, and, at some stage—perhaps when it is right and appropriate—the disposal of unclaimed vehicles. We need to look closely at the regulations. I invite the Committee to do likewise.

Amendment No. 287 relates to the police power to enter premises for the purpose of seizing a vehicle that has been misused in a manner that would be caught by Clause 52. It is right that the police officer would need

to have reasonable grounds for believing the motor vehicle to be on the premises in question—the purpose of the amendment—but that is not how the clause is presently drafted. We accept the principle behind the amendment. It must be right that the officer acts, at all times, on a belief that is reasonable.

Parliamentary counsel wishes to draft more precise wording to reflect what I believe the noble Viscount seeks to achieve in his amendment. Therefore, with the assurance that we shall seek to offer a government amendment at a later stage, I hope that the noble Viscount will feel able to withdraw his amendment. I believe that that would be helpful to everyone. We promise to bring forward such an amendment before Report.

Amendment No. 288 would, ostensibly, extend the police powers to enter premises provided by the clause. As presently drafted, the power to enter is related to the premises where the vehicle is known, or believed, to be. The amendment seeks to allow the officer to enter the premises, or, “any part thereof”. The term “premises” includes “any part thereof”. It follows, therefore, that the amendment is unnecessary. Having explained our intentions, I hope that the noble Viscount will realise that we have already covered what he seeks to achieve.

Lord Swinfen: It seems to me that the Minister indicated that it is not the intention that the owner of the vehicle should be permanently deprived of it. However, when the noble Lord uses the word “seize”, it brings to mind Customs and Excise officers seizing goods they believe to be contraband, with no intention of those goods being returned to the person who brought them into the country. I am not a lawyer, but I wonder whether the word “seize” actually means that the goods—in this case, the vehicle—will be permanently removed from the owner. Will the noble Lord reconsider the use of that word in the Bill?

Lord Bassam of Brighton: My noble friend Lord Rooker has provided me with the answer to the noble Lord’s query. It is a question of two different uses of the same word. I am sure that the noble Lord followed my response. I said earlier that there will be circumstances in which the vehicle is returned. Regulations will cover that situation, and a fee may well be charged to reclaim the vehicle. Therefore, we envisage that there will be occasions when the vehicle is returned. After all, as the noble Lord said, it is the rightful property of the owner—the person who is the keeper.

Viscount Bridgeman: I am most grateful to the noble Lord for his most helpful reply. I look forward to studying the amendments that will be brought forward. I am also grateful for his clarification that reference to “premises” does include “any part thereof”. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 287 to 290 not moved.]

Clause 52 agreed to.

5 p.m.

Clause 53 [*Retention etc of vehicles seized under section 52*]:

Viscount Bridgeman moved Amendment No. 291:

Page 47, line 41, at end insert—

“() The powers of disposal of vehicles under this Act shall not apply or arise unless and until the owner of the relevant vehicle has been convicted of a criminal offence in respect of the use of the vehicle which led to the seizure.”

The noble Viscount said: This is a probing amendment. Presumably the new provision has its greatest impact on the person who works, pays taxes and owns a motor car outright. The clause appears to impose a power to forfeit the vehicle without compensation, irrespective of its value and the seriousness of the offence which led to its seizure.

Before such a power can be used, the taxpaying citizen, who is most likely to be affected by it, should at the very least have been convicted of a criminal offence in respect of the use of the vehicle, hence the amendment. Before the Secretary of State can start promulgating regulations to deprive a law-abiding and tax paying citizen of his property, the regulations should establish that the citizen in question has been properly convicted of a criminal offence. I beg to move.

Lord Monson: I strongly support the amendment. Although I warmly support the principle of Clauses 52 and 53, I believe that we must be careful not to go so far as to deprive individuals of their human rights—or what most people would consider to be human rights. After all, we are talking about vehicles whose value may range from a couple of hundred pounds up to £10,000-plus. I venture to suggest that to be deprived of such a possession permanently would be disproportionate in almost all cases. The financial loss involved would be well in excess of any fine that might be levied.

Even to be deprived of the vehicle temporarily could cause considerable financial distress if the period in question were too long. However, the noble Viscount suggests permanent dispossession and I support what he has said.

Lord Bassam of Brighton: I can understand the spirit and intention behind the amendment, which is to save owners from costs incurred by arbitrary seizure or disposal of a vehicle when nothing of a criminal nature is proved against them.

We argue that the amendment is unnecessary. The removal, retention, release and disposal of vehicles will, as I said in a previous debate, be subject to regulation. We will want to ensure that the regulations take full account of the considerations and circumstances to which the noble Viscount has given some thought. There is proper compliance with the human rights legislation, to which the noble Lord, Lord Monson, drew attention, and provision to avoid embroiling the police in unnecessary civil proceedings.

[LORD BASSAM OF BRIGHTON]

We will give the regulations careful thought. We argue that it is inappropriate to constrain them by putting such a provision on the face of the Bill. We intend to protect the wholly innocent owners who were not using a vehicle when it was seized, did not know of or consent to its use and could not have stopped it being used. Clause 53(2) provides that the regulations must waive any charges that such owners might otherwise incur.

I hope that that explanation offers reassurance to Members opposite. The regulations will clarify the circumstances in which the police will be able to dispose of a vehicle which is not claimed by its owner. We will make matters plain when we have published the regulations and no doubt there will be an opportunity to view them. There will be consultation on their detailed content, which will cover some of the concerns that have understandably been raised today.

Viscount Bridgeman: I am grateful to the Minister for the reassurance that the regulations will meet our requirements. In those circumstances, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Viscount Bridgeman moved Amendment No. 292:

Page 47, line 46, leave out "may" and insert "shall"

The noble Viscount said: I rise to speak to Amendments Nos. 292, 294, 295 and 297. Other amendments in the group stand in the name of the noble Viscount, Lord Simon. Amendment No. 297 refers to,

"The burden of proof in any proceedings [lying] on the party who has seized or detained the vehicle, and not on the owner or person with a right to possession of and interest in the same".

That appears to us to be a perfectly reasonable provision. I beg to move.

Viscount Simon: I want to speak to Amendments Nos. 293 and 296 standing in my name. Amendment No. 293 is aimed at those people who have had their vehicle confiscated under an anti-social behaviour order. The amendment is explanatory in that in order for someone to recover their vehicle after it has been confiscated under such an order, it will be necessary for that person to prove that he already has the necessary certificate of insurance for it. In other words, he will not be able to drive away uninsured.

Amendment No. 296, which is almost a continuation of the amendment to which I have just spoken, also concerns vehicles confiscated under anti-social behaviour orders. It seeks to make allowance for a vehicle to be destroyed when it has no value and will never be claimed. It seems incongruous to leave a local council or police pound having to store lots of vehicles for ever when there is no residual value in any of them.

Lord Rooker: The clause as drafted allows the Secretary of State to make regulations in respect of various issues. I realise that the points Members of the Committee have raised are important, but they are

more appropriate for the regulations. We need flexibility in drafting the regulations and expressing the issues. Amendment No. 292 would curb our freedom of action. Clause 52(8) contains an important safeguard in that the new police powers relating to the seizure will be exercisable only after the regulations have come into force.

As regards Amendment No. 297, the removal and storage of the vehicles would impose a cost on the police. The amendment would make it more difficult for them to recover that cost and therefore it would impose an extra burden on the police. It should not be too difficult for a person to prove that he was not involved in the misuse of his vehicle because normally he would not have been present when it was being misused. It would be more difficult for the police to show that he had some involvement if he denied it.

We do not see a need for Amendment No. 296. The regulations will prescribe the circumstances under which the seized vehicle can be disposed of. That would include, for instance, cases in which the seized vehicle was, in the opinion of a competent authority, in such a condition that it ought to be destroyed.

In respect of Amendments Nos. 293 and 294, the regulations will be able to specify what proof of ownership must be produced before the vehicle can be released. We must be careful about that. We need to examine the documentation that will be acceptable as proof of ownership. We ought to be concerned about the principle of releasing a vehicle to someone other than the owner, which could lead to further arguments. We accept that the owner and the registered keeper are not necessarily the same person, but that is a matter of detail which we shall address in the regulations.

Viscount Bridgeman: Will the Minister assure us of the procedure under which the regulations will be put into effect?

Lord Rooker: I was about to say, "As laid down in the clause", but that is not a satisfactory answer. I cannot see whether it is the negative or affirmative procedure. Perhaps I may put it this way: it fully conforms with the recommendations of the Delegated Powers and Regulatory Reform Select Committee of this House because we have accepted all its recommendations.

Viscount Bridgeman: I am grateful to the Minister. I am sure that he will write to us on this point. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 293 to 297 not moved.]

Viscount Bridgeman moved Amendment No. 298:

Page 48, line 34, at end insert—

"() A person whose vehicle has been seized under section 52 may apply to a magistrates' court within the relevant jurisdiction within 28 days for an order that the vehicle be released by the relevant authority.

() Upon such an application, it shall be for the relevant authority to show on the balance of probabilities that the relevant police constable did have reasonable grounds to seize the vehicle.

() Failure to satisfy the court will result in the vehicle being returned immediately to the applicant and the applicant's costs being paid by the relevant authority.

() If a court is satisfied that there were good reasons, it may order that the vehicle be returned but also that the relevant authority's reasonable costs be met for the seizure and storage of the vehicle.

() If a court is satisfied that it is in the public interest that a vehicle remain seized, it may so order but only for a total period of 6 months."

The noble Viscount said: The amendment refers to the powers in Clause 53 in regard to the removal and retention of vehicles which have been seized under Clause 52. As they affect the owner of a vehicle, the proposals are very draconian and we suggest that they should be matters for a tribunal rather than for the Secretary of State. The amendment seeks to design an appellate procedure for those who feel that they have been wronged by a local authority in circumstances where either the Secretary of State or the local authority is unlikely to create such an appellate procedure. This is similar to the provisions in the private security Bill as regards appeals against the grant of private security licences. I beg to move.

Lord Monson: Again, I support the amendment of the noble Viscount, Lord Bridgeman. This is a well thought out and balanced amendment which introduces a much needed element of fairness into the clause. As I said before, I strongly support the principles of Clauses 52 and 53, but certain safeguards, such as this one, need to be incorporated into them.

Lord Borrie: I intervene on this occasion only because we did not have amendments dealing with particular aspects of Clause 52 and therefore we never discussed—we never had occasion to discuss—the warnings that have to be given by a police constable before he may seize vehicles. That warning—and a repetition of the offence—is necessary for the seizure to take place and is preparatory to using, in the words of the noble Viscount, Lord Bridgeman, this "draconian power".

Lord Rooker: It would be quite unfair—indeed, unjust—for the police to retain indefinitely vehicles that they had seized, but we do not consider that the procedures provided for in this detailed amendment, which would enable an aggrieved owner to have access to a court in the event of a dispute with the police, are necessary.

In such circumstances the vehicle owner could make use of existing civil procedures to gain access to the county court. Indeed, the civil courts have already determined similar disputes arising out of the removal, retention and disposal of vehicles seized by the police under their current powers under the Road Traffic Regulation Act 1984. One example is the case of *Service Motor Policies v City Recovery Limited* 1997, which reached the Court of Appeal. So there is already a satisfactory procedure.

If the owner of the vehicle is subject to a criminal charge arising out of the circumstances in which the vehicle was seized, then an application under the Police Property Act may also be open to him. That procedure is often used by those who are subject to criminal charges to recover their property.

Viscount Bridgeman: I am grateful to the noble Lord, Lord Monson, for his support of the amendment. I note what the Minister said—particularly his assurance in regard to the remedies currently available through the courts—and I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 53 agreed to.

5.15 p.m.

Lord Rooker moved Amendment No. 298A:

After Clause 53, insert the following new clause—

"ANTI-SOCIAL BEHAVIOUR ORDERS

(1) Section 1 of the Crime and Disorder Act 1998 (c.37) (anti-social behaviour orders) shall be amended as follows.

(2) For paragraph (b) of subsection (1) (authority to be satisfied that order is necessary to protect persons), there shall be substituted—

"(b) that such an order is necessary to protect relevant persons from further anti-social acts by him."

(3) The words after that paragraph (which specify the authorities who, as relevant authorities, are entitled to apply for anti-social behaviour orders) shall be omitted.

(4) After subsection (1) there shall be inserted—

"(1A) In this section and sections 1B and 1E "relevant authority" means—

- (a) the council for a local government area;
- (b) the chief officer of police of any police force maintained for a police area;
- (c) the chief constable of the British Transport Police Force; or
- (d) any person registered under section 1 of the Housing Act 1996 (c. 52) as a social landlord who provides or manages any houses or hostel in a local government area.

(1B) In this section "relevant persons" means—

- (a) in relation to a relevant authority falling within paragraph (a) of subsection (1A), persons within the local government area of that council;
- (b) in relation to a relevant authority falling within paragraph (b) of that subsection, persons within the police area;
- (c) in relation to a relevant authority falling within paragraph (c) of that subsection—
 - (i) persons who are on or likely to be on policed premises in a local government area; or
 - (ii) persons who are in the vicinity of or likely to be in the vicinity of such premises;

(d) in relation to a relevant authority falling within paragraph (d) of that subsection—

- (i) persons who are residing in or who are otherwise on or likely to be on premises provided or managed by that authority; or
- (ii) persons who are in the vicinity of or likely to be in the vicinity of such premises.”

(5) Subsection (2) (which is superseded by the provision made by section (Consultation requirements) of this Act) shall cease to have effect.

(6) In subsection (3) (which identifies the court to which an application should be made), for the words from “the place” to the end there shall be substituted “the local government area or police area concerned”.

(7) For subsection (6) (nature of prohibitions which may be imposed by order) there shall be substituted—

“(6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting persons (whether relevant persons or persons elsewhere in England and Wales) from further anti-social acts by the defendant.”

(8) In subsection (12) of that section (interpretation)—

(a) after “In this section—” there shall be inserted—

“‘British Transport Police Force’ means the force of constables appointed under section 53 of the British Transport Commission Act 1949 (c. xxix);”;

(b) after the definition of “local government area” there shall be inserted—

“‘policed premises’ has the meaning given by section 53(3) of the British Transport Commission Act 1949.”

(9) Nothing in this section applies in relation to any application made under section 1 of the Crime and Disorder Act 1998 before the coming into force of this section.”

The noble Lord said: In moving Amendment No. 298A, I shall speak also to the proposed new clauses in Amendments Nos. 298B to 298F. These are government amendments on the central issue that I flagged up at Second Reading. I said that we would be bringing forward these amendments, which I hope will meet with the Committee’s approval. I do not want to delay our proceedings, but it is worth putting on the record the reasons why we have brought forward these amendments. I can do so fairly briefly.

The anti-social behaviour orders, known as ASBOs—I try to avoid jargon in this place because if it turns up on the telly people wonder what the hell you are on about, but it takes a long time to say without it—are an important tool in addressing anti-social behaviour. However, ASBO use varies between areas and agencies and, to aid the battle against anti-social behaviour, the Government wish to increase the effectiveness of ASBOs by introducing these six amendments.

The proposed new clauses will amend and add to the provisions of Section 1 of the Crime and Disorder Act 1998. Amendment No. 298A seeks to enable the British Transport Police and registered social landlords to apply directly for anti-social behaviour orders by giving them “relevant authority” status. Each faces particular problems with anti-social behaviour and this proposed new clause will empower them to deal with such problems in an effective and

timely manner. It specifies that the British Transport Police and registered social landlords are able to apply for ASBOs to protect persons who are on their premises or in the vicinity of their premises.

Amendment No. 298A also seeks to extend the area over which an ASBO can be made. It allows for the protection of persons anywhere within England and Wales or a defined area within England and Wales and tackles the problem of an offender simply moving to another area to continue the anti-social behaviour. The applicant will not be required to name or consult each local government area to be covered by the ASBO; paperwork therefore will be kept to a minimum.

Amendment No. 298B seeks to add a new Section 1A to the 1998 Act which enables the Secretary of State to add other non-Home Office police forces to the list of relevant authorities should this be required in the future—for example, the Royal Parks Police—hence avoiding the need for primary legislation.

Amendment No. 298C seeks to add a new Section 1B to the 1998 Act which enables county courts to make anti-social behaviour orders where the person who is to be the subject of the ASBO is party to proceedings that involve anti-social behaviour—for example, in eviction proceedings. Relevant authorities must also be party to those proceedings in order to make the application for the ASBO. If the relevant authority is not party to the proceedings, it may apply to the county court to be joined in the proceedings. Introducing the ASBOs into the county court removes the need for a separate legal process and enables the community to be protected more quickly.

Amendment No. 298D seeks to add a new Section 1C to the 1998 Act which enables a court dealing with criminal proceedings to make an order equivalent to an anti-social behaviour order against a person who has been convicted of a criminal offence in addition to the sentence or conditional discharge. The court must be satisfied that the offender has acted in an anti-social manner that has caused or is likely to cause harassment, alarm and distress, and that the ASBO is necessary to protect persons in England and Wales against further anti-social acts. There is no requirement for a relevant authority to apply for the ASBO on conviction. The court will be able to grant the ASBO by its own motion. This amendment also removes the need for a separate legal process and enables the community to be protected more quickly.

Amendment No. 298E seeks to insert a new Section 1D into the 1998 Act which introduces an interim ASBO that can be made by the courts on application by a relevant authority. It is for a fixed period pending the outcome of a full hearing. The effect of the interim anti-social behaviour order would be similar, as regards the prohibitions it may impose and the sanctions for breach, to a full ASBO. It will provide faster protection to the community and is especially beneficial to witnesses.

Amendment No. 298F seeks to introduce a new Section 1E which amends the consultation requirements for relevant authorities applying for

ASBOs. The clause requires the Home Office police force or local authority to consult before applying for an ASBO. It also requires the British Transport Police and registered social landlords to consult both the Home Office police and the local authorities before making an application for an ASBO. It removes the requirement for relevant authorities to consult authorities in adjoining areas which may be covered by the ASBO.

I hope that that brief summary of the proposed new clauses will enable those who are experienced in this matter to realise that the provisions will give more teeth, and practicality, to the anti-social behaviour order. At meetings of one of my local police consultancy committees, which I attended on a regular basis, great hopes were expressed for the ASBOs. Their difficulty in getting off the ground caused a degree of discontent. At present, almost 500 have been brought into being. The proposed changes are highly practical. They will allow ASBOs to "take off". I beg to move.

Lord Dholakia: I thank the Minister for his explanation. It will obviously take some time to read his answer tomorrow and to interpret precisely what it means, but I am grateful for the information.

I have no problem with amending Section 1 of the Crime and Disorder Act. However, there are two publications relating to the Bill: one containing comment by the Delegated Powers and Regulatory Reform Committee; the other from the Joint Committee on Human Rights. My difficulty is that major amendments to the Crime and Disorder Act have not been through some of the machinery that was established to examine the implications. I wonder at what stage the Minister will take that factor into account. That would be helpful. At this stage, I shall make a note of the point and, if we are not satisfied, we hope that on Report a proposal from the committees will be forthcoming.

Lord Corbett of Castle Vale: I thank my noble friend and welcome the provision in paragraph (d) of the proposed new clause to enable registered social landlords to apply to the courts for anti-social behaviour orders.

My noble friend will probably recall that the housing action trust for Castle Vale—which was a testament to civic neglect over many years—set about trying to rebuild that estate and the lives of the 10,000 people living there. It was a sign of the maturity and confidence of the people there that, when the housing action trust decided that anti-social behaviour orders should be applied for, it received the support of that community. One of the most gratifying events was that, when it turned to the community and asked for people to come forward as witnesses, the necessary number of witnesses appeared. If anyone had thought of acting in that way and giving support to the relevant authorities 10 years earlier, they would have had their windows put in at the very least.

My point is that the Castle Vale housing action trust, among other registered social landlords, found the procedure extremely cumbersome, because it was

not in charge of it. The trust had to persuade the local authority and the local police force to become involved. It was a bureaucratic nonsense to have to go through the local council when it was no longer the landlord of the homes involved.

One of the last tasks I carried out in my previous job at the other end of this building was to write a letter to the Home Office, on the back of this experience, urging the Government to make this among other changes to the way in which anti-social behaviour orders can be dealt with. On behalf of the Castle Vale housing action trust—I should mention that I am chairman designate of a neighbourhood management board which is being established there—and the people living on the Castle Vale estate, I thank the Government for bringing the amendment forward.

We should not be mesmerised by the number of anti-social behaviour orders that have been granted. There is some evidence that magistrates are sometimes reluctant to use them. But there is also evidence that when those accused of anti-social behaviour—I have seen documents running to 30, 40 or 50 incidents, all denied by the young man concerned, as it usually is, and his family—are confronted with that kind of documentation, it can achieve a change in behaviour. That does not happen in every case—and in my experience not in most cases—but in some cases the very threat of an application to the courts for anti-social behaviour orders and the knowledge of what can follow does indeed improve the behaviour. The real threat in the case of the Castle Vale housing action trust was that alongside the applications for ASBOs it applied for possession of the houses concerned. This is serious stuff; but it is serious action that leads public bodies to take such steps. I thank my noble friend again for bringing forward the amendment.

Lord Rooker: I am grateful to my noble friend for his remarks. I know of the incredible efforts carried out by that community over the years. The estate, some 20 or 30 tower blocks, was built on the former Castle Bromwich aerodrome at breakneck speed. It was badly managed by the former managers; namely, Birmingham City Council. The estate was totally reformed. People are queuing up to live in the area now, whereas, in the past, when my own constituents were offered the opportunity to live there, they were horrified. I used to sit there in terror at my surgeries on Friday evenings listening to people saying that they did not want to go to Castle Vale. The exact reverse is now the case. I appreciate what my noble friend has said.

Turning to the matter raised by the noble Lord, Lord Dholakia, at Second Reading I flagged up the point that we should bring these amendments forward. They were not ready for the Bill, and we did not want to delay the Bill. I should point out that they are being introduced in Committee, not on Report; so I shall not take too many complaints that we have not introduced them at the first available opportunity after the Bill was printed.

A further memorandum has been submitted to the Delegated Powers and Regulatory Reform Committee covering Amendment No. 289B. The Joint Committee

[LORD ROOKER]

on Human Rights raised a question on the amendments. Its report is in the form of a long letter to me containing 17 questions, one of which I shall refer to. A reply should be sent to the Joint Committee tomorrow. The Government's view is that the amendments, and also the provisions in the Crime and Disorder Act, are fully compatible with the Human Rights Act.

I have not yet taken advice on the matter or seen the detail of the reply. However, I was astonished to read the final question on Clause 54, relating to the British Transport Police, which is under the heading:

"Removal of truants to designated places".

The question I was asked, in paragraph 16 of the letter, was:

"What would the purpose of the removal of such truants be, and how would it relate to the legitimate grounds for depriving a person of liberty under Article 5(1)?"

I thought: has this committee taken leave of its senses? The only reason the British Transport Police are involved is that someone is on railway property. So how can we be depriving someone of his or her liberty under the Human Rights Act? If that question is what I think it is, it gives the Human Rights Act the exact bad name that we do not want it to have by making preposterous allegations or by raising issues in such a way that the general public would say that members of the committee are not living in the real world.

The British Transport Police are there to look after railway property. That is their role and function. Truants—people on the property—would be removed. That is what the clause is about—removing people. We are not depriving anyone of his or her liberty. Is it depriving someone of his or her human rights if we remove a truant from railway property? That sounds preposterous. I know that I shall get it in the neck from members of the Joint Committee, but that is up to them. I read the report as a reasonable person. I have not discussed it with the civil servants. I read the whole thing from cover to cover. It was, after all, a letter to me.

The members of the Joint Committee from this Chamber have a vested interest in the issue, but I do not know whether they are here at the moment. Looking at the list of members, I think that they are not here, so I shall not invite any comments. We will give a reasoned and substantive answer to all the questions—much more than was contained in my bellicose statements of a few minutes ago. I am sure that the Committee will be satisfied. We are not in the business of breaching human rights legislation. We are in the business of bringing some law and order to areas where we have discovered defects. One of those areas relates to truants on railway property.

The amendments will require some scrutiny because this is the first time that they have been available. It is important that the Committee of this House and the Joint Committee have an opportunity to look at them. We also have Report stage to come if noble Lords wish to tease out further aspects of them. The new clauses are important. I am not in any way suggesting that

they are not. It is because of their importance that I was so mystified by the last but one question of the Joint Committee.

5.30 p.m.

Lord Dholakia: I had no intention of interfering in the Minister's robust answer to the Joint Committee whenever that is likely to be. My main intention was to point out that whenever such amendments are moved in Committee, an important stage is missed out. I simply want to be satisfied. We have no difficulty with the provision that the Minister is asking for.

Lord Rooker: I have moved the first of the amendments. If the Committee approves it, I shall move the others formally.

On Question, amendment agreed to.

Lord Rooker moved Amendments Nos. 298B to 298F:

After Clause 53, insert the following new clause—

"POWER OF SECRETARY OF STATE TO ADD TO RELEVANT AUTHORITIES

(1) After section 1 of the Crime and Disorder Act 1998, there shall be inserted—

"1A POWER OF SECRETARY OF STATE TO ADD TO RELEVANT AUTHORITIES

The Secretary of State may by order provide that the chief officer of a body of constables maintained otherwise than by a police authority is, in such cases and circumstances as may be prescribed by the order, to be a relevant authority for the purposes of section 1 above."

(2) In section 114 of that Act (negative resolution procedure for orders) after "section" there shall be inserted "1A,"."

After Clause 53, insert the following new clause—

"ORDERS IN COUNTY COURT PROCEEDINGS

After section 1A of the Crime and Disorder Act 1998 (which is inserted by section (*Power of Secretary of State to add to relevant authorities*)), there shall be inserted—

"1B ORDERS IN COUNTY COURT PROCEEDINGS

(1) This section applies to any proceedings in a county court ("the principal proceedings").

(2) If a relevant authority—

(a) is a party to the principal proceedings, and

(b) considers that a party to those proceedings is a person in relation to whom it would be reasonable for it to make an application under section 1,

it may make an application in those proceedings for an order under subsection (4).

(3) If a relevant authority—

(a) is not a party to the principal proceedings, and

(b) considers that a party to those proceedings is a person in relation to whom it would be reasonable for it to make an application under section 1,

it may make an application to be joined to those proceedings to enable it to apply for an order under subsection (4) and, if it is so joined, may apply for such an order.

(4) If, on an application for an order under this subsection, it is proved that the conditions mentioned in section 1(1) are fulfilled as respects that other party, the court may make an order which prohibits him from doing anything described in the order.

(5) Subject to subsection (6), the party to the principal proceedings against whom an order under this section has been made and the relevant authority on whose application that order

was made may apply to the county court which made an order under this section for it to be varied or discharged by a further order.

(6) Except with the consent of the relevant authority and the person subject to the order, no order under this section shall be discharged before the end of the period of two years beginning with the date of service of the order.

(7) Subsections (5) to (7) and (10) to (12) of section 1 apply for the purposes of the making and effect of orders made under this section as they apply for the purposes of the making and effect of anti-social behaviour orders.”

After Clause 53, insert the following new clause—

“ORDERS ON CONVICTION IN CRIMINAL PROCEEDINGS

After section 1B of the Crime and Disorder Act 1998 (which is inserted by section (*Orders in county court proceedings*)), there shall be inserted—

“1C ORDERS ON CONVICTION IN CRIMINAL PROCEEDINGS

(1) This section applies where a person (the “offender”) is convicted of a relevant offence.

(2) If the court considers—

(a) that the offender has acted, at any time since the commencement date, in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself, and

(b) that an order under this section is necessary to protect persons in any place in England and Wales from further anti-social acts by him,

it may make an order which prohibits the offender from doing anything described in the order.

(3) The court may make an order under this section whether or not an application has been made for such an order.

(4) An order under this section shall not be made except—

(a) in addition to a sentence imposed in respect of the relevant offence; or

(b) in addition to an order discharging him conditionally.

(5) An order under this section takes effect on the day on which it is made, but the court may provide in any such order that such requirements of the order as it may specify shall, during any period when the offender is detained in legal custody, be suspended until his release from that custody.

(6) An offender subject to an order under this section may apply to the court which made it for it to be varied or discharged.

(7) In the case of an order under this section made by a magistrates’ court, the reference in subsection (6) to the court by which the order was made includes a reference to any magistrates’ court acting for the same petty sessions area as that court.

(8) No application may be made under subsection (6) before the end of the period of two years beginning with the day on which the order takes effect.

(9) Subsections (7), (10) and (11) of section 1 apply for the purposes of the making and effect of orders made by virtue of this section as they apply for the purposes of the making and effect of anti-social behaviour orders.

(10) In this section—

“the commencement date” has the same meaning as in section 1 above;

“the court” in relation to an offender means—

(a) the court by or before which he is convicted of the relevant offence; or

(b) if he is committed to the Crown Court to be dealt with for that offence, the Crown Court; and

“relevant offence” means an offence committed after the coming into force of section (*Orders on conviction in criminal proceedings*) of the Police Reform Act 2002.”

After Clause 53, insert the following new clause—

“INTERIM ORDERS

(1) After section 1C of the Crime and Disorder Act 1998 (which is inserted by section (*Orders on conviction in criminal proceedings*)), there shall be inserted—

“1D INTERIM ORDERS

(1) The applications to which this section applies are—

(a) an application for an anti-social behaviour order; and

(b) an application for an order under section 1B.

(2) If, before determining an application to which this section applies, the court considers that it is just to make an order under this section pending the determination of that application (“the main application”), it may make such an order.

(3) An order under this section is an order which prohibits the defendant from doing anything described in the order.

(4) An order under this section—

(a) shall be for a fixed period;

(b) may be varied, renewed or discharged;

(c) shall, if it has not previously ceased to have effect, cease to have effect on the determination of the main application.

(5) Subsections (6), (8) and (10) to (12) of section 1 apply for the purposes of the making and effect of orders under this section as they apply for the purposes of the making and effect of anti-social behaviour orders.”

(2) In section 4(1) of that Act (appeals), for “order or” there shall be substituted “, an order under section 1D or a”.”

After Clause 53, insert the following new clause—

“CONSULTATION REQUIREMENTS

After section 1D of the Crime and Disorder Act 1998 (which is inserted by section (*Interim orders*)), there shall be inserted—

“1E CONSULTATION REQUIREMENTS

Before making an application for an anti-social behaviour order or for an order under section 1B—

(a) the council for a local government area shall consult every chief officer of police of any police force maintained for a police area within which any part of that local government area lies;

(b) any such chief officer shall consult that council and every other such chief officer; and

(c) any other relevant authority shall consult both that council and every such chief officer.”

Lord Hylton: Before the next stage of the Bill, will the Government consider whether the language of this group could be made briefer?

Lord Rooker: Each amendment is a brand new clause to the Bill. Clauses can be one line or 50 lines long. They are as brief as parliamentary counsel, in his or her wisdom, can make them.

On Question, amendments agreed to.

Clauses 54 and 55 agreed to.

[Amendment No. 299 not moved.]

Clause 28 [*Resignation in the interests of efficiency and effectiveness*]:

[Amendment No. 300 had been withdrawn from the Marshalled List.]

Lord Dixon-Smith moved Amendment No. 300A:

Page 27, line 21, at end insert—

“(c) after subsection (5), there shall be inserted—

“() Before any action is taken under this section the Secretary of State shall take into account any representations by the appropriate police authority or Her Majesty’s Inspectorate of Constabulary.”

The noble Lord said: Part 3 deals with the power of the Secretary of State to require an authority to cause to retire the commissioner or deputy commissioner, in the case of the Metropolitan Police, or the chief constable in a shire constabulary. It is unlikely that such a situation will arise so precipitately that it will be a complete surprise to anybody. Our aim in tabling Amendments Nos. 300A, 301A and 305 is not to delay the proceedings or to prevent the Home Secretary from exercising his power. We simply want him to take into account the views of the authority—which, after all, is the employer of the man in question—before exercising his power.

In normal circumstances, such situations will develop. They may not develop over a long period, but they will develop. One would have thought that reinstating the triangulation of consultation in this small way was worth doing. We are devoted to the proposition that police authorities have a responsible role to play in the management of their forces. It is a co-operative role. The tripartite arrangement depends entirely on co-operation between all its parts if it is to work. We thought the amendments worth tabling because, so far as we could tell, although the persons affected can make representations that have to be considered by the Secretary of State, the authority seems to be no more than a posting box for a requirement for action. We thought that authorities were entitled to have their views listened to. We do not intend to prevent the Secretary of State taking the action if the situation is at that point. We simply want to be sure that all views are properly considered on the way. I beg to move.

Lord Peyton of Yeovil: I agree with my noble friend. I have two very civil amendments in this group, motivated by the same intention. One hopes that the Home Secretary will not reach this point too often, because it is difficult to exaggerate the importance of a chief officer of police and the authority under which they serve.

I hope that the Home Secretary does not get into the habit of ordering people about. That would not generate the trust and mutual respect that are essential in the present very difficult circumstances in which all three parties work.

My amendments are not flippant. Good manners and courtesy can make very awkward situations less uncomfortable and a little easier to handle than under the procedures laid down in Acts of Parliament.

Lord Bradshaw: Amendment No. 304 is also in this group. Clause 30 is one of the most important in the Bill. It goes to the heart of one of the core principles underpinning the constitution of policing in this country, which is the operational independence of the

chief constable. The current proposals would undermine that principle. They require very detailed scrutiny.

The Secretary of State already has the power, under Section 42 of the Police Act 1996, to require a police authority to exercise its powers under Section 11 of that Act to call upon the chief constable to retire in the interests of efficiency and effectiveness. They are long-stop powers, or a safety net, for situations in which it is clear that the police authority is not carrying out its responsibilities properly to deal with the unsatisfactory performance of the chief constable and, as a result, policing in the area not being efficient or effective.

The Government propose to extend those powers in the Bill. Of particular concern is the proposal that the Secretary of State should be able to require the police authority to suspend a chief constable. That change is far more substantive than the noble Lord, Lord Rooker, suggested at Second Reading. The existing powers at the point of resignation are entirely different from the proposed new powers of suspension. By its nature, the point at which the Secretary of State would consider whether to call upon the police authority to require a chief constable to resign or retire would come at the end of the process when all the facts had been scrutinised and the issues understood. Yet the ability to suspend a chief constable potentially kicks in right at the outset of the process. Is it right that a Home Secretary should be able to interfere in the management of people at that early stage without any form of consultation, without having been there on the ground and without necessarily having the full background and the full facts?

The Government have stated their intention that this would only be a power of last resort. But such statements can easily be lost in the mists of time. The potential for a future Home Secretary improperly to exert influence through the new power is significant. In today’s increasingly media-driven age, where people expect instant responses and actions, the stated purpose of the new power could easily be exceeded or even abused.

This is a serious issue. The principle of the operational independence of a chief constable free from political interference has stood the test of time and we erode it at our peril. The amendment I am discussing seeks to protect that principle by requiring the Secretary of State to consult the relevant police authority and have regard to any representations it may make before exercising the powers. I hope that the noble Lord, Lord Rooker, will accept the amendment. It does not seek to wreck the Government’s intention underpinning the clause, but it provides a proper buffer between the Home Secretary of the day and the potential for direct interference and undue influence on the fate of a chief constable. As I say, it does not frustrate the Government’s stated intention. I urge the Minister to think seriously before taking the powers we are discussing.

Lord Condon: I support Amendments Nos. 300A, 301A, 304 and 305. The cumulative effect of Clauses 28

to 32 is probably to make it easier to suspend and remove a chief officer than it is to remove the most inexperienced probationer constable on the grounds of inefficiency or ineffectiveness. That may well be right and in the public interest in the sense that an ineffective and inefficient chief officer can do far more harm than the youngest probationer constable. However, that power to suspend and remove brings with it an obligation at least to adhere to the concepts of natural justice and human rights of the chief officers so affected.

Clauses 28 to 32 seek to update and to some extent extend existing powers. In the recent past those existing powers have been shown to be not effective in taking care of the public interest and the reputation of the service. Therefore, I fully acknowledge the need for reform and the need to extend some of the powers. However, I hope that when the Minister responds to the amendments he will give some assurance that the rights of the chief officers affected will be considered when the regulations under Clause 31 are brought into effect. At the moment an act of faith is required to believe that Clause 31 will bring in procedures to ensure that the rights of the affected chief officers are looked after. The amendments currently under consideration would put on the face of the Bill a requirement to consult police authorities and the inspectorate of constabulary to enable other views to be taken into account.

Clearly, it is in the public interest and that of the service that inefficient and ineffective chief officers should be removed from their positions after due process. My only concern is that at the moment that due process is not clear on the face of the Bill; it will probably be contained in the regulations under Clause 31. As I say, I support the amendments that I have mentioned.

5.45 p.m.

Lord Rooker: I assure the noble Lord, Lord Condon, that it is not intended in any way, shape or form to deny individual citizens their rights. It may be a question of denying their right to the job in question, but, as I say, we have no intention of going down the road of denying individual citizens their rights. If I cannot satisfy the noble Lord with regard to Clause 31 today, I hope that I shall be able to do so by Report stage. This is an important part of the Bill and the noble Lords, Lord Dixon-Smith, Lord Peyton of Yeovil and Lord Bradshaw, were right to comment on it. I do not agree with all the points they made, but it is right that we spend a few moments discussing this crucial part.

Amendments Nos. 300A and 301A would introduce a layer of process serving no purpose. Clause 28 simply adds the option of resignation to that of retirement when the police authority exercises its powers under Sections 9E or 11 of the Police Act 1996. The Secretary of State's role under those sections is that he must consent to the exercise of those powers. The amendments are misplaced in that the Secretary of State's obligations in considering whether or not to consent are in Section 42 as amended by Clause 30. But

assuming the principle behind them is that the Secretary of State should consult the police authority, they are also unnecessary. Action under Sections 9E and 11 is initiated by the police authority which applies to the Secretary of State for consent. By definition, its views are taken into account as the initiating authority.

I understand that Her Majesty's Inspectorate of Constabulary is not in the business of making representations as such. It does, of course, offer advice to Ministers on policing issues, including efficiency and effectiveness. It is almost inconceivable that Ministers would not seek the advice of HMIC before consenting to the exercise of these powers by the police authority, but "representations" by it would not be appropriate. However, that does not mean that it is excluded from the matter.

Amendments Nos. 303B and 303C would remove the power of the Secretary of State to intervene in order to require action and to substitute a request for action by the police authority. The effect of this part of Clause 30(2) is simply to include in the existing intervention powers the route of resignation as inserted by Clause 28.

The existing intervention powers (under Section 42 of the Police Act 1996) are for use as a last resort where other avenues have failed. At that stage, the need for urgent action would be paramount and the power to make a request—as opposed to direct—would not represent an effective course of action.

I freely admit to the noble Lord, Lord Peyton, that I put a sheaf of notes in the Library on the legislation. However, I cannot remember whether they included the clauses we are discussing. I believe that they concerned another part of the Bill. It is not the easiest thing to follow through the process when one is considering dumping sections and subsections in other pieces of legislation that are cross-referenced in our amendments in the Bill, which is amending legislation. I make that absolutely clear.

The existing intervention power already gives the Home Secretary the power to require departure. The only change introduced in Clause 30(2), which runs from line 13 to line 44—it is a substantial subsection—is to allow the departure to be by resignation as well as by retirement. The amendments would change and seriously weaken existing legislative provision rather than the new legislative provision in the Bill. As such, they would not work in the intended way and would in many ways be wrecking amendments.

Amendments Nos. 304 and 305 relate to matters of procedure—that is not to say that they are not important—which should not be set out on the face of the Act but are properly a matter for secondary legislation. Clause 31, to which the noble Lord, Lord Condon, referred, provides a regulation-making power. Where an officer made representations against intervention by the Secretary of State under Section 42, the requirement for an inquiry would be triggered and the views of all parties would be heard, considered and reported to the Secretary of State.

[LORD ROOKER]

I freely admit—I may dig myself into a pit by saying this—that in this context I am very much reliant on the powers of the scrutiny committees in this House. Clause 31 clearly contains the regulation-making power for the removal of senior officers. That provision will become Section 42A of the 1996 Act, which is the main legislation. Clause 31(3) states:

“A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament”.

That involves the negative resolution procedure. However, the point is that there is a procedure for debating the matter. I grant that the affirmative resolution procedure is not involved but the fact that the negative resolution procedure is involved does not mean that the House and the other place cannot debate the matter. There is a well-known procedure for laying a prayer and having a debate. The issue can be brought before the House if the House so chooses.

I end as I began. I say to the noble Lord, Lord Condon, that in no way would the Home Secretary, myself or any other member of the Government operate in such a way as to deny the relevant rights to individuals. I hope that that reassures him. Perhaps I may make a further addition to my earlier comments. The regulations must include the right to know the reasons for the decision, the right to make personal representations to the police authority and, if the Secretary of State initiates removal, an inquiry must be set up by an independent person under Section 42. Those requirements all remain. We should secure the rights of ordinary citizens and ensure that we are not oppressive in relation to an individual. These circumstances clearly involve a traumatic time in a person's life; one has to think about the circumstances in which the powers will be used. They may be a traumatic part of the life of a professional person who is reaching the pinnacle of his or her career. Their rights have to be safeguarded to the extent that we can do so in the regulations. Those matters will be included. I hope that that reassures Members of the Committee that the amendments are not really necessary and that we are certainly minded to take account of the rights of the individuals concerned.

Lord Condon: Before the Minister concludes, I thank him, as ever, for his encouraging and sympathetic response to the points that have been raised. He properly discussed the addition of the word “resign” to the word “retire”. To ensure that Members of the Committee do not miss the significance of that, for a relatively young chief officer, resignation rather than retirement could mean forfeiting all pension rights. Over a period of 20 to 30 years, he or she might possibly have to forfeit a six-figure sum in terms of pension rights. As the Minister said, the proposal would have grave implications for a relatively young chief officer if the powers were used in a crude way, which I am sure will not be the case.

Lord Bradshaw: So far as Amendment No. 304 is concerned, we are not really satisfied. We think that

before the issue of the removal of the chief constable appeared, the matter would have come to the notice of Her Majesty's Inspectorate of Constabulary and the police authority. The process is long and happens very rarely. However, we believe that any attempt to cut out the police authority from the tripartite process will in the end—we have not yet reached the regulations—involve an unnecessary further step along the road. We shall not press Amendment No. 304 but I give notice to the Minister that we feel very strongly about the matter and expect improvements on Report.

Lord Dixon-Smith: I am grateful to my noble friend Lord Peyton of Yeovil for his amendment and in effect for supporting the principle that I advanced. The noble Lord, Lord Bradshaw, argued along similar lines to ourselves. The noble Lord, Lord Condon, pointed out that the proposal will extend existing powers. His point about the effect on pension rights raises a fundamental issue that needs careful consideration.

Lord Rooker: I am grateful to the noble Lord for allowing me to make the situation absolutely clear. The proposal would have an effect on pension rights but there will be no forfeiture of existing pension rights that were owned by the person. The right to future rights may—I stress that word—be affected. That would be the case in relation to any resignation. There will be no loss of existing vested rights.

Lord Condon: In a sense, what the Minister is saying is accurate but it is also slightly misleading—not intentionally, I am sure. For example, a relatively young chief officer of 41 or 42 years of age will not at that point have accrued pension rights that would automatically kick in if he or she were forced to retire at that point. He or she would have to wait until the age of 60 before any pension provision kicked in. The proposal would have a very serious financial impact on his or her life at that point.

Lord Rooker: Sure.

Lord Dixon-Smith: I am grateful to the Minister and the noble Lord, Lord Condon, for those interventions, which confirm that pension considerations are an important factor.

The Minister said that to the extent that the amendment and those grouped with it changed an existing power in the 1996 Act, they were not really appropriate. We were well aware of that; our approach was quite deliberate. I do not duck that matter. I do not think that the 1996 Act was a perfect piece of legislation; it could be improved by introducing this little gentle and slightly more humane aspect that we have proposed. It would involve a slight saving and it would reinstate arrangements that we happen to believe are appropriate.

The Minister's comments make it clear that we shall have to study his response with great care. The Bill is obviously amending previous legislation—it is not original legislation. As the Minister said, it is therefore somewhat difficult always to interpret what the effect

is as one goes back through previous legislation. We may well need to return to this issue. Meanwhile, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 301 had been withdrawn from the Marshalled List.]

[Amendment No. 301A not moved.]

Clause 28 agreed to.

Clause 29 [Suspension of senior officers]:

Lord Dixon-Smith moved Amendment No. 302:

Page 28, line 11, at end insert—

“() The Metropolitan Police Authority will, in exercising its power, formally advise of the likely duration of the period of suspension prior to the retirement or resignation of the Commissioner of Police, and be required to notify the Secretary of State and Her Majesty's Inspectorate of Constabulary accordingly.”

The noble Lord said: Amendment No. 302 and Amendment No. 303, which is grouped with it, seek simply to add a slightly different dimension to a situation in which suspension is called for by requiring the authority to put a time limit on the suspension.

It is an unfortunate fact of life that in a number of cases—not, I hasten to say, in this but in other professions—people are suspended on full pay for interminable periods. One hears of suspensions going on and on in the medical profession. Because a suspension is in place, there seems to be no urgency to resolve the matter. Of course, the person suspended continues to draw his salary and, therefore, he is no worse off. But such a situation is slightly ridiculous, and I do not consider this to be an unreasonable request.

I believe that if a suspension proved to have been arranged for too short a period, an option could be put in place for nominating an extension to it. But the point of the amendment is to ensure that the suspension process is moved forward and that it is subject to pressure to be moved forward due to the fact that it will end if a conclusion is not reached. That may seem to be an insignificant or irrelevant point but we believe that it could be important. It could also be useful in the interests of the efficiency and effectiveness of the service. I beg to move.

Lord Condon: I support Amendments Nos. 302 and 303; moved by the noble Lord, Lord Dixon-Smith, for the reasons which I outlined in debate on the amendments relating to Clause 28. The powers to suspend are proposed new powers. Members of the Committee will be aware that we are not talking about allegations of criminality or even of misconduct; we are talking about allegations of inefficiency and ineffectiveness. I accept that they can be serious, but they are not of the nature of misconduct or criminality.

A suspension could be triggered not on the grounds of a substantive finding of inefficiency or ineffectiveness but simply because it might be in the interests of efficiency and effectiveness and subsequent powers might be used later. Therefore, it is proposed that very strong powers should be used without a substantive finding. I pray in aid the arguments that I

put forward in relation to the previous amendments. I hope that, in responding to the amendment, the Minister will again give an assurance that Clause 31, which concerns regulations, will address this type of concern. Therefore, I support the spirit of the amendments in the name of the noble Lord, Lord Dixon-Smith.

Lord Rooker: I hope that the regulations will make it clear that the period of suspension should not be unreasonable. I believe that, in a way, the noble Lord, Lord Dixon-Smith, made the case for me. He fairly put forward the two sides of the coin in relation to the setting of the duration of the suspension. If the period that had been set were too short, it would not be fair to the officer concerned if, following inquiries, the suspension then had to continue for a much longer period. We have no provision for setting a term for suspension under any existing powers in relation to disciplinary proceedings.

The fact that a suspension had been arranged would probably indicate that the position surrounding it was not clear. It would be clear that the suspension should have been put in place but a great deal of work would be involved; hence the reason for arranging a suspension rather than holding inquiries while the person in question was still working.

But there is also a danger in over-pitching the term of a suspension in order to be on the safe side and ensure that an officer is not disappointed when the period is extended. There have been some outrageous examples in terms of the conduct of public administration in this country. As the noble Lord, Lord Dixon-Smith, said, that is not necessarily the case in relation to the police, but the NHS is a prime example. It is preposterous to think that anyone would say, “You’re suspended and it will last for four years”, but that is how it happens in reality and it is totally and utterly unacceptable. No one would defend that. I certainly do not seek to do so; I make that absolutely clear.

There is no practical way of putting a time limit on the duration of a suspension. That is the difficulty that we face.

Therefore, I hope that something may be included in the regulations—I am not writing it as I am on my feet—setting out that there is a duty to ensure that the inquiries which follow a suspension are carried out as expeditiously as possible and that there are no long delays between the various stages of the process.

We have taken advice on this matter because it forms a serious part of the Bill. It affects few individuals but they are individuals who find themselves in traumatic circumstances. We have consulted the Inspectorate of Constabulary, which does not believe that this is a viable way of proceeding. On the other hand, I fully accept that we must find a way of proceeding which is compatible with the desire

[LORD CONDON]

As the Minister said, this is not a question of seeking to go abroad and recruit actively; it is a question of removing barriers to entry for many candidates who have lived in this country for many years and who would be fine additions to the police service.

Lord Renton: I wonder whether the noble Lord will allow me to put a question to him. I listened with great respect—I always had respect for him, as he knows. Bearing in mind that in some parts of the country the police do not receive the public support they need, does he think that that support will be increased or lessened by the recruitment of foreigners?

Lord Condon: With respect to the noble Lord, Lord Renton, to use the term “foreigners” does not take the debate forward. Many able people living in this country, who have lived in this country for many years, would, with advantage and in the public interest, come into the service via this provision.

Baroness Park of Monmouth: I hesitate to intervene at such a late stage, but I cannot see why, if such a person should be a loyal, suitable person who has lived for many years in this country, he cannot make the choice and become a British citizen. I know the Minister said that in some cases difficulties arise over property rights. But it is such an important job and one where unquestioned loyalty—perceived as loyal by the ordinary man in the street—is so necessary that the simple answer is for them to become British subjects. Otherwise they will not be eligible.

7 p.m.

Lord Rooker: Matters are getting worse. I do not accept the arguments. In answer to the question on consultation I can say that I am not aware there was consultation as such, but the issue was raised in the White Paper *Policing a New Century: A Blueprint for Reform*. In the human resource management section, paragraph 6.16 says:

“The restrictions on foreign nationals serving as police officers will be removed by the Police Bill”.

So it has not just been trumped up from anywhere.

Let me put it this way. All the examples have been one-sided, except for that of the noble Lord, Lord Condon. We are talking about the police authority over citizens. But by and large most people's contact with the police is when the police are helping them. Nobody asks the brain surgeon, “Is your nationality okay? I do not know whether I can trust you”. They trust the fact that the person is qualified to do the job and has the professional qualifications. They probably would not even question their residency application. It is the quality of the people concerned that is important.

When the police are helping the general public, making inquiries after a crime or conducting a crime prevention survey, nobody will ask, “Are you British, because if you are not, I do not want your help?”. That is the implication of what some noble Lords have said;

“negative” would be the polite way to describe what I have heard in the past half-hour. Noble Lords have not been able to give a good reason.

I feel that I have answered the noble Baroness, Lady Park of Monmouth. I cannot give details of individual circumstances, although I could give examples from my constituency experience of people being caught up in problems because they could not have dual nationality. There is one nation in the European Union that does not allow dual nationality, so it is not a third world issue. It can be serious. Many people have put down roots here—perhaps, they have raised a family, done business or been educated and received their qualifications and skills here. They are as dedicated to this country as anybody else, but, because of some quirk, some nations have not got their act together to take account of the fact that people move around the planet in a way in which they never did before, which causes difficulties for individuals. However, that should not be a barrier to those people participating fully in the society in which they have chosen to put down roots, as long as they have as they have the necessary competences, skills and abilities.

The implication of what the noble Baroness, Lady Park of Monmouth, said is that nobody of British nationality has ever been a traitor. That is the implication of her question about whether they were fully up to scratch with their allegiance. Most traitors to this country came from the upper class, and they were all British. We should not enter a diversionary debate, in the belief that everything is black and white.

We heard the noble Lord, Lord Condon, say that he had personal front-line experience of people who would have made a good contribution to the police service in this country being prevented doing so because of a quirk of nationality. That problem may not have been of their creation, but they could not get out of it, perhaps because of their children or whatever; I do not know. It could have been because of the effect on the rights of their family in the other country or other family responsibilities. We simply do not know.

I suspect that the clause will get another run-out on Report. I shall probably be able to deploy more and better arguments for those noble Lords whom I have been unable to satisfy now.

Lord Monson: I accept some of what the Minister says, but does he agree that a brain surgeon cannot stop someone in the street and search them or pull them up in their car on a motorway? The question of authority is at the crux of the matter.

Baroness Park of Monmouth: I should like to say that the issue of treason did not cross my mind. I was merely concerned about the degree of authority that someone might have in such cases, not about treason.

Lord Dixon-Smith: I do not apologise for initiating the discussion, even if the Minister would have preferred us to have bit-by-bit discussions and try to

amend parts of the clause. I could not see how we could do that. We have had a discussion in the round, and that is what was required.

As I said, I suspected that the Government's motives were good: in fact, they are good. However, whether the Minister's response has satisfied everyone is an entirely different matter. Those who said that it was the worst clause in the Bill had a point. Sadly, the clause is open to misinterpretation because of the way in which it is drafted. That may be unfortunate, and I know that it is not the intention that the effect should be malign. However, the way in which the Bill is drafted means that, in the wrong hands, the clause could be misinterpreted.

The Minister has given a good explanation. The contribution from the noble Lord, Lord Condon, was significant. I was also aware of the problems that had occurred from time to time and how they cause difficulty. I am grateful to my noble friends who have contributed.

Clause 60 agreed to.

Clause 61 agreed to.

[Amendment No. 311 not moved.]

Baroness Wilkins moved Amendment No. 311A:

After Clause 61, insert the following new clause—

"DISABILITY DISCRIMINATION"

(1) Section 64 of the Disability Discrimination Act 1995 (c. 50) is amended as follows.

(2) Subsection (5A) is omitted.

(3) After subsection (8), insert—

"(8A) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

(a) by the chief officer of police as respects any act done by him in relation to a constable or that office;

(b) by the police authority as respects any act done by them in relation to a constable or that office.

(8B) There shall be paid out of the police fund—

(a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under this Act, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

(b) any sum required by a chief officer of police for the settlement of any claim made against him under this Act if the settlement is approved by the police authority.

(8C) Any proceedings under this Act which, by virtue of this subsection, would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in this section to the chief officer of police shall be construed accordingly.

(8D) This section applies to a police cadet and appointment as a police cadet as it applies to a constable and the office of constable.

(4) In this section—
"chief officer of police"—

(a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act,

(b) in relation to any other person or appointment, means the office who has the direction and control of the body of constables or cadets in question;

"the Police Act" means, for England and Wales, the Police Act 1996 (c. 16), or, for Scotland, the Police (Scotland) Act 1967 (c. 77);

"police authority"—

(a) in relation to a person appointed or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act,

(b) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

"police cadet" means any person appointed to undergo training with a view to becoming a constable;

"police fund" in relation to a chief officer of police within paragraph (a) of the above definition of that term has the same meaning as in the Police Act, and in any other case means money provided by the police authority;

"specified Act" means the Metropolitan Police Act 1829 (c. 44), the Metropolitan Police Act 1839 (c. 47) or the Police Act."

The noble Baroness said: My noble friend Lord Ashley of Stoke apologises to your Lordships. He is unable to be present because of a long-standing engagement that he could not break.

The amendment would remove irrelevant barriers to joining the police force. It would remove the police from the employer exemptions in the Disability Discrimination Act 1995. In doing so, it mirrors provisions in the Race Relations (Amendment) Act 2000, which brought the police within the remit of anti-discrimination legislation.

The amendment follows the recommendation made by the Disability Rights Task Force in its report *From Exclusion to Inclusion*, published over two years ago. In its response, entitled *Towards Inclusion—Civil Rights for Disabled People*, the Government accepted that recommendation and, following on from the EU directive on equality in employment, which required the UK to remove this and other employment exemptions, the Government have confirmed their intention to do so by October 2004.

We must agree with the Disability Rights Commission that it is a basic question of justice that all employees, wherever they work, should be protected against discrimination. The Disability Discrimination Act enacted by your Lordships in 1995 provides a flexible framework that can recognise the particular requirements of occupations such as the police, containing, as it does, the concept of reasonableness, which has emerged as a supremely workable attribute of the law relating to disability. The duty to make reasonable adjustments need not imply any negative impact on operational effectiveness or safety. The police would not be required to take on anyone who could not do the job.

The amendment might help with recruitment and retention. As the case of a police officer cited in research published by Diabetes UK into the nature and extent of discrimination against people with diabetes shows, discriminating attitudes can impede disabled people from making a contribution to society more than the effect of any impairment. The police officer was removed from driving duties and made

[BARONESS WILKINS]

subject to a blanket bar on transfer to other forces because of his diabetes. In his experience, however, his impairment had given him strength. He said:

"Being a diabetic has changed my life. I think it has made me a better and more responsible person. If I were treated more fairly I could live quite happily with diabetes. I have never felt it restricts me—officialdom has always managed to more than fill that role."

As the Government have accepted the case for the inclusion of the police in the DDA, I urge them to take the opportunity presented by this Bill to legislate on the exemption now, rather than wait until late in 2004.

In paragraph 2.34 of the White Paper *Policing a New Century: A Blueprint for Reform*, the Government argued the need for a diverse workforce representative of all sections of the community. Agreement to the amendment would help to make the Government's aim a reality. The White Paper sets a target of increasing police numbers to 130,000 by spring 2003. If the DDA were extended to cover police officers, the pool of people from which the new officers could be recruited in order to meet that target would be increased.

According to the National Institute for the Blind, currently the Metropolitan Police refuse people simply for being colour blind or for being very short-sighted. Disabled people have been employed for a long time as civilians in the police force and allowing some disabled people to serve as police officers would be consistent with the proposals in the White Paper which suggest a blurring of lines between jobs done by civilians and officers.

The Police Reform Bill is proposing a number of major changes to the police force. Given that situation, surely it would make sense to accept this amendment and extend the Disability Discrimination Act to police officers now so that they will not be subject to continual change. I urge Members of the Committee to accept this amendment and to enact all the changes at once rather than wait for another piecemeal reform in the year 2004. I beg to move.

Lord Dholakia: I am delighted to support this amendment. The noble Lord, Lord Ashley, has a unique record of taking on issues of disability. I am delighted that the noble Baroness, Lady Wilkins, has made out a very sound case about the need to extend the Disability Discrimination Act to cover police officers.

I very much welcome this amendment because it is an important debate in the context of police reform and one on which I hope the Government will reflect very carefully. The Government's decision to bring the police within the remit of anti-discrimination legislation through the Race Relations (Amendment) Act, as pointed out by the noble Baroness, Lady Wilkins, was extremely welcome and positive. It is now quite proper and timely to look very seriously at extending that principle to disability.

Policing must reflect, recognise and respond effectively to the many and varied elements of today's society. It is a credit to this Government that they

recognised this early in their term of office and have put in place targets for recruitment to the police from members of minority ethnic communities. But discrimination on grounds of disability has not yet been given the same amount of attention despite the government's commitment in their response to the Disability Rights Task Force to extend the Disability Discrimination Act to police officers when legislative time allows. Surely, this Police Reform Bill provides the right opportunity for us to act.

It is therefore right that we not only support it, but make provisions which are appropriate. I believe that we must also proceed carefully. The noble Baroness, Lady Wilkins, has rightly pointed out some of the difficulties that may exist. Clearly, many aspects of policing can be physically demanding. This House must also bear in mind the wider requirements of the criminal justice system. The police are under mounting pressure to ensure all cases are watertight and capable of withstanding intense scrutiny from defence barristers looking for the slightest issue on which to cast doubt on the credibility of the overall case. What impact might there be on a case if the credibility of the evidence of a police constable was brought into doubt owing to concerns, for example, about eyesight?

I do not have the answer to this particular question, but my point in raising it is simple. The police service operates to some very high standards which are required by the criminal justice system. We cannot ignore them. They are a reality and they place demands on those people who hold the office of constable. Minimum standards are absolutely necessary. Yet the police service must also be an inclusive service if it is to retain the confidence of all sections of society. The police service is doing itself no favours if it fails to take advantage of the wealth of skills and experience which people with disabilities have and which can be of great advantage to the service.

In conclusion, I hope that the noble Lord, Lord Rooker, will give this amendment very careful consideration. I believe there is a balance between the needs and demands of policing and the equally pressing need to avoid discrimination. We must think very carefully about the detail of the issue to ensure that we strike the right balance. If the noble Lord believes that the Home Office needs more time to consider the issue before coming back with government amendments at Report stage to put into effect the spirit of this amendment, then let it be so. But I very much hope that he will signal a clear commitment tonight that the Government will act on this important issue.

7.15 p.m.

Lord Bassam of Brighton: I thank the noble Baroness, Lady Wilkins, and, in his absence, the noble Lord, Lord Ashley of Stoke, for the great ingenuity that they have exercised in finding a vehicle to bring forward this very worthwhile proposition and to seek to end various employment exemptions from the Disability Discrimination Act. By tabling this amendment to the Police Reform Bill they are replicating Clause 4 of the Bill of the noble Lord, Lord

Ashley, which seeks to amend the Disability Discrimination Act in much wider areas. That was debated in Committee on 6th March.

My noble friend Lady Hollis of Heigham made clear when speaking for the Government at both Second Reading of the noble Lord's Bill on 23rd January and in Committee last week, that they are not yet ready to amend the Disability Discrimination Act. As she pointed out quite properly, we are still developing, through a thorough and widespread consultation, our overall legislative strategy for improving the Act. In that respect the noble Lord's Bill and this amendment before us today are a little premature as the noble Baroness said. We set ourselves a target deadline of October 2004 and it is the Government's intention to stick to it.

We have made it clear that we will be implementing a comprehensive employment and vocational training protection scheme for disabled people, represented currently in the employment directive brought forward under Article 13 of the EC Treaty, when we bring forward proposals in 2004. That would cover most of the important proposals made in our response to the Disability Rights Task Force document *Towards Inclusion*, including most of those items which would be brought about by this amendment with the exception, which I believe is widely understood, of the Armed Forces. There it is the government's intention to retain the current exemption in the Disability Discrimination Act.

I recognise that my response sounds a little bureaucratic, negative and something of a killjoy. But the Government's case is that we need to have a comprehensive approach and to address matters of detail in that approach. It has been rightly pointed out that we seek to reflect broadly the diversity of our population in the workforce of the police service, which is right. I am grateful to noble Lords who have supported that objective. I believe that we have made great strides in that direction. The noble Lord, Lord Dholakia, was kind enough to pay tribute to the Government for their record on race legislation and, more importantly, on action. I believe that we are all proud to have been associated with it.

However, in this instance, although we recognise the value of this amendment and that it would bring forward matters that we intend to deal with later, it is right that our strategy should be comprehensive and that the issues raised in this amendment are picked up in a broader and more thorough way than it allows. I have not studied its detail, but there may well be matters which are lacking. I do not know. There are broader considerations at work. We welcome the debate and the fact that we have had the opportunity to put on record again our commitment. We look forward to bringing forward a comprehensive package in due course.

With those words of encouragement, which is what they are intended to be, I hope that the noble Baroness will be able to withdraw the amendment.

Baroness Wilkins: I am grateful to the noble Lord, Lord Dholakia, for his support for the amendment

and to the Minister for his thoughtful reply. I am sure that my noble friend Lord Ashley of Stoke will study it most carefully. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clauses 62 to 65 agreed to.

Lord Rooker moved Amendment No. 312:

After Clause 65, insert the following new clause—

“REGULATIONS FOR NCIS

(1) After section 34 of the 1997 Act there shall be inserted—

“34A REGULATIONS FOR NCIS

(1) Subject to the provisions of this section, the Secretary of State may make regulations as to the government and administration of NCIS and conditions of service with NCIS.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision with respect to—

- (a) the ranks to be held by police members of NCIS;
- (b) the promotion of police members of NCIS;
- (c) voluntary retirement of police members of NCIS;
- (d) the efficiency and effectiveness of police members of NCIS;
- (e) the suspension of police members of NCIS from membership of NCIS and from their office as constable;
- (f) the maintenance of personal records of members of NCIS;
- (g) the duties which are or are not to be performed by police members of NCIS;
- (h) the treatment as occasions of police duty of attendance at meetings of the Police Federations and of any body recognised by the Secretary of State for the purposes of section 64 of the Police Act 1996 (c. 16);
- (i) the hours of duty, leave, pay and allowances of police members of NCIS; and
- (j) the issue, use and return of—

(i) personal equipment and accoutrements;
and

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(ii)

police clothing.

(3) Regulations under this section for regulating pay and allowances may be made with retrospective effect to any date specified in the regulations, but nothing in this subsection shall be construed as authorising pay or allowances payable to any person to be reduced retrospectively.

(4) Regulations under this section as to conditions of service shall secure that appointments for fixed terms are not made except where the person appointed holds the rank of superintendent or a higher rank.

(5) Regulations under this section may make different provision for different cases and circumstances.

(6) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Before making any regulations under this section, the Secretary of State shall consult the Scottish Ministers.”

(2) In section 37 of the 1997 Act (discipline regulations for NCIS), after subsection (2) there shall be inserted—

“(2A) Without prejudice to the generality of the other powers conferred by this section, regulations under this section may make provision—

- (a) for conferring a right to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings on the Independent Police Complaints Commission;
- (b) for conferring a right to participate in, or to be present at, disciplinary proceedings on such persons as may be specified or described in the regulations;
- (c) as to the representation of persons subject to disciplinary proceedings; and
- (d) for section 34 of the Criminal Justice and Public Order Act 1994 (c. 33) (inferences to be drawn from a failure to mention a fact when questioned or charged) to apply, with such modifications and in such cases as may be provided for in the regulations, to disciplinary proceedings.

(2B) In subsection (2A) ‘disciplinary proceedings’ means any proceedings under any regulations made under subsection (1) which—

- (a) are conducted in England and Wales; and
- (b) are identified as disciplinary proceedings by those regulations.”

(3) In section 38 of the 1997 Act (appeals against decisions in disciplinary proceedings), in subsection (1), for the words “or required to resign”, in both places where they occur, there shall be substituted “, required to resign or reduced in rank”.

[Amendment No. 312A, as an amendment to Amendment No. 312, not moved.]

On Question, Amendment No. 312 agreed to.

Lord Rooker moved Amendment No. 313:

After Clause 65, insert the following new clause—

“REGULATIONS FOR NCS

(1) After section 79 of the 1997 Act there shall be inserted—

“79A REGULATIONS FOR NCS

(1) Subject to the provisions of this section, the Secretary of State may make regulations as to the government and administration of the National Crime Squad and conditions of service with that Squad.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision with respect to—

- (a) the ranks to be held by police members of the National Crime Squad;
- (b) the promotion of police members of the Squad;
- (c) voluntary retirement of police members of the Squad;
- (d) the efficiency and effectiveness of police members of the Squad;
- (e) the suspension of police members of the Squad from membership of it and from their office as constables;
- (f) the maintenance of personal records of members of the Squad;
- (g) the duties which are or are not to be performed by police members of the Squad;
- (h) the treatment as occasions of police duty of attendance at meetings of the Police Federations and of any body recognised by the Secretary of State for the purposes of section 64 of the Police Act 1996 (c. 16);
- (i) the hours of duty, leave, pay and allowances of police members of the Squad; and

(j) the issue, use and return of—

- (i) personal equipment and accoutrements; and
- (ii) police clothing.

(3) Regulations under this section for regulating pay and allowances may be made with retrospective effect to any date specified in the regulations, but nothing in this subsection shall be construed as authorising pay or allowances payable to any person to be reduced retrospectively.

(4) Regulations under this section as to conditions of service shall secure that appointments for fixed terms are not made except where the person appointed holds the rank of superintendent or a higher rank.

(5) Regulations under this section may make different provision for different cases and circumstances.

(6) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In section 81 of the 1997 Act (discipline regulations for NCS), after subsection (2) there shall be inserted—

“(2A) Without prejudice to the generality of the other powers conferred by this section, regulations under this section may make provision—

- (a) for conferring a right to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings on the Independent Police Complaints Commission;
- (b) for conferring a right to participate in, or to be present at, disciplinary proceedings on such persons as may be specified or described in the regulations;
- (c) as to the representation of persons subject to any disciplinary proceedings; and
- (d) for section 34 of the Criminal Justice and Public Order Act 1994 (c. 33) (inferences to be drawn from a failure to mention a fact when questioned or charged) to apply, with such modifications and in such cases as may be provided for in the regulations, to disciplinary proceedings.

(2B) In subsection (2A) ‘disciplinary proceedings’ means any proceedings under any regulations made under subsection (1) which are identified as disciplinary proceedings by those regulations.”

(3) In section 82 of the 1997 Act (appeals against decisions in disciplinary proceedings), in subsection (1), for the words “or required to resign”, in both places where they occur, there shall be substituted “, required to resign or reduced in rank”.

On Question, amendment agreed to.

Lord Rooker moved Amendment No. 314:

After Clause 65, insert the following new clause—

“SUPPLEMENTARY PROVISIONS ABOUT POLICE MEMBERSHIP OF NCIS

(1) The reference in section 59(8)(a) of the 1996 Act to persons falling within section 9(2)(a) of the 1997 Act shall include a reference to persons appointed as police members of the National Criminal Intelligence Service (“NCIS”) after the date on which section 64 comes into force.

(2) The persons whose interests are to be represented by the membership of the Police Negotiating Board shall include persons appointed as police members of NCIS after the date on which section 64 comes into force.

(3) In section 62(1) of the 1996 Act (duty to consult Police Negotiating Board before making certain regulations), after paragraph (a) there shall be inserted—

“(aa) section 34A of the Police Act 1997;”.

(4) The function of the Police Advisory Board for England and Wales of advising on general questions affecting members of NCIS within section 9(1)(b) of the 1997 Act shall include the function of advising on such general questions as respects persons appointed as police members of NCIS after the date on which section 64 comes into force.

(5) In section 63(3) of the 1996 Act (duty to consult Police Advisory Board before making certain regulations), in paragraph (c), after "section" there shall be inserted "34A,".

(6) In section 9A of the 1997 Act (retirement in interests of efficiency or effectiveness), for "member of NCIS" there shall be substituted "police member of NCIS with the rank of assistant chief constable".

On Question, amendment agreed to.

Lord Rooker moved Amendment No. 315:

After Clause 65, insert the following new clause—

"SUPPLEMENTARY PROVISIONS ABOUT POLICE MEMBERSHIP OF NCS

(1) The reference in section 59(8)(b) of the 1996 Act to persons falling within section 55(2)(a) of the 1997 Act shall include a reference to persons appointed as police members of the National Crime Squad ("the Squad") after the date on which section 65 comes into force.

(2) The persons whose interests are to be represented by the membership of the Police Negotiating Board shall include persons appointed as police members of the Squad after the date on which section 65 comes into force.

(3) In section 62(1) of the 1996 Act (duty to consult Police Negotiating Board before making certain regulations), after paragraph (a) there shall be inserted—

"(ab) section 79A of the Police Act 1997;".

(4) The function of the Police Advisory Board for England and Wales of advising on general questions affecting members of the Squad within section 55(1)(b) of the 1997 Act shall include the function of advising on such general questions as respects persons appointed as police members of the Squad after the date on which section 65 comes into force.

(5) In section 63(3) of the 1996 Act (duty to consult Police Advisory Board before making certain regulations), in paragraph (c), after "39," there shall be inserted "79A,".

(6) In section 55A of the 1997 Act (retirement in interests of efficiency or effectiveness), for "member of the National Crime Squad" there shall be substituted "police member of the National Crime Squad with the rank of assistant chief constable".

On Question, amendment agreed to.

Clause 66 [*Police authorities to produce three year strategy plans*]:

Lord Dixon-Smith moved Amendment No. 316:

Page 59, line 11, leave out "secure that the plan is and remains consistent with" and insert "have regard in preparing that plan to"

The noble Lord said: In moving this amendment, I shall speak also to Amendments Nos. 324, 325 and 326. We have already covered this ground during proceedings on the Bill, so I shall not detain the Committee for more than a few moments. Although we welcome the general proposals on three-year police plans, and so on, we believe that it is improper to have quite the amount of detailed control over the content of the plan that the present drafting of the Bill gives the Secretary of State.

The amendments are part of a whole series that we have presented during the course of the Bill's progress. They are designed to relieve that pressure, and to allow

a little more flexibility in local plans. As I said, we have already covered this ground sufficiently and, therefore, I need say no more. I beg to move.

Lord Bradshaw: I should like to speak to Amendment No. 327, which is included in this grouping. We fully support the statutory provision for three-year policing plans produced by the police authority. Indeed, that is what is happening in the places where good practice is found in the country. However, we have some difficulty with aspects of three-year plans with which we shall deal later. We should have preferred the tried-and-tested formulation in the Police Act 1996 because it recognises the respective roles and responsibilities of the tripartite relationship, which is about partners who work to the same time-scale together rather than working in some sort of management line, one to the other. We support the amendment. If it is not accepted at this stage, we shall return to the matter on Report.

Lord Rooker: The national policing plan is seen as a key part of the process of achieving a high standard of policing throughout England and Wales. The preparation of the three-year policing plans that are required to be consistent with the national policing plan will help to ensure that all police forces are working to this common goal. We need to ensure that different levels of the plan are consistent with each other. Hence it is appropriate that the Bill requires the three-year strategy plans to be consistent with the national policing plan, rather than simply asking those who are writing the plans to "have regard to" the national policing plan. We do not accept that this requirement undermines the tripartite relationship or the role of police authorities. Indeed, we believe that it raises their profile and supports their role in ensuring consistent and coherent planning.

Amendment No. 327 would delete the requirement for annual best value performance plans to be consistent with the three-year plans. It seems entirely logical to us that, just as the national policing plan informs the three-year strategy plans, so three-year strategy plans inform the best value performance plans. Hence the clause requires local policing plans to be consistent with the three-year plans; and that the police authority's annual report assesses the extent to which the strategy plan has been implemented.

The central bone of contention here is that many noble Lords believe that we are hell-bent on undermining the tripartite relationship. We are not. I shall keep saying that until I am blue in the face.

Lord Dixon-Smith: The Minister will keep saying it until he is blue in the face, and we shall continue to make our point. However, we are dealing with what appears on the face of the Bill—the content of the legislation, which makes these things possible. That is the matter of concern that we have been pressing throughout these debates. I suspect that we shall never be able to agree with the Minister on this issue. We entirely accept the Minister's good faith and his good intentions, but we have to deal with the words that

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appear on the paper in front of us. Those words would permit rather more than I am sure the Minister intends to implement himself. We have some concern for the future. I have heard the explanation. This is a well cultivated field now, and further cultivation this evening will not improve it. For now, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Bradshaw moved Amendment No. 317:

Page 59, line 15, leave out from "In" to end of line and insert "considering the draft plan, the police authority"

The noble Lord said: This amendment extends the debate that has just taken place. I shall not, therefore, be very long in my introduction. We seek to emphasise that the police plan—the three-year plan—is a joint effort between the police authority and the chief officer. We believe that that Government are placing too much emphasis in the Bill on the chief officer. In our view, the plan is the authority's plan. We do not want the roles of the chief officer and the police authority blurred. Like the Minister, we want consultation with local communities. Indeed, it is one of the statutory duties of police authorities. But, at present, the Bill confuses the role of the police authority and that of the chief officer.

We shall continue to say—the Minister is aware of this—that we want the provision straightened out by the time we reach the Report stage, so that it is quite clear to any simple, not complicated, person reading the Bill that it is a tripartite relationship, and that certain duties are laid down for the police authority. That must be clearly stated in the legislation. I beg to move.

Lord Harris of Haringey: I support the amendment.

If we believe, as I am sure is the case with my noble friend the Minister, that the three-year plan is an important document, and if it is setting an overall direction for the police service in the area, it should be owned by the police authority. If it is such an important document, clearly there should be local consultation that is the responsibility of the police authority. For that reason, I believe that the amendment proposed by the noble Lord, Lord Bradshaw, is eminently sensible. When my noble friend the Minister considers it in the cold light of day, I am sure that he will realise how much it supports the objectives that he is seeking to fulfil.

Lord Rooker: The Government are determined to support police authorities—full stop. I stress that point. The noble Lord, Lord Bradshaw, cannot have it all his own way. A tripartite arrangement means that there has to be something for the other two parties to do. You cannot have a monopoly. All I ever hear from the noble Lord, Lord Bradshaw, is that the tripartite relationship seems to consist of only one part.

We support the police authorities and the chief police officers in their planning to achieve a consistently high standard. We need to have confidence that the local plans are based on

appropriate and timely consultation with local communities. Section 96 of the Police Act 1996 requires the police authority to make arrangements for consultation. Once those arrangements are in place it is equally appropriate for the chief police officer to make use of them, as it is for the police authority.

I am looking for a shaking of the head from the noble Lord, rather than a nodding of the head. However, I am seeing only neutrality. It seems to me that this argument is too one-sided. We believe that chief police officers should be able to make use of those consultations, and that they should do so when preparing the draft three-year plan. It is not enough to expect the police authorities to have regard to these local views when they consider the draft plan submitted to them. By then, it is too late. It is far better for the chief officer to have taken note of local views when drafting the three-year plan. What on earth is wrong with that? It is the Government genuinely supporting police authorities and the chief police officers.

Lord Bradshaw: I hear what the Minister says. I have taken part in many consultation meetings involving the public. They are generally led by the police authority, and a fairly senior policeman is usually in attendance at such meetings. However, it is usually the responsibility of the police authority to produce the plans. It is its plan. If I seem to be somewhat obdurate, I apologise, but I am sticking very firmly to any measures which undermine the place of police authorities and thereby the local communities and elected representatives who form a majority of the authorities. Therefore, I hope that for once I have the Minister's sympathy for sticking up for elected representatives.

I am implacably imposed to direct instructions from the Secretary of State to the chief officer of police which in any way bypass the police authority. Having said that, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Bassam of Brighton: I beg to move that the House be resumed. In moving the Motion, I suggest that the Committee stage begin again not before 8.31 p.m.

Moved accordingly, and, on Question, Motion agreed to.

House resumed.

Hepatitis C

7.31 p.m.

Lord Morris of Manchester rose to ask Her Majesty's Government what new help they are considering for people with haemophilia who were infected with hepatitis C by contaminated National Health Service blood products and for the dependants of those who have since died.

The noble Lord said: My Lords, the purpose of this debate—I speak as president of the Haemophilia Society—is to focus parliamentary and public attention on the now burning sense of injustice felt by a small and stricken community.

Ninety-five per cent of people with haemophilia treated before 1985—some 4,800 people—were infected with hepatitis C—HCV—by unclean NHS blood products. One in four of them was also infected with HIV. Over 800 have now died of AIDS-related illnesses from HIV infection and 212 have died from liver disease linked to HCV.

Yet, already twice stricken, the haemophilia community has now been dealt a cruel further blow. They are told by the Department of Health that blood products on which many rely crucially for their survival came from plasma donated by people who have since died of vCJD.

That briefly is the factual basis of what doctors of the highest distinction—including my noble friend Lord Winston, who is vice president of the Haemophilia Society—have described as the worst treatment disaster in the history of the National Health Service.

Its magnitude explains why the Haemophilia Society has felt moved to protest today about the absence from this debate of my noble friend Lord Hunt of Kings Heath as the departmental Minister appointed to speak in this House for the Department of Health. That my noble friend Lord Filkin is on duty this evening is most welcome to me personally. But I would be remiss not to emphasise how dismayed the haemophilia community are, not least those who are now terminally ill—and the dependants of those who have died—that this is the third debate on the disaster in your Lordships' House when its only health Minister has not been present to participate. They are dismayed too about the blatant discrimination they continue to suffer and the delays, week after week after week, in answering parliamentary questions about the hardship it imposes.

HIV-infected people rightly won financial recompense from the Macfarlane Trust set up by the then government in 1987 as an,

“official acceptance of moral responsibility”.

Fifteen years on those infected with HCV at the same time—and by the same route—still await parity of treatment. There is exactly the same moral responsibility for loss and hardship in both cases.

Like HIV infection, HCV can involve heavy financial loss. A survey conducted by the Haemophilia Society, published today, spells out in graphic terms the severity of that loss and the urgency of the need for a positive ministerial response to the practical measures the society proposes on behalf of the 11,000 haemophilia patient community and their families.

Nearly half of those infected with HCV have had to give up work or cut their working week on health grounds; 40 per cent are unable to obtain life insurance; 14 per cent find it impossible to secure mortgages; and 73 per cent can show that their families, as well as they themselves, are adversely

affected financially, practically and emotionally by the grossly stigmatising effects of the infection. The survey's findings make ludicrous the argument that there is no stigma in having HCV.

Nor is it tenable for the Department of Health to go on arguing that financial recompense is only ever paid when negligence can be proved. As Karin Pappenheim has pointed out for the Haemophilia Society, if that argument had held in 1987 there would have been no financial recompense for HIV infection; nor, going further back, would the vaccine damage payments scheme ever have been enacted.

Equally flawed was the department's response to the Haemophilia Society's call for a public inquiry into the infection *en masse* of the haemophilia community. Its response was to say that there had already been an inquiry. But it was an in-house inquiry by the department itself—held in secret—which responsible journalists describe as,

“a whitewash perpetrated behind closed doors”.

The “inquiry” reported in 1998, again peddling the fallacy that HCV, unlike HIV, does not involve social stigma, and simplifying the last government's reasons for compensating only HIV infection to the point of crude inaccuracy.

The truth about the in-house inquiry is now exposed in a letter on the disaster sent to me by the noble Lord, Lord Owen. A health Minister at the time when many of the infections occurred, the noble Lord discloses that moneys allocated—and announced to Parliament—for making NHS blood products safer by ceasing to import blood from high-risk donors abroad were not used for their agreed purpose. Self-sufficiency was not achieved as planned but this was not reported to Parliament, although failure to achieve it meant continued reliance on less safe imports. One is entitled to ask how many people with haemophilia could have been saved from life-threatening viral infection had the policy announced in Parliament been duly implemented.

In a letter sent to me on 12th November last, the noble Lord, Lord Hunt, admitted that failure to inform Parliament of this important change of policy in regard to self-sufficiency was never considered by his department's in-house inquiry. Surely that admission alone justifies the call for an independent further inquiry. In the same letter the Minister stated:

“The department's officials are looking into points raised by Lord Owen, and I will write to you again when examination of all the relevant documents has been completed”.

Four months on, I am still awaiting his further letter.

All of this deepens the disquiet felt by the haemophilia community about the grossly unjust treatment of those infected with HCV, as does the Government's reaction to Mr Justice Burton's landmark High Court ruling against the National Blood Authority last March. His core finding in awarding significant compensation was that suppliers of blood to NHS patients have a legal duty to supply clean blood. Yet 4,800 haemophilia patients were contaminated by unclean blood and, while the judgment applies directly only to offences after the

[LORD MORRIS OF MANCHESTER]

Consumer Protection Act came into effect in March 1988, its unmistakable logic is that it is right in principle to compensate NHS patients infected by unclean blood.

For that logic not to be applied now to people with haemophilia infected by unclean NHS blood is wrong in principle, cruelly discriminatory and morally perverse. The issue is ultimately one of moral right; and in none of the parliamentary campaigns in which I have been involved in 38 years in Parliament—even thalidomide and those for statutory recognition of dyslexia and autism—have I felt so strongly that campaigning ought not to have been necessary.

Nor should it be necessary any longer to campaign for people with the same disability to have the safest available medical treatment whether they live in Scotland and Wales or in England. As of now, postcode, not clinical need, determines whether haemophilia patients are prescribed safer, but more expensive recombinant clotting factors.

It is deeply disquieting also that even the current policy of entitling children with haemophilia to the safer treatment is sometimes ignored in parts of England. The Department of Health has told haemophilia patients that any danger of infection from plasma from donors who have since died of variant CJD is “theoretical”. To which patients reply that “theoretical” dangers ought more properly be put to the test by those who declare them to be theoretical than by a community already twice stricken by life-threatening blood-borne infections.

They ask now simply, “When will right be done?”. Only 43 per cent of patients over 20 are receiving recombinant. Fifty-seven per cent are still forced to use blood products and many have resorted to treatment strikes.

I return in conclusion to the issue of financial recompense and the logic of Mr Justice Burton’s historic ruling. To go on viewing special help for life-threatening infection, post-Burton, from the narrow perspective of medical negligence is contemptuous of the principle he enunciated.

The Chief Medical Officer is now reviewing existing systems for compensating patients harmed by NHS treatment. And, as Professor Ian Kennedy, who chaired the Bristol heart inquiry, has stated, redress for haemophilia patients requires a new initiative outside those systems. He writes to the society:

“It is for this reason that I have urged the Chief Medical Officer’s Working Party to contemplate more wide-ranging changes to respond more effectively to those needing financial and other assistance arising from medical mishaps. The community you represent is just such a group”.

He goes on to say that the needs of HCV-infected haemophilia patients are,

“as clear a case of deserving help as any for a compensation scheme based on need, regardless of blame, and funded through general taxation”.

Since my last debate, at least two more European countries have set up special schemes for compensating HCV-infected patients. Sweden and

Spain have now joined those already providing just treatment and the Haemophilia Society, in developing proposals which could be implemented here, has based them on the experience of those who have led the way all across Europe. I hope very much that my noble friend Lord Filkin will agree that Ministers will now meet the society—and soon—to hear its detailed proposals.

That justice delayed is justice denied was never more strongly felt than it is today in the small community for whom I speak this evening. They want this debate to hasten the end of an injustice that leaves so many of them doubly disabled and in double despair. But if their striving for equity has to go on, let no one doubt that go on it must until justice is done.

Lord Astor of Hever: My Lords, before the noble Lord sits down, he mentioned a letter he received from the noble Lord, Lord Owen. Would it be possible for myself and other speakers tonight to have sight of that letter?

Lord Morris of Manchester: My Lords, I shall be pleased to make the letter of the noble Lord, Lord Owen, available to the noble Lord, Lord Astor, and also to my noble friend Lord Filkin.

7.43 p.m.

Baroness Gardner of Parkes: My Lords, I have given notice that I wish to speak in the gap. As is the tradition, I shall be brief. I arrived late today and when I rang to put my name down for the debate I found that I had just missed the deadline. When I saw that one of the speakers had dropped out of the debate I realised that it was a good opportunity for me to say a few words.

There is very little I can add to what has been said by the noble Lord, Lord Morris; he has covered the issue very thoroughly. One point that he did not raise is that if you have hepatitis and haemophilia, there is no way that you can obtain life insurance. This is highly relevant and is particularly related to the title of his unstarred Question, which refers to the dependants of those who have died.

Haemophilia is extremely distressing, not only to those who suffer from it but to their families. Hepatitis C is also a terrible burden. I support the view of the noble Lord, Lord Morris, that recombinant Factor H should be available for everyone. That is particularly desirable if there is a risk of BSE—which becomes new variant CJD in humans—being transmitted through blood transfusions and blood products. At the moment, no one seems to know what is the position in that regard, but the recombinant factor, which is totally synthetic, would mean that there would be no risk whatever of being infected. That is a very important point.

I shall not take up any more of your Lordships’ time. I merely wish to indicate my strong support for the unstarred Question tabled by the noble Lord, Lord Morris.

7.45 p.m.

Lord Addington: My Lords, the noble Lord, Lord Morris, has been a doughty warrior for those who suffer from haemophilia. This subject has been discussed before and my noble friend Lord Clement-Jones, who is unable to be here due to a severe but not life-threatening domestic crisis, and I have both spoken on it a number of times.

People with haemophilia have a potentially life-threatening disability which restricts their life. Their history is basically tied up with the fact that suddenly they were led to believe that there was an answer to haemophilia which would enable them to lead normal lives. That answer—clotting agents—turned out to be, effectively, a death sentence or at least placed a great restriction on their lives. Two groups of infection arose—one of which has been dealt with and one of which has not. That is roughly what happened. We then get into the morass of why one group of sufferers is treated differently from the other.

There are definitions of what is “legal responsibility” and so on, but I am sure that a good lawyer could dance circles around them. However, we are not in the job of interpreting the law, we are in the job of making it. We try to give guidance to lawyers as to what they should do.

If the Government provided treatment for a group of people who needed it desperately and offered them the chance of a whole life as opposed to a part life and a life of restriction, and that treatment damaged people in that group in two different ways, there is something fundamentally wrong if only one part of that group receives compensation.

The noble Lord, Lord Morris, has brought forward more information today—I know that he will ensure that we all have copies of the letter of the noble Lord, Lord Owen—but it merely increases the significance of certain actions. However, one fact is absolutely clear: lives have been affected and lives have been foreshortened.

There is a further irony in that new drug treatments mean that someone with HIV stands a better chance of surviving, in better shape, than someone with hepatitis C.

A series of issues come together to make this case more solid every time we discuss it. The Government sit back and adopt a legal defence that states that at a certain time they felt that one form of infection was caused through negligence while they could not possibly consider the other form of infection. The notes suggest that artificial factors should have been used at certain points, but, whatever happens, there is no easy answer as to what should be the cut-off point. If there is, the Government should do something about it. I would never dream of suggesting what level of compensation should be paid. Indeed, given the passage of time, I would suggest that different calculations are probably necessary for the different situations.

But a recognition that the Government have disadvantaged one group against another—perhaps, “a subsection of one main group” is a better way of

putting it—and then not treated those subsections in the same way lies at the heart of the issue. We have two groups of people who have acquired different life-threatening diseases through the same treatment. It is not their fault; it is the fault of the treatment they were given. They were told that the treatment would make them better and deal with the underlying condition. Given that information, they would have been insane to refuse treatment. Then, having been damaged, one of the groups does not receive support. There is something wrong about that.

The Government can dig themselves into a certain legal position. However, unless they are prepared to address the fact that there is something very wrong at a basic level, this problem will not go away. Unless they give a better answer—unless they say, “Yes, we will deal with the underlying problem, not put up legal defences”—they will be hearing a great deal more about the issue for a great deal longer.

7.50 p.m.

Lord Astor of Hever: My Lords, I begin by paying tribute to the noble Lord, Lord Morris of Manchester, for once again bringing before the House the important subject of those people with haemophilia who were infected with hepatitis C by contaminated NHS blood products. The Haemophilia Society is fortunate to have the noble Lord as its president. Very few national charities or patient representative groups can have such a committed president working so tirelessly and effectively for their cause.

I pay tribute also to the Haemophilia Society for its excellent campaigning and the support work that it does, not only for people with haemophilia, but also for their families and the dependants of those who have died.

I also mention the work of the Haemophilia Alliance, which comprises the Haemophilia Society and the UK Haemophilia Centre Doctors Organisation. They are drawing up the service specification of care for people with haemophilia and related bleeding disorders.

The noble Lord, Lord Morris, made the point that, for the third time in a year, the Government have failed to put up a health Minister for this debate. I have the greatest respect for the noble Lord, Lord Filkin, who always answers my questions effectively. However, I am disappointed that the noble Lord, Lord Hunt, is not here in person to demonstrate the Government's real concern for this group of people who, unfortunately and tragically, received infected blood products before the hepatitis C infection could be removed.

In addition to the inadequate support services for managing HCV, and the poor management and care after diagnosis, the noble Lord, Lord Morris, set out some of the problems that such people face financially and emotionally. It is quite wrong that they should experience this social stigma or discrimination, wherever it occurs. We on these Benches feel a great deal of sympathy for them.

[LORD ASTOR OF HEVER]

In preparing for this debate, I went back to the debate introduced last year by the noble Lord, Lord Morris, to look at the issues that we raised at that time. On the subject of comprehensive care centres, which provide specialised care and support for patients and their families, some progress does seem to have been made. Postcode prescribing is less the case this year, but there are still some glaring gaps.

In the debate last year, I raised my concern that there was not one CCC in the South West. For haemophiliacs living in Cornwall or Devon the nearest centre was in Basingstoke, in Hampshire, 237 miles from Penzance. That situation has not changed, as was highlighted by my honourable friend the Member for South West Devon in a Westminster Hall debate last November. I understand that the regional commission group is considering the provision of a CCC in the West Country. I should be grateful if the Minister, in replying, could give some hope to the haemophiliacs living there, given the very real problems that they face.

Last year, I asked about the Hepatitis C Expert Steering Committee which the Government were setting up to produce a consultation document. This was to consider the wide range of specialist services which treat, support and care for people with hepatitis C. This consultation document, *Children in Need and Blood-Borne Viruses: HIV and Hepatitis* was published last month. Unfortunately, it was a missed opportunity. It addressed children only, not adults. All children are treated with recombinant up to the age of 16, so the issue of adults being infected with blood-borne viruses was not addressed.

I also raised the issue of there being no nationwide system to identify and monitor people with haemophilia infected with HCV and asked the Government what plans they had to ensure that such a system was created. Unfortunately, no progress has been made on central identification. Will the Minister tell the House what intentions the Government have on the issue?

I raised the important point that the majority of health authorities either did not provide treatment for HCV, or did so only on a limited and inadequate scale. Once again, no progress has been made, although we hold out some hope that, following the reforms to NICE, this wrong will be righted.

In last year's debate, the noble Lord, Lord Clement-Jones—who I am sorry to see was unable to take part in the debate—pointed out the fears that the Government were putting haemophiliacs in England at risk from variant CJD. That situation has also not changed. Indeed, as the noble Lord, Lord Morris, pointed out, only 43 per cent of patients are receiving the safer, but more expensive, alternative to the blood plasma which they have been warned may contain vCJD. Indeed, many haemophiliacs are refusing blood transfusions because of fear of contracting vCJD. As the noble Lord, Lord Morris, said, some have resorted to treatment strikes, even though they could die without regular transfusions. In England, unless they

are new patients, or under 16, haemophiliacs must use blood products derived from human blood, with all the risks that this might entail; whereas sufferers in Scotland, Wales and Northern Ireland are given the safe, genetically-produced recombinant Factor 8. That is indeed postcode care for haemophiliacs.

Last year, I cited the absurd example from the North West. The policy adopted by the NHS commissioners in Wales means that all haemophiliacs living in North Wales are entitled to receive recombinant Factor 8 irrespective of age, postal code or viral status, and attend the Manchester or Liverpool centres. However, many people living in Manchester, Liverpool and the surrounding areas do not have the same rights and benefits. That situation has not changed.

If someone is infected with contaminated blood products provided by the NHS, surely that person is entitled to the best support and treatment. The Haemophilia Society is in no doubt as to the superior quality of recombinant blood agents.

In a Written Answer last year, the noble Lord, Lord Hunt, said that his department was carefully considering the case for extending provision of re-clotting factors to all haemophiliac patients in England. Has any progress been made on this issue? What reason is there for further denying to adult haemophilia sufferers in England the safer recombinant clotting factors? Was the decision to withhold this treatment taken on financial grounds?

In the Westminster Hall debate on 20th November, the Minister said that there was a world shortage of recombinant Factors 8 and 9. However, according to an article in *Haemophilia World*, supply to the UK is available in sufficient quantities. Moreover, the noble Lord, Lord Hunt, admitted, in an exchange with the noble Lord, Lord Turnberg, that that shortage has now eased. According to the Government, the additional cost of making recombinant treatment available to all haemophiliacs in England would be in the region of £50 million a year. Can the Minister enlighten the House on whether recombinant will be provided to all, regardless of where they live or their age?

Last year, I raised the issue of the lack of welfare support for many haemophilia sufferers. Again, nothing has changed. It would be helpful to have some reassurance from the Minister that the problem will be looked at.

The need for more funding for research was also raised. Progress is being made slowly, but it is too slow for those infected. Perhaps the Minister can touch briefly on funding for research when he winds up.

Finally, in a Westminster Hall debate on 14th November last year, the health Minister John Hutton announced the Government's intention to reform the system for dealing with clinical negligence claims, with a White Paper due "early next year". As it is now "early next year", can the Minister tell the House when it might be forthcoming?

8.1 p.m.

Lord Filkin: My Lords, I start my response to this important debate by marking the contribution of the noble Lord, Lord Morris, on the issue over many years. By my count, over the past four years there have been four significant debates in the House on the subject and 45 PQs—although my arithmetic could be faulty. The fact that the Government do not always agree with the noble Lord should not detract from the respect that we hold for his campaigning for this group of people.

I was slightly saddened by the noble Lord's remarks about my noble friend Lord Hunt. I know—and I know that the noble Lord, Lord Morris, knows—that my noble friend is one of the most committed and principled Ministers of health that anyone could hope to find. From several conversations that I have had with him, I know that he is concerned about the issue and agonises about it. I assure the House that his absence today is certainly not caused by any lack of interest or concern. Any implication that might have been inadvertently carried is misplaced.

All noble Lords who have spoken have raised some important issues. Haemophilia is a lifelong, painful and debilitating condition, but modern treatment can be very effective. It is not effective for everyone, but many patients look forward to an excellent quality of life. Medical science has transformed the situation over the past 30 years.

One of those changes came in the 1970s, when it was learned how blood plasma products could provide some effective treatment for haemophiliacs in ways that had not been possible before. Sadly, as we know, during that period the majority of regularly treated patients with haemophilia were unfortunately infected with HIV or hepatitis C, or possibly both. As a result, around 3,000 people with haemophilia are now estimated to be living with hepatitis C, 500 of whom are also infected with HIV. We all recognise that they therefore face considerable medical and psychological problems over and above those faced ordinarily by people with haemophilia.

Across the Chamber—and, clearly, within government—there is considerable sympathy for people with haemophilia in this situation. As the noble Lord, Lord Astor, said, it is essential that the NHS is properly geared up to deliver the full range of clinical and support services to help them, as far as possible, to cope with those afflictions. That includes providing routine and emergency medical treatment, drug therapies, physiotherapy, counselling and genetic services and specialised services for HIV and hepatitis.

The treatment and care of haemophilia patients is provided by a network of comprehensive care centres and smaller haemophilia centres. Significant progress has been made in the quality of care over the past 10 years or so. CCCs provide specialised care and support for patients and their families, delivered by multi-disciplinary teams. I shall deal later with the question raised by the noble Lord, Lord Astor, about the South West. All haemophilia patients who need that level of

support should have access to the facilities of a comprehensive care centre, although it may not be geographically as close as some would desire.

The Government are also looking to develop a national service specification to try to ensure the highest possible standards for care. The Haemophilia Alliance, which includes the Haemophilia Society and the UK Haemophilia Centre Doctors Organisation, has produced its proposed national service specification, which outlines the key components of a high quality haemophilia service, whether it is provided in large CCCs or smaller haemophilia centres. The specification builds on the considerable expertise of the Haemophilia Alliance in delivering multi-disciplinary comprehensive patient care. The Government are determined to ensure that people with haemophilia are increasingly well cared for in the NHS, supported in their communities and more fully informed about how best to look after their health. We have welcomed that model service specification, which sets out clear standards of care for patients with inherited bleeding disorders. NHS commissioners of haemophilia services should find the document a valuable resource when planning and developing services for patients.

The treatment of hepatitis C has improved markedly over recent years. NICE assessed the use of a drug combination therapy of ribavirin and interferon for treating hepatitis C and published its recommendations in October 2000. This therapy has been shown to be twice as effective as any previous treatment. NICE's recommendations provide clear and authoritative advice for clinicians and healthcare providers and should help to ensure that patients get effective progress.

The thrust of the Government's position—as I am sure the House will expect—is that we do not believe that there are grounds for changing our position on compensation. Nevertheless, the focus has to be on trying to improve the quality of care that is offered. I shall briefly illustrate a number of facts—which I hope are accepted—about care and prognosis. It would be a mistake to create an impression that anyone unfortunate enough to have haemophilia and hepatitis C would inevitably die earlier than might otherwise be the case. The majority of patients who acquire hepatitis C will live out their normal life span. Hepatitis C infection is cleared in about 20 per cent of those infected, but it persists in about 80 per cent to become chronic infection. Most of those 80 per cent with chronic infection will have only mild liver damage and many will have no obvious symptoms. However, about 20 per cent of patients with chronic infection develop cirrhosis after 20 or 30 years. Out of 100 people exposed to hepatitis C, 20 would clear the virus within two to six months and 80 would develop it. Of those 80, 20 would never develop liver damage and 60 would develop some level of long-term symptoms. Of those 60, 24 would clear it fully and 16 would develop cirrhosis of the liver over 20 years.

None of that is to imply that this is a happy picture. Both having those diseases and undergoing the treatment regimes are distressing and painful for

[LORD FILKIN]

patients and their families. However, the figures show that the picture is not as bleak as might sometimes be imagined from some of our discussions. The thrust has to be to try to improve the prognosis for people who have been unfortunate enough to be afflicted in these ways.

On a national strategy to deal with hepatitis C, the noble Lord, Lord Astor of Hever, signalled the importance of high standards of medical and social care being applied consistently across England, if not across the United Kingdom, as this is clearly a devolved matter for Scotland and Wales. We fully recognise the importance for public health of having effective prevention, treatment and testing services in place for hepatitis C. We are committed to having a robust and effective strategy to reduce transmission and benefit those already infected. To assist in developing our strategy, we set up a multi-disciplinary steering group in March 2001. We have asked the group to provide a draft strategy consultation paper for the Government to consider. We hope that it will be published in the next few months. The steering group has invited key stakeholders, of whom the Haemophilia Society will be an extremely important one, to provide information and advice. I know for a fact that it will comment vigorously.

The consultation paper will provide a framework for strengthening prevention, reducing the level of undiagnosed infections, improving services for patients with hepatitis C and identifying actions to support change. It is anticipated that the implementation of the strategy will be a component of the hepatitis action plan as proposed in the Chief Medical Officer's report.

I turn to the question raised by the noble Lord, Lord Astor, on treatment and haemophilia care in the West Country. As I think he indicated, there is not a comprehensive care centre in the South West, but there are haemophilia centres in Barnstaple, Exeter, Torquay, Plymouth and Truro. These are not comprehensive care centres but comprise the lower stage which do not have every single specialism but are able to deal with much of the medical and social support that families or individuals require. Nevertheless, that still means that perhaps once or twice a year a person with haemophilia and HCV may have to travel outside the region for other care. That is not done simply for reasons of economy; it involves critical specialist functions. Some of these centres need to have sufficient throughput to be able to retain and utilise specialist consultants to provide effective care. That is a highly relevant factor as regards why there is not such a centre in the South West.

The noble Lord, Lord Astor of Hever, also referred to a document which I assure the House is not the Government's consultation paper on the national strategy for hepatitis C, which will be published later this year as I have just indicated. It is, in fact, draft guidance for local authorities and the NHS specifically on blood borne viruses and children in need as defined by the Children Act 1989. We shall have to wait a little while before we see the consultation document itself.

I turn to the significant issue of recombinant clotting factors and their availability for all haemophilia patients. As the House knows, the lives of people with haemophilia were transformed in the 1970s by the development of clotting factors which brought the prospect of a much improved quality of life. However, as we know, these were infected. Everything has been done to ensure that the plasma-derived clotting factors used by people with haemophilia are as safe as possible. Since the mid-1980s, human plasma used to make clotting factors has been treated to remove HIV and hepatitis. Since then, products have had a quite remarkably excellent safety record. As an additional precaution, with the onset of variant CJD, all human plasma derived clotting factors now used by the NHS are made from imported plasma to reduce any potential cross contamination.

However, as has been noted in debate by the noble Baroness, Lady Gardner of Parkes, the noble Lord, Lord Astor, and others, over the past 10 years new recombinant or synthetic clotting factors have been developed. The Haemophilia Society and others have petitioned us to make recombinant factor 8 and 9 the treatment of choice for people with haemophilia. The noble Lord repeated that call today. That is largely based on the ground that recombinant products are regarded as free from the risk of transmission of as yet unknown viruses and free from a theoretical risk of variant CJD.

Before the switch to imported plasma in 1998, the fears of people with haemophilia were heightened by the discovery that some of them had received clotting factors that included plasma from a patient who subsequently developed variant CJD. Although the risk of transmitting variant CJD through blood products remains theoretical, I can perfectly understand why that has caused distress to many people with haemophilia given the history of that condition. Four years ago the Government responded to those fears by requiring NHS trusts to provide recombinant clotting products for all haemophilia patients and children under 16. As I think has been said, currently all patients up to the age of 20 receive recombinant products. Around 55 per cent of all clotting factors used in England are recombinant factors.

As I think has been pointed out, Scotland and Wales, with their devolved powers in these matters, already provide that treatment for all haemophilia patients. However, as the noble Lord is aware, we are giving consideration to extending the provision of recombinant clotting factors for all haemophilia patients in England. We shall take a decision on that matter later this year. It is not being ignored. In the meantime all haemophilia patients are receiving effective treatments with either recombinant or plasma-derived clotting factors.

The noble Lord, Lord Astor of Hever, also drew attention to the question of what research was being undertaken in this field. The Medical Research Council has made about £4 million available for hepatitis research over the past five years. The

Department of Health has made £2.5 million available for hepatitis research since 1996-97. Therefore, there is ongoing research, as there should be.

I turn to a most painful issue. I refer to the issue of compensation to haemophilia patients with hepatitis C. That issue has been raised many times in both Houses. However, the Government's position remains unchanged. Although we have enormous sympathy for the individuals affected by this tragedy, we do not believe that a special payments scheme is justified. I know that that will come as a disappointment to the noble Lord, Lord Addington, and to others who have argued for such a scheme this evening and on previous occasions. That matter rests on the fundamental principle that has been mentioned several times in the House; that is, unless it can be shown that a duty of care is owed by an NHS body and that there has been harm, and the harm was caused by negligence, the Government do not believe that compensation should be paid.

Lord Morris of Manchester: My Lords, how can we then defend the continued existence of the Macfarlane Fund for people with haemophilia infected with HIV?

Lord Filkin: My Lords, I am about to come to that point.

Lord Morris of Manchester: My Lords, I hope that my noble friend will also be referring to the vaccine damage payments scheme.

Lord Filkin: My Lords, comparisons have been made between the decision not to offer special payments to haemophiliacs with hepatitis C and the special payments established in the late-1980s for haemophiliacs with HIV and the *ex-gratia* payments we are making to people with variant CJD and their families. However, the Government recognise that there are significant and real differences between those situations. I believe that the party of the noble Lord, Lord Astor, when in government, also recognised that point as they reached the identical judgment as this Government in those situations.

In the case of HIV we need to think back to the circumstances of the late 1980s when HIV had a vast and dramatic effect. It was a source of massive fear and stigma for all those who became infected. There was widespread public reaction. There was no treatment known or thought to be possible for it and death from AIDS related diseases was considered inevitable for all people who had HIV. That is not the situation for those with hepatitis C. It was in that context that special payments were introduced and the Macfarlane Trust was established. We see that as a reflection of those truly exceptional circumstances and the poor prognosis at the time for people with haemophilia who became infected with HIV.

Although the Government have agreed *ex gratia* payments for victims of variant CJD, the circumstances and background of that situation are again truly exceptional. Variant CJD is a particularly horrific condition. It is incurable. It is inevitably fatal

and it is devastating in its effect on sufferers and their families, both to know that one has it and in the form of dying that follows from it. That, fortunately, is not the situation with hepatitis C. It therefore, does not change our longstanding policy on compensation for injuries caused by the NHS which I firmly believe is the right one.

The noble Lord, Lord Morris, referred to Justice Burton's judgment. In short, the judgment effectively found that there was a liability between the period of time when it was possible to introduce a cure and a cure was introduced, and when it was covered by the 1998 Act.

Mention has been made of the policy and practice of other countries. Clearly, the Government are tracking the position closely. There is not time to give chapter and verse on every other country that has made judgments. The vast majority of countries do not make compensation for haemophiliacs with hepatitis C. Those countries that do, such as Canada and Ireland, particularly focus compensation on periods when they believed that they had negligence in relation to the delay in introducing treatment to blood plasma products after it was found possible to so treat them and reduce the risk of infection from hepatitis C.

The noble Lord called for a public inquiry. In essence, the Government's position on that is that there is nothing of fundamental significance that we do not know about a public inquiry that would be brought out by it. The Government did not take part in a whitewash in 1997-98. There was a serious attempt by officials and Ministers to look afresh at the decisions that were taken by the previous government to establish whether they raised anything that required to be considered afresh. That was done fully and carefully. I know that the noble Lord, Lord Morris, regrets the fact that the position was not changed.

Reference has been made to the position of the noble Lord, Lord Owen, as Minister responsible for health, in relation to self-sufficiency in blood plasma products. Again, time does not allow me to go into full details. However, the essence is that at that time all blood plasma products were infected, we believe, with hepatitis C, and whether they had been imported or not would not have fundamentally affected the vulnerability of haemophiliacs to infection, which all of us regret so deeply.

For those reasons, with regret, I do not believe that there is benefit to anyone from a public inquiry, and the Government therefore do not support that. However, to go back to where I started, there is continuing concern in the Government and across the House for the affliction of people who suffer haemophilia and hepatitis C or HIV with it. I have marked the fact that we shall be publishing a very serious national consultation strategy and I very much hope that there will be vigorous engagement with that in the coming months. Ministers will of course be very pleased to meet the Haemophilia Society and its

[LORD FILKIN]

president We have the greatest respect for its work on behalf of the people who suffer from this very serious affliction.

Lord Davies of Oldham: My Lords, I beg to move that the House do now adjourn during pleasure until 8.31 p.m.

Moved accordingly, and, on Question, Motion agreed to.

[The Sitting was suspended from 8.23 until 8.31 p.m.]

Police Reform Bill [HL]

House again in Committee on Clause 66.

Lord Dixon-Smith moved Amendment No. 318:

Page 59, line 22, leave out from first "to" to "the" in line 23.

The noble Lord said: Amendment No. 318 continues a line of debate that we began at an early stage in the Bill. Again, I do not believe that I need to go into too much detail. But, given the obligation on police authorities to take guidance into account, the way that the clause is drafted is tantamount to dictating the contents of the local strategy. We do not believe that that is right. We entirely accept that the Home Secretary has every right to have a say in what the Home Office's priorities are and should be. No one has any difficulty with that. It is absolutely right that local police authorities should have to take that into account in large manner, and their three-year strategies should be consistent with it.

But the fact is that in the 40-odd police authorities across the length and breadth of the country, some of which are in charming and relatively rural and remote areas, some of the problems of the more metropolitan areas do not exist. In many of the far-flung regions of this country—if anywhere in this country is far-flung; I doubt that it is—the problems of London and the South East are totally alien. It seems to us that the powers that are given in the Bill are a little over-restrictive and perhaps are not sufficiently likely to recognise the differences that exist in different parts of the country. Those differences should properly permit priorities which are more different than might be implied by the Bill as it is worded at present. I beg to move.

Lord Bradshaw: I rise to support this group of amendments. I shall not reiterate what the noble Lord, Lord Dixon-Smith, said, although I very much agree with him. We consider the suggested form to be over-prescriptive. We believe that we shall find a different form in different places—that is the essence of local policing. We hope that the Minister will allow more laxity in what is submitted. We also hope that this measure is not being introduced only for the benefit of the officials in the Home Office rather than for the benefit of the people who are being policed.

One amendment in the group relates to a matter that we discussed previously. If the Secretary of State is to issue modified or revised guidance, we believe that it

should be issued by, we suggest, 30th June in the year preceding the beginning of the relevant three-year plan. That time is needed in order to carry out proper consultation and prepare the plan for presentation. Every month taken in excess of that will mean that the plan must somehow be rushed through the process. But in the end—the objectives of the Home Secretary have come very late this year—it is inevitable that parts of the plan will already have been put together.

We believe that it should be mentioned on the face of the Bill that police authorities, persons who represent chief officers in the police force which is maintained by those authorities, together with other people thought fit, should be consulted. Therefore, we support all the amendments. We hope that the Minister will give consideration both to the prescription and to the date, in particular.

Lord Rooker: The one amendment which neither noble Lord mentioned by number is Amendment No. 321. I shall be happy to take away that matter for consideration and return to it. I thought that I should place that on the record at the start.

We believe that the amendment is unnecessary. We have always consulted widely but, as I said, I shall take away the matter and reflect on what has been said, which is nothing! It is true that the theme of consultation was present throughout the debate but, in fact, no one mentioned Amendment No. 321.

We debated the issue of timing in the early stages of the Bill. We understand the restrictions on timing and somehow we must ensure that guidance on the content and form of the plans is issued in good time; otherwise, we shall not receive good reports. It is as simple as that. The police authorities would rightly put the Home Office in the dock if it were not realistic in relation to timing. I fully understand that there would be a breakdown of the tripartite arrangements. As I have said repeatedly, the Government want to support police authorities and chief police officers. We cannot do that if they cannot do their job properly; and they cannot do their job properly if we do not work to a decent and reasonable timetable in issuing them with the guidance.

The guidance should not be seen as threatening; it is intended to be helpful. I know that it does not work if one says, "I'm the man from the Government. I've come to help you". That will not be accepted. But the guidance is not intended to be threatening; it is intended to be useful to chief officers and police authorities. We want to be confident that the local plans are being shared with the local committees—a key element of the plans—and we want the local plans to be consistent with the national plan. But it is true that we must get our act together with regard to the timing. In relation to consultation, to which Amendment No. 321 relates, we shall consider the matter to see whether we can place something concrete in the Bill by Report stage.

Lord Dixon-Smith: I am very grateful to the Minister. I wish that I could agree with him that guidance should not be threatening. The difficulty is

that I have seen guidance in, one might say, an earlier metamorphosis with a different department. There was a great deal of guidance and it was, in fact, obligatory to comply with it. It went into the most amazing detail. In the end, it was, in my view, completely unreasonable.

I hear what the Minister has to say. I am encouraged by it because I have great faith and belief in what he says. But I constantly remind the Committee that we must consider what might happen if this legislation, as drafted, were in the hands of less reasonable people. It may seem to some that that is a quibble, but in my experience it is not. It is a very serious matter. We shall study the explanation, but in the meantime I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 319 to 321 not moved.]

Lord Bradshaw moved Amendment No. 322:

Page 59, leave out lines 32 to 34.

The noble Lord said: At this point we may have some difficulty with the detail of the Bill. Subsections (8) and (10) to (15) fundamentally alter the nature of the proposals and, in our view, represent unwarranted central control over local planning. We agree that we should have three-year strategies and that they should be consistent with the national policing plan, but we do not agree that police authorities should have to submit their three-year plans for the approval of the Home Secretary before they are published. That is like a child being told to submit his homework for marking by the Home Secretary or by officials after which it is returned to the child and he is asked to amend it before resubmitting it.

The proposals cause considerable offence. They demonstrate a lack of trust by the Government in police authorities and police forces; they undermine the tripartite relationship; and they seek to turn police authorities into little more than agents of Government rather than proper bodies carrying out a proper job on behalf of local communities.

We recognise that the Bill does not refer to the three-year plans having to be approved by the Home Secretary, but that is the cumulative effect of subsections (8) and (10) to (15). We have no objection to police authorities sending a copy of their three-year plans to the Home Secretary, as currently they send their annual plans, but we believe that the Government are going for over-elaboration. Subsection (3) makes it a statutory duty on police authorities to ensure that their three-year plans are consistent with the national policing plan and failure to do so will mean that the authority is in breach of that statutory duty. That alone should provide the safeguard that the Government seek.

We see no reason why the Home Secretary needs to go any further and interfere with the content of the plans. There is no evidence that in producing their annual plans, policing authorities disregard the priorities set by Ministers. If I am wrong, I shall be more than happy for the Minister to offer a correction to that assumption. I believe that it is true to say that

most authorities go to considerable lengths to reflect the Government's priorities. I ask the Minister to give further thought to those provisions. I believe that they will irreparably damage the nature of the tripartite relationship. I am sure that we shall return to this issue on Report. I beg to move.

Lord Dixon-Smith: Amendment No. 323 is grouped with this amendment and contains a delicious irony. We consider that this part of the clause should be left out, although to a certain extent that is against what I am about to say. My amendment proposes leaving out subsections (10) and (11) of Clause 66. Those subsections state:

"(10) If the Secretary of State considers that there are grounds for thinking that—

(a) a police authority's three-year strategy plan . . . may not be consistent with any National Policing Plan applicable . . . he shall, before informing the police authority of his conclusions on whether or not it is in fact so inconsistent, consult with the persons mentioned in subsection (11),

(11) Those persons are—

(a) the police authority in question;

(b) the chief officer of police of the police force maintained by that authority;

(c) persons whom the Secretary of State considers to represent the interests of police authorities; and

(d) persons whom the Secretary of State considers to represent the interests of chief officers of police".

There is a glorious inconsistency in those words compared with almost all the rest of the Bill. We consider that the subsections allow the Home Secretary to tell a police authority what to do. In debating such matters we have said that our difference with the Government is not about ends but means. We believe that the Government are wrong as to the means and consider that those subsections are not appropriate. I support the noble Lord, Lord Bradshaw, in his remarks and our amendment supports the position he has taken.

8.45 p.m.

Lord Rooker: I am unsure whether the noble Lord, Lord Dixon-Smith, is complaining that there is too much consultation. If the Home Secretary believes that the three-year plan of a police authority is inconsistent with the national plan he will consult the police authority, the chief police officer, ACPO and the Association of Police Authorities. Perhaps that is a consultation too far.

This clause is long and I want to make it absolutely clear that it does not give the Secretary of State a power of veto over the three-year strategy plans. To listen to the tenor of the debate one would think that it does. The police authority has to decide whether to take the views of the Home Secretary on board. There is no power of veto by the Home Secretary. As we said in relation to the amendments grouped with Amendment No. 316, the three-year plans are required to be consistent with the national policing plan to

[LORD ROOKER]

demonstrate that all the forces are working to a common goal. It seems sensible that someone should ensure that they are consistent with each other.

The Home Secretary has an overall responsibility, as part of the tripartite arrangement, for policing in England and Wales, so it is entirely appropriate that he should check the plans for consistency with the national policing plan and inform police authorities if he concludes that they are not. I believe that it is appropriate for the Home Secretary to do that. We do not believe that that undermines the tripartite relationship of the authorities. It raises the profile of police authorities.

The noble Lord, Lord Bradshaw, and his mates and "matesses" on the police authorities will be in front of cameras and on the wireless when their turn comes to submit their strategy plans. People will say, "Hey, I didn't know we had police authorities; I thought it was just David Blunkett and the chief constable". The role of police authorities will be elevated, which is important and consistent with our dedication to the tripartite arrangement. If the Home Secretary is not convinced, as the noble Lord, Lord Dixon-Smith, said, he will consult. The clause does not give the Home Secretary a veto over the plans. That point has to be clearly made. Noble Lords are free to return to this matter at a later stage, but I hope that they will not press their amendments tonight.

Lord Dixon-Smith: If the Minister would accept the principle of the wording of this clause and apply the consultation back through the Bill to Clause 1, we would all be happy.

Lord Bradshaw: I hear what the Minister says, but I am afraid that the propensity of the Home Office to interfere in matters is large indeed. Plans may be held up for comment and they will be delayed because those comments will be late in coming, as they always are. I hope that these amendments will be given serious consideration. It will be necessary to refer back to them. It is extremely difficult to get the local press to come to a policy authority meeting. They are extremely dull meetings. In the nine years that I have been a member of the police authority, we have never had the luxury of having the television medium present. We have had junior reporters from the local press who usually get everything wrong because they cannot understand what is going on. However, it is a far cry from reality to talk about the interests of the local press. In the meantime, I beg leave to withdraw the amendment. I hope that the Minister takes what I say seriously.

Amendment, by leave, withdrawn.

[Amendments Nos. 323 to 329 not moved.]

Clause 66 agreed to.

Clause 67 agreed to.

Lord Bassam of Brighton moved Amendment No. 329A:

After Clause 67, insert the following new clause—

"PRESIDENT OF ACPO

If a person who holds the office of constable becomes the president of the Association of Chief Police Officers of England, Wales and Northern Ireland, he shall, while he is the president of that Association—

- (a) continue to hold the office of constable; and
- (b) hold that office with the rank of chief constable."

The noble Lord said: In moving the amendment, I speak also to Amendments Nos. 340B and 341A. It is a straightforward group of amendments. ACPO wishes to move from a part-time one-year presidency to a full-time three-year presidency. The ACPO president currently remains in charge of his force while he serves as ACPO president for one year. Following his or her election, the president of ACPO will need to resign from his force or retire in order to take up full-time office. ACPO believes that the president needs to retain the rank of chief constable. The amendment will have the effect of ensuring that, while he holds office, the ACPO president will continue to have full police powers and the rank of chief constable. I am advised that ACPO and the APA are content with that approach. The amendment reflects that desire and makes good sense in terms of the general direction in which ACPO wishes to take its presidency. I beg to move.

Lord Harris of Haringey: I do not agree with the Minister that it is a straightforward amendment. I think that it is bizarre. I shall be interested to know in how many other places in statutes a company limited by guarantee (or whatever applies to ACPO) is referred to specifically. I shall be interested to know why such a provision is offered to ACPO but not to, let us say, the Police Superintendents' Association or the Police Federation which might wish to do something similar. I assume that the implication is that the person would have his or her salary paid by ACPO; that there is no implication that the Crown or anyone else would find the salary. But that means that the cost is spread more generally.

Why does it have to be assumed that the person will have the rank of chief constable? I understand that ACPO offers membership to people of assistant chief constable rank upwards. Does it mean that an assistant chief constable who becomes president of ACPO will receive automatically a pay rise and be treated as a chief constable? I find it a strange amendment.

If someone wants to be president of ACPO it is a career choice which he or she makes for three years. If there were a provision for chief constables to dip in and out of being chief constables in order perhaps to serve as representatives on other public bodies and then be engaged as chief constables elsewhere, it might be a suitable amendment. However, to specify an organisation in this way I find somewhat surprising.

Lord Bassam of Brighton: I understand the noble Lord's desire for more information. I am happy to

answer his questions. However, he ignores the special position that ACPO holds within the structure of UK policing. The ACPO president currently holds office for one year while continuing to exercise control and direction over his or her force. The view has been formed that that is less than ideal. As the demands on ACPO and its expertise have increased—that has happened not just under this Government but successive governments—the president of ACPO, who occupies a unique position in terms of leadership, spends less and less time running his own force. The full-time presidency will allow the president to contribute more effectively to policy development and implementation.

If one seeks parallels, the chief executive of CPTDA and the directors-general of NCS and NCIS continue to hold the rank of chief constable and the office once they take office. In a sense, the provision is parallel to those existing arrangements. It will enable the ACPO president to maintain his standing within the police service, enabling him to represent chief officers in an effective and timely fashion.

I appreciate the noble Lord's desire for more information. However, those are the reasons that the amendment has been brought forward. There is agreement with ACPO and APA for the amendment to be made to the Bill.

Lord Dholakia: In referring to the ACPO president, the point has been raised about whether similar arrangements would exist for the Police Federation and the Police Superintendents' Association. Is there any reason why those bodies have been excluded? Do they not play a part with regard to policy issues and the Home Office?

Lord Condon: The equivalent posts in the Police Superintendents' Association and the Police Federation are already full-time posts providing continuity for a number of years. I understand that the amendment seeks to put ACPO in a similar position to the Police Superintendents' Association and the Police Federation.

Lord Harris of Haringey: I am grateful for the noble Lord's clarification of that point. I am still confused by my noble friend's answer. When one refers to an association in legislation, one normally refers to an association which represents chief officers of police—or some reference of that nature. Why is a specific organisation reflected in the legislation? For example, if in the future a majority of chief constables no longer had confidence in the way ACPO was organised and set up a rival organisation, would we be left with this piece of legislation relating to a specific organisation which perhaps contained fewer and fewer chief constables?

The provision could be drafted so that it did not refer to a specific organisation but achieved the laudable aim—I support it—that a force area should not be deprived of its chief constable, or whichever

senior officer it is, while he fulfils the important role of president of ACPO. It seems a strange way of tackling what I accept is a problem that needs to be solved.

Lord Bassam of Brighton: It is a fact that ACPO is already referred to in statutes. If the noble Lord reads Section 127 of the Criminal Justice and Police Act he will see that. I do not find it extraordinary. ACPO occupies a unique place in the structure of the UK policing network.

The president will be paid by ACPO. The Police Federation is a statutory body under the provisions of the Police Act 1996, so police organisations do have a statutory reference point. It is for that reason that to effect a change we need to address it in statute. That is why the amendment has been brought forward.

On Question, amendment agreed to.

9 p.m.

Clause 68 [*Crime and disorder reduction partnerships*]:

Lord Dholakia moved Amendment No. 330:

Page 61, line 24, at end insert “; and

(e) every police authority any part of whose police area lies within the area”

The noble Lord said: In moving Amendment No. 330, I shall speak also to Amendment No. 331, which is consequential on Amendment No. 330. The Crime and Disorder Act 1998 established local Crime and Disorder Reduction Partnerships in each district. These partnerships must undertake an audit of local crime and disorder problems and produce a three-year strategy for tackling them.

The 1998 Act made chief officers and local authorities the “responsible authorities” for the partnerships. Police authorities were required to co-operate with the local partnerships. That has had an unfortunate effect. In some areas, police authorities have been excluded from playing a full role in the work of local partnerships.

The local partnerships have now been in existence for nearly four years. Although there has been some good progress, a recent Home Office report recognised that many “challenges remain”.

Our proposals seek to make the partnerships more effective by giving police authorities equal statutory status. We believe that this is even more important if we are to achieve coherence between police authorities' three-year plans and the three-year district crime reduction strategies.

One of the key findings of the recent Home Office report was that local partnerships missed key opportunities to integrate their consultation with wider consultation efforts by police authorities. We believe that our amendment will help to tackle this problem and that police authorities' involvement can bring far greater strategic oversight and co-ordination to the work of the various partnerships within the force area.

[LORD DHOLAKIA]

The Minister's letter said that the Government was actively considering this proposal. I hope that he will be able to give us good news today by accepting the amendment. I beg to move.

Lord Bassam of Brighton: My speaking note says that police authorities have a key role to play in local partnerships structures. It is for that reason that I can tell the noble Lord that we are giving active consideration to the amendment on whether police authorities should become responsible authorities for the purposes of Section 5 of the Crime and Disorder Act 1998. I hope that the noble Lord will find that a welcoming and acceptable comment. Having given the matter active consideration and consulted further, no doubt we shall bring something back on Report.

Lord Dholakia: I am grateful to the Minister. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 331 not moved.]

Clause 68 agreed to.

Clause 69 [*Secretary of State's functions in relation to strategies*]:

Lord Dixon-Smith moved Amendment No. 332:

Page 63, leave out lines 30 to 41.

The noble Lord said: We are back on the Secretary of State's functions—possibly in his alias as the National Assembly for Wales. We are dealing with the Secretary of State's powers. The Bill says that he, "may, by order, require" strategies in relation to crime reduction,

"to include, in particular, provision for the reduction of—

- (i) crime of a description specified in the order; or
- (ii) disorder of a description so specified",

and so on.

This again is Whitehall seeking to dictate the detail of what might be in a local crime reduction plan. I entirely accept what I may call "its benign intentions", but the clause presumes that the Home Secretary, if he makes orders of this nature, will be *au fait* with every local situation in the country. All my experience suggests that Whitehall departments, let alone Secretaries of State, who after all are guided by their departments, have that omniscient breadth of vision of knowing everything that goes on across the country.

This is a well-rehearsed discussion. We have been over this ground on numerous occasions. I need not say any more. I beg to move.

Lord Bassam of Brighton: The noble Lord, Lord Dixon-Smith, is right to say that we have been around this course several times. But it is worth going over some of this ground. Responsible authorities are required to deal with crime and disorder problems and, under Clause 68 of the Bill, misuse of drugs, which affect their area. These should be a reflection of both local and national priorities as these are often the same. Clause 69 allows the Secretary of State to require partnerships to take account in their local strategy of

areas of crime and disorder that reflect national priorities. To take account; that is, to reflect upon, think about, develop and work at.

A recent review of the crime and disorder reduction strategies published in 1999 showed that in some partnership areas the strategies did not contain crime reduction targets which reflected either local or even national priorities. That is why we seek to take things that stage further, so that they do reflect those matters.

There needs to be development of partnerships. There needs to be active co-operation. There needs to be a working between the centre and the locality to ensure that those priorities match up. That is what this clause seeks to establish.

It is essential that we focus on the main areas of crime and disorder that affect our local communities. I do not think that it is an arguable case that issues such as strategies to combat the misuse of drugs fail to be a local priority fairly much everywhere. If one talks to a police officer, in the main he will say that much of the burglary committed in his locality is fuelled by drugs and drug addiction and the need to feed a habit. That is a universal case. It must be right to give some extra leverage to ensure that there is proper focus on something which is a national issue and also patently a local issue.

If we remove the clause, as the noble Lord suggests, that strategy, that ability to develop that partnership locally and nationally is damaged. This is about identifying national priorities in achieving and sustaining reductions in crime and for the setting and achieving of targets to be determined locally. That is what we seek to achieve.

We have been over this argument many times. I think that we have the balance about right. I think that the noble Lord is not necessarily persuaded that this is the heavy hand of the centre impacting upon the important level of local independence. We are trying to develop that joint strategy, which means that national and local priorities are well matched. I invite the noble Lord to examine the 1999 report, because it reflects on the need to make those elements work together, rather than out of kilter and contrary to people's priorities in tackling those aspects of crime.

Lord Dixon-Smith: The Minister has given me the words that I wanted. He said that the purpose of the clauses is to ensure that those who prepare the local plans take account of the national priorities. The Bill does not say "take account"; it says "require"—there is a huge difference of emphasis between those two phrases.

I should be delighted to withdraw amendment No. 332. I shall table an amendment on Report, quoting the Minister's words, and we shall see what happens. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 69 agreed to.

Clauses 70 to 72 agreed to.

Earl Attlee moved Amendment No. 333:

After Clause 72, insert the following new clause—

“PROVISION OF SPECIAL SERVICES

In section 25 of the 1996 Act (provision of special services), after subsection (1) there shall be inserted—

“(1A) Such services may include provision of an escort service for the movement of abnormal loads in any locality in the police area for which the force is maintained, subject to subsections (1A) and (1B) below if—

- (a) the load cannot be moved under a general order made under section 44 of the Road Traffic Act 1988 (c. 52) by reason of its gross weight or overall dimensions, or
- (b) it is necessary to move the load at a time when suitable police resources would not normally be available and, in the opinion of the chief officer or the operator, it is essential that the load is escorted by the police because—
 - (i) the load is particularly awkward, or
 - (ii) the agreed route is particularly hazardous in view of the nature of the load.

(1B) Provision of services in accordance with subsection (2) is subject to the payment to the police authority of such charges as may be determined by the authority, provided that—

- (a) on request of an operator, a fixed charge for the escort of the load is quoted in advance and the same quotation is offered to any other operator who appears to be planning the movement of the same or a similar load, and
- (b) when a fixed charge for the escort of the load is quoted in advance, the charge is reasonable but may have an allowance for contingencies.

(1C) In this section—

“operator” means the person operating the vehicle carrying or drawing the abnormal load,

“abnormal load” means a load, including the carrying vehicle, whose weights or dimensions—

- (a) exceed those within regulations made under section 41 of the Road Traffic Act 1988, or
- (b) are such that regulations made under section 41 of the Road Traffic Act 1988 require movement of the load to be notified to the chief officer of police.”

The noble Earl said: Amendment No. 333 stands in my name. I remind the Committee that I am president of the Heavy Transport Association, and that I operate an abnormal-load vehicle.

Although Amendment No. 334 also deals with abnormal loads, it is important to understand that the two issues are separate. Amendment No. 334 deals with the question of who will escort abnormal loads, while Amendment No. 333 seeks to specify when the police may charge for providing an escort. I suspect that the Minister will have more difficulty with this amendment, but we shall see.

It is important that the Committee understands that there is no legislation on the provision of police escorts for abnormal loads. In the past, the police have done so on a non-statutory basis, for perfectly sensible and obvious reasons. However, a police escort is not viewed as a core activity, and some police forces, such as Norfolk, have started to charge for providing one. In some cases, police forces resort to questionable tactics to enforce payment.

Some forces have relied upon Section 25 of the Police Act 1996, which includes the words, “on request of any person”.

That is fine when applied to the organiser of a football match, but it is not effective if a person moving an abnormal load is told by a chief constable that he must have an escort, because that person has not requested it. It needs to be remembered that the escort is provided largely for the convenience of other road users. It is not only my interpretation that creates this uncertainty. Some counsels for police authorities advise that charges can be made, while others advise that they cannot. Can the Minister say who is right?

My amendment is designed to allow the police to make a charge in either of two circumstances. The first is if the load is abnormal to the extent that its gross weight is over 150 tonnes or its dimensions are in excess of around 27 metres long and 6 metres wide, with the result that the specific authority of the Secretary of State, in the form of a “special order”, is required. Secondly, a charge can be made if it is desired to move the load at a time when a police escort would not normally be available. An example might be the movement of a piece of engineering equipment during the night. A further qualification to the second circumstance applies if, in the opinion of the chief officer or the operator, a police escort is necessary because the load or the route is particularly awkward. That is, I admit, a subjective test. However, if the amendment were agreed to, the situation would still be much better.

Furthermore, the new Section 1B provides for fixed charges to be agreed in advance. The more difficult loads tend to be moved by specialist contractors. They do not mind paying for special facilities if the cost can be built into their quotation and if all other operators bidding for the job have the same costs.

A final observation is that if the principles behind Amendment No. 334 find favour, charging for police escorts will become less problematic because the activity will be less of a drain on police resources. I beg to move.

Lord Rooker: The noble Earl made copious references to Amendment No. 334 when moving Amendment No. 333. My response to Amendment No. 333 is exactly the same as my response to Amendment No. 334.

As I indicated last Thursday, we are in broad sympathy with the intention behind the various amendments tabled by the noble Earl, and he has discussed the matter with my right honourable friend the Minister of State. Like him, and with ACPO, we should like to see a reduction in police involvement in such work.

We are actively considering how to bring that about and how to ensure that the best arrangements are organised for escorting abnormal loads. John Denham pursued this matter further in a meeting with ACPO representatives on 7th March. It would be counterproductive and unhelpful if I were to go any further. Some concerns arise, and the noble Earl

[LORD ROOKER]

understands what they are. But basically we agree with him and want to find a solution to the two issues which satisfies ourselves, the police and of course the industry. In the circumstances I hope that the noble Earl will not press either of his amendments.

9.15 p.m.

Earl Attlee: I am grateful for the response of the Minister. I intend to speak to Amendment No. 334 because other Members of the Committee may also want to speak to it. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Earl Attlee moved Amendment No. 334:

After Clause 72, insert the following new clause—

"ESCORT FOR ABNORMAL LOADS

"The Secretary of State may by regulations make provision requiring all police forces in England and Wales to provide a police escort for abnormal loads moved under the provisions of section 44 of the Road Traffic Act 1988 (c. 52) (authorisation of use on roads of special vehicles not complying with section 41 regulations) only if—

- (a) the driver of the load is likely to have to contravene traffic regulations;
- (b) the load cannot be moved under a general order made under section 44 of the Road Traffic Act 1988 by reason of its gross weight or overall dimensions;
- (c) in the opinion of the chief constable or the operator, the load is particularly awkward; or
- (d) in the opinion of the chief constable or the operator, the agreed route is particularly hazardous in view of the nature of the load"

The noble Earl said: In view of what the Minister said, I shall truncate some of my comments.

The proposal behind Amendment No. 334 is that when an operator makes his statutory abnormal load notification, when appropriate and in particular on motorways and dual carriageways, the chief officer says, "Yes, you can move the load at this time but you must provide an escort in accordance with ACPO guidelines", or some other guidelines produced by the Home Office. The guidelines will be non-statutory but cover such matters as the experience of the escort driver, warning signs, communications both with the load and the police, and other technical details.

In short, we are talking about self-escorting. Perhaps the term "private escorting" has connotations that are not helpful. We are not talking about privatising or "contractorising" a police function. There will not be an opportunity for a cosy cartel to develop with obscure lines of responsibility between the escort, the operator and the police. If something goes wrong, say an unnecessary obstruction or an accident, the police will be able to investigate without fear or favour. The operator will be in control, but he will also be responsible.

It is important to understand that the escort will not be able to stop the traffic or authorise the driver of the abnormal load to break traffic regulations. The police or traffic wardens will still be required for that purpose. The escort will have only two functions; the

first to warn oncoming or following traffic of the abnormal load by means of flashing lights and clear signs; the second is, in certain circumstances, to block off completely lane two of a three-lane motorway or dual carriageway.

I made a more detailed speech at Second Reading, and more importantly on 2nd May last year from the Opposition Dispatch Box. Perhaps my noble friend on the Front Bench will confirm that this is still the extant policy of Her Majesty's Opposition. If we go down this route, we will make more effective use of police resources; we will save industry significant costs that are incurred in waiting for a police escort; the escort task will be better undertaken technically; and the motoring public will be saved much inconvenience because loads can be moved at unsociable hours on our most congested roads. I beg to move.

Lord Dixon-Smith: My noble friend has a strange way of asking whether I support him. However, I am happy to make clear to him that I do.

Viscount Simon: Like the noble Earl, Lord Attlee, I should perhaps declare that I am a civilian holder of the police class 1 driving certificate; that I go out on traffic patrol numerous times each year with various constabularies; and that in fact my next full police driving course is booked for June of this year.

It is my belief, shared by many front-line officers and I believe some within the transport industry, that the power to stop and control traffic, and to allow the contravention of road traffic legislation, should only be used by a uniformed police officer. Clause 37 of the Bill allows for those powers to be devolved to traffic wardens and the amendments are intended formally to set up private escorting.

I have three concerns on this matter: safety, security and insurance. If a private organisation is escorting an abnormal load and another motorist ignores all warning signs and subsequently causes a crash, who will foot the bill? Who will be liable? Will it be the insurer of the car, or will it be down to the escorting company's inability to stop following or approaching traffic? In either case I suspect that it will be the private motorist or the insurance companies who will foot the bill, and thus insurance rates will rise.

With car and lorry-related crime and lorry hijacking on the increase, the issue of security is of growing significance. Drivers of all types of vehicle must have every confidence that the person requiring them to stop for any purpose, be it for an abnormal load or any other reason, is a genuine police officer. Uniforms are worn by police officers to give confidence to the public, who are aware that the wearer is a physical manifestation of the law and is the protector of the public. That confidence must not be eroded by allowing some other person, in effect, to impersonate a police officer.

In the same way, the driver of the abnormal load needs to know that the person overseeing that activity is fully empowered by the law to allow the breaching of various pieces of legislation and to take the

appropriate action, based on their judgment, should other road users fail to act responsibly when confronted by the load.

That leads me to my concerns about safety. When I was last with police officers escorting an abnormal load on the motorway, there were motorists trying to pass where it was dangerous to do so, despite the fact that the marked police vehicle was appropriately positioned and was displaying a blue light. Under the noble Earl's plans, private operators would use a flashing orange light. That may alert drivers to the danger of the load, but, if they fail to behave sensibly where there is a full police escort, how can we expect drivers to act any better if the escort is provided by people who do not have the full weight of the law?

It would not surprise me to learn that the proposals had been brought about by a shortage of police resources. I understand and appreciate that, but, with about 3,500 people killed on our roads each year, the safety and security of the transport industry and other motorists must be of paramount importance. It is for that reason—and those that I have already given—that I would not wish there to be any privatisation of the escorting of abnormal loads.

My final point does not necessarily relate to the amendment, but is more a matter of academic interest. Who would determine which roadside furniture might have to be temporarily removed to allow an abnormal load to proceed in an urban area?

Earl Attlee: I am extremely grateful for the noble Viscount's contribution. I have no notes about roadside furniture, so I shall answer that question first. If roadside furniture needs to be removed, it is a matter for the local council. It would not matter whether there was a police escort, whether any escort was required at all or whether it was a special order; it would be for the council—the local authority—to decide on moving street furniture.

The noble Viscount raised what I call the "blue light" argument. I get the same argument from a personal friend who is involved in moving abnormal loads. I have escorted abnormal loads for some time, using an amber flashing beacon light, and I have experienced no problems. Furthermore, an ACPO study was done several years ago, during which two loads were moved. One was moved conventionally, with a police escort, and one was moved by police officers masquerading as civilians, if the noble Lord understands me. There was no difficulty, which is why ACPO is happy with the proposals.

It is also suggested that the police had special skills in escorting abnormal loads. They may have had, in the past. I hope that I will not upset the noble Lord, Lord Condon, by what I am about to say. However, Kent police do not have a special traffic police force any more and use ordinary area cars for escorting abnormal loads. Last summer, I was escorted by them. They did a satisfactory job, but they did balk me, which stopped me racing down the hill in order to "fly" up the other side, so I moved the load a little more slowly than I could otherwise have done. They were not experienced in moving abnormal loads.

Another advantage of using private escorts is the use of signs. At the moment, the police car goes along but has no special signs. Under these proposals, the escort vehicles will have special signs.

I also expect that the guidelines will pay special attention to the experience of the escort driver. We do not want to have a 17 year-old boy escorting an abnormal load. Often, the person driving the escort vehicle will himself be a low-loader driver.

The noble Viscount mentioned insurance. If there is an accident, the police will, as I said, investigate without fear or favour. What happens if there is no police escort, as often happens, even though the load is very big?

I agree that the police or traffic wardens should be the only persons to stop the traffic or allow for special facilities. That is well understood and the Minister has addressed the matter. I am extremely grateful for the comments of the noble Viscount, Lord Simon. I am sure that the Minister will speak briefly because he has already spoken to my amendments.

Lord Rooker: That is absolutely bang to rights. My noble friend Lord McIntosh questioned whether anyone would ever have thought that on both sides of the House we have experts in moving abnormal loads. One never ceases to be amazed about this place. We heard thoroughly professional speeches, also drawing on experience.

I repeat what I have said. However, the most important consideration is that the amendment would not be helpful to constrain the detailed consideration of all the issues that is currently taking place.

Earl Attlee: I am extremely grateful for the Minister's comments. I shall not be returning to this issue. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Earl Attlee moved Amendment No. 335:

After Clause 72, insert the following new clause—

"REMOVAL OF VEHICLES BY POLICE CONTRACTED RECOVERY SCHEMES"

In section 99 of the Road Traffic Regulation Act 1984 (c. 27) (removal of vehicles etc.), after subsection (2)(c) there shall be inserted—

"(d) may, subject to paragraphs (e) and (f) provide for Police Contracted Recovery Schemes;

(e) any regulations for a scheme under subsection (2)(d) shall provide that—

(i) all appointed recovery operators are accredited to an International Standards Organisation standard;

(ii) a person whose vehicle falls within subsection (1) is, subject to sub-paragraph (iii) or (iv), given the opportunity to arrange removal himself;

- (iii) sub-paragraph (ii) shall not apply if a constable believes safety of other road users would be compromised and the customer is unlikely to be able to arrange for the vehicle's removal before the appointed recovery operator;
- (iv) sub-paragraph (ii) shall not apply if the road on which the vehicle is permitted to rest is a special road and the customer is unlikely to be able to arrange for the vehicle's removal within a time specified in the regulations or one hour, whichever is the greater;
- (v) if a person whose vehicle falls within subsection (1) arranges removal of the vehicle himself and his choice of recovery operator arrives before the appointed recovery operator, he shall be under no obligation to the appointed recovery operator or the authority;
- (vi) neither the authority, the chief police officer or the police authority may benefit from a preferential scale of charges or free services from an appointed recovery operator;
- (vii) when a vehicle has been abandoned by the owner or registered keeper the authority shall pay the appointed recovery operator the charges prescribed under section 102 of this Act;
- (viii) an appointed recovery operator shall not be required to give any financial or other consideration for being appointed;
- (ix) the police authority may make a financial charge, as prescribed, against the person whose vehicle falls within subsection (1), for despatching the appointed recovery operator, and such a charge may be collected by the appointed recovery operator;
- (x) any scheme must allow for competition, new operators joining the scheme, and aim to have operators no further than a prescribed distance from each other;
- (xi) no person shall be appointed under a police contracted recovery scheme if he is not of good repute as defined in sub-paragraph (xii);
- (xii) a person is of good repute if he meets similar requirements to paragraphs 1 to 6 of Schedule 3 to the Goods Vehicle (Licensing of Operators) Act 1995 (c. 23);
- (xiii) appointed recovery operators shall not charge more than the amount prescribed under section 102 for removing a vehicle weighing no more than 3500 kilograms unless approved by the chief officer of police on each occasion;

(xiv) appointed recovery operators shall not charge more than the amount prescribed under section 102 for removing a vehicle weighing more than 3500 kilograms unless there are unusual difficulties requiring extra facilities, but rates shall not exceed those published under sub-paragraph (xv); and

(xv) appointed recovery operators shall publish their scale of charges in such form as may be prescribed in one or more local papers;

(f) before making any regulations under subsection (2)(d) the Secretary of State shall consult such organisations as he considers necessary and in particular the authorities empowered by regulations under section 99(1)."

The noble Earl said: Then hour is late and I do not intend to give a detailed explanation of my amendment. The reason for tabling it is that there is considerable concern about police vehicle recovery schemes.

There have been court cases challenging their legality. In South Wales the nominated police recovery operator was charging extortionate rates to captive customers. In several areas the police have been telling motorists that they must use the police contractor when they have no power to do so. In other cases the customer's choice of recovery operator turned up before the police contractor but was turned away by the police using questionable procedures.

The Committee may be interested to hear that operators have to pay the police authority as much as £6,000 to buy a "patch". In addition, they are obliged to provide free—I repeat, free—storage and recovery services to the police. If it is necessary to return to this issue at Report I shall have to consider whether the word "corruption" is too strong. Ordinary motorists will be paying for these free services given to the police on the back of the recovery schemes.

Turning to the amendment itself, paragraph (e) is largely self-explanatory as it deals with all the concerns of motorists and trade associations. I do not intend to weary the Committee by going through it in detail tonight. However, I believe that the Minister will have to say whether he believes the principles in paragraph (e) are right or wrong. Does he believe there to be a general problem and, if so, what is he doing about it? I beg to move.

Lord Rooker: There is a serious issue here which has to be addressed. That is not easy to do. I did not say this in my original speech because it would have been wrong to link all three amendments together. This matter is part of an issue that we are currently looking at as well as those concerning other amendments which the noble Earl proposed. People may believe that they can make their own arrangements more cheaply. The Freight Transport Association and the Road Haulage Association would like guidelines. There is concern that currently owners of stolen vehicles recovered by the police have to pay police removal and storage costs. We are looking at these issues. I am not making a commitment that we shall return to them at Report stage, but they are under active discussion in government at present. Whether

we can bring anything forward as regards this Bill in this House or in another place remains to be seen. There may even be another Bill. I am not making any commitment. I can assure the noble Earl that various government departments, and not just the Home Office, are actively discussing these issues.

Earl Attlee: I am extremely grateful to the Minister for regarding it as a serious problem and not simply telling me why my amendment was unworkable. I was surprised that he did not raise the issue of the need to move broken down vehicles from certain roads very quickly. That is an issue which concerns the police. We know that the hard shoulder is an extremely dangerous place on the motorway. I am grateful for the noble Lord's response. I would like to use the normal caveat, but in the meantime I beg leave to withdraw the amendment

Amendment, by leave, withdrawn.

9.30 p.m.

Clause 73 [*Liability for wrongful acts of constables etc.*]:

Lord Rooker moved Amendment No. 335A:

Page 66, leave out lines 21 to 24 and insert "Each of the enactments specified in subsection (1A) shall be amended as follows—"

The noble Lord said: At this stage of the Bill, and at this time of night, I hope that noble Lords will take my word when I say that the amendments in this group are, essentially, technical amendments to Clause 73. I could make lengthy speeches on each amendment, if required. However, as I said, they are technical and not substantive policy amendments. I beg to move.

On Question, amendment agreed to.

Lord Rooker moved Amendments Nos. 335B to 335D:

Page 66, line 28, at end insert—

"(1A) The enactments are—

- (a) section 88(1) of the 1996 Act (liability of chief officers);
- (b) section 97(9) of that Act (liability of the Secretary of State);
- (c) section 42(1) of the 1997 Act (liability of the Director General of NCIS);
- (d) section 86(1) of that Act (liability of the Director General of the National Crime Squad);
- (e) section 27(8) of the Police (Northern Ireland) Act 1998 (c.32) (liability of the Secretary of State);
- (f) section 29(1) of that Act (liability of the chief constable of the Police Service of Northern Ireland);
- (g) paragraph 7(3) of Schedule 3 to that Act (liability of the Police Ombudsman); and
- (h) paragraph 14(1) of Schedule 3 to the Criminal Justice and Police Act 2001 (c.16) (liability of the Central Police Training and Development Authority).

(1B) In paragraph 7(1) of Schedule 8 to the 1997 Act (liability of Police Information Technology Organisation)—

- (a) for "a tort committed by" there shall be substituted "any unlawful conduct of";
- (b) for "torts committed by" there shall be substituted "any unlawful conduct of"; and

- (c) for "in respect of any such tort" there shall be substituted "in the case of a tort,".

Page 66, line 29, leave out from beginning to second "for" in line 31 and insert "In each of the enactments specified in subsection (3),"

Page 66, line 32, at end insert—

"(3) The enactments are—

- (a) section 88(4)(a) of the 1996 Act (payments in respect of tort proceedings against constables and special constables);
- (b) section 42(4)(a) of the 1997 Act (payments in respect of tort proceedings against members of, and constables serving with, NCIS);
- (c) section 86(4)(a) of that Act (payments in respect of tort proceedings against members of, and constables serving with, the National Crime Squad);
- (d) section 29(3)(a) of the Police (Northern Ireland) Act 1998 (c.32) (payments in respect of tort proceedings against police officers in Northern Ireland); and
- (e) paragraph 7(4)(a) of Schedule 3 to that Act (payment in respect of tort proceedings against police officers serving with, or assisting, the Police Ombudsman).

(4) In section 42(6) of the 1997 Act (application to Scotland), paragraph (a) shall be omitted.

(5) In section 39 (1) of the Police (Scotland) Act 1967 (c. 77) (liability for wrongful acts of constables)—

- (a) for "in reparation in respect of any wrongful act or omission" there shall be substituted "for any unlawful conduct"; and

- (b) for "in respect of a wrongful act or omission" there shall be substituted "for any unlawful conduct".

(6) In section 39(4) of that Act, for "wrongful act or omission" there shall be substituted "unlawful conduct".

On Question, amendments agreed to.

Clause 73, as amended, agreed to.

Clause 74 [*Liability in respect of members of teams*]:

Lord Rooker moved Amendment No. 335E:

Page 68, line 28, leave out "who is a member"

The noble Lord said: In moving this amendment, I shall speak also to Amendments Nos. 335E to 335S. This group contains essentially minor amendments; they are not amendments of major substance. However, as my briefing does not refer to them as being "technical", perhaps I should put this on the record and speak to them briefly. I would not like to be accused later of misleading the Committee.

Clause 74 provides a legal basis for civil liabilities arising from operations of joint investigation teams set up under international agreements to which the United Kingdom is a party. As drafted, the clause envisages such teams involving police officers from England, Wales and Scotland, and law enforcement officers from abroad. Amendments Nos. 335I, 335J, 335L and 335M are counterpart provisions for Northern Ireland, envisaging that such teams could also include Northern Ireland police officers.

Amendments Nos. 335G and 335H reflect that international agreements are likely to include both reserved and devolved matters and, therefore, involve the Secretary of State, as well as the Scottish Ministers and this Parliament. Amendments Nos. 335E, 335F and 335N are minor drafting amendments in relation to the legislation for Scotland.

[LORD ROOKER]

Amendment No. 335L, which amends subsection (5) of this clause, reflects the possibility that, with the agreement of the competent authorities of the countries setting up the joint investigation team, it could include members of international organisations such as Europol. Reimbursements might therefore be received from such organisations, as well as from other countries and territories.

Clause 75 provides that members of joint investigation teams set up under international agreements to which the United Kingdom is a party are to be treated in the same way as constables while in England, Wales and Scotland with regard to offences committed against them. Amendment No. 335S amends counterpart legislation for Northern Ireland to provide similar treatment for officers from abroad when in Northern Ireland as members of joint investigation teams.

Amendments Nos. 335Q and 335R reflect that international agreements are likely to include both reserved and transferred matters, and therefore involve the Secretary of State, as well as the Scottish Ministers and this Parliament. Amendment No. 335P is a minor drafting amendment in relation to the legislation for Scotland. I beg to move.

On Question, amendment agreed to.

Lord Rooker moved Amendments Nos. 335F to 335N:

Page 68, line 34, leave out "officer of police" and insert "constable"

Page 68, line 49, after "by" insert "the Secretary of State with the consent of"

Page 69, line 2, leave out "the Scottish Parliament" and insert "either House of Parliament."

Page 69, line 3, at end insert—

"() In section 29 of the Police (Northern Ireland) Act 1998 (c. 32) (liability for wrongful acts of constables), after subsection (5) there shall be inserted—

"(6) This section shall have effect where an international joint investigation team has been formed under the leadership of a constable who is a member of the Police Service of Northern Ireland as if any unlawful conduct, in the performance or purported performance of his functions as such, of any member of that team who is neither—

(a) a constable, nor

(b) an employee of the Board,

were unlawful conduct of a constable under the direction and control of the Chief Constable.

(7) In this section "international joint investigation team" means any investigation team formed in accordance with—

(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union;

(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with that Article of that Treaty; or

(c) any international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State.

(8) A statutory instrument containing an order under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Page 69, line 6, after second "fund" insert "or by the Chief Constable of the Police Service of Northern Ireland"

Page 69, line 8, leave out "from the authorities of another country or territory"

Page 69, line 10, at end insert "or by that Chief Constable"

Page 69, line 11, after "fund" insert "or (as the case may be) to that Chief Constable"

Page 69, line 12, at end insert—

"() In Scotland, where—

(a) any sums are paid by virtue of this section by a police authority or a joint police board, and

(b) in pursuance of an international obligation, the Secretary of State receives any sum by way of reimbursement, in whole or in part, of the sums so paid,

the Secretary of State shall pay the sum received by him by way of reimbursement to the Scottish Ministers who shall pay it to that authority or board."

On Question, amendments agreed to.

Clause 74, as amended, agreed to.

Clause 75 [*Assaults on members of teams*]:

Lord Rooker moved Amendments Nos. 335P to 335S:

Page 69, line 44, leave out first "member" and insert "constable"

Page 70, line 11, after "by" insert "the Secretary of State with the consent of"

Page 70, line 13, leave out "the Scottish Parliament" and insert "either House of Parliament."

Page 70, line 14, at end insert—

"() In section 66 of the Police (Northern Ireland) Act 1998 (c. 32) (assaults on constables), after subsection (3) there shall be inserted—

"(4) In this section references to a person assisting a constable in the execution of his duty include references to any person who is neither a constable nor in the company of a constable but who—

(a) is a member of an international joint investigation team that is led by a member of the Police Service of Northern Ireland; and

(b) is carrying out his functions as a member of that team.

(5) In this section "international joint investigation team" means any investigation team formed in accordance with—

(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union;

(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with that Article of that Treaty; or

(c) any international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State.

(6) A statutory instrument containing an order under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament."

On Question, amendments agreed to.

Clause 75, as amended, agreed to.

Lord Bradshaw moved Amendment No. 335T:

After Clause 75, insert the following new clause—

"PENSION ARRANGEMENTS"

() The Police Pensions Act 1976 (c. 35) shall be repealed with effect from 31st March 2005.

() By 31st March 2003, the Secretary of State shall bring forward proposals for debate in both Houses of Parliament for the introduction, by 31st March 2005, of new pension arrangements for police officers, including arrangements to ensure the full and on-going costs of the new arrangements are met from a pension fund established from the Consolidated Fund."

The noble Lord said: In moving Amendment No. 335T, I shall speak also to Amendments Nos. 335TA, 337A and 340AA, which are grouped together on the yellow sheet. They address two issues of considerable importance. We have been debating a large Bill about police reform but one key issue which is in need of desperate reform has been dumped again and again by governments of both parties. It is the issue of police pensions. I would couple with that—although it is not the subject today—fire service pensions.

The cost of police pensions is not a new issue for this House. The problem with the current police pension scheme is that it is under-funded. It means that the ongoing pension costs must be met by police authorities from the normal revenue account. Those costs are offset to an extent by the contributions made by serving police officers who pay from their monthly salaries 11 per cent, but that does not come close to meeting the existing pensions burden.

Lord Bassam of Brighton: I thank the noble Lord for giving way. In opening, he referred to four amendments in the group. Amendments Nos. 335TA and 340AA cover a subject other than pensions; they cover the Riot (Damages) Act. My understanding is that those issues have been separated, so perhaps for the convenience of the Committee the noble Lord might first concentrate on the issue of pensions. When we have got that out of the way we can move on to the other.

Lord Bradshaw: I shall finish the subject of pensions and then turn to the Riot (Damages) Act.

Current expenditure has risen from 7 per cent in 1991-92 to 13.3 per cent overall in 2000-01. More than £1 billion of police budgets are now spent on pensions. That will increase and in some authorities it is as much as 25 per cent of their costs. It varies from place to place.

The Minister may be assured that we are doing all we can to keep a cap on early and ill-health retirements, but the ongoing costs of pensions are unavoidable. The Government makes a grant but it must cover many items besides pensions. This year, many authorities are having to dig into their own reserves or to increase the council tax by large amounts in order to meet their deficit on pension funds.

In 1998, the Government consulted stakeholders on this exercise and a great deal of time and effort was put into it. The amendment we propose is simple. It proposes that at some point in the future we say that the existing pension scheme will stop and a new

pension scheme which is properly funded will start. It is quite simple. In time, it will ensure that pensions do not impact on front-line policing.

The amendment would bring a great deal of transparency to the issue of police funding and the cost of pensions. It would enable Parliament, police authorities, chief officers and members of the public to know much more clearly how their money is being spent. I shall stop there because that is the end of what I want to say about pensions. I beg to move.

Lord Bassam of Brighton: It is one of the ironies of life that I was one of the officials on the other side, in local government, who prepared a briefing about this problem more than a dozen years ago. The issue has certainly not gone away.

I do not know whether it is the intention of the noble Lord, but the effect of Amendment No. 335T would be to replace the current statutory scheme with an approved funded scheme similar—perhaps almost exactly the same—to those in the private sector. A public sector scheme such as the police pension scheme can have its benefits guaranteed by statute, but the existence of a fund does not necessarily make an expensive scheme affordable. We need to think long and hard about that. While we understand the concern of police authorities over the increasing burden of funding pensions, we have to consider the solution to this problem very carefully.

I see that the noble Baroness, Lady Harris, is in her place. She and I have debated this issue in the past. It is a problem to which we shall have to give very careful consideration.

The cost of setting up a funded scheme as proposed by the noble Lord would be somewhere in the region of £35 billion. This is a massive sum to divert away from other more immediate—some may say "front line"—issues and uses. We are giving careful consideration to the detailed options but, in broad terms, we think that the better way forward is likely to be a twin-track approach, first, by introducing a better system of financing police pensions—I am sure that the noble Lord will welcome that—and, secondly, by introducing a more affordable scheme for future entrants.

We hope to meet the requirements of police authorities and chief officers for a system which gives a greater certainty about pensions obligations on individual forces. We shall be announcing our conclusions in the very near future. We are also soon due to consider options for modernising the police pension scheme to make it more flexible and affordable, both for the officers and for police authorities.

As to Amendment No. 337A, under the present arrangements the police grant is indivisible. It is calculated from various elements, most of which are related to policing activity with only a relatively small part set aside for pensions. The total grant for each police authority is unhypothecated. We do not attempt to ensure that authorities "break even" on each component. There are swings and roundabouts in this issue to give an overall general fairness.

[LORD BASSAM OF BRIGHTON]

If we were to split off a piece of the grant for pensions, it would be logical to break the whole provision into its several components. No doubt at that stage someone would accuse us of control freakery at the centre, but that is a debate for another day. We argue—I think we are right—that this would benefit no one and would limit the scope for police authorities and chief officers to be flexible in the disposition of their carefully managed resources.

As I mentioned in my observations on Amendment No. 335T, we hope to bring forward proposals shortly that will provide greater certainty to police pension costs. We feel that these will meet the main concerns expressed in the noble Lord's amendment. Undoubtedly there will be detailed and careful discussions with the APA and the chief officers on this issue. With those assurances, I hope that the noble Lord will feel able to withdraw his amendment.

9.45 p.m.

Lord Bradshaw: I thank the Minister for that reply. At this time of night, I do not want to protract the discussions.

The scheme that we propose would draw a line under the present scheme, which would stop on a certain date. A new funded scheme would come into effect from that date. So the new funded scheme, which the Minister has said might cost £35 billion, would in fact be invented at a date in the future and would be funded for officers joining after that date. The problem would at least be capped at some time in the future.

I believe that this is the only way out of the difficulty. The alternative is to spend £35 billion, which I cannot see any government doing. Although the police grant is indivisible, we have to meet the police pension. Police authorities regard that as their first obligation. As I have said, some authorities—I believe Merseyside is one—are now spending 25 per cent of their money on this issue.

Lord Bassam of Brighton: I think I follow the noble Lord's drift. But would not the proposal lead to two separate pension schemes being offered? Where would the equity in those two schemes exist? How would the second, the funded scheme, have sufficient funds to pay out pensions from day one? That is what the noble Lord's scheme would envisage. Those are exactly the kinds of questions that worry me. This is exactly why we are concerned about the costs.

Lord Bradshaw: The scheme would not pay out pensions from day one, because the second scheme would apply only to new entrants, who would build up their pensions for a good while in the future. It is only by drawing a line between the two schemes that we can go forward.

I am not an actuary. I do not know how pension funds work; but I do know that they are an incredible burden. Every authority is having to go to its ratepayers for considerably more money to pay for

pensions than it otherwise would. I intend to return to the matter. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Bradshaw moved Amendment No. 335TA:

After Clause 75, insert the following new clause—

“RIOT DAMAGES

The Riot (Damages) Act 1886 (c. 38) shall be repealed.”

The noble Lord said: The amendment seeks to repeal the Riot (Damages) Act 1886. The Act provides that, where a police authority declares under the terms of the Public Order Act that a riot has taken place, we become liable to pay for any damages to buildings and their contents arising from the riot.

The legislation is widely viewed as archaic. The subject was discussed during a debate in this House in 1986 on the Public Order Bill. It has come back into the public eye following the claim against the Bedfordshire police authority for £40 million arising from the fire at the Yarl's Wood detention centre.

The provisions of the Act apply even when there has been no negligence or default on the part of the police. In fact, the mobile support unit from Thames Valley went to Yarl's Wood, and the following day I was present when the chief constable commended officers for their actions. They certainly had no part in any of the damage, only in containing it. The claim was made on the basis that the riots were somehow the result of a failure to provide adequate policing, although I do not believe that that was the case at Yarl's Wood.

I do not believe that there is any justification for these claims being met on the basis of being local disturbances. Claims may fall to be met by insurance companies, but I do not believe that they should fall on the local police authority. Ruth Henig, the chairman of the Association of Police Authorities, has written to John Denham calling on the Government urgently to review the Act. Although she wrote in November last year, no reply has been received from the Minister—which is extremely disappointing, and perhaps underlines the fact that we have very little confidence that the Home Office will meet the deadlines which it sets itself in the Bill. I beg to move.

Lord Rooker: I am sorry if Ruth Henig has not had anything in writing. However, following the riots in Bradford, Burnley and Oldham last summer, the Government set up an urgent review of the Riot (Damages) Act. That review is going on at the moment. I suspect that that would have been announced before Ruth Henig wrote her letter—or possibly just after, I do not know. Either way, she deserves a reply, even if it is only an acknowledgement, because it is now March.

The noble Lord, Lord Bradshaw, mentioned 1986. It is worth pointing out that the police were not free-standing authorities at that time, but were parts of county councils and always had the council reserves to draw on. In 1985, there was a riot in Handsworth,

which affected my constituency and Small Heath, so I am familiar with the operation of the Riot (Damages) Act as it affects small businesses.

I am reluctant to say anything about Yarl's Wood. I was almost going to say that a spiv insurance company is trying to get the police to pay for its liabilities, but that would be an unfair description. I am sure that the insurance company is a bona fide operation that is not seeking to boost its profits at the expense of the public purse—although that is how it looks to an ordinary person from outside.

There are three inquiries going on. I called in to Yarl's Wood unannounced on Saturday afternoon on my way to Home Office business in Bedford. It would be wrong of me to say anything about Yarl's Wood and the issues of Bedford police in advance of the reports that we shall receive from the various inquiries, because of the implications for those who are making claims and those who are seeking to rebut them.

Lord Bradshaw: Before I withdraw the amendment, I should like an assurance that the Minister will take the matter away and consider it and come back and tell us what will happen. We are dissatisfied and believe that something should be done.

Lord Rooker: The Government are pursuing an urgent review of the Riot (Damages) Act 1886. When we have pursued our urgent review, we shall report back to Parliament. However, I cannot guarantee that that will be in time for Report stage.

Lord Bradshaw: I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Thomas of Gresford moved Amendment No. 335U:

After Clause 75, insert the following new clause—

"PART 6A

WALES

POWERS OF THE NATIONAL ASSEMBLY FOR WALES

(1) References to the Secretary of State in Part II of the Police Act 1996 and in Part I of this Act shall, in relation to the Police Areas in Wales, have effect as references to the National Assembly for Wales and references to England and Wales shall, where appropriate, have effect as references to England or Wales.

(2) Every power conferred upon the National Assembly for Wales by this Act shall be exercised in accordance with the Government of Wales Act 1998 (c. 38)."

The noble Lord said: I understand the resentment that may be felt by those of your Lordships who have spent four days debating various matters in Committee and then find that I have come to interfere at nearly ten o'clock at night. That is not because I do not have an interest in police reform. I spent the first five years of my life living in a police station, where my father was as sergeant in the small Denbighshire Constabulary. Coming from a police family, I have seen the situation from the roots up.

Scotland has eight territorial police forces under the jurisdiction of the Scottish Parliament. They have maintained their tripartite arrangement. It is alive and well in Scotland and supported by our Government—a combination of Labour and Liberal Democrat Members of the Scottish Parliament. The police authorities determine the budget and resources. The chief constable is concerned with operational decisions about police deployment. The Scottish Executive has policy responsibility for law and order in Scotland and is answerable to the Scottish Parliament for those responsibilities.

We in Wales think that it is time that the National Assembly for Wales took on those same responsibilities. It is fortunate that the Government of Wales Act gave power to transfer the existing functions of the Secretary of State for Wales to the Welsh Assembly but also gave power for functions to be transferred under any other Act. Therefore, I seek to amend the Long Title to make that possible in this Bill.

When the Government of Wales Bill went through Parliament, Mr Ron Davies said that devolution was a process and not an event. It is a continuing process. When I see the prescriptive powers that the Bill gives to the Secretary of State and how it distorts the tripartite arrangement which has operated so well over many years, I realise that the provisions of any Bill dealing with the police require to be focused and directed at the needs of a particular area. We in Wales do not want a national policing plan in which the Secretary of State sets out strategic policing priorities for all police forces. I refer to Clause 1.

I give another example. Clause 6 concerns the regulation of equipment and provides that,

"The Secretary of State may by regulations make . . . provision requiring all police forces in England and Wales . . . to use only—

- (i) the equipment which is specified in the regulations . . . approved by the Secretary of State".

Flak jackets and guns may be important for police forces on Merseyside, in Greater Manchester or in London. However, in Gwynedd we are much more concerned about the provision of proper mountaineering equipment. In other more pastoral parts of Wales, people are more concerned about the quality of the sheep dip which police forces have to examine. Different areas have different concerns. I speak from experience. I recall terrorism cases in Wales among elements of the population which do not occur elsewhere in the UK. The coastline is a feature of Wales. I remember the words of the noble and learned Lord, Lord Williams of Mostyn, prosecuting in a case involving drugs that were shipped on to a deserted beach in Wales. He said that the defendants had failed only in one respect in that they had underestimated the inquisitiveness of the native people of Pembrokeshire. I refer also to fraud. Most fraud cases in Wales seem to relate to livestock. Rustling is a big issue there. It used to be a hanging offence and is still so regarded.

I am trying to explain that different priorities and different issues arise in different parts of the United Kingdom. For the Secretary of State on his own—save for his political advisers and his civil servants in

[LORD THOMAS OF GRESFORD]

Whitehall—to have a prescriptive power to put forward a measure for the whole of the country will result in such measures being not properly focused and not properly directed.

We have devolved power to Wales in the National Assembly for Wales. We have put in place in Wales a system of secondary legislation which, unlike the system of secondary legislation at Westminster, is open to scrutiny. One of the total failures of this Chamber is that we are incapable of amending secondary legislation that is brought before us. That is not the case with secondary legislation that is brought forward in Wales. It can be properly debated and amended, and consensus can be achieved. It is a better system for dealing with the needs of Wales. I do not speak from a particularly nationalistic point of view. I do not say that everything has to be different in Wales. I say that, from a practical point of view, it would be sensible for the government of Wales in the National Assembly to take over the functions of the Secretary of State in relation to Part I of the Bill and to Part II of the Police Act 1996. I beg to move.

10 p.m.

Lord Rooker: I welcome the noble Lord to our debate at the 11th hour of our fourth day. That is not a criticism. I have not seen him since the passage of the Anti-terrorism, Crime and Security Act before Christmas.

The noble Lord has obviously been in this House a lot longer than I have and he is learned in the law, but I have a feeling that he has no comprehension whatever of the momentousness of his proposal. I shall explain why.

Lord Thomas of Gresford: I was involved from these Benches at every stage of the passage of the Government of Wales Act. I have every appreciation of what it means to devolve the powers and functions of a particular part of government to the Welsh Assembly.

Lord Rooker: Well, I have a few questions for the noble Lord, but he need not answer them tonight.

The noble Lord proposes a major revision of the devolution settlement that was enacted by the Government of Wales Act 1998. He said that he was a leading participant in the passage of that Act. That statute and the current settlement, so recently won, were offered to the electorate in our manifesto of 1997. Those proposals were endorsed in a referendum, albeit very narrowly, I accept; I remember waiting, with everyone else, for the final result.

For good reason, the Government oppose the amendment. The Home Secretary's role in policing is predicated on a single criminal justice system. For example, while ministerial priorities for policing in England and Wales have their basis in Section 37 of the Police Act 1996, they are not drawn up in isolation from wider policies on crime reduction and prosecution. That is because the priorities and

indicators that are set require certain actions to be taken and results to be demonstrated that do not depend solely on the police.

If the noble Lord is serious about devolution—he clearly is; I do not say that in a pejorative way—and the proposal to devolve the Secretary of State's responsibilities for policing to the National Assembly, frankly, he must, at the same time, be a little more thorough. He must devolve the criminal justice system. He should not forget that prisons and the probation service are Home Office matters. He must advocate splitting the Court Service and the Crown Prosecution Service. He should also ask himself how Wales would benefit from breaking up the Forensic Science Service. If you are going to do the job, you should do it properly and not at half cock.

The noble Lord mentioned Scotland. That is a fair point and I understand why he raised it. Colleagues of mine in both Houses make such comparisons. One has to look at the history. Responsibility for policing in Scotland is not for the Home Secretary but for the Secretary of State for Scotland. It has never been the responsibility of the Secretary of State for Wales. That is obviously part of Scotland's history of a separate criminal justice system. England and Wales have long shared a common criminal justice system. I have no doubt that the noble Lord could put a date on that; I cannot, but I know that it happened a long time ago. If anything, therefore, the example of Scotland supports the current arrangement south of the Border, by which I mean England and Wales.

The Bill contains a major programme of police reform, but we also need to consider the White Paper aspects—those parts of the reform that are not part of the legislation. It will do the hopes for the further reduction of crime in Wales no good to have Welsh policing taken out of the scope of the reform agenda. The amendment does not deal with the Police Act 1997. What would happen to the National Crime Squad, the National Criminal Intelligence Service, the Police Information Technology Organisation and the codes of practice in respect of interfering with property?

The noble Lord chose an example which arose in an earlier debate on the Bill concerning equipment. I believe that we raised that issue ourselves. We have the crazy situation in which some police forces cannot communicate with each other because they insist that they are not being given the equipment to do so. It is absolutely preposterous that they cannot share the intelligence that they gather. Therefore, the idea of Wales opting out concerns not only a question of language—far from it; they are entitled to that. The fact is that criminals do not recognise the English/Welsh border. They do not recognise the English/Scottish one either, before anyone gets up to say that—I am not going to get myself into any sheep dip over that one!

The noble Lord does not deal with the Secretary of State's role in respect of best value. I am not knocking that and saying that it is a technically deficient point. I am saying that, if there is a serious attempt, which

noble Lords and others are entitled to mount, to have full devolution in which Wales is separated from England in respect of the police and criminal justice system—we should bear in mind that in Scotland it was always separate; it was not part of the mainstream following the active settlement—then they are embarking on a momentous operation of massive proportions and, probably, dislocation for police services in Wales. I cannot prove that. However, it will be a massive upheaval.

Therefore, our principal objections are that policing cannot be divorced from the administration of the criminal justice system. The costs of such radical surgery may be prohibitive, although I do not have a figure for it. The amendment does not take account of the other statutory enactments in respect of policing. And, perhaps most importantly, it cuts across the devolution settlement, which is literally only ink-dry on the paper in the grand scale of history. It is but a blip, from 1998 to 2002. That is not a criticism, but it has hardly had time to get started. Embarking on the major upheaval that this would cause would mean that the present system does not have time to bed down. One assumes that it was endorsed in last year's general election, by the referendum and by both Houses of Parliament.

If the noble Lord wants to return on Report with an amendment which covers all the issues that I have raised tonight then, frankly—I was going to say that he may not find me here—he will have to return with an amendment which is probably as big as the Police Reform Bill itself. It is that momentous. It is right that the matter has been raised. In the context of policing in England and Wales, this is the only occasion during our debates over the past four days of the Committee stage when the issue has been raised.

Lord Thomas of Gresford: I am pleased to hear the Minister support the devolution settlement, which we on these Benches accepted and promoted with even greater fervour than those on his own side.

The noble Lord should look a little more closely at Scotland. I made the point that the eight territorial police forces fall under Scottish jurisdiction. But the British Transport Police, the Ministry of Defence Police, the United Kingdom Atomic Energy Authority Constabulary and the National Criminal Intelligence Service—bodies which he mentioned in his reply—all come under the jurisdiction of the United Kingdom Government. That is the settlement that has been achieved in Scotland. I do not seek to change that; nor did I suggest it. I simply say that Wales has police forces which should come under the territorial police forces, which should come under a far more democratic jurisdiction than that of the Secretary of State for whom the noble Lord speaks when he replies in this debate.

Therefore, this is not as momentous as the noble Lord thinks. If it helps him, it was in 1453 that the Grand Court of Wales and the Marches was abolished by a Welsh-speaking Welsh king by the name of Henry VIII. We talk about Henry VIII clauses, but in fact he put together the two jurisdictions of that time.

Although in earlier proposals that I drafted for a parliament for Wales I proposed the resurrection of that court, we have not quite gone that far. It is perfectly possible for the police forces in Wales to co-operate with all the police forces in England and with the bodies to which the noble Lord referred—particularly with the scientific bodies which serve not only England and Wales but much wider areas—and for the tripartite arrangement, as exists in Scotland, to apply in Wales as well.

He invites me to return to the matter on Report in order to pursue this point. I accept that invitation. I shall consider the amendment as he suggests and I shall try to put it into a more succinct compass. We shall discuss the matter further. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clauses 76 to 78 agreed to.

Schedule 7 [*Minor and Consequential Amendments*]:

Lord Dholakia moved Amendment No. 336:

Page 130, line 40, at end insert—

"In section 6 of the 1996 Act (general functions of police authorities), after subsection (5) there shall be inserted—

"(6) A police authority for any police area shall have power to call for information or reports from Her Majesty's Inspectors of Constabulary, the Audit Commission or any relevant council for that authority."

The noble Lord said: This is a minor amendment. Unlike the previous amendment, it has no major implications. I hope that the Government will have no difficulty in accepting it. It is prompted by the desire of the police authorities to enhance their capacity to do an effective job to secure the best possible policing for their communities. I know that police authorities are committed to working with the Government to achieve a fundamental and radical improvement in policing. They fully support the aims of the Government. However, there is disagreement on the way in which the Government have chosen to secure those aims, but not with the aims themselves.

Unlike the Government, police authorities do not have ready access to independent objective advice on the work of their forces. HMIC carries out a valuable job in providing inspection reports but currently sees its role as reporting primarily to the Home Secretary or to the chief constable. This amendment would enable police authorities to be pro-active and to call in HMIC or local auditors where they have concerns about a particular aspect of local policing, or where they would find it helpful to have independent, professional advice on a particular issue.

We believe that self-improvement is always more effective than intervention imposed from outside. Rather than having to wait to be told that things are going wrong, police authorities want to take pre-emptive action locally. I hope that that is an attitude

[LORD DHOLAKIA]

and an approach that the Government want to encourage and that I shall receive a positive response from the Minister. I beg to move.

Earl Attlee: Can the noble Lord, in winding up, explain why his amendment does not appear to cover the British Transport Police, the Ministry of Defence Police and other forces?

Lord Bassam of Brighton: This amendment would allow any police authority to require Her Majesty's inspectors of constabulary, the Audit Commission, and the local authority within the relevant police area to disclose any information or to make a report. I presume that the intention is to cover information or reports relevant to the policing of the area, but as the amendment is drafted it does not state that. The effect would be much wider.

I have some difficulty with the amendment because it appears that the noble Lord is seeking to achieve through legislation something that would be better achieved by voluntary co-operation and through the spirit of mutual good working practices. The noble Lord made the point that in many instances it is better to achieve co-operation and good working practices to raise standards. This amendment appears to force the issue through legislation. Is this the right way to proceed when there is such good co-operation already? I wonder whether the Local Government Association, to which the APA is aligned, would be concerned—I am sure that it would be—about the proposed power to direct information or reports from local authorities.

We are unaware of any instance which would merit the extensive power provided in the amendment. I can see the benefit of reports and information being shared. We all share a common understanding of the need for that. However, I am not sure that to force the measure through by this approach adds to the existing provisions. I suspect that it may set up some suspicions, particularly where there is a requirement on local authorities to direct information or reports.

Lord Dholakia: The noble Earl, Lord Attlee, asked why the British Transport Police and other parties have not been included. We were concerned by the representations made to us by the police authorities. That is why we included them in the amendment. However, when talking about good practice there is no reason why others should not be involved.

The Minister's answer is most unhelpful. We are talking about best practice. We have not seen evidence of local co-operation working effectively as it would if there were the power to call in HMIC auditors to help in terms of better policing. We shall reconsider the matter and, if necessary, return to it on Report. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lord Dholakia moved Amendment No. 337:

Page 131, line 5, at end insert—

"In section 15 of the 1996 Act (civilian employees), for subsection (3) there shall be substituted—

"(3) Subsection (2) shall not apply to such persons employed by the authority for its own support as may be determined by that authority."

The noble Lord said: Like the previous amendment, this amendment is about enabling police authorities to do their job effectively.

The amendment would mean that police authorities could decide their own staffing levels rather than having to seek the agreement of the chief officer. It may seem peculiar, but although the police authority holds the police budget and decides how to allocate resources, it has to seek the chief officer's consent to increase its own staff even by one. Such a restriction is inappropriate and has led to difficulties in some areas—difficulties which have arisen only because of the way in which the legislation is currently framed.

The Government should recognise that police authorities are responsible enough bodies to decide their own staffing levels. Most authorities have only a handful of staff. They are always reluctant to devote resources to their own support staff if this will detract in any way from the front line policing services provided to their communities. However, it is important that police authorities are properly resourced and have the tools to carry out their duties effectively. If they need an officer to undertake research or analysis they should be able to employ one without needing the chief officer's agreement.

This Bill is about modernising and improving policing. This small amendment will contribute to that by helping police authorities secure improvements in local policing by doing their job more effectively. I beg to move.

10.15 p.m.

Lord Bassam of Brighton: Again, I can see where the noble Lord comes from on this issue. I understand some of the force of the argument underlying the amendment. However, we cannot see a self-evident problem that needs to be addressed in the way the noble Lord suggests. It is obviously right that police authorities are appropriately resourced to carry out their functions in setting a budget, the appointment of senior officers, local policing plans, best value and so on. But I am not sure that the proposition that the noble Lord makes deals with that problem. Nor are we convinced that there are conflicts or difficulties which give rise to this solution.

In the absence of any evidence that it is a major issue for police authorities and chief officers, it is not an amendment we can support. The noble Lord may wish to reflect on that point and suggest that the APA makes representations on the issue, perhaps to officials in the Home Office to see whether there is some other way in which the issue can be teased out without the

need to legislate. I do not think that legislating on the issue is the way to solve the problem—if there is a problem.

Lord Dholakia: I am grateful to the Minister. One of my concerns is that often he speaks on a particular amendment on the basis of advice that he has received. There are three Members on this side of the House with direct police authority experience, including myself. Anyone who has served on a police authority knows of the number of discussions, conflicts and internal difficulties that take place between it and the chief officers. I should have thought that the right way to try to resolve the matter would be to give a responsible police authority the ability to make the appointments they consider appropriate.

I wish only to say to the Minister that we shall certainly get in touch with the police authorities to see whether they can make direct representation to the Home Office in order to see whether there are other means by which this matter can be resolved. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 337A not moved.]

Lord Dholakia moved Amendment No. 338:

Page 132, line 21, at end insert—

"In Schedule 2 of the 1996 Act for paragraph 25(1), there shall be substituted—

"(1) A police authority may make to its chairman and other members such payments by way of reimbursement of expenses as the authority may determine."

The noble Lord said: Amendment No. 338 is grouped with Amendment No. 339. These are minor amendments but ones which I hope that the Government will have little difficulty in accepting. They provide for the police authorities to determine for themselves the levels of expenses for travel and subsistence to be paid to their members.

In the Criminal Justice and Police Act 2001, the Government fulfilled a long-standing commitment to police authorities to deregulate allowances paid to their members. The Home Secretary finally gave up control over the level of allowances and police authorities were given the scope—long available to local authorities—to decide their own allowances. However, because the Department for Transport, Local Government and the Regions had not then deregulated travel expenses for local councillors, the Home Secretary felt unable to take that further small step.

I understand that the DTLR is now deregulating expenses for local authority members. The Bill provides an opportunity to do likewise for police authority members. I hope that the Government recognise that police authorities are responsible bodies which can be trusted to behave reasonably.

Perhaps I may quickly mention how police authorities have responded to their new freedom to set up their own allowance levels. They have done so responsibly. The Association of Police Authorities set up an independent panel to produce guidance for all

authorities on appropriate allowance levels. The panel linked those allowances to clear job profiles for members and appropriate time commitments. Indeed, I understand that the panel's report has been cited as good practice and is widely drawn on by other local government bodies in producing their own allowance schemes. All police authorities are currently implementing the panel's recommendations, which will be reviewed in due course.

I believe that this shows that police authorities could and should be entrusted by the Government to manage their affairs sensibly without needing to be told by the Home Secretary that they should pay, for example, £6.57 per day subsistence to their members. I hope that the Minister feels able to accept this small but further rationalisation of the current arrangements. I beg to move.

Lord Bassam of Brighton: The noble Lord will be happy when I say that I am about to raise the white flag on this matter. I fully acknowledge that there are differing approaches in legislation for police authorities and local authorities. If the noble Lord is content to withdraw his amendment, which does not actually do what it perhaps seeks to do, we will give fair consideration to the proposition and will undertake some reasonably swift consultation and perhaps bring forward an amendment at a later stage.

The noble Lord has a point here. We are quite happy to give it active consideration.

Lord Dholakia: Especially when the noble Lord, Lord Rooker, moves his head I am always delighted. I am always happy with small miracles from time to time from the Minister. I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 339 not moved.]

Schedule 7 agreed to.

Schedule 8 [*Repeals*]:

Lord Rooker moved Amendment No. 339A:

Page 134, leave out lines 31 and 32 and insert—

"Section 42(6)(a)."

On Question, amendment agreed to.

[Amendment No. 340 not moved.]

Lord Rooker moved Amendment No. 340A:

Page 134, line 38, column 2, at beginning insert—

"In section 1—

- (a) the words after paragraph (b) of subsection (1); and
- (b) subsection (2)."

On Question, amendment agreed to.

Schedule 8, as amended, agreed to.

Clause 79 [*Short title, commencement and extent*]:

[Amendment No. 340AA not moved.]

[LORD ROOKER]

Lord Rooker moved Amendments Nos. 340B to 341A:

Page 71, line 32, leave out "and" and insert "to"

Page 71, line 39, after "provision" insert "(other than one contained in Chapter 1 of Part 4)"

Page 71, line 39, at end insert—

"() Section (*President of ACPO*) also extends to Northern Ireland."

The noble Lord said: With the leave of the Committee I shall move Amendments Nos. 340B to 341A *en bloc*. I beg to move.

On Question, amendments agreed to.

Clause 79, as amended, agreed to.

In the Title:

Lord Rooker moved Amendment No. 341B:

Line 5, after "officers;" insert "to amend the law relating to anti-social behaviour orders;"

On Question, amendment agreed to.

[*Amendment No. 341C not moved.*]

Title, as amended, agreed to.

House resumed: Bill reported with amendments.

HSBC Investment Banking Bill [HL]

Reported from the Unopposed Bill Committee with amendments.

House adjourned at twenty-eight minutes past ten o'clock.

CORRECTION

AT COL. 527 OF THE *Official Report* for Monday, 11th March, the question of the Baroness Carnegy of Lour was wrongly attributed to the Baroness Trumpington.

Written Answers

Tuesday, 12th March 2002.

Magistrates' Courts: Dorset

Earl Russell asked Her Majesty's Government:

What is the number of magistrates' courts in the County of Dorset; what was the equivalent figure in 1992; what is the projected figure for 2012; and whether they will express these figures as a ratio of courts to square miles. [HL2972]

The Lord Chancellor (Lord Irvine of Lairg): There are nine courthouses comprising 23 courtrooms in Dorset, representing one courthouse per 113.78 square miles or one courtroom per 44.52 square miles; in 1992 there were 12 courthouses comprising 29 courtrooms, representing one courthouse per 85.33 square miles or one courtroom per 35.31 square miles.

The provision of courthouses and courtrooms is the responsibility of the local Magistrates' Courts Committee, which has informed me that it is not currently in the process of consultation over the closure of any courthouses, although an operational decision may be taken in 2002–03 to reduce the number of hired rooms at County Hall in Dorchester or to suspend the hiring of those rooms pending a consultation exercise.

Defendants' Court Attendance Costs: Dorset

Earl Russell asked Her Majesty's Government:

Whether they have done any research on the proportion of defendants in Dorset whose costs in attending court exceed the fine imposed if they are found guilty. [HL2975]

The Lord Chancellor: My department has undertaken no such research.

Bereavement Damages

Lord Grabiner asked Her Majesty's Government:

Whether they intend to change to the level of bereavement damages awarded under Section 1A of the Fatal Accidents Act 1976 and Article 3A(5) of the Fatal Accidents (Northern Ireland) Order 1977. [HL 3280]

The Lord Chancellor: I laid before Parliament yesterday orders increasing the level of bereavement damages from £7,500 to £10,000 to reflect the increase in inflation since the figure was last revised in 1991. The orders will take effect from 1 April 2002.

Northern Ireland: Policing

Lord Hylton asked Her Majesty's Government:

In what ways they are helping the Northern Ireland Policing Board, the Oversight Commissioner and the Police Ombudsman to work together in harmony and mutual support. [HL2852]

The Lord Privy Seal (Lord Williams of Mostyn): Through the legislative framework created by the Government the three bodies named, whilst independent in their own right, are encouraged by the Secretary of State to work towards the common goal of an effective and acceptable police service in Northern Ireland.

Cabinet Secretary and Head of the Home Civil Service: Life Peers

Lord Patten asked Her Majesty's Government:

Whether it is a constitutional convention that a retiring holder of the posts of Cabinet Secretary and head of the Home Civil Service should receive a life peerage. [HL2929]

Lord Williams of Mostyn: There is no constitutional convention. However, as my right honourable friend the Prime Minister said in another place on 25 June 2001, a limited number of holders of very high office may be recommended for a peerage direct to the Queen by him.

IRA Ceasefire

Lord Laird asked her Majesty's Government:

In view of recent incidents, what they consider to be the status of the IRA ceasefire. [HL2945]

Lord Williams of Mostyn: The Secretary of State continues to keep the status of all ceasefires under review. He will not hesitate to take appropriate action if necessary.

Northern Ireland Police Ombudsman

Lord Laird asked Her Majesty's Government:

Further to the Written Answer by the Lord Privy Seal on 13 February (WA 153-4) concerning the Northern Ireland Police Ombudsman, whether they will supply in more detail a breakdown of the work carried out by consultants listed in that reply, and name the accounting officer for the Office of the Ombudsman's office. [HL2947]

Lord Williams of Mostyn: The accounting officer for the ombudsman's office is Mr Sam Pollock. A further breakdown of the work carried out by consultants listed in my reply of 13 February is a matter for the ombudsman's office. The Police Ombudsman has

been asked to write to the noble Lord. A copy of the letter will be placed in the Library.

Sex Discrimination Act 1975: Extension to Public Authorities

Lord Lester of Herne Hill asked Her Majesty's Government:

Whether they will introduce amendments to the Sex Discrimination Act 1975 to extend its application to public authorities, similar to the amendments to the Race Relations Act 1976 made by Section 1 of the Race Relations (Amendment) Act 2000. [HL2969]

Lord Williams of Mostyn: We are committed to extending the Sex Discrimination Act 1975 to cover public authorities when parliamentary time allows.

Lord Lester of Herne Hill asked Her Majesty's Government:

Further to the Written Answer by the Baroness Morgan of Huyton on 4 October 2001 (WA 62), whether they intend to amend the Sex Discrimination Act of 1975 to provide for the imposition of a positive duty on specified public authorities to promote sex equality, similar to the duty provided for in Section 71(1) of the Race Relations Act 1976; and, if so, when. [HL2970]

Lord Williams of Mostyn: The position remains as in October. We are committed to introducing a duty on public bodies to promote sex equality when parliamentary time allows.

Northern Ireland: Weston Park Discussions

Lord Laird asked Her Majesty's Government:

Whether there was an agreement made at Weston Park last summer concerning Northern Ireland; and, if so, who was involved and what was agreed. [HL3000]

Lord Williams of Mostyn: The Weston Park discussions did not result in immediate agreement on political advance. Following intensive discussions there, the British and Irish Governments put a package of measures, covering all outstanding issues, to the Northern Ireland parties on 1 August.

IRA Decommissioning

Lord Laird asked Her Majesty's Government:

When they consider that there will be another act of IRA decommissioning. [HL3001]

Lord Williams of Mostyn: The Independent International Commission on Decommissioning reported on 23 October 2001 that it had witnessed an event, which it regarded as significant, in which the

IRA had put a quantity of arms completely beyond use.

We now want to see further decommissioning by the IRA, and decommissioning by all other terrorist groups. The timing of any future decommissioning events is a matter for the Independent International Commission on Decommissioning.

Northern Ireland: Prisoners' Early Release Scheme

Lord Laird asked Her Majesty's Government:

How many prisoners released in Northern Ireland under the early release scheme have been recalled due to further criminal activity. [HL3216]

Lord Williams of Mostyn: Five individuals who were released from prison early under the terms of the Northern Ireland (Sentences) Act 1998 have been recalled to prison due to further criminal behaviour.

Register of Lords' Interests

Earl Attlee asked the Leader of the House:

Whether it is necessary to declare any significant indebtedness, other than a mortgage with a financial institution, in the new Register of Lords' Interests. [HL3255]

Lord Williams of Mostyn: Questions about the entries in the new Register of Lords' Interests should, in the first instance, be directed to the Registrar of Lords' Interests. The registrar consults whenever necessary the Sub-Committee on Lords' Interests, and Members should accept his advice in determining whether any particular interest is relevant or significant for the purposes of the register. A Member who acts on the advice of the registrar in determining what is a relevant interest satisfies fully the requirements of the code of conduct.

Personal Injury Cases

Lord Grabiner asked Her Majesty's Government:

When they intend to publish a consultation paper on periodical payments for future loss and care costs in personal injury cases. [HL3279]

The Parliamentary Secretary, Lord Chancellor's Department (Baroness Scotland of Asthal): My noble and learned Friend the Lord Chancellor has today published the consultation paper *Damages for Future Loss: Giving the Courts the Power to Order Periodical Payments for Future Loss and Care Costs in Personal Injury Cases*. The consultation paper proposes that the courts should have the power to award damages for future loss and care costs in the form of periodical payments. Responses to the consultation are sought by 7 June 2002. Copies of the consultation paper have been placed in the Libraries of both Houses.

Commonwealth Ministers' Discussions: Capital Punishment and Prison Conditions

Lord Hylton asked Her Majesty's Government:

When Commonwealth Ministers last discussed capital punishment; what was the outcome; what plans exist for further discussions; and whether prison conditions in the Caribbean Islands are on the agenda. [HL2912]

The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Baroness Amos): Commonwealth Ministers, including law Ministers, have not discussed capital punishment at their meetings over the past 15 years. There are no plans to discuss capital punishment or prison conditions at future meetings.

Middle East

The Earl of Sandwich asked Her Majesty's Government:

Whether they agree with the French Government's view that there must be an immediate peace settlement in the Middle East, on the grounds that violence there is endemic and will not respond to further security and anti-terrorist measures; and, if not, why not. [HL2986]

Baroness Amos: In common with our EU partners, the Government believe there is a need to establish a political perspective. However, the first step must be to establish an acceptable level of security on the ground. As a first step toward talks, the Palestinian Authority must take serious action to stop the violence, dismantle terrorist networks and bring terrorist suspects to justice. Israel must withdraw its forces from Palestinian-controlled areas, end extrajudicial killings, lift the closures and restrictions, and freeze settlements.

The Earl of Sandwich asked Her Majesty's Government:

Whether they have protested against the part destruction by the Israeli Defence Force of the trade union headquarters in Nablus; and with what result. [HL2988]

Baroness Amos: We are greatly concerned by Israeli destruction of Palestinian Authority infrastructure. Such action does not help the Palestinian Authority to dismantle terrorist networks, undermines the authority of President Arafat, and disrupts Palestinian economic, social and humanitarian development. Together with our EU partners, we raised our concerns at the EU General Affairs Council on 28 January about Israeli destruction of infrastructure funded by EU members. We reserved the right to claim reparation in the appropriate fora.

China: British Citizens or Residents

Lord Hylton asked Her Majesty's Government:

How many cases they know where British citizens or residents were deported from China, because of membership of or association with Falun Gong, since July 1999; whether they are aware of cases where visas to visit China have been refused to British citizens or residents for the same reason; if so, how many; and whether they are making representations to the Chinese Government on these matters. [HL3044]

Baroness Amos: Five British citizens were deported from China on 14 and 15 February this year by "illegally preaching Falun Gong". A Swedish national, resident in the UK, was deported from China after taking part in a Falun Gong demonstration in Tiananmen Square on 20 November 2001.

The issuing of visas to China is a matter for the Chinese authorities. We are not aware of any cases where British citizens, or residents, have been refused a visa to China because of affiliation to Falun Gong.

Our embassy in Beijing has made official representations to the Chinese authorities about lack of consular access to the British citizens who were deported, their alleged mistreatment and confiscation of their belongings.

Turkey: Human Rights

Lord Hylton asked Her Majesty's Government:

What reports they have received from the British Embassy in Ankara concerning the expulsion of inhabitants from villages and hamlets in the Van and Sirmak districts in 2001, and the destruction for the second time of Senlikkoya in October 2000; whether they have information concerning difficulties faced by inhabitants wishing to return to their original villages; and whether they will draw the attention of the Government of Turkey to the United Nations Guiding Principles on Internal Displacement (dated 1998). [HL2915]

The Minister for Trade (Baroness Symons of Vernham Dean): The British Embassy in Ankara reports regularly on human rights issues in Turkey. It has previously reported on village clearances in the regions mentioned by the noble Lord. In the course of its regular monitoring of human rights in Turkey, it receives information from a variety of sources covering a range of issues, including the impact of clearances on the local population.

Gibraltar

Lord Hoyle asked Her Majesty's Government:

Further to the Written Answer by the Baroness Symons of Vernham Dean on 25 February (WA 201), whether the Two Flags Three Voices formula allows the Chief Minister to have an equal say with

other partners and a vote on any decisions reached at the talks. [HL2983]

Baroness Symons of Vernham Dean: As I explained in my answer to the noble Lord on 25 February, the Two Flags, Three Voices formula allows the Chief Minister of Gibraltar to participate in the Brussels Process with his own and distinct voice as part of the British delegation. We have made clear that any proposals emerging from the Brussels Process would be implemented only in the event of an affirmative vote by the people of Gibraltar in a referendum.

World Trade Organisation Negotiations

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

Which United Kingdom Minister has overall responsibility for World Trade Organisation negotiations. [HL3107]

Baroness Symons of Vernham Dean: The United Kingdom Minister with overall responsibility for World Trade Organisation negotiations is ultimately my right honourable friend the Secretary of State for Trade and Industry. However, as Minister for Trade, I am responsible for taking forward this work on a day-to-day basis.

UN Convention on the Rights of the Child

Baroness David asked Her Majesty's Government:

How in light of devolution they ensure that their obligations under the Convention on the Rights of the Child are consistently monitored and implemented across the United Kingdom; and [HL2612]

Following devolution, responsibility for ensuring compliance with the Convention on the Rights of the Child throughout the United Kingdom rests with the United Kingdom Government and not with the devolved administrations in Scotland, Northern Ireland and Wales; and [HL2613]

In response to the concluding observations adopted by the Committee on the Rights of the Child in 1995 following examination of the United Kingdom's initial report under the Convention of the Rights of the Child, they have carried out an up-to-date review of action taken; and, if so, whether they will publish the results. [HL2614]

The Parliamentary Under-Secretary of State, Department for Education and Skills (Baroness Ashton of Upholland): The Children and Young People's Unit (CYPU) is responsible for monitoring the implementation of the UN Convention on the Rights of the Child across the United Kingdom and will be co-ordinating the Government's next report in 2004. CYPU is a cross-departmental unit responsible for ensuring the coherence of the Government's policies for children and young people. In taking forward this

work, CYPU is working closely with the devolved administrations and Whitehall departments to ensure a proper perspective across the United Kingdom. As with other international treaties, while responsibility for the convention as a whole rests with the United Kingdom Government rather than the devolved administrations, responsibility for implementation in respect of devolved matters does rest with the devolved administrations.

The Government responded to the Committee on the Rights of the Child's concluding observations of February 1995 when we published the United Kingdom's second report in August 1999. The second report will be considered by the committee later this year. Given the time that has elapsed since the last report was submitted and the important changes that have taken place since then, we intend to publish later this spring a brief update on UK progress since 1999.

Afghanistan: Civilian Casualties

The Earl of Sandwich asked Her Majesty's Government:

How they respond to evidence from non-governmental organisations working in Afghanistan that air strikes targeted at the Taliban are also causing civilian casualties, hampering the relief effort and reducing the numbers of people who can be assisted. [HL936]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Bach): The coalition has ensured throughout operations in Afghanistan that the targeting of legitimate military targets is conducted with the utmost care and with the over-riding requirement that the danger of civilian casualties should be kept to a minimum. We obviously regret any such casualties that may occur. Reports and claims of civilian casualties received by the Ministry of Defence have predominately emanated from the Taliban via a variety of media groups. There have been virtually no reports received from more reliable sources such as non-governmental organisations.

The Earl of Sandwich asked Her Majesty's Government:

Further to the Question for Written Answer tabled by the Earl of Sandwich on 23 October 2001 (HL936) which is still unanswered, how they respond to further evidence in the *Guardian* of 12 February of the large number of civilian casualties in Afghanistan during the war. [HL2854]

Lord Bach: The Government have said before that the international coalition operating in Afghanistan makes every effort to avoid civilian casualties, but obviously regrets any that may occur. We should be cautious about believing all newspaper reports, since many were derived from factual errors or Taliban propaganda. As the *Guardian* article itself says, regarding an academic who is researching casualties, "some of the strikes he records duplicate one another, others are fictional".

Medically Downgraded Army Personnel

Lord Vivian asked Her Majesty's Government:

How many of the medically downgraded 9,635 Army personnel are unfit for deployment outside the United Kingdom, for deployment on operational duties and for deployment overseas.

[HL2600]

Lord Bach: The figure of 9,635 medically downgraded personnel in the Army was as at 1 April 2001. As at 1 January 2002, there were 10,126 medically downgraded personnel. The breakdown of this total is shown below.

Number of medically downgraded personnel deployable overseas in any part of the world in a line of communication or base role, but not in a fighting role	7,159
Number of medically downgraded personnel who may be employed outside the UK in Germany, Belgium or (for Gurkas) Nepal	1,435
Number of medically downgraded personnel unfit for any deployment outside the UK	1,532

Harrier Departmental Fleet

Lord Vivian asked Her Majesty's Government:

What is the current total number of Fleet Air Arm Harriers and RAF Harriers GR7; and what will be the number in the future after the proposed cuts.

[HL3076]

Lord Bach: On 4 March 2002, there were 54 Sea Harriers and 86 RAF Harriers in the Harrier Departmental Fleet. The Harrier Departmental Fleet is the total number of Harrier aircraft owned by the Ministry of Defence and includes aircraft from the operational fleet, sustainment fleet, training fleet and aircraft owned by QinetiQ. Following the withdrawal from service of the Sea Harrier between 2004 and 2006, the Sea Harrier element of the departmental fleet will be nil, and the RAF Harrier element is planned to be 86.

Army: Recruitment

Lord Vivian asked Her Majesty's Government:

What action is being taken by the Ministry of Defence to increase the number of recruits for the Army; and what money is being allocated to units that have set up their own unit recruiting teams.

[HL3096]

Lord Bach: Action is being taken in a wide range of areas with the aim of increasing Army recruiting, both for officers and soldiers, co-ordinated by the Army Training and Recruiting Agency's Recruiting Group. This includes television advertising, work experience and "Look at Life" courses, graduate recruitment seminars and undergraduate army placements. In addition, concentrated recruitment drives have been trialled in two specific areas. The first in the London

area last year showed a 24 per cent increase in inquiries and the latest drive in the North East in February showed an increase in inquiries of 31 per cent, although it is too early to assess the effect on actual enlistments. Similar events are planned for Scotland in June this year, a further London campaign in October, and the home counties and South East also in October. Changes to the recruiting process are being implemented in selected areas using more non-uniformed staff to process applications, allowing uniformed personnel to be more mobile and go out to the potential audience rather than expecting them to come to the recruiting offices. Other initiatives include *Camouflage Magazine*, which is aimed at 13 to 17 year-olds and aims to cultivate and maintain an early interest in the Army; there are currently nearly 90,000 members of whom nearly half are 15 and 16 year-olds. Also, a Commonwealth selection team is being set up with effect from April 2002 to serve the increasing interest from Commonwealth countries.

As from 1 April 2002 there will be 93 regimental recruiting teams (RRTs), encompassing existing RRTs and the former mobile display teams, these will be staffed by Field Army personnel, but funding will be from both recruiting group and the Field Army. The level of funding will vary according to the team's size and the recruiting need of their particular capbadge. Funding includes the provision of vehicles and trailers, portable computers, mobile telephones, travel and subsistence costs, with fuel costs and marketing support also provided.

Staff Sergeants and Sergeants: Extension of Service

Lord Vivian asked Her Majesty's Government:

What steps are being taken to enable staff sergeants and sergeants to extend their service voluntarily beyond the 22-year point by placing them on a special list.

[HL3097]

Lord Bach: Any soldier who has completed 18 years' service on the open engagement, notice engagement or the 22-year engagement, may apply to be considered for service on the long service list (LSL). At present, there are 577 soldiers serving on the LSL (as at 1 January 2002), of whom approximately 200 are staff sergeants and 37 are sergeants. While no guarantee can be given of employment up to age 55, every effort is made to secure this.

Soldiers can also be granted career continuance for periods of up to five years. Employment may be in their own arm or service, or they may be required to serve in another arm or service on transfer.

In addition to this, the Army is currently conducting a study, known as the non-commissioned engagements and career structures study, into soldier career structures. One strand of this study is to examine the possibility of employing more soldiers, including those at the rank of sergeant and staff sergeant, for longer than 22 years.

Flight RR 500, 18 February

Lord Vivian asked Her Majesty's Government:

Why approximately 15 duty personnel were not allowed to fly on flight RR 500 from Stansted to Munster on 18 February, when the flight was carrying only 91 personnel and when the Ministry of Defence had chartered 106 seats. [HL3138]

Lord Bach: Flight RR 500 on 18 February was chartered for 100 seats but 21 out of the pre-booked and waiting list passengers failed to report. All eight stand-by duty passengers who did report were then boarded. Only one non-duty aspiring passenger did not fly, an indulgee wife of a serviceman. The failure to fly was due to a local administrative error and RAF staff have been rebriefed on the procedures to be followed when dealing with indulgence passengers.

Courts Martial: ECHR Judgment

Lord Vivian asked Her Majesty's Government:

What action they are taking as a result of the recent European Convention on Human Rights ruling on military courts martial. [HL3139]

Lord Bach: The European Court of Human Rights delivered its judgment in the case of *Morris v the United Kingdom* on 26 February. The Court noted that the changes to the court martial system made by the Armed Forces Act 1996 have gone a long way to meeting the concerns it had expressed previously, in the *Findlay* case. However, it found that there had been a violation of Article 6 of the European Convention on Human Rights, which concerns the right to a fair hearing, as regards certain aspects of Mr Morris's trial by court martial in 1997.

The Court was concerned about the potential for undue external influence over certain members of a court martial panel; and about the procedures for involving non-judicial authorities in the review of court martial findings and sentences. We are assessing the implications of the Court's judgment for the future conduct of courts martial and whether any changes that may be necessary require the legislation to be amended. At present, Army and Royal Air Force courts martial scheduled for the near future are being postponed. We regret the inconvenience this is causing to accused and their representatives and to witnesses. The possible resumption of courts martial is being reviewed on a week-by-week basis. For the time being, trials in the Royal Navy are continuing in view of the nature of the regulations in that service concerning the position of court martial members.

We shall make an announcement as soon as our assessment of the implications of the judgment has been completed. However, we do not consider that the judgment fundamentally affects the court martial

system, which we intend to retain as an effective and fair means of administering discipline and justice in our Armed Forces.

Single Sky Proposals

Lord Vivian asked Her Majesty's Government:

In view of the recent European Commission ruling on the "Single Sky Policy", what steps are being taken by the Ministry of Defence to allow the United Kingdom to retain control over its own airspace to ensure that the Royal Air Force is able to fly at any time in defence of the United Kingdom. [HL3140]

Lord Bach: The Ministry of Defence is fully engaged in formulating the UK's position on the European Commission's Single Sky proposals. These proposals, which recognise the national security imperative, call for close co-operation between civil and military authorities. The MoD has forged close links with the Civil Aviation Authority and other interested government departments, and these will ensure that we are fully involved in any Single Sky legislation discussions which impinge on issues of national security.

Royal Armoured Corps: Collective Performance Levels

Lord Vivian asked Her Majesty's Government:

What are the criteria for the collective performance levels 1-5 in regiments of the Royal Armoured corps. [HL3141]

Lord Bach: Collective performance (CP) levels are generic for Army formations and units, and are not specific to the Royal Armoured Corps (RAC). The definitions of CP levels 1-5 are as follows:

CP level	Description
CP 1	Units, sub-units or detachments all of whose soldiers have successfully completed their individual Foundation Training (Individual Training Directives (Army) and Special To Arm Training) in year.
CP 2	A unit trained in single arm sub unit skills.
CP 3	A unit trained in single arm/specialist role skills (i. e. up to unit level) less specific to theatre training.
CP 4	A battle group or unit trained for its primary task/ all arms operations, less any specific to theatre training.
CP 5	A formation or task force, trained for all arms operations, less any specific to theatre or mission training.

Regiments of the RAC are required to reach up to CP4. They achieve this by gaining proficiency in a number of mission essential tasks (land), depending on their role and designated readiness.

Regional Cultural Consortia

Baroness Anelay of St Johns asked Her Majesty's Government:

What was the cost of maintaining the regional cultural consortiums in 2001 in total and by region.

[HL3024]

The Minister of State, Department for Culture, Media and Sport (Baroness Blackstone): The cost of maintaining the regional cultural consortiums in 2001 was £379,559.69. The cost by region is set out in the following table. The consortiums have also received financial assistance from a variety of regional bodies and in kind from staff in the Regional Government Offices.

	£ Total
Living East	53,513.39
East Midlands Cultural Consortium	47,183.60
Culture North East	72,410.10
North West Cultural Consortium	61,202.45
South East Cultural Consortium	43,139.85
South West Cultural Consortium	34,029.07
West Midlands Life	25,409.36
Yorkshire Cultural Consortium	42,671.87

Baroness Anelay of St Johns asked Her Majesty's Government:

On how many occasions they have reviewed the effectiveness of the work of the regional cultural consortiums; and whether those reviews have been published.

[HL3025]

Baroness Blackstone: The first review since the consortiums were launched around Christmas 1999 is currently taking place and decisions on that review will be announced in due course.

National Stadium

Baroness Anelay of St Johns asked Her Majesty's Government:

Further to the Statement of the national stadium by the Baroness Blackstone on 19 December 2001 (HL Deb, cols 301–14), whether the independent value for money assessment has been commissioned into the proposed contracts with Multiplex; if so, which company has been commissioned to carry out such an assessment; and whether they are satisfied that the company has no previous or likely future involvement in the project.

[HL3029]

Baroness Blackstone: Following a competitive tendering process in which Sport England and DCMS were involved, Wembley National Stadium Limited, a wholly owned subsidiary of the Football Association, has appointed Cyril Sweett Limited to undertake a value for money analysis of the proposed contract with Multiplex Constructions Limited. I have placed a copy of the terms of reference for this study in the Library of the House, Cyril Sweett Limited has had no previous involvement in the national stadium project and there

is, at present, no indication of likely future involvement in the project.

Sports Clubs: Applications for Charitable Status

Baroness Anelay of St Johns asked Her Majesty's Government:

What conclusions they reached in their discussions with John Stoker of the Charity Commission on 12 February with regard to the potential implications for sports clubs which may decide to apply for charitable status under the Charity Commission's proposals outlined in *Promoting Sport in the Community*.

[HL3062]

Baroness Blackstone: Following the Minister for Sport's meeting with Mr Stoker, a number of significant improvements are to be made to the Charity Commission's guidance to sports clubs which are considering applying for charitable status. The commission will circulate the improved guidance for comments shortly.

Charitable status will make a number of financial benefits available to local amateur clubs, including mandatory 80 per cent rate relief. The Government expect that this improved guidance, together with further practical measures which are presently being discussed with the commission, will greatly help local clubs in making successful applications.

NHS Hospitals: Board and Lodging

Baroness Barker asked Her Majesty's Government:

What is the definition of hospital board and lodging, excluding food and laundry.

[HL2664]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Hollis of Heigham): There is no hospital board and lodging charge, Maintenance and treatment in a National Health Service hospital are provided free, regardless of a person's financial situation.

Furniture and Furnishings (Fire) (Safety) Regulations

Lord Morris of Manchester asked Her Majesty's Government:

What evidence they have of evasions of the Furniture and Furnishings (Fire) (Safety) Regulations made under the Consumer Protection Act 1998; and what action the Department of Trade and Industry is taking to address any breaches of the legislation.

[HL2934]

The Parliamentary Under-Secretary of State, Department of Trade and Industry (Lord Sainsbury of Turville): The Furniture and Furnishings (Fire) (Safety) Regulations 1998 are enforced by local

authorities, which have powers to suspend the supply of products which do not meet the requirements of the regulations, to seize such products, and to prosecute suppliers. This department collates statistics on prosecutions under the regulations every five years and publishes them in a statutory report on consumer safety. The most recent report, published in 1998, records that 404 prosecutions were brought under the regulations between April 1993 and March 1998, of which 398 resulted in conviction.

Energy Generation: Nuclear and Renewable Sources

Lord Campbell of Croy asked Her Majesty's Government:

Whether they will increase the proportion of energy generated from nuclear and renewable sources in order to reach their targets for reducing emission of carbon dioxide in the United Kingdom.

[HL2985]

Lord Sainsbury of Turville: My department is looking to accelerate the development of renewables in a wide range of sources and technologies. The renewables obligation for England and Wales; due to come into effect from 1 April 2002, (subject to parliamentary approval) and the comparable Scottish renewables obligation represent the Government's main mechanism for achieving our target of obtaining 10 per cent of licensed electricity supplies from eligible renewable sources by 2010. This is a very challenging target but one we are determined to see met. It is intended to act as a stimulus to industry and to provide a milestone for monitoring progress.

Nuclear power provides about one-quarter of the UK's electricity supplies. It is for the private sector to bring forward proposals for new plants. We are not aware of any such plans.

Overall, the department's energy and emissions projections indicate that the UK is on track to meet its Kyoto targets. On central assumptions, the policies and measures set out in DEFRA's Climate Change Programme are projected to reduce the UK's CO₂ emissions by at least 19 per cent by 2010 from a 1990 baseline.

Scotland: Renewable Energy

The Duke of Montrose asked Her Majesty's Government:

Further to the comments about Scotland by the Lord Sainsbury of Turville in the debate on wind energy on 25 February (HL Deb, col. 1305), what arrangement will be required to unblock renewable projects in Scotland; and how many projects are currently blocked.

[HL3006]

Lord Sainsbury of Turville: My remarks on 25 February were in relation to NFFO locational flexibility, which is applicable to projects in England

and Wales. The Scottish Executive is currently in the process of putting regulations in place to facilitate locational flexibility for SRO (Scottish Renewables Order) projects in Scotland. Subject to approval by the Scottish Parliament, these will be in place by the end of March 2002, bringing Scotland into line with the position in England and Wales.

Scotland is well on the way to achieving its SRO target of 150 MW of installed renewables capacity by 2003. The Scottish Executive is aware of only one project that will benefit from the locational flexibility provisions being put in place, compared to the 100 or so projects that stand to benefit from the new flexibility in England and Wales.

Sound Recording: Copyright Exception

Baroness Anelay of St Johns asked Her Majesty's Government:

Further to the Written Answer by the Lord Sainsbury of Turville on 2 July 2001 (W4 33), which parties were consulted on the possibility of changes to the scope of the exception to copyright governing the playing or showing of broadcasts in public places where the public has not paid for admission; and what were the results of this consultation exercise.

[HL3026]

Lord Sainsbury of Turville: Those consulted included organisations representing right holders, particularly the owners of rights in sound recordings and music, and users of sound recordings, such as broadcasters, small businesses and background music providers. Right-holder interests wanted the exception to copyright in Section 72 of the Copyright, Designs and Patents Act 1988 to be repealed or modified. Those providing background music by dubbing wanted Section 72 to be modified too but another user group wanted Section 72 to remain unchanged. A dialogue with some of the key interests is continuing.

Labelling Policy: Lead Department

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

Which department they identify as the lead department for the co-ordinating labelling policy.

[HL3059]

Lord Sainsbury of Turville: The lead department for co-ordinating product labelling policy is the Department of Trade and Industry, which provides the secretariat for an Interdepartmental Group on Product Labelling.

Ridgeway

Lord Avebury asked Her Majesty's Government:

When they expect to receive the assessment of the condition of the Ridgeway from the Countryside

Agency, requested by the Minister for Rural Affairs; and whether they will make this assessment the basis for consultations on further measures that may be needed from the Department for the Environment, Food and Rural Affairs to protect the Ridgeway from damage by motor traffic. [HL2910]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Whitty): The Department for Environment, Food and Rural Affairs has no plans to consult on this issue.

The Ridgeway Management Group (comprising the relevant highway authorities and the Countryside Agency) has commissioned an audit of the condition of the trail throughout its full length. The report is expected in the early summer. The management group will then consider what further action is required to ensure that the surface of the Ridgeway is maintained to an appropriate standard.

Sustainable Development

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

Whether they will ask the World Trade Organisation to include environmental impact assessments when a conflict may arise between trade rules and sustainable development. [HL3105]

Lord Whitty: The Doha Development Agenda, agreed by Ministers at the fourth Ministerial Conference of the World Trade Organisation in Doha in November 2001, strongly reaffirmed the WTO's collective commitment to the objective of sustainable development.

The ministerial declaration states: "We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive".

The declaration assigns a new role to the WTO's Committee on Trade and Development and Committee on Trade and Environment to act as forums to identify and debate the developmental and environmental aspects of the negotiations, in order to support the objective of having sustainable development considerations appropriately reflected during the course of the new trade round.

The declaration also explicitly supports "the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis". This reflects the view which is strongly held by the majority of WTO members that environmental or sustainability impact assessments should be entirely voluntary in nature and should be conducted at the national level.

The United Kingdom and the European Union strongly support the use of environmental or sustainability impact assessments as a tool to assist the

development of countries' trade policies with a preference for sustainability impact assessment as this allows the full range of economic, environmental and social impacts to be considered in a balanced way.

The EU is, therefore, undertaking its own sustainability impact assessment (SIA) of the new round. The European Commission has recently awarded a contract to the Institute for Development Policy and Management at the University of Manchester to conduct a detailed and rigorous SIA of the new round. The results of the SIA, when available, will be used by the EU to inform its approach to the negotiations. Regular consultations with civil society on the scope and findings of the SIA will be convened by the European Commission. A dedicated website has been set up to provide easily accessible reports on the progress of the SIA.

Trout and Cormorants

Lord Mason of Barnsley asked Her Majesty's Government:

What assessment has been made by the Environment Agency of the damage caused to inland trout lakes through the constant killing of trout by cormorants; and what protection is being provided to safeguard trout stocks. [HL3132]

Lord Whitty: In 1996, the Environment Agency, together with DETR and MAFF, launched a research programme to improve the level of information on piscivorous birds and their impact on fisheries. The survey concluded that predation by cormorants was a problem at specific fisheries rather than a general problem.

As well as providing information on a wide range of non-lethal anti-predation measures, DEFRA issues licences to allow the shooting of a limited number of cormorants as an aid to scaring where it can be demonstrated that the cormorants are having a serious effect on the performance of a fishery and where there is no other satisfactory solution. Recent studies suggest that stocking with larger trout is a cost-effective option for reducing losses to cormorants.

Lord Mason of Barnsley asked Her Majesty's Government:

Whether the Environment Agency is encouraging a cull of the cormorant; and how many licences have been issued to kill cormorants. [HL3133]

Lord Whitty: The Environment Agency does not encourage the cull of cormorants as they are a protected species under the Wildlife and Countryside Act 1981. The destruction or taking of these birds, their eggs or their nests is prohibited except under licence from DEFRA or one of the statutory conservation bodies (in England, English Nature). The Act does provide for them to be controlled under licence to prevent serious damage to fisheries although there are no powers to undertake a general cull.

In the licensing year 200-01 (May to April), DEFRA issued in England a total of 79 licences to shoot a total of 506 cormorants. The number reported to have been shot was 199. English Nature only issued one licence for the purposes of scientific research, but no cormorants were killed under this licence.

Lord Mason of Barnsley asked Her Majesty's Government:

Whether they will estimate how many rainbow trout are killed by cormorants each year; which regions are suffering most; which cormorant species are most responsible for the depletion of trout stocks; and from where they originate. [HL3134]

Lord Whitty: No estimate has been made of the number of rainbow trout taken by cormorants.

Cormorants in the UK belong to a single species *Phalacrocorax carbo* but there are two distinct races or sub-species. *Phalacrocorax carbo carbo* is found predominately on the north-east Atlantic coasts of Europe (especially the British Isles). *Phalacrocorax carbo sinensis* breeds almost exclusively inland beside

freshwaters and is found across much of Europe, as well as in Russia, India, China and Japan, *Phalacrocorax carbo carbo* accounts for most of the predation on rainbow trout.

Lord Mason of Barnsley asked Her Majesty's Government:

What discussions have taken place between the Environment Agency and the Royal Society for the Protection of Birds to rid trout lakes of cormorant activity. [HL3135]

Lord Whitty: The Non-Governmental Joint Fisheries Policy and Legislation Working Group, chaired by Lord Moran, now holds regular and on-going discussions with the Environment Agency, RSPB, English Nature, and various angling bodies to discuss the way forward in resolving problems caused by cormorants. These discussions have previously resulted in the leaflet *Cormorants: The Facts*, published in 2001, which seeks to communicate the various cormorant management options to the angling community. Ridding trout lakes of cormorant activity is not practicable.

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