Vol. 762
No. 21

Thursday
25 June 2015

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

£4·00

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201516/ldhansrd/index/150625.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £4

Annual subscriptions:
Commons, £865; Lords £600

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
Con Ind	Conservative Independent
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Lab	Labour
Lab Ind	Labour Independent
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Thursday, 25 June 2015.

11 am

Prayers—read by the Lord Bishop of Bristol.

NHS: GP Clinics

Question

11.07 am

Asked by ***Lord Brooke of Alverthorpe***

To ask Her Majesty's Government whether they will provide an annual report to Parliament regarding the operation of seven-day opening of general practitioner clinics.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, we are committed to seven-day GP access. We have already invested £175 million in 57 schemes covering 2,500 practices, offering improved access including evening and weekend appointments. The 2016-17 mandate to NHS England, to be published later this year, is expected to reflect Government commitments, including on access. The Government hold NHS England to account for progress against these objectives and publish an annual assessment of NHS England, including progress in delivering the mandate.

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful to the Minister for the information he has just given. Will he recall that earlier in the week, in reply to a Question about the number of GPs in practices, he said that the general practice model "is largely broken"? His second statement was that it "is probably broken". In the light of that expression of his concerns about what was happening in GP practices, I presume that he was associating himself with those millions of NHS patients who increasingly find it difficult to see a GP within the time they want, or to see a GP of their choice. If so, can he say whether moving from what is broadly a five and a half-day weekly GP practice to seven days for all will improve matters for those patients or make matters worse, especially as it is being done on a broken model, to use his own words? In those circumstances—

Noble Lords: Too long!

Lord Brooke of Alverthorpe: In those circumstances will he say what the new model will be, spell it out to the public and say how many GP practices will have to close?

Lord Prior of Brampton: The noble Lord makes a number of interesting points. One of the leaders of the BMA talked yesterday about the need for a renaissance in general practice, which was about the only thing in that speech that I agreed with. We need a renaissance and a complete transformation in general practice because the structure of primary care is largely unchanged since being set up in 1947, and the population's requirements have changed fundamentally. So over the next five years, I expect primary care to go through a renaissance and be transformed from the bottom up.

Baroness Meacher (CB): My Lords, the Minister referred to a renaissance of general practice. Given that about 30% of GPs are expected to retire in the next five years and even the most popular training schemes cannot find anyone to come and train—I should not say "anyone"; however, Winchester has six people but places for 16—what sort of renaissance will it be? We actually need GPs, so perhaps the Minister can explain.

Lord Prior of Brampton: The noble Baroness is quite right. We do need GPs, and they will be at the heart of the renaissance in general practice. The Government are committed to recruiting an extra 5,000 GPs into general practice over the next five years—that figure is net of people retiring. We accept entirely the noble Baroness's proposition that we must persuade more newly qualified junior doctors to opt for general practice rather than for working in hospitals.

Baroness Walmsley (LD): My Lords, what discussions have the Government had with the Royal College of Emergency Medicine about the idea of collocating GP clinics in A&E departments? Surely such a strategy has the potential for killing two birds with one stone.

Noble Lords: Oh!

Lord Prior of Brampton: I agree with the sentiments of the noble Baroness. There are indeed many GP practices that are collocating outside or very close to A&E departments. For example, I saw one at the Royal Free only last week. It is one of a number of new models of care that we should be exploring.

Baroness McIntosh of Hudnall (Lab): My Lords, may I press the Minister a little more on recruitment? In an answer to me earlier in the week, he made the same reply—that the Government were committed to recruiting more GPs—but he has not yet told us what incentives would make a newly qualified doctor wish to go into general practice, and whether those incentives are financial or otherwise. In particular, the idea that part of your commitment would be to a seven-day week is possibly not quite as alluring as he would like it to appear.

Lord Prior of Brampton: The right answer to the noble Baroness is twofold. First, we have to paint a picture that inspires young doctors to go into general practice. There is no doubt in my mind that the solution to the health needs of today's population depends on a different model of general practice. We can paint that picture, and I hope that leaders of the BMA might wish to help paint it as well. Secondly, on the seven-day week issue, we are living in 2015 and people expect to be able to see GPs at the weekend. People get ill at weekends, and if we want good quality of care, we have to provide that care seven days a week. If we wish people to be treated outside hospitals, we have to provide good access seven days a week in primary care.

Lord Colwyn (Con): Will my noble friend make it easier for GPs who have retired to come back to work in part-time practice? I am told this is extremely difficult at the moment.

Lord Prior of Brampton: My noble friend makes a very good point. Health Education England and NHS England have a return-to-practice scheme precisely to do as he suggests, making it easier for those who have temporarily left practice by going overseas, or taken time out, to come back to practice.

Baroness Wheeler (Lab): How does the Minister see the plans for seven-day working going forward in the light of recent data showing that there is growing pressure on surgeries and that practice closures have resulted in one in four GPs now working as locums, who are increasingly forming an integral part of practice teams? Does the Minister see the new models of care and the transformation he refers to embracing these new forms of working, together with partnered and salaried GPs? We often hear the view that local and part-time working, particularly for women GPs, is one of the major causes of GP shortages.

Lord Prior of Brampton: The noble Baroness makes a good point. The old model, based largely around partners, often in small practices, is the one that I think will evolve over the next five years. We will certainly see many more salaried GPs coming into the workforce. The fact that there are now many more women doctors, who will wish to take time out to look after their children or for maternity leave and the like, means that the structure of general practice will change fundamentally. It may also mean more locums. I do not have a view on that particular aspect of the noble Baroness's question.

Baroness Howarth of Breckland (CB): My Lords, if the Minister believes that we have had the same model since 1948, what was the House doing taking through during the last Session the health legislation that changed the structure so that the business model was around GP practices? Many GPs find that extremely onerous. They want to be doctors, not business managers. There has been significant change and not necessarily for the better. Would the Minister not agree?

Lord Prior of Brampton: The noble Baroness—

Lord Foulkes of Cumnock (Lab): Has a very good point.

Lord Prior of Brampton: The main thrust of the legislation was to put GPs more in control of the delivery and structuring of local healthcare.

Employment: Tribunals

Question

11.15 am

Asked by ***Baroness Turner of Camden***

To ask Her Majesty's Government what assessment they have made of the ability of individuals who have been dismissed to invoke their employment rights when they cannot afford tribunal costs.

Baroness Evans of Bowes Park (Con): On 11 June, we announced the start of the post-implementation review of the introduction of fees in the employment tribunal. The review will consider how successful the policy has been in achieving its original objectives, which included maintaining access to justice for those seeking to bring disputes to the tribunal. Our intention is to complete the review later this year.

Baroness Turner of Camden (Lab): My Lords, is the noble Baroness not aware that for many people, losing their job is an absolute disaster? There is also a feeling of grievance. Those feelings can be assuaged if people have access to a tribunal. In fact, to get to a tribunal they must make a quite large payment of £1,000. Why should they have to do that? Where is the justice in it? It is about time we had a revision of these procedures. They are most unfair to many people.

Baroness Evans of Bowes Park: I know that the noble Baroness has raised this issue on many occasions. I hope I can reassure her that the very purpose of this review is to ensure that the original objective of maintaining access to justice for everyone has been achieved. Of course she is right that there has been an implementation of fees, but we also introduced other reforms that have had an impact. For instance, early mandatory conciliation helps to divert people from going through acrimonious hearings. That must surely be a better approach. In its first nine months, more than 60,000 people accessed this scheme. We are very clear that of course people must maintain and have access to justice, but there are other, better ways for employees with legitimate claims to try and resolve their disputes outside a tribunal if they can.

Lord Pannick (CB): My Lords, will the Government also establish a review into the substantial increases in court fees that are damaging access to justice for small businesses that seek to recover debts and for victims of personal injuries who are seeking compensation?

Baroness Evans of Bowes Park: My Lords, I have a slight sense of how Daniel might have felt when he first faced Goliath when I have to answer a question from the learned noble Lord. I assure noble Lords that any specific proposals that the Government have for changes to court or tribunal fees will be consulted on and brought before Parliament for the appropriate level of scrutiny.

Lord Lester of Herne Hill (LD): My Lords, the Minister referred the House to the review that will be carried out. Will she accept from me that the terms of reference of that review are grotesque, give the appearance of pre-judgment and ask questions that no human being could possibly answer? For example, one question that should win a prize is whether there has been a reduction in weak or unmeritorious claims—not whether there has been a reduction in meritorious claims but only in weak ones. How anyone could possibly answer that I do not know. Will the Minister please ask the Ministers dealing with this to review the terms of reference and consider whether an independent body ought not to carry out the review rather than the Government as a judge in their own cause?

Baroness Evans of Bowes Park: My Lords, this will be a very fair review, which will look at all factors. It is absolutely critical to ensure that we understand what is happening. As I previously said, of course fees have had an impact, but they were not introduced on their own. The Government also brought forward early mandatory conciliation which, as I said, is having a good impact. But the system was not perfect before the introduction of fees. Individuals and employees with legitimate claims who were forced to go through acrimonious tribunals now have the option of mandatory conciliation. Businesses often had to face speculative claims, which obviously was very distressing and difficult for them to deal with, and the taxpayer was footing a £71 million bill. This review will look at all the factors involved and, if the Government believe that further action needs to be taken, of course it will be brought to the House and a consultation will happen in the normal way.

Lord Davies of Stamford (Lab): My Lords, let me ask a question which I have asked the Government before, both in writing and orally, and never had other than a completely evasive response. As the Minister and the whole House know, there are very widespread allegations of job discrimination among job applicants. When jobcentres encounter prima facie evidence of job discrimination against their applicants, what is their policy? Do they keep a record of those occasions? If so, what are the numbers for the latest period available? Do they take legal action or support the applicant in taking legal action under the law? They can hardly expect the applicant himself or herself to have the resources to pursue legal action. If they do, on how many occasions has such legal action been taken or supported?

Baroness Evans of Bowes Park: I am afraid that I will have to take that question back and return to the noble Lord at a later stage.

Lord Harrison (Lab): Will the Minister address the problem raised by the noble Lord, Lord Pannick, about small businesses being prevented by rising court fees from having justice within the system? That was something echoed last week when we talked about late payment of commercial debt.

Baroness Evans of Bowes Park: My Lords, we are doing everything we can to ensure that everybody has fair access to the justice system. Part of the reason we reformed the employment tribunals was very much so that small businesses could therefore start to be able to deal with these and go through conciliation.

Lord Goldsmith (Lab): My Lords, I understand why the Minister feels that she is entering the lions' den, but is not that because the policy of this Government, as before, has been to reduce the opportunities for the vulnerable to seek legal advice and assistance—for example, through the destruction of the legal aid system? Would she consider the implications of that, please?

Baroness Evans of Bowes Park: I am not sure whether the noble and learned Lord had the opportunity to hear the speech earlier this week from my right honourable friend the Secretary of State for Justice and Lord Chancellor. The speech was extremely clear about making sure that we are absolutely committed to ensuring that everyone has access to justice and that we are very focused on the needs of those most in need.

House of Lords: Appointments

Question

11.23 am

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

To ask Her Majesty's Government what proposals they have for constitutional reform and the appointment system to the House of Lords.

Lord Campbell-Savours (Lab): My Lords, in asking the Question standing in my name on the Order Paper, I make it clear that my Question is not born of political opportunism or malice, but of a matter of principle.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): Okay, then! Appointments to this House remain a matter for the Prime Minister. On constitutional reform, we have set out in the Queen's Speech and our manifesto a range of measures, including those on delivering our commitments to the nations and regions of the United Kingdom and for a referendum on our membership of the EU. Noble Lords will be able to discuss those issues in full in the debate later today.

Lord Campbell-Savours: My Lords, just for the record, both Labour and the Conservatives increased their share of the poll at the last general election. How can we justify adding to the existing 101 Liberal Democrat Peers, who already form 21% of the whipped party-affiliated membership of this House, when their party secured only 7.9% of the poll, winning only eight seats on a collapsed national vote at the general election? Surely, if we are listening to the people, even UKIP and the Greens have a greater claim on new peerages—otherwise, we bring this House into disrepute and, indeed, ridicule.

Baroness Stowell of Beeston: My Lords, I certainly understand the point that the noble Lord makes in his Question, and his view is shared by many noble Lords around the House. I shall make two points in response. If and when a Dissolution Honours List marking the end of the previous Parliament is published, it would be surprising if it did not reflect the fact that there were two parties in government. More importantly, the message I want to direct to all noble Lords is that, regardless of party balance, this House has a very important role in the legislative process, and in doing our work, this House is not, and should not become, an alternative platform for party politics.

Lord Forsyth of Drumlean (Con): My Lords, can my noble friend confirm that, had the coalition agreement proposal on appointments to this House—which was that it should be proportionate to the result of the previous election—been carried out, the number of Liberal Democrat Peers in this House should be 42? Has she had applications for retirement from 60 Liberal Peers?

Baroness Stowell of Beeston: My noble friend refers to what was in the coalition agreement. I stress that it was in the coalition agreement; it was not in the Conservative Party manifesto in 2010 or 2015. One of the things we were able to introduce in the previous Parliament is the facility for permanent retirement from this House, which is now a route we can all consider for departure at the right time.

Lord Thomas of Gresford (LD): My Lords, the Childcare Bill was introduced in this House last week. It applies only to children in England. It will have the benefit of full scrutiny by this House and the other place and its committees. At the same time, primary legislation passed by the Parliaments of Scotland, Wales and Northern Ireland has no such second examination, consideration or scrutiny. Is it not time for us to have a federal United Kingdom second Chamber, wholly elected, and dispose of this place altogether?

Baroness Stowell of Beeston: No, I do not agree with the noble Lord. The proposals that my party made in our manifesto at the election for constitutional change and greater powers for all parts of the United Kingdom are the mandate on which we are governing and are what we are getting on with delivering.

Lord Grocott (Lab): My Lords, the question is whether the Prime Minister stands by the document he signed, which said that appointments to this House should be,

"reflective of the share of the vote secured by the political parties in the last general election".

If the Leader of the House is saying that that system no longer applies, will she explain what principle the Prime Minister now intends to abide by in making recommendations for appointments to this House?

Baroness Stowell of Beeston: This Prime Minister will follow the same principles he followed in the previous Parliament and the principles that his predecessors followed in making appointments to this House. There is always an acknowledgement of the results of general elections but, historically, this House has never reflected party balance. This House has an important role and all Peers are doing the country good service if we focus on that role.

Baroness Hayman (CB): My Lords, the Leader of the House said in her original Answer that appointments to this House are a matter for the Prime Minister. The Conservative Party manifesto said that they would,

"ensure the House of Lords continues to work well by addressing issues such as the size of the chamber and the retirement of peers".

When will we hear details of how those manifesto commitments will be implemented?

Baroness Stowell of Beeston: On the size of the House, it is worth our being aware of two points. First, since permanent retirement was made available to Peers last August, 27 noble Lords have retired. That is a far greater number than people expected when we brought in that provision. To me, that shows a good direction of travel; I am sure that a trend is now being set and more will follow. Secondly, the statistics for attendance in the previous Session show that the numbers are starting to go down.

Baroness Smith of Basildon (Lab): My Lords, in opposition David Cameron pledged to cut the cost of politics, including by cutting the number of Members of Parliament in the other place. The noble Baroness talks about the numbers in this House, but is she aware that each year in government the Prime Minister has appointed more Members of your Lordships' House than any Prime Minister in my lifetime, with more from the government parties than any Prime Minister in my lifetime? How does that contribute to cutting the cost of politics? How many more new Conservative government Peers does she expect on her Benches?

Baroness Stowell of Beeston: I remind the noble Baroness that the peerages created in the previous Parliament by my right honourable friend the Prime Minister included 47 Labour Peers. I remind her and all noble Lords that the cost of this House in the previous Parliament went down by about 13%. As individual Peers, we must not forget that we cost four times less per head than Members of the other place.

Communities: Young Muslims

Question

11.31 am

Asked by ***Baroness Afshar***

To ask Her Majesty's Government what measures they have put in place to counter the impact of Islamophobia and stigmatisation on young Muslims.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, this Government are committed to preventing anti-Muslim hatred and the stigmatisation of young Muslims. We are continuing the extensive community engagement of my predecessors to help to understand the concerns faced by Muslim communities, including working with the cross-government Anti-Muslim Hatred Working Group and Tell MAMA in order to record and monitor anti-Muslim hate crime.

Baroness Afshar (CB): I think the Minister for her reply. Have the Government considered celebrating differences by marking occasions such as Eid al-Fitr and applauding actions such as those by Muslims in this month of Ramadan in forgoing eating all day in order to share an evening meal with those who cannot afford it? Could we have more celebration and less condemnation?

Baroness Williams of Trafford: My Lords, this Government and the Prime Minister himself have done extensive engagement in celebrating some of the occasions in communities of different faiths, in marking those occasions that are so important to them. In the Prime Minister's message for Ramadan, he talked—as indeed did my honourable friend Greg Clark in the other place—about the peaceful nature of Islam and the phenomenal contribution of Muslims to this country.

I have been one of the lucky recipients of several invitations to Big Iftars, and that coming together of different faiths has been a great success.

Baroness Warsi (Con): My Lords, I pay tribute to the extensive relationship and engagement that my noble friend has with British Muslim communities, but is she aware of the Government's report on the review of Prevent and other reports that identify Islamophobia as a driver of radicalisation? In light of the Government's determined effort to defeat extremism, when can we expect to hear from them about the rising phenomenon of Islamophobia in a keynote speech? What is the Government's policy response to tackle it?

Baroness Williams of Trafford: My Lords, I return the compliment to my noble friend, who over the years has, not just in her words but in her actions, worked hard to tackle Islamophobia in this country. She has been a great support to me in some of the multifaith work that we have done. My noble friend makes a good point about the problems of the disaffection and isolation of young men. Those problems do not apply just to the Muslim community but can apply to young men and women in all areas of this country. The Government have put £8 million into supporting adults in learning English, which is a very good measure in terms of tackling the isolation and disaffection that young people may have. One of the projects that I visited in Rochdale was a Near Neighbours project, which has done phenomenal work in bringing together not just different faiths but different age groups and different aspects of the community. It has created some very peaceful outcomes in terms of that community's well-being.

Baroness Hussein-Ece (LD): My Lords, amid reports that the Government have started to disengage with Muslim grass-roots communities, does the Minister think that it is helpful for the Prime Minister to say that some Muslims "quietly condone" radicalisation—apparently we are sitting at home, quietly condoning it? Or does the Minister agree with the Home Secretary's most senior counterterrorism adviser, Charles Farr, who was quoted in the *Telegraph* the other day saying that there is a danger of oversimplification, given that there are 2.7 million Muslims in the UK, and just a few hundred have joined Daesh—so-called ISIS? Who does the noble Baroness think is right?

Baroness Williams of Trafford: My Lords, I agree with both of them. The Prime Minister is not saying that Muslims are a problem but that Islamic ideology is a problem that needs to be tackled, and Charles Farr was making a similar point.

Lord Singh of Wimbledon (CB): My Lords, is the Minister aware that ever since 9/11 there has been a huge increase in the number of attacks on Sikhs and Sikh places of worship in cases of mistaken identity? The most recent case was a machete attack on a young Sikh dentist in south Wales, which was described on "Newsnight" as Islamophobia. Does the Minister agree that hate crime is hate crime against any community, and that it should be tackled even-handedly, irrespective of the size of the community?

Baroness Williams of Trafford: The noble Lord is absolutely right—hate crime is hate crime.

Lord Beecham (Lab): My Lords, will the Government consider convening a meeting of the different faith communities to encourage collaboration around combating Islamophobia? Perhaps that could draw on the experience of the Community Security Trust, which works with both Jewish and Muslim communities to protect places of worship—a very good example of interfaith collaboration.

Baroness Williams of Trafford: My Lords, I have a long history of work with interfaith communities, which is well established back in my home area of Trafford. I am pleased to be able to tell the noble Lord that I am already engaging in that work.

European Union (Approvals) Bill [HL]

First Reading

11.38 am

A Bill to make provision approving for the purposes of Section 8 of the European Union Act 2011 certain draft decisions under Article 352 of the Treaty of the Functioning of the European Union.

The Bill was introduced by Lord Gardiner of Kimble (on behalf of Lord Freud), read a first time and ordered to be printed.

Business of the House

Timing of Debates

11.38 am

Moved by ***Baroness Stowell of Beeston***

That the debates on the motions in the names of Lord Wills and Lord Whitty set down for today shall each be limited to 2½ hours.

Motion agreed.

Child Poverty

Statement

11.38 am

Baroness Evans of Bowes Park (Con): My Lords, I shall now repeat in the form of a Statement the Answer given by my right honourable friend the Secretary of State to an Urgent Question in another place. The Statement is as follows:

"The latest low-income statistics based on the *Households Below Average Income* report are published today, covering April 2013 to March 2014. They show that the percentage of individuals and children in relative low income is at its lowest level since the 1980s. The latest figures show that the proportion of people in both relative and absolute low income remained flat on the year for children, working-age adults and disabled

[Baroness Evans of Bowes Park]
people. For pensioners, the proportion both in relative and absolute low income increased, but it was not statistically significant.

The figures I have quoted are measured against RPI. In the publication, we have also shown the effects when measured against CPI—a much more widely accepted measure of inflation—and those figures are more positive.

I believe that today's figures demonstrate that if you deal with the root causes of poverty, as this Government have done, then even under a measure of poverty that I have consistently described as flawed you can have an impact.

I remind the House of some of the important things we have done to help families on low incomes through tackling root causes, whether it is in education, where we have introduced the pupil premium and tackled failing schools with the free schools programme, our commitment to supporting families through the ground-breaking troubled families programme, our investment in early years support and childcare, or our unprecedented back to work programmes, which have helped support hundreds of thousands of people into work. Our fundamental belief is that the most powerful way to change lives is by creating a welfare system that makes work pay, writes no one off and supports people into work. This is what we have been doing, and what the left has failed to understand—that if you deal with the root causes of poverty, the symptoms will sort themselves. Today's figures show how important it is both to balance the books and to continue reforming welfare".

11.41 am

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Baroness for repeating the Answer, but I am not really sure that it addresses the Question. Perhaps I may take her back. When the Labour Government brought in the Child Poverty Act, the commitment then was to seriously tackle the problem and it was enshrined in legislation. At that point, it was supported by the Conservative Party. Today, we hear that the Government are seeking to redefine child poverty now that it is on the rise for the first time in 10 years, with children turning up hungry at the school gate.

Will this decision be subject to the Prime Minister's promised family test? What is more important: either tackling the problem by genuinely understanding how many children are living in poverty so that action can be taken to protect and support them and their families, or just masking the problem by massaging the statistics?

Baroness Evans of Bowes Park: I reassure the noble Baroness that tackling child poverty is, and always will be, a priority for this Government. We have focused on tackling the root causes of poverty. That is how you really make an impact on people's lives.

Lord Storey (LD): My Lords, there is a legitimate argument to be had about whether relative poverty is the most effective measure of poverty, but there can be no doubt that the significance of the Child Poverty Act is that it legally binds the Government to reduce poverty. Will the Minister therefore assure the House that, whatever happens, there will remain a legally binding target on Ministers to reduce the number of children in poverty and that there is not simply an attempt to pave the way for cuts in tax credits and other benefits that will hurt children and their life chances?

Baroness Evans of Bowes Park: I confirm that we fully intend to implement the Conservative manifesto pledge, which states:

"We will work to eliminate child poverty and introduce better measures to drive real change in children's lives, by recognising the root causes of poverty: entrenched worklessness, family breakdown, problem debt, and drug and alcohol dependency".

This is something that we will certainly be tackling.

Baroness Butler-Sloss (CB): My Lords, the Minister will of course be aware that many children are still being born into poverty and that their lives will be blighted through disadvantage. Would she be prepared to discuss with some of us some of the problems that are currently arising?

Baroness Evans of Bowes Park: The noble and learned Baroness is absolutely right. This is extremely important and I would be very happy to meet her and others to discuss it. However, we must remember that work is the single most important route out of poverty. That is why we are extremely proud that, since 2010, 2 million more people are in work. We are also helping people to get back to work through the Work Programme. We are focused on tackling the root causes of poverty.

Baroness Corston (Lab): My Lords, as the widow of Professor Peter Townsend, who did more than anyone in the world to establish the concept of relative deprivation as an international policy standard that is accepted even by UNICEF, I remind the Minister that it was a participation standard; it was about whether families could take part in what we think of as normal life—for example, whether parents could afford to give their children a birthday party and whether they could accept a birthday party invitation because they had the money for a gift. It was intended to tackle exclusion. When I think of the people whom I used to represent in the House of Commons and the way they struggled with their lives, to suggest that money does not play a very big part is an absolute disgrace.

Baroness Evans of Bowes Park: The noble Baroness speaks extremely passionately. I reassure her that this Government are absolutely committed to tackling child poverty. There are many facets to it, which is why we are looking at the root causes in trying to make sure that all children have the best start in life.

The Earl of Listowel (CB): My Lords, while I recognise the value of the Government's very welcome policies on employment, childcare and the pupil premium, and following on from the question asked by my noble and learned friend, will the Minister consider arranging a meeting with the Secretary of State for Education or the Education Minister of State, Edward Timpson, so that we can talk about these important issues? We are all very concerned about families in this time of austerity

and that policy is focused on their needs. As the Minister is keen to address the roots of poverty, will she discuss with the noble Baroness, Lady Williams of Trafford, government policy on social housing, particularly social housing for families in housing need and homeless families, so that their needs are not overlooked, and then write to us?

Baroness Evans of Bowes Park: I am very happy to pass on the noble Earl's request to the relevant Secretaries of State.

Lord Liddle (Lab): My Lords, does the Minister agree that whatever the intellectual merits of different definitions of poverty, if the Government proceed with what is widely rumoured in the press to be £5 billion of cuts in working families' tax credits, the impact of that will inevitably be to increase very considerably the amount of child poverty in this country?

Baroness Evans of Bowes Park: The noble Lord will understand that I cannot comment on speculation in the press, but once again I assure him that tackling child poverty is a priority for this Government and that we are determined to help to improve and transform the lives of the poorest and most disadvantaged in our society.

Earl Attlee (Con): Can my noble friend the Minister remind the House how much we are spending on welfare?

Baroness Evans of Bowes Park: A lot. Large amounts. I am afraid that I do not have the figure directly to hand, but I can assure the noble Earl that we are focused on ensuring that people can get out of poverty. The best way to do that is to get people into work, which is why our focus has been on improving the economic situation as well as on helping to tackle the root causes of poverty.

Baroness Hollis of Heigham (Lab): My Lords, forgive me, but that is simply not the case. It is already true that more than half the children who are in poverty have a parent already in work. Work for them is not the route out of poverty. The obvious response is to seek to increase the minimum wage to a living wage level, but even so, families will still need tax credits to make work pay. Can the Minister not accept that the proposed working tax credit cuts will not only increase the number of children in poverty—the IFS estimates by 300,000—but will absolutely destroy the Government's mantra that work is the best route out of poverty?

Baroness Evans of Bowes Park: I can say to the noble Baroness that we have halved the tax bill for somebody working full time on the minimum wage and have delivered the first above-inflation rise in the minimum wage since the recession. That is something that we are very proud of.

Lord Kirkwood of Kirkhope (LD): Can I take the Minister back to the answer that she gave to my noble friend Lord Storey when she quoted parts of the Conservative manifesto? I make it clear to her that as far as I am concerned that is not a statutory legal target that commits the Government to an outcome at some time in the future. Will she confirm that whatever else changes, there will still be a statutory legal target that Governments will have to observe in future?

Baroness Evans of Bowes Park: I can confirm to the noble Lord that we will be implementing our manifesto commitments.

The Lord Bishop of Durham: Will the Minister recognise that across the country, churches and other organisations reckon that they will be providing more help for holiday hunger this summer than ever before because of children going hungry during school holidays? Will she also recognise that there is a serious problem regionally and that we need to tackle this in the north more significantly than in the south?

Baroness Evans of Bowes Park: I thank the right reverend Prelate for his question. He can be assured that we take extremely seriously the issues that he raised. I also pay tribute to the great work that the churches do in providing support to the people who need it most.

Lord Sherbourne of Didsbury (Con): Bearing in mind the importance of the policy on welfare, is the Minister able to tell the House what the policies on welfare are of the party opposite?

Baroness Evans of Bowes Park: We are making sure that the welfare system rewards a willingness to work, and of course one of the key reforms of the Government is the implementation of universal credit, which will make sure that people are always better off by taking on more work. We also have our Work Programme, the largest programme to get people into work since the 1930s.

Lord Elystan-Morgan (CB): The Minister referred to her party's manifesto. Will there be a definite statutory commitment to the eradication of child poverty or not, either under the current formula or under a reformed and better formula?

Baroness Evans of Bowes Park: I am very happy to refer again to our commitment in the manifesto, which says that we will work,

"to eliminate child poverty and introduce better measures to drive real changes in children's lives".

Constitution: Gracious Speech

Motion to Take Note

11.51 am

Moved by ***Lord Wills***

That this House takes note of the implications of the constitutional changes proposed in the Gracious Speech.

Lord Wills (Lab): My Lords, in 2007, when the last Labour Government launched their programme of constitutional reform, the political editor of the BBC pronounced that this was all very well but nobody would be talking about it down at the Dog and Duck.

[LORD WILLS]

Last year, in the aftermath of the Scottish referendum, the same Nick Robinson said that such constitutional issues were,

"what politics is really about—who should have power over what?".

He was right on both occasions.

Constitutional issues are often esoteric, but they are also always important. They reflect and determine how power is distributed in our country and, in turn, that determines how every other question in our public life will be answered. These issues are particularly important now. The politics of our democracy are febrile. Too many voters feel adrift and alienated, disillusioned and distrustful of politicians and suspicious of the established and powerful. In response, successive Governments have sought to make changes in the wiring of our democracy. There have been attempts to rebalance power away from Westminster and Whitehall, to reform Parliament and to restrict the power of the Executive. Now, this Government have announced themselves with a raft of new constitutional proposals in their manifesto and in the gracious Speech.

The Government are right to recognise the need for reform. Our constitutional arrangements urgently need to adapt to changing political realities. The union is fraying. Our relationship with the European Union is now in play. Everyone agrees that your Lordships' House needs to change but very few agree how. At the last election, UKIP received nearly 4 million votes and has one Member of Parliament, and the SNP has 56 out of 59 MPs in Scotland and not a single Member in your Lordships' House. George Osborne is the only member of the Cabinet with a constituency in the north of England. The main parties are increasingly sequestered in their redoubts. This is a fragmenting polity. Only 16% of the British people trust politicians to tell the truth but 31% trust bankers. Constitutional reform is needed.

Some of the Government's proposals are welcome. Their measures that significantly devolve power to cities, Scotland, Wales and Ireland have received widespread support and will help to recreate a sense of belonging that is so important in countering this toxic sense of alienation. These reforms build on previous developments. The other proposals also address long-standing concerns.

However, the more closely those other proposals are scrutinised, the harder it is to avoid the conclusion that they are partisan and short-sighted, and driven not by the needs of the nation but by the short-term, sectarian interests of the Conservative Party. They do not "adopt a one-nation approach", as promised in the gracious Speech; they are a departure from the welcome custom that successful and enduring constitutional reform needs to be framed by proportion and consensus. I want to discuss this in relation to four key proposals which, taken together, reveal an unmistakable pattern of behaviour. I am pleased to see that so many distinguished Members of your Lordships' House from all sides are going to speak after me to provide their wisdom and insight into these issues and others, I hope.

Perhaps the most glaring example of this Government's narrow and partisan approach is in their approach towards the union. For more than 300 years, the United Kingdom has in my view been a uniquely successful enterprise in multicultural and multinational living, but it now faces what one can only say is an existential threat. For those of us who care about the future of this remarkable institution, this is a time for statesmanship and vision, a time to bring the people of these islands together again. But what we are getting from the Government instead is a short-sighted, self-interested approach to one of the most difficult and intractable constitutional questions. The *Daily Mail* reported that on the night of the Scottish referendum result, over a curry dinner, the Prime Minister decided that he was,

"going to explode a bomb in Labour territory".

That bomb was giving English MPs a veto over matters affecting only England, which it is widely agreed will tend to give that veto to the Conservative Party. It constitutes and continues the process of setting nation against nation which is so destructive of the union. The Chancellor of the Exchequer is reported to have been an enthusiast for this bomb—relishing, it is reported, the "raw politics" of it.

The Prime Minister and the Chancellor did not try to build on the Scottish referendum result to cement the union. Instead, the very next morning they went out to explode a bomb in Labour territory. Once the veto is scrutinised in detail, its flaws reveal themselves. Quite apart from the technical problems of definition, critically, it ignores the principle of the need for differential protections for the minority nations of the United Kingdom. The *Economist* chided its favoured party of government by saying:

"Britain's union is a delicate balancing act. It is the only stable rich country of its kind: one in which the population of one constituent part is much greater than all the others put together".

That Conservative bomb on Labour territory was followed by another one during the recent election campaign with that party's scare stories about Labour and the SNP—again setting the nations of this United Kingdom one against the other. On this I can do no better than to quote one of your Lordships who sits on the Conservative Benches opposite and who has unsurpassed experience in these issues. The noble Lord, Lord Forsyth, was quoted in the *Guardian* in April as saying of his party's approach that:

"It doesn't seem to me to be a very good policy to try and deal with the rise of Scottish nationalism by stirring up English nationalism. I think you have to, we need to find ways of binding the United Kingdom together, of binding that partnership together".

That is exactly so. The survival of the United Kingdom is not a tactical munition to be chucked around in some politician's jape after a curry dinner.

That brings me to this Government's onslaught on the Human Rights Act, which among other things was designed to help foster a sense of belonging by providing the individual citizen with protection against the overweening power of the state. One rule of law must command broad support in society for it to be sustained. It should not come at the price of requiring majority support for every leaky judgment. That would leave minorities and individuals defenceless. We forget at our peril where the orthodoxies of majorities can lead. Modern human rights were born from the terrible experiences of the 20th century, where the protections

that we take for granted—democracy and the rule of law—proved frail and millions and millions paid a terrible price.

The Government's commitment to scrap the Human Rights Act is intended to suggest that human rights judgments in the courts that have provoked disquiet in sections of the media and the population will no longer occur. That is simply not true, not least because many such cases have resulted from judgments not in British courts but in the European Court of Human Rights. If the Government then seek to satisfy those populist demands by also withdrawing from the European Convention on Human Rights, as some senior Ministers are reported to be advocating, they will be turning their backs on those fundamental protections for the individual.

Noble Lords should not take my word for that. In 2009 Jesse Norman, now a respected Conservative Member of Parliament and chair of the Commons Culture, Media and Sport Select Committee, and Peter Oborne, a prominent right-wing commentator, wrote this:

"As a General Election approaches, it is important for the Conservative Party to drive home the message that it stands for freedom, decency and British liberty. It should drop its opposition to the Human Rights Act".

The fact that it has not, again, speaks for the short-term and partisan nature of this Government's approach.

Anyone who still has doubts about that should chart, as I have done, the occasions of the Prime Minister's public pronouncements on the Human Rights Act. Their timing is characterised by coming after the Prime Minister has had some difficulty or other with the more extreme dwellers on his party's right wing. The Human Rights Act is the meat that he throws from the sledge to keep those wolves at bay. The protection of the individual against the state really should be more precious than that.

Finally, I want to address two issues that are perhaps so technical that the Government might have hoped that they would sneak through without anyone in the media or the public taking much notice. Both of them will nevertheless fundamentally alter the way in which elections are fought in this country and how Governments are elected. In the light of this Government's track record it is not surprising, perhaps, that they will alter them in favour of the Conservative Party.

The first concerns political party funding and the Government's proposals that trade unions should opt in to this. There are two fundamental principles that should govern any attempt to solve the intractable problems with political party funding. First, it should remove the public perception that political influence can be bought; and secondly, it must do so in a way that is roughly equivalent in its impact on all the main political parties. In other words, it should be seen to be fair. This proposal satisfies neither principle. It will do little to address the popular perception that political influence can be bought and, while there may be good arguments for an opt-in, there are none for doing it in this way in isolation.

Why are the Government bringing forward this measure and not also one that, for example, would ban all party political donations from individuals who had evaded tax through aggressive tax avoidance schemes? There is at least as good a case to exclude such donations. This Government's partial approach makes it impossible to avoid the conclusion that they do not want to secure a long-overdue clean-up of party funding. Instead, they want to privilege the short-term interests of the Conservative Party.

My last example of this Government's partisan approach is the superficially innocuous commitment in their manifesto to try again to,

"address the unfairness of the current Parliamentary boundaries, reduce the number of MPs to 600 to cut the costs of politics and make votes of more equal value".

There is nothing inherently objectionable about that proposal. However, the statistical basis on which the size of constituencies is equalised is crucial. The Government appear to be opposing this not on the basis of population but on the basis of an electoral register that remains neither comprehensive nor accurate. The most recent assessment by the Electoral Commission last year suggested that it was still only 85% complete. That means that 8 million voters who are eligible to vote cannot do so because they are not on the register. This matters for specific electoral reasons as well as on the grounds of general democratic principle. Most agree that those eligible voters not registered to vote are more likely to vote Labour when they do vote and the Liberal Democrat vote in the inner cities, such as it still is, is also likely to suffer. The Electoral Commission found that underregistration is notably higher than average among the young, private sector tenants, and black and ethnic-minority British residents, and that the highest concentrations of underregistration are most likely to be found in metropolitan areas.

The evidence suggests that the party that will suffer least, if at all, from such a flawed electoral register is the Conservative Party. Electoral registration has been significantly lower in Labour areas than in Conservative ones. The *Daily Telegraph*, with its hotline into the inner sanctum of the Conservative Party, revealed on 8 May this year the real motivation behind this reform:

"Redrawing constituency boundaries to lock Labour out of power for decades is at the top of the agenda for the new Conservative government, senior Tories have said".

Our electoral arrangements should never become the object of partisan manoeuvring; it corrodes public trust and undermines the foundations of our democracy. So for many years all political parties have sought consensus on such issues and have, for the most part, succeeded in finding it—but no longer, apparently.

These are all far-reaching reforms being pursued by a Government who have hardly received a resounding endorsement from the electorate. In the last 50 years, only one Government have had a smaller absolute majority. In these circumstances it might have been thought prudent to embark on an extensive and comprehensive programme of public engagement and consultation, but there has been no sign of that so far. The Government may argue that this is a matter for Parliament and that it is through Parliament that popular consensus is secure. Of course our system of representative democracy is one that we should continue to cherish, but it can be augmented. In the case of such profound changes, it should be.

[LORD WILLS]

Many of my noble friends, and others in your Lordships' House, believe that there should be a constitutional convention to discuss all these issues in a way that properly reflects their interdependence. I have long been a supporter of this; I wrote a pamphlet advocating it 10 years ago, although it is important that such a convention should not just convene the usual great and good, but accommodate the peoples of these islands through a randomly selected, demographically representative sample of them. Even if a constitutional convention is too great a stretch, there are other means to engage the public through new technologies and deliberative forums. Again, there has been not a word from the Government about any of these forms of public engagement.

Worse than this, earlier this week we heard from the Justice Secretary his intention to restrict the ability of the public to engage with these issues by emasculating their rights to know under the Freedom of Information Act. It is no surprise that Ministers and civil servants do not like that Act—it would not be doing its job if they did—but it is essential to open up the Government to the public whom they serve. How do the Government think they will enhance the public's confidence in their politicians if they restrict their rights to know in this way? What exactly is it that the Government want to stop the public finding out about their plans for the country?

I understand that the Minister is an Oxford historian. I do not know whether he took the paper on theories of the state when he was up there, but if he did he may recall what Aristotle said about constitutions. The great philosopher wrote that:

"constitutions which aim at the common advantage are correct and just without qualification, whereas those which aim only at the advantage of the rulers are deviant and unjust, because they involve despotic rule which is inappropriate for a community of free persons".

If he does not recall those words, I commend them to him now. In the context of these short-sighted and partisan proposals, I conclude by also commending to him and to everyone in your Lordships' House the conclusion of the royal commission in 2000, which was that your Lordships' House's key function is,

"to act as a 'constitutional long-stop'",

to ensure that,

"changes are not made to the constitution without full and open debate and an awareness of the consequences".

12.08 pm

Lord Steel of Aikwood (LD): My Lords, the House should be grateful to the Labour Party, and, indeed, to the noble Lord, Lord Wills, for introducing this timely subject. I suspect that much of this Parliament will be taken up with arguments on constitutional issues. We look forward with no hesitation to the Private Member's Bill that my noble friend Lord Purvis of Tweed will introduce to the House for further debate in due course.

It was interesting that during the days of the debate on the gracious Speech so many Members on the Conservative Benches spoke in support of the idea of a constitutional convention. I hope that, at the end of today's debate, the Minister will not be—how can I put it politely?—disappointingly coy on the subject of a constitutional commission or convention. I am sure that that is what is needed, rather than endless debates in both Houses of Parliament.

I shall make six points in my speech today, which means one point per minute. First, there is some confusion in the Government's mind between devolution and home rule. My party has always believed in the latter. Jo Grimond put it very well when he wrote about the distinction:

"I do not like the word devolution … It implies that power rests at Westminster, from which centre some may be graciously devolved … Power should rest with the people who entrust it to their representatives to discharge the essential tasks of government. Once we accept that the Scots and the Welsh are nations, then we must accord them parliaments which have all the normal powers of government, except for those that they delegate to the United Kingdom government or the EEC".

Jo Grimond was my great guru and I have always thought that that is a perfect description of the difference between devolution and home rule.

Secondly, people talk loosely about devo-max. I would rather talk about the maximum amount of home rule consistent with common sense—and it is common sense to retain a united foreign and defence policy together with a common currency, pension arrangements and macroeconomic strategy. The SNP based its financial forecasts at the time of the independence referendum on oil income at $105 per barrel. It has since fallen below $50 per barrel and is forecast to stay below $60 for the foreseeable future, which is why full fiscal autonomy is a dangerous myth.

Thirdly, that is why we need a constitutional convention or commission which would include more than just the political parties—as the noble Lord said in introducing the debate—to pursue a confederal approach to the United Kingdom. The arguments are not new. My distinguished predecessors as Liberal leaders, Mr Gladstone and Mr Asquith, both wrestled with "Home Rule All Round", but were balked by the Conservative majority in the House of Lords. I hope that history will not repeat itself.

After the Parliament Act 1911, we had a very large, heavyweight constitutional commission, which reported in 1918 and recommended that this place should be elected by the other place. Of course, that was long before we had a Northern Ireland Assembly, a Scottish Parliament and a Welsh Assembly. The electoral potential today is much greater than was available to that commission in 1918. Professor Vernon Bogdanor, in a somewhat unprofessorial phrase in a recent article, said about the constitution of this country:

"If one joined a tennis club, paid one's subscription, and asked to be shown the rules, one would not be pleased to be told that the rules had never been gathered together in one place, that they were to be found in past decisions of the club's committee over many generations, and that they lay scattered among many different documents",

and that in any case some of the rules—conventions—were not written down at all. That is a pretty good description of the constitution as we know it today.

Fourthly, I believe that any constitutional convention would have to include on its agenda a proposal to replace this House with a smaller senate elected by the component parts of the United Kingdom—the institutions in Wales, Northern Ireland and Scotland—and that,

as far as the House of Commons is concerned, any such election should be by region to avoid the overweighting of London membership in a future Chamber. It should also include plans for an independent element such as we have now on the Cross Benches, which we would not wish to lose.

Fifthly, we in Scotland must wake up to the dangers of a one-party state. We are all proud patriots, but nationalism is never of itself a satisfactory creed, as has been seen in other countries, and can be seen today in the utterances of the cybernats. It is to the credit of Nicola Sturgeon that she has done her best to counter them, but at the next Scottish Parliament elections, less than a year away, we must roll back the drift towards an unhealthy one-party autocracy which we have north of the border.

Sixthly, and lastly, the noble Lord who introduced the debate mentioned electoral reform. It is interesting that after almost every election there is criticism of the electoral system but somehow, as Parliaments progress, that discontent dies away and we never get electoral reform. In creating the new Scottish Parliament, we at least created a proportional election system. I am not a great fan of the regional list system but at least it is proportional and it does mean that people are represented correctly in that Parliament. We also managed to obtain proportional representation for local government in Scotland, which means that every council elected in Scotland correctly represents the people in their area. I do not wish to be put off by reference to the past AV referendum, because that was not about proportional representation at all.

There is much work to be done by a constitutional commission. I hope that this little debate moves us directly in that direction.

12.15 pm

Baroness Kennedy of The Shaws (Lab): My Lords, I have been engaged with constitutional issues for over 25 years. I was one of the initial signatories to Charter 88, a cross-party organisation, set up in the late 1980s, which was concerned that in our modern democracy institutions did not work in the best way and that we should look at ways in which our constitutional arrangements needed to be reformed. I became chair of that organisation and there developed a very clear set of intentions. The idea was that there should be reform of Parliament, particularly this House. It did indeed lead, when Labour came into government, to reform, so that there was a much reduced number of hereditary Peers, the hereditary principle clearly being so outmoded. There were discussions about a written constitution and the need for devolution—perhaps, as the noble Lord, Lord Steel, said, home rule is a better description. We talked also about a Bill of Rights, reform of the judiciary, the Freedom of Information Act and proportional representation.

When Labour came into government in 1997, it was because of my involvement in constitutional reform that I came to be in this House. Many of those issues were the platform upon which Labour had become the Government, and many of the reforms took place in the following years, though not all of them. I remind the current Government that when we talked about a British Bill of Rights, it was seen to be quite complicated. If we spoke about trial by jury being one of those rights, for example, it had to be circumscribed and it became difficult to work out who would be entitled to it and how to write that into a Bill. It could not be everybody, as in America, because that would be financially impossible. It became clear that incorporating the European Convention on Human Rights and bringing rights home was a more satisfactory way of doing things. That became our British Bill of Rights. In turn, that was incorporated into the Scotland Bill—Scotland, of course, has its own legal system—which too incorporated the European convention. In Northern Ireland it became part and parcel of the peace process. So, disentangling some of these things that become built into constitutions becomes rather difficult.

We did reform the judiciary but we should remember that, when you seek to reform, you should be careful what you wish for. The reform of the Lord Chancellor's role was done in rather a back-of-an-envelope way. While I wanted to see reform of that role and, for example, the ways in which judges were appointed, the way it was done has led to a reduction in that great role and problems for us. We created a role that meant that people without legal training have become Lord Chancellor, which has reduced the greatness of that role. The reform had to be cobbled together because there had not been proper consideration of how it should take place. I say to this House: we are the guardians of the constitution. We have a wealth of experience and we should call upon the Government to look more carefully before they step into reform, because there can be unimagined consequences.

In 2006 I was invited by the Joseph Rowntree Reform Trust to chair an inquiry into the failure of people to vote, as we were seeing a big reduction in voting numbers. We held what was then called the Power inquiry. We thought about how it should be titled and decided on "Power" because, precisely as my noble friend Lord Wills said, it is all about power. That is what constitutional reform and constitutions are about: who has power, how the checks and balances are created and so on. When we did that inquiry—I emphasise that it was not a great and grand inquiry—it was quite useful to have people who were not the same old faces involved. That inquiry went round the country. We spoke to people in community centres and so on and asked them why they did not vote. What we got were the answers that my noble friend Lord Wills has referred to: real disengagement because people felt they were not listened to and that wealthy and well-connected people had access to power in a way that they did not. That is still bubbling away under the discontent that I think there is in our nation.

I warn the House that constitutional change is a very interconnected issue. I say this particularly with a view to Scotland. We saw what happened in the referendum. In many ways, the Prime Minister, Mr Cameron, was outplayed by Alex Salmond in the preparation for that referendum: the question ended up being written by Mr Salmond; the timing was chosen by Mr Salmond; and votes for the young—which I support—was pressed for by Mr Salmond. Our Prime Minister is currently under the same kinds of pressures from the anti-European lobby in his own party, and he is being much too

[Baroness Kennedy of The Shaws]
compliant over how to set up a referendum and how it should take place. I ask him to think carefully about how he does that. If we are not careful, a referendum on the European Union which does lead to our leaving Europe will have enormous consequences internally for the United Kingdom. It is almost inevitable that at that point, Scotland would say, "We want to have another referendum on whether we stay part of the United Kingdom", and I would regret that enormously. I see all these things as being interconnected, and great risks are being taken with our unity.

I know that my time is running out but I want to speak about how Scots will read the business of English votes for English laws. If it is done on the cheap—the solution being that Scots leave the Chamber when England gets to deal with its own subject matter—that, too, creates a second-class citizen feeling for people in Scotland. This business of English votes, which I thought was a terrible thing to announce on the steps of Downing Street the day after the referendum had been won by the no campaign, has to be handled with great caution because of how the Scottish people feel. The Scots feel at the moment that they are discussed in derogatory, sidelining and insulting ways. So we have to be mindful of how this dialogue is conducted and how we speak about each other if we want to retain a United Kingdom.

Finally, on the Human Rights Act, it will not surprise your Lordships to learn that I feel most alarmed that we are talking about leaving the European Convention on Human Rights and the European court. We are part of a tapestry in which we have played a leading role, not just in Europe but throughout the world. Our place in this tapestry is so powerful and we have the high ground. We are a beacon for the way in which we protect human rights. We wrote this thing, so the idea that we are stepping away from it is a tragedy but it also has implications for our relationship with the European Union. Once we want to step outside the court, there are questions about whether we can remain part of the Council of Europe, and that in turn has implications for whether we can actually be in the European Union, which has embraced the European convention so wholeheartedly into its systems.

We have to bear in mind the risks in all of this and the interconnectedness. We are the place that can do this best, but we have to speak to the Government about the risks they are taking with the United Kingdom, never mind with our relationship with the rest of the world.

12.23 pm

Lord Butler of Brockwell (CB): My Lords, having missed the opportunity to take part in the third day of the debate on the gracious Speech, I welcome the chance to offer my two pennyworth—or rather seven minutes' worth—today on this major part of the Government's agenda for the year ahead, although I am not as censorious of the Government's proposals as the noble Lord, Lord Wills.

It is a paradox that in a Queen's Speech of which the avowed theme was "one nation" the Government should be doing so much to fragment power in the United Kingdom. Nevertheless, I welcome the direction of march, as well as many of the individual measures in the Queen's Speech. I have never believed that the man in Whitehall knows best. On the contrary, I believe that services are best delivered by empowering those nearest to the point of delivering them. Empowering managers and recognising local diversity was the theme of the Civil Service reform programme, Next Steps, which I led for 10 years as head of the Civil Service.

I sympathise with those speakers in the debate on the gracious Speech who looked at the variety of constitutional measures in the Government's programme and yearned for a unifying theme. The noble Baroness, Lady Kennedy, made a similar point. Nevertheless, I do not support the notion that these measures should be delayed pending a constitutional convention or commission to give logic and consistency to the reform programme. For one thing, there are pledges that need to be delivered. We may feel that the vows made to the people of Scotland in the days before the independence referendum were made in precipitate haste. I remind the noble Lord, Lord Wills, that they were made at the prompting of the former leader of his party. Nevertheless, they were made with the agreement of all parties and the Government are honour-bound to deliver them.

I believe that the Smith commission—despite the fact that it, too, had to act under great pressure—did a good job in producing a package that could be acted on. There will be matters that Parliament will need to look at closely in legislating for that package but the Government are nevertheless right to press ahead with implementing it. Similarly, the Government are right to press ahead with legislation to implement the Stormont agreement for Northern Ireland and the St David's Day agreement for Wales. I welcome the intentions underlying the Cities and Local Government Devolution Bill, which is currently being debated in your Lordships' House.

Then there are the proposals about English votes for English laws, which the noble Lord, Lord Wills, said were prompted by the political interests of the Conservative Party. There is no entirely logical answer to the West Lothian question. Nevertheless, it is a nettle which has to be grasped. It would have been made even more urgent if the last election had produced a Government who had no majority in England and Wales, and who would only have been able to pass laws restricted to England and Wales through Scottish votes. The fact that this so easily could have happened underlines the need to find some arrangement which reconciles the right of English and Welsh MPs to determine laws affecting their own country, with the role of the Westminster Parliament to legislate for the United Kingdom as a whole. The Government have produced proposals to achieve that balance. I do not agree with the noble Lord, Lord Wills, that these are simply motivated by the political interests of the Conservative Party but good will is going to be needed from all parties to reach a reasonable outcome, recognising and balancing the undoubted rights of all parties to legislate on behalf of the United Kingdom.

I have not spoken about the British Bill of Rights or the referendum on EU membership. Nevertheless, this is a formidable programme of constitutional change. We should not postpone it while we set up a constitutional

convention designed to produce a logical and lasting framework. The British constitution has always developed pragmatically. We may feel that at this moment it is developing with precipitate haste but stasis is not an option. This would be absolutely the wrong time to propose the chimera of a written constitution. There are too many moving parts. Nevertheless, this is very important and major stuff, as the noble Baroness, Lady Kennedy, said.

The role of Parliament in this coming Session will be crucial in dealing with this programme of constitutional change. Both Houses will need to look at and debate the details of these changes with the greatest possible care. We have a very heavy responsibility and we will need the advice of our Select Committees. I believe that the Government abolished the Political and Constitutional Reform Select Committee in another place at entirely the wrong time. Nevertheless, the Public Administration Select Committee has been given that role, and it will have a very important part in this. In this House, we are fortunate in having the Constitution Committee, with a very distinguished membership. That Select Committee will have a very important role in advising us, and the House as a whole will have a major part to play in the months ahead.

12.30 pm

Lord Desai (Lab): My Lords, it is an honour to follow the noble Lord, Lord Butler. I have a very different perspective on the question at hand and will make two new propositions. First, we have a sort of written constitution. The noble Lord, Lord Norton, who is about to follow me, once added a schedule to a regulatory reform Bill which listed all the Acts that no subsequent Government could change—the core of the UK's written constitution. I once tried to play the game of asking what acquis Britannique someone wanting to join the United Kingdom from outside would have to sign. The acquis Britannique exists—we know it exists but we just do not admit its existence.

Secondly, we have been in an ongoing constitutional convention for about the last 40 years. In the 1970s, we joined the European Union and had the Kilbrandon commission. The decision to join the European Union continues to be somewhat fraught and disputed, although I believe the forthcoming referendum will confirm that it was the right decision. We decided not to become a federation when the Kilbrandon commission reported. Ever since then, we have been playing with this question of whether to have a federation or not and have created a somewhat patchy sub-federation which is not yet complete. The whole question of English votes for English MPs, or whatever it is called, is really the final capstone in creating a proper federation: we have devolved power to Wales, Scotland and Northern Ireland but have not found a way of devolving power to England because we do not want to create another Parliament for England. That is the problem: if we could only afford another Parliament for England, the English votes question would not matter, as we would have devolved power in England.

We have done various things but do not want to admit that these things have happened. My noble friend Lady Kennedy referred to the very peculiar way in which we reformed the Lord Chancellorship. It was very much a Thursday afternoon decision. Everybody had gone home, suddenly the Lord Chancellorship was about to be abolished and new tights had to be found for the new Lord Chancellor early on Friday morning, otherwise we would not have met. We also reformed the judiciary—remember how contentious that Bill was as it went through your Lordships' House. We successfully made one of the biggest reforms when we did that.

We have done reform, but it can be done only by the party in power. It is not possible to say that the party in power should be more consensual. That is not what power is about: if you are in power, you have a majority and you exercise it. You then wait for the next Government, if they have a chance, to reverse what you do. That is exactly what the Conservative Party is trying to do with the Human Rights Act. It was not in power when it was passed; it is now in power and saying, "Let us have a go at this Human Rights Act and see if we can do it more to our satisfaction". It is a very imperfect, clumsy way of doing reform, but it is the way we have in this country and we have to make the best of what we have. We must understand that we are in a continual process of constitutional reform. It is just that nobody has written it all down, although maybe the noble Lord, Lord Norton, has and teaches it every week to his students.

Let me give one example. The noble Lord, Lord Steel, pointed out how representation in Scotland, at both parliamentary and local level, has an element of PR added. When the boundaries Bill passes here and the number of MPs is reduced from 650 to 600—if the Prime Minister can still satisfy his Back-Benchers to get that done—there is no reason why the 50 extra people should not then come from a top-up through PR. That could be done without any major referendum on voting procedures or anything like that. It would then be very easy for us to correct the kind of historic wrongs that have happened to UKIP, the Greens and so on. We would have 600 seats by the conventional first past the post method and 50 by a top-up method. That would be the beginning of reform and done in the standard British way of adding an amendment to a Bill. We do not need a major reform of voting procedure or the entire election process. We have opportunities here. We need to consolidate somewhere in our minds or in some written form what are the major gaps left and why they are there. If we can do things that way, we have the opportunity now, especially through your Lordships' House, to point out to the Government where those gaps are.

To end, one major gap is key and dealing with it could create a proper federal constitution here. As I said, we have about three-fourths of a federal constitution. If we reformed your Lordships' House—another endless saga, I know—in a way that it would be elected but elected through a regional representation or list system, and if you could have, let us say, 10 regions in England, Scotland, Northern Ireland and Wales, we could have 30 representatives from each of those regions. We would then have an Upper Chamber that would be a truly good and federal one as well as representing a lot of local and devolved authorities. There are possibilities like that. There are omissions in what the Government said. However, it must be said that we do not trust

[LORD DESAI]
them to actually do things right. The right thing is to never trust any Government to do things right unless they have a check put upon them. That is what your Lordships' House should do.

12.37 pm

Lord Norton of Louth (Con): My Lords, I, too, congratulate the noble Lord, Lord Wills, on initiating the debate. The Motion addresses the implications of constitutional changes. I propose to focus on the constitutional implications of those changes.

Robert Stevens, in his book *The English Judges*, published in 2002, makes the point that the nation witnessed massive constitutional change in the period from 1640 to 1720. He notes that there were major constitutional developments in later years, such as the Reform Acts, but these were essentially,

"independent acts rather than part of a dramatic period of constitutional restructuring".

He then—this is my key point—says:

"For lawyers and courts, however, the period from 1970 to 2000 provided a practical and psychological transformation comparable with the earlier constitutional revolution".

The Labour Government returned in 1997 introduced a whole raft of constitutional measures. Anyone expecting a period of quiet after 2010 was to be disappointed. The coalition agreement heralded concessions and compromises on a number of measures of constitutional reform. The current Government are committed to several major constitutional measures, not least—as we heard—in relation to devolution and the European Union. The sheer scale means that we are not looking at independent Acts—that is, piecemeal changes that have time to bed in before other changes are made. We are looking at a whole gamut of changes to our constitutional arrangements, changes that are significant quantitatively and qualitatively.

During the 1980s and 1990s, several coherent approaches to constitutional change developed, each stipulating a particular constitutional structure deemed most appropriate to the United Kingdom. The problem with the constitutional reforms implemented by the Blair Government was that they bore no clear relation to any approach. When I asked Ministers what was the intellectually coherent approach to constitutional change being taken by the Government, I received no answer. In 2002, I initiated a debate on the constitution. In replying, the then Lord Chancellor, the noble and learned Lord, Lord Irvine of Lairg, admitted that there was no such approach. Rather, he said, the Government proceeded,

"by way of pragmatism based on principle, without the need for an all-embracing theory".—[*Official Report*, 18/12/2002; col. 691.]

The principles that he enunciated were not necessarily compatible with one another, as they appeared to embrace power residing at the centre and power not residing at the centre.

The coalition Government fared no better in that they were formed by parties which adopted approaches that were almost diametrically opposed to one another. The Liberal Democrats adhere to the liberal approach to constitutional change and the Conservatives to the traditional, or Westminster, approach—approaches that are at different ends of the spectrum of negative and positive constitutionalism, of what one sees a constitution as being for.

The result is that we are seeing, and pursuing, major changes to our constitution without having a clear appreciation of the implications for the constitution as a constitution. What is the principled approach to constitutional change? What type of constitution are we trying to craft for the United Kingdom? As things stand, we are in danger of ending up with a constitution that is the sum of a raft of disparate constitutional changes, rather than a coherent framework that we have set out to create.

In the debate on the gracious Address, I made the case for a constitutional convocation, not to draft a new constitution, but rather to make sense of where we are. We need an exercise in constitutional cartography. My purpose today is not to repeat what I said then, but rather to put specific questions to my noble friend Lord Bridges about the Government's approach to constitutional change—not to specific proposals, not to the implications of particular measures to be introduced, but rather to constitutional change as such.

First, what is the Government's intellectually coherent approach to constitutional change? How do they see the constitution as a constitution? Are they wedded to maintaining the Westminster model and the attributes ascribed to it? Secondly, what are the mechanisms within government to ensure that it engages in joined-up thinking on constitutional measures? Who is in charge of constitutional issues, not least in terms of ensuring a coherent approach to constitutional change? This is a question not about, or not just about, co-ordination, but about leadership. It would be helpful to know from my noble friend how government is now structured in order to consider constitutional issues as constitutional issues.

My key point in this debate is to stress that in looking at the implications of constitutional change, we should not confine ourselves—indeed, must not confine ourselves—to looking solely at the implications of this Bill or that Bill. We must look at the implications for the constitution as a whole. To do that, we need to be clear as to what type of constitution we have, and want, for the United Kingdom.

12.43 pm

Lord Lipsey (Lab): My Lords, two constitutional dogs did not bark in the Queen's Speech, although they should have done—parliamentary boundaries and the voting system. I shall say a word or two on each.

On parliamentary boundaries, under the Bill passed in the last Parliament, constituencies will have to have electorates within 5% of the average. An associated proposal would reduce the size of the House of Commons from 650 MPs to 600. In the last Parliament, noble Lords on this side of the House fought hard to stop the Bill. I am shocked to see that I spoke 166 times, according to *Hansard*. Noble Lords opposite accused of us of partisanship. Partisanship—moi? In fact, we had a case of great substance on two points, which got lost. One was that the 5% tolerance was too low; a 10% tolerance would mean far less disruptive change to constituency boundaries without ruining the effect of making every vote of roughly equal weight.

The second was that the reduction in the number of MPs was not justified, given that the number of electors per seat will, if that change goes through, have increased by 22% since 1950—and the workload of an MP is now many times what it used to be. I was very pleased that in March this year the now late constitutional affairs Select Committee produced a report which endorsed both these points.

The Government could just ignore the committee and plough on, but it would be a mistake—and this is the crucial point—from their own partisan point of view. The bias in the electoral system has gone. Before the 2015 election, it favoured Labour. Now it favours the Tories. Had the general election vote nationally been tied, the Tories would have won 301 seats to Labour's 254, according to the electoral geographers Ron Johnston and Charles Pattie. However, if the changes to the rules go through, the Tories will be torn apart by internal conflict. There will be fewer seats for their MPs to represent. Even in the seats that remain, there will be fundamental changes in boundaries. These measures combined will mean a plethora of deadly duels, mostly in Tory seats, often between sitting Tory MPs, regularly involving clashes between new, young Members—winner takes all. It is a recipe for dissent.

Less obviously, it will have a terrific effect on the Prime Minister's European goal, which I assume is to recommend to the country that we stay in. Tory grass roots are fundamentally Eurosceptic—I do not think anybody would deny that—so any MP who thinks, suspects or is worried that their seat may change or disappear will have every incentive to adopt a very Eurosceptic position. The prospect of Tory civil war—which in some ways I welcome—over Europe will be magnified several times over by these proposals. It is unusual that I appeal to the Government to exercise their self-interest, but they should have another look at the combined effect of these proposals.

I am not surprised that electoral reform was not in the Queen's Speech. In my experience, parties rarely question a system that has delivered them an overall majority. I sat on the Jenkins commission—the result of a pledge by Labour in opposition to look at the electoral system—which somehow seemed a lot less attractive after we had just won an overwhelming majority under Tony Blair. Yet this election has again shown the unfairness in modern conditions of Britain's electoral system. The Government's overall majority is based on the votes of less than a quarter of the electorate. We now have a set of completely new injustices on top of the old ones. Lib Dem underrepresentation, which used to be the big concern, is now as nothing compared with UKIP underrepresentation: it got 14% of the vote and one seat. Then there is SNP over-representation: with just over 50% of the Scots vote, it got 95% of Scots MPs—so, because of the voting system, Scotland, which just last year rejected independence, now has MPs nearly all of whom favour it. This is very odd.

There was, of course, a referendum on electoral reform in 2011 which came down against change, but Nicola Sturgeon's threats of a new Scottish referendum on independence show that in our febrile age referendum results do not last for ever. The previous European referendum has lasted for more than 40 years. Would anyone like have a bet with me that we will have another referendum on Scotland within 20 years? You cannot say that electoral reform can never be subject to another referendum and that it will not happen but is permanent.

In the mean time, I hope that attitudes in my party will change. It gives me no pleasure to say this, but the prospect of an overall Labour majority under the present system is now, and for the foreseeable future, near to nil. This is for three reasons. First, the bias of the electoral system is now against it, and will be even more against it if the boundary changes go ahead. Secondly, the 2015 general election showed a sharp decline in the number of marginal seats; again using the evidence of Professor Johnston. Whereas at the last election 75 seats would have fallen on a 5% swing to us, now it is only 49. Thirdly, Scotland is and may well remain a virtually Labour-free zone.

Given that the Government will not do anything, I wonder whether my party ought not to take an initiative on this, get together with the other parties that have been so badly affected by the electoral system and see whether there are any outline proposals that might come about that would improve it. We will not have an overall Labour majority in the foreseeable future but there could still be a hung Parliament—we only just avoided one this time—in which case it would again be possible to change the electoral system. At any rate, this is a matter that deserves to be debated.

12.50 pm

Lord Rennard (LD): My Lords, I very much welcome the Labour Party's continuing interest in constitutional matters, as reflected in its choice of subject for this debate.

In the period before the election of the last Labour Government in 1997, I was the joint secretary of the committee examining constitutional reform that was established by the Labour and Liberal Democrat parties and chaired jointly by the late Robin Cook and my noble friend Lord Maclennan of Rogart. That committee demonstrated then that cross-party work in opposition could help to deliver real measures of reform when a Government are then willing to act to improve the health of our democracy. Contrary to the view expressed a few moments ago by the noble Lord, Lord Norton of Louth, I believe that the committee agreed a coherent programme. Our work helped to prepare for the rapid introduction of legislation for the creation of the Scottish Parliament, the Welsh Assembly and the London Assembly, all of which use forms of proportional representation, as well as the incorporation of the European Convention on Human Rights into British law and the establishment of freedom of information legislation.

When that committee was established, we agreed that it is dangerous for any one party to propose on its own what it considers to be reforming changes to the constitution. That is why I am so committed to the principle of a constitutional convention, as currently proposed in the Bill introduced by my noble friend Lord Purvis of Tweed. The experience of the Scottish constitutional convention, in that same pre-1997 period, also showed the benefits of the involvement of civic society, working with people in all parties committed to making our country more democratic, enabling home

[LORD RENNARD]
rule, devolving power and making government at different levels more representative of the people who vote for it.

The Labour Government who were elected in 1997 failed, however, to deliver on their manifesto promise of a referendum on proportional representation—something very different from the system offered in the referendum four years ago. After introducing proportional representation for the 1999 European Parliament elections, progress on constitutional reform then faltered. The late and very much missed Lord Jenkins of Hillhead referred, in a report commissioned by the Labour Government proposing an alternative electoral system for Westminster, to the rich cornucopia of fruits delivered to the Labour Party in that 1997 landslide which caused a diminution of its interest in voting reform for the House of Commons. It is regrettable that the efforts put into the Jenkins commission by the noble Lord, Lord Lipsey, as he has just referred to, and the noble Baroness, Lady Gould of Potternewton, were spurned by those in their own party who probably considered at that time that the Labour Party had become invulnerable in general elections. They could not think that now.

Perhaps one of the greatest mistakes made by my own party in its 27-year existence was its failure at that time to accept the Labour Government's offer of the alternative vote system, which was clearly being made as an alternative to the promised referendum on a proportional system. I begged my noble friend Lord Ashdown, who was leader at the time, not to reject such an offer. However, when the AV system was offered to the people four years ago, the referendum clearly killed off the prospects of adopting it as the sole means of electing Members of the House of Commons in the foreseeable future. Nevertheless, the election last month of another majority Conservative Government with a minority vote of just under 37% has again awakened interest in the subject of voting reform, at least among those parties that between them received over 63% of the vote, but also among those who do not want to see one-party states established in the parts of the UK towards which more power is now being devolved. I suspect that it was the distorting effect of first past the post in Scotland last month that has particularly caused some figures within the Labour Party again to consider voting reform. It simply cannot be right that 50% of the vote for the SNP in Scotland entitled it to 95% of Scottish MPs.

I noted carefully some of the contributions made in the debate on the gracious Speech by some Labour Members of the House. The noble Baroness, Lady Kennedy of the Shaws, spoke then and today of her work with the Power commission, which recommended moving away from first past the post and giving the vote to 16 and 17 year-olds, and made significant suggestions for the reform of the funding of political parties—all of which should now be addressed in a constitutional convention. In that debate, the noble Baroness, Lady Adams of Craigielea, said:

"We are in a constitutional mess",

and that,

"we have to look again at the voting system that produces such a result".—[*Official Report*, 1/6/15; cols. 229-30.]

I always listen with particular interest to the noble Lord, Lord Foulkes, although we have often disagreed in the past about the issue of voting reform. The noble Lord described himself in that debate as having been a "Neanderthal" or "dinosaur" when it comes to first past the post, but he agreed that we must look at the issue again, and in a comprehensive way, through the vehicle of a constitutional convention. The noble Lord, Lord Elder, who is much respected, speaking with what he described as "fear and trepidation", acknowledged that,

"the present system, which has given absolute power to a Government with only just over a third of the votes cast and denies effective representation to other parties which have polled millions, is no longer fit for purpose".—[*Official Report*, 1/6/15; col. 222.]

I could not put it better.

Finally, I will refer briefly to the absence of any proper democratic accountability in the current proposals for mayors to control combined local authorities. The present proposals will in effect provide for one-party states, which cannot be good for the governance of those authorities. That is why my noble friends Lord Shipley and Lord Tyler are tabling amendments to the Cities and Local Government Devolution Bill to provide for elections on a fair basis, so that representative bodies will be able to hold such mayors properly to account in an open and democratic way.

12.58 pm

Lord Judd (Lab): My Lords, I very much thank my noble friend Lord Wills for having introduced such an important debate and for having done it so well.

It is clear from what he said—and this was very much reinforced by my noble friend Lord Lipsey—that the present arrangements are just not adequate. In fact, they are fundamentally flawed and lack credibility. Piecemeal reform is not the way to proceed; we need a road map and a destination which the road map will assist us in reaching. I am inclined to believe that we will have to go down the road of federalism and regionalism, even if we have several attempts, and whatever happens in Scotland. I also believe that it will also be necessary to introduce a new approach to voting that enables a far wider cross-section of the population to identify with those who claim to be representing them.

In recent times there has been a lot of talk about Magna Carta. I am as excited about Magna Carta as anybody—it has tremendous significance in our history. But we are trustees of a great deal more than just Magna Carta. It opened a door by taking on the exclusive power of the king and demonstrating that this could no longer prevail, but it also opened a door to a process of evolution to which the role of the people was absolutely essential.

Let us cast our minds back over our history just for a moment to William III, the Bill of Rights, the Levellers, Peterloo and the Tolpuddle martyrs. My wife, who is a historian, said to me this morning, "Aren't you talking about social issues here rather than constitutional issues?", but of course my point is that social and constitutional issues are essentially linked because the constitution has to reflect the social realities of the time in which one is living. There is a post-First World War endorsement of the essential

role of women. We in this House should never forget the incredible courage of the Suffragettes, but of course they were preceded in the previous century by the Tolpuddle martyrs, and before that, more generally in politics, by the Great Reform Act 1832.

After the Second World War we saw very significant developments. There was the drive for the UN declaration on human rights, in which great people such as Eleanor Roosevelt played such a key part, as did leading statesmen in our own country from both left and right. They were central to the creation of that declaration. That then moved on to the European convention. Of course these had implications for our constitution—it was part of the process of evolution.

Another thing happened after 1945. We began to see in a highly interdependent world the indispensability of international institutions. Some people would ask whether this raised issues of sovereignty. Of course it did, but we were recognising that the interests of the people who happened to live in the British Isles could best be served by contributing—let us not talk about sacrificing—some of that sovereignty to the wider international community, because that was indispensably in our interests. More recently—and it will be with us for a long time—we have had the struggle for identity in Ireland and Scotland. In Scotland—I am a half-Scot—let us never forget that very much lingering at the back of a lot of people's minds has been a feeling that the Act of Union was not something that they brought about but was very much a stitch-up between the Scottish establishment and the English, and that the day of reckoning will come.

I am trying to describe the fact that it has been evolution and struggle that has brought us to where we are, and we still have a very enviable society in many ways. Now, we are trying to engage in top-down management. We are saying, "We're the people who manage things at the moment. How are we going to get it right for the future?". I believe that that is destined to fail unless we re-engage the people in the process. We are practitioners within the existing constitution. We do not own it; the constitution belongs to the people. Therefore, if we are to have a lasting and sustainable way forward, it has to re-engage the people. It seems to me from that standpoint that a national convention on the constitution, with wider representative participation in society as a whole, is critical. I sometimes fear that we are determined in all we are doing to retain the power of the Executive. The time has come when we have to re-examine the role of the Executive, which is to reflect the will of the people. It is their servant, not their master.

1.05 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I want to touch briefly on the proposed British Bill of Rights. Of course, I recognise that a delay for consultation is now proposed, but there could be no clearer commitment than for such a Bill. Indeed, just two days ago in the other place, Dominic Raab, the new Justice Minister, full of enthusiasm, stated:

"We will legislate for a Bill of Rights to protect our fundamental rights, prevent abuse of the system and restore some common sense to our human rights laws".—[*Official Report*, Commons, 23/6/15; col. 748.]

He continued by saying that, although leaving the convention was not the Government's objective, no option was off the table.

There is time today to make only one or two brief points. First, in the debate on the gracious Speech on 1 June, the noble and learned Lord, Lord Mackay of Clashfern—whom I am happy to see in his place—with regard to our failure to implement Strasbourg's judgment on prisoner voting, confessed to,

"a feeling of great anxiety that the United Kingdom, with its tradition for respect of the rule of law, not the rule of lawyers, should be in breach of a treaty by which it is bound".—[*Official Report*, 1/6/15; col. 179.]

That of course was entirely consistent with evidence that the noble and learned Lord had given the Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, as recorded at paragraph 92 of its report, HL Paper 103. Later in his speech, the noble and learned Lord, Lord Mackay, suggested a possible way of dealing with this sort of situation short of withdrawing from the convention. He suggested—as reported at cols. 179-80 of the *Official Report* for 1 June—that the convention should recognise the possibility that member states such as the UK whose Parliament is sovereign and not subject to having its Acts set aside or modified by the courts of that country should be exempt from the obligation to implement a decision of the Strasbourg court that one of its statutes contravenes the convention, provided only that the state's legislature passes a resolution which, for stated reasons, declines to implement the Strasbourg court's decision.

Clearly, the noble and learned Lord was attempting to avoid the unthinkable possibility of withdrawing from the convention and to put forward a constructive suggestion. However, with the best will in the world, it seems to me inevitably doomed. In the first place, it is surely inconceivable that all the states party to the convention would agree to such an amendment of the convention. In any event, would we really be happy to achieve a position where, for example, if the Russian Duma, or indeed the Irish Parliament, wanted to recriminalise homosexuality, it would be perfectly able to do so? In truth, we must recognise that our preparedness to accept that the very occasional unwelcome ruling against us is the price we pay for the huge benefits to the wider population of the Council of Europe of subjecting less liberal states to the constraints and disciplines of the convention.

I should make it plain that I, too, regret a number, although in fact only a very small number, of Strasbourg's decisions. Frankly, they do not include that on prisoner voting—a decision that we could satisfy simply by giving the vote only to those serving 12 months or less. Surely we are, after all, trying not to outlaw prisoners but to instil in them some sense of civic responsibility. However, I regret one or two Strasbourg decisions—for example, the cases of Al-Skeini and Al-Jedda, which are in direct disagreement with our own final court's decisions, to which I was party respectively in this House and in the Supreme Court, and which tend to undermine our forces' fighting capabilities in armed conflicts abroad. I am troubled, too, by the extent to which Strasbourg has extended the scope of the Article 8 right to respect for private and family life.

[Lord Brown of Eaton-under-Heywood]

As to the application of the convention to warlike operations, there are possible solutions. Indeed, I canvassed them in a conference last month at Oxford, but there is not time to develop them today, although I hope that we may one day come back to them. With regard to Article 8 and, in particular, its impact on the deportation of foreign criminals, let us see how the changes to the legislation introduced by last year's Immigration Act work out. According to the *Times*, there is shortly to be a Court of Appeal case which questions those changes.

There has been extensive debate during recent years about Section 2 of the Human Rights Act requiring our courts to "take into account" Strasbourg's jurisprudence on the convention. High authority in our courts dictates that we should not only take account of that case law but, where it is settled, directly in point and authoritative —for example, a clear decision of the Grand Chamber—follow it. The object of the 1998 Act was, after all, to "bring rights home". If our courts were to refuse to apply a clear Strasbourg decision, the inevitable consequence would be, as the noble Baroness, Lady Kennedy of The Shaws, mentioned, to drive the disappointed litigant back to Strasbourg to establish the claim there.

Of course, success in Strasbourg would bind the Government only in international law, as with prisoner voting, where primary legislation stands in the way of domestic enforceability. But I can see some arguments for preferring that to the present position, which, just very occasionally, requires our Supreme Court to follow a Strasbourg case against its own better judgment—those arguments were indeed canvassed by the noble and learned Lord, Lord Irvine of Lairg, back in December 2011. But it is one thing to elaborate Section 2 of the Act to spell out that our courts are not obliged to follow Strasbourg or, indeed, to repeal the 1998 Act—essentially reverting to the position before 2000, when we merely took account of the UK's international law obligations—but quite another to legislate contrary to certain specific convention requirements as determined by the Strasbourg court, and that is what I understand the Government presently have in mind. We shall need to watch their proposals very carefully indeed.

1.13 pm

Lord Soley (Lab): My Lords, it was a pleasure to listen to the very constructive and thoughtful opening speech of my noble friend Lord Wills. It was a pleasure, too, to listen to many of the other speeches, including that of the noble and learned Lord, Lord Brown, to which I would add simply one line: one person in the European continent who will be delighted if we withdraw from the convention is Vladimir Putin. If you find yourself doing something that is on the same side as Vladimir Putin on human rights, it really is time to think again.

On the wider issue, I have re-read the Queen's Speech today. There is not a lot in it on the constitution. I agree with the mayoral approach, which was introduced by the Blair Government. I supported it then and I still do. I like the idea of the northern powerhouse and, yes, we should do that elsewhere as well. After that, the speech descends into vagueness. One line that troubles me is:

"My government will also bring forward legislation to secure a strong and lasting constitutional settlement".

That is usually the triumph of hope over experience. Listening to the noble Lord, Lord Norton, with whom I agree on many things on the constitution, I think he always seeks a logical structure, which, frankly, I do not think you will ever get, especially with the British constitution. It is the triumph of hope over experience because, basically, we make it up as we go along. That is not entirely a bad thing, because I sometimes think that overpredictability in politics is an anti-democratic approach; you should find yourselves at times in unpredictable situations because that is where you lose. Occasionally, we need to lose in politics, whether we are talking individually or as parties, because it sobers you up and makes you think through policies again.

I find the vagueness about how we handle this reform of the constitution deeply worrying. Like a number of other speakers today, including on the Tory side, I was deeply worried about the call for English votes for English laws immediately after the Scottish referendum. If you wave the English flag in front of the Scottish flag, you will provoke conflict and disagreement. It is only 300 years since we fought around that border and it is an issue in people's hearts and minds. It could also easily give a boost to UKIP. If it finds itself speaking for English nationalism—previously, it tended to present itself as speaking for United Kingdom nationalism—it would create a greater danger within England. Although I have always found Scottish nationalism deeply disturbing, I consider English nationalism no less disturbing, and we could break up this precious union that we have had for so many years. So I do not think that English votes for English laws—or Welsh votes for Welsh laws—is the way forward.

That is not to say that there is no need to reflect the problem that England does not have a parliamentary structure of its own. We have to work out how we handle the relationship between the four parts of the United Kingdom. The big, obvious problem is that England is bigger than the other three parts put together, but there are problems within that. As I indicated when I last spoke on the constitution here, some 22 million people live in the south-east corner of England, which makes it bigger than the other three parts of the United Kingdom and bigger virtually than much of the rest of England. There is a distortion there. You also have the problem whereby, if you try to change the relationship between the various parts of the United Kingdom, you always have to remember that one part, Northern Ireland, would require, if you made too many changes, either the unstitching of some of the agreements already made or the altering of some international agreements that were lodged at the United Nations as part of the settlement with southern Ireland. So there is a complication there, which is why I think so many of us in the Labour Party, the Liberal Democrat party and, to some extent, the Conservative Party have been saying that the way forward is to have a constitutional conference of some type and to involve the people in it—not to have simply a top-down approach. Many people throughout the United Kingdom have lost confidence in the political system, so we need to involve people in change. I am not saying what those changes should be. The noble Lord, Lord Steel, made a good point when he talked

about the difference between devolution and home rule. His point about home rule was powerful and we should give thought to it.

I have also been encouraged by the group that has been set up by, I think, the noble Lords, Lord Purvis and Lord Foulkes. It crosses all parties and involves Members of both Houses as well as members of local authorities. The discussions within that group have been incredibly co-operative and quite indicative of ways forward. A key question that we must all answer at the end of the day, touched on by the noble Lord, Lord Steel, is what the United Kingdom is for. The more we devolve power, or give home rule—as the noble Lord, Lord Steel, phrased it—the more we raise the question: what is the United Kingdom Government to do and what is their purpose? In fighting the referendum, we put great effort into spelling out the dangers of a break-up of the United Kingdom. We were right to do so. The noble Lord, Lord Steel, mentioned the oil price, but it was not just that: if the Royal Bank of Scotland had gone belly up in an independent Scotland, the impact would have been disastrous for Scotland. The case for the union was very strong. But in drawing attention to the dangers of a break-up, we understated the advantages of staying together. I cannot spell them out now in this short contribution, but they are to do with issues such as macroeconomic policy, defence and foreign affairs, pensions and so on. If we are to start talking in a constitutional convention about what the role of the United Kingdom is, we can make it meaningful again for the people of the United Kingdom. We can show people in Scotland—or England if we see a rise in English nationalism—the advantages of being part of the UK.

We are in a strange situation at the moment. In a way, the SNP's view of the United Kingdom is a bit like the Tories' view of Europe: "We don't really want to be part of this but maybe we have to be". That is a very negative approach. We need to think of the advantages and about how we do this. If the Government are not going to go down the road of a constitutional convention, will they please say what their strategy is to deliver what they said they would do in the Queen's Speech, which is to create a strong and lasting settlement for the United Kingdom?

1.20 pm

Baroness Taylor of Bolton (Lab): My Lords, I congratulate my noble friend Lord Wills on initiating this debate. I was going to congratulate him on his timeliness, but this debate would have been timely at any point during the last Parliament and probably any time during this one as well, such is the pace of change that this Government are introducing and have introduced in the past.

We have heard today that there is very little in terms of a common approach from the Government regarding constitutional change. There is one common thread, in that most of these changes are botched, fragmentary and not thought through. Many of them, as my noble friend said, are determined by political advantage, which is not a good driving force for constitutional change. During the last Parliament, we had the AV referendum, although I disagree with my noble friend Lord Lipsey on electoral reform. We had the referendum not because the Government as a whole wanted to consider electoral reform but for the wrong reason—because of the coalition deal.

Then we had the Fixed-term Parliaments Act, which certainly suited some in terms of political advantage at the time, although I am not sure that the electorate were enamoured of it when it came to that very long election campaign. I wish my noble friend Lord Grocott well in his attempt to repeal that Act. We also had the boundary changes, which several colleagues have talked about today. They were blatantly political. The idea of creating constituencies regardless of the natural boundaries in an area is dangerous. It makes the link between a Member of Parliament and their constituency all the more difficult. Any such constitutional change that has cutting the cost of politics as its purpose is going in the wrong direction. We should be defending the need for an effective representative democracy and not making cheap jibes in order to curry favour.

Nobody has mentioned the House of Lords reform that Nick Clegg introduced. That sank very quickly so perhaps it is best not to do dwell on it. But we saw other changes, such as voter registration. My noble friend produced figures that show that 8 million people will now be off the register. That is a serious situation, not just for our democracy but for our society. It will increase the alienation of many people, which is the last thing this country needs at this particular time.

Many noble Lords spoke about the Scottish referendum, of course. Many noble Lords in this House worked very hard to ensure that the result of that referendum was the right one—a vote for "better together". However, our efforts were somewhat undermined when, after everyone had rejected the idea of a second question about devo-max on the ballot paper, we then had that vow—the panic measure a couple of days before, on the part of all parties—that undermined all that we had been trying to do.

Then, as others have said, it was even worse after the result, when separation had been rejected. Instead of making a statement consolidating the union, the Prime Minister, as my noble friend said, exploded a time bomb outside Downing Street in the morning, stoking up problems with his announcement about English votes for English laws being such a priority. As my noble friend said, you do not counter Scottish nationalism by fanning the flames of English nationalism— so much for the Government's apparently enduring settlement aim, which totally contradicts what the Prime Minister did on that day.

It has been said that the purpose of EVEL is to harm the Labour Party. I am not sure that it will as much as people say, but some of that is in our own hands. I am sure that that was the motive behind what the Prime Minister said. Everybody within Parliament should be concerned that the Prime Minister is going to try to change our constitution by introducing English votes for English laws by changing the Standing Orders in the House of Commons, which could be done—and he wants to do it within 100 days. That is rather a fundamental change to go through simply on the basis of changing Standing Orders in another place. It is very serious indeed.

[Baroness Taylor of Bolton]

We have seen lots of piecemeal changes. Mention has been made today of the possibility of a constitutional convention, conference, convocation, commission or whatever—call it what you will. I do not think that the name matters. Maybe there should be a Joint Committee of both Houses. We need to know how all of these changes will knit together or I fear that we will have a ridiculous and unnecessary situation with many tensions and challenges, and too many times the courts will end up making decisions and not Parliament. I agree with the noble Lord, Lord Norton: we need to step back, not to try to write a new codified constitution but to clarify the framework and get a coherent approach.

I want to make a final point about one type of creeping constitutional change that has not so far been mentioned: the increasing use—would say abuse—of Henry VIII powers in legislation. Sweeping changes are now being made by regulation and no proper indication is being given about the nature of those changes at the time that the legislation goes through—even in Committee and on Report. As Ministers we have all tried to push the boundary on that a little, but we used to have in government a legislation committee—a Cabinet committee—that actually looked at how legislation was fit for purpose and fit for being introduced. One of the tests of that was whether the statutory instruments that were being proposed were proportionate. We have got well away from SIs being proportionate. It is almost as if Ministers are competing to see who can get away with the most—on my count the noble Lord, Lord Nash, is winning at the moment. This House probably needs to look at whether we need a new mechanism so that it does not reject or accept an SI but has some powers of delay. That would be very helpful.

I congratulate my noble friend. He is right that we should keep returning to this issue and keep asking the questions about how the constitutional changes will fit together. He reminded the House that part of our role is to be a constitutional long-stop. This House has to take that responsibility very seriously indeed.

1.29 pm

Lord Purvis of Tweed (LD): My Lords, to abuse an allusion from a former Prime Minister's phrase, our union is one that is not at ease with itself. In his opening remarks the noble Lord, Lord Wills, said that our union is frayed, and I cannot disagree with that. I thank him for bringing this debate to the House. The absence of ease within our union was demonstrated in the general election when the political imperative in our nation became almost overpowering, with fear of government in one part of the United Kingdom being set against that in another. The last time posters of the nature we saw being displayed in the United Kingdom were those of a century ago on the Irish question. The union is a remarkable and resilient creation, but I fear that its resilience will be tested if we have perpetual government in the same manner as the kind of election campaign we saw in May. Government of the United Kingdom cannot be sustainable in the long term if it is formed from only one nation within the union and a one-party state in another part of the country, always using opposition against that union Government to its electoral advantage.

Surely for all of us who believe in the union, there must be discomfort with the greater political incentive being identity rather than philosophy. We in the United Kingdom are not immune to the wave of nationalism in Europe that has been gaining ground either. In May, some 6 million people in these islands voted for overtly nationalist parties. However, there is nothing to be gained from criticising or blaming the people for doing that. Our role must be to consider carefully what our union means in all parts of it and what it offers for every citizen, from the northern islands to Cornwall and from Wales to the east coast or the south coast. With all their different political imperatives and pressures, and all their different economic situations, they are still part of the union, and it seems that it is indeed becoming more frayed.

Our task in this Parliament is therefore to work on how we can resolve our relationship within the union, and its relationship with the wider European Union. If the union is to be at ease with itself, surely it must be outward-looking rather than one where, even on reading all the party manifestos in the election, one gets the impression that we will be spending the next five years looking inwards at ourselves and not beyond. If there is any lesson to be learned from the Scottish referendum, I would caution the Minister that if he thinks the European referendum will be the resolution of many of these issues, that is perhaps a naive thought. As the noble Lord, Lord Norton, said, this debate is about the implications of constitutional change, but I wish to take a slightly different slant and consider what the implications are for the union as a whole. However, I cannot but draw the conclusion that if we continue with perpetual changes to one part of the constitution in isolation from consideration of their impact on the other parts, the pressure on the whole will become too great.

My noble friend Lord Steel highlighted the consistent view of Liberals and others for many generations that home rule or a federal arrangement is the most appropriate framework for government. Even in the constitutional crisis a century ago that led to the Parliament Act and others, there was no referendum in any one part of the union to secede from another. We have challenges ahead of us of a larger order that those which previous generations faced and we are not yet in a position to make a response in a commensurate way. We have not considered sufficiently what the referendum in Scotland tells us; we are still in the process of carrying out a sigh of relief rather than making a proper and rational assessment of what is required for the future. That is because for many years we have not been ahead of the debate on the constitution. We have debated it often, as has been indicated by other speakers, but we have done so almost in complaint about and in response to difficulties in one part of the United Kingdom, not to propose a new relationship for the country. As we heard from the noble Lord, Lord Butler of Brockwell, and others, I do not question for one moment the ability of our Civil Service to make a silver purse out of a constitutional sow's ear; we can do remarkable things by attaching a crown to something and giving it a historical name—suddenly it becomes a convention or a constitutional practice. But such a piecemeal

approach, even with a degree of finesse, is no longer sufficient and it cannot be the pattern of things to come.

As my noble friend Lord Rennard indicated, it does not need to be that way. There can be cross-party agreements and ways forward so that we can secure some form of agreement. But we must change our mindset so that constitutional reform is not the Government having to do something in response to a political pressure of the day, but wanting to do something to hold the whole together. I hope therefore that my Constitutional Convention Bill will receive a fair hearing. It is meant to be one way of trying to gather together as much consensus as possible, along with a specific remit which means that we can address what the noble Lord, Lord Butler, indicated was his concern; namely, that we delay one part in order to try to make what is perhaps a naive attempt at achieving the whole in the future. We need not delay the Government, which to be fair are seeking to honour their commitment to Scotland, Wales, Northern Ireland and the cities, but it is important that we should commence at the same time a process to consider how the whole brings this together in a holistic way.

My Bill is a vehicle through which the Government can address the human rights legislation issue and how it fits in with our constitutional arrangements; about how we can have fair financing, not only for the cities and regions of England, but also about the formula which holds the whole together across the nations. And, yes, it also means that from that, we can then work out what the appropriate role for this institution is under the electoral system for this Chamber. I hope that the outcome may well be a charter of new union. It may well be a document which, while not a written constitution, would certainly signal what this union is and what it is for.

Finally, I know that a constitutional convention was not in the Conservative manifesto; it did not propose a convention, but nor did it rule one out. I am of an optimistic disposition and I know that the Minister is greatly experienced and a shrewd adviser. Since he was an adviser to the former Prime Minister who was seeking a nation that was at ease with itself, I hope that he will see the merit in a process that will assist in having a union at ease with itself too.

1.37 pm

Lord Hunt of Kings Heath (Lab): My Lords, I warmly welcome this debate and thank my noble friend Lord Wills for his opening remarks. I certainly agree with the noble Lord, Lord Norton, on the need for a coherent approach to constitutional change. He has made the point many times before. Any objective analysis of the Government's proposals would show that they have produced anything but that coherence, and they certainly do not answer the questions raised by my noble friend Lord Soley when he asked what the nature of the UK itself is in the current context and about the need for a lasting settlement. Indeed, as my noble friend Lord Wills said, many of the proposals seem to be motivated by short-term political advantage rather than in order to provide any long-term national benefit. I certainly see nothing in them that would bring our nation together, nor do I see anything which would restore public confidence in the health of our political system. I shall take one example. As my noble friend Lady Taylor said, we have proposals to create two tiers of Members of Parliament on the basis of Commons Standing Orders. A change of such immense importance surely deserves the full scrutiny of both Houses of Parliament, looking not only just at the proposal, but at the impact on the rest of the constitution.

We also see proposals for the repeal of the Human Rights Act which will reduce the ability of those who find themselves the victims of state abuse to defend themselves adequately, along with proposals which may involve the Human Rights Act continuing to apply in Scotland and Northern Ireland but not in England, thus driving a further wedge between England and Wales on the one hand and the rest of the United Kingdom on the other. My noble friend Lady Kennedy pointed out the risks of that.

There are proposals from the Justice Secretary to limit the public's right to know by emasculating the Freedom of Information Act, and proposals to make it more difficult for unions to donate to political parties and ballot their members. These proposals do absolutely nothing to increase the transparency of donations made by private donors to political parties, particularly the Conservative Party. In the Bills that the Government intend to introduce, nowhere is there any sense of the public crisis in confidence in our constitutional arrangements. Where is the response to the work of my noble friend Lady Kennedy and the Power inquiry and the disengagement of so many people from those who wield power? Where are the proposals to deal with the imbalance in registration of voters? The young, the renters—those who do not own their own homes—the poor and those from minority ethnic groups have the highest levels of non-registration. What steps is the Minister taking to ensure that electoral registration does not leave millions of people unregistered? My noble friend suggested that the figure is 8 million.

What steps will the Minister take to stop new constituencies being created that fail to take account of the actual number of people who live there? What is his response to my noble friend Lord Lipsey, who pointed out that the bias in favour of Labour has now been reversed, which should give the Government a greater sense of interest in providing greater tolerance in the numbers that will be allowed for each constituency? I also want to ask about the recent report of the Electoral Commission of the 1.9 million people retained on the electoral register under transitional arrangements. The Electoral Commission wants to delay bringing forward the order to bring an end to the IER. Will the Minister say whether the Government agree?

On human rights, my noble friend Lord Judd spoke of the indispensability of international institutions. How right he is. My noble friend Lady Kennedy spoke of the tragedy of our potential withdrawal on human rights. We have a Government who say that they support human rights but that they should be British human rights. Of course, one has to go back to the October 2014 document which said that the Conservatives would reintroduce the rights in the same wording as the convention rights, but would make it clear that there are aspects of those rights that would be specifically

[Lord Hunt of Kings Heath]
excluded. For example—the noble and learned Lord, Lord Brown, has already pointed this out—on the prohibition of deportations if the deportee would be tortured or killed on return, such deportations could go ahead. Another example is the application of human rights law to the military.

We are very confused about what the Government intend partly because Ministers keep making remarks that seem to be in direct contradiction to each other. The Minister has a very good opportunity to spell out what are the Government's intentions. Can he say whether they will withdraw from the convention? The Lord Chancellor made remarks on this yesterday that directly contradicted something one of his junior Ministers said very recently.

On devolution, I will simply say that in relation to Scotland we want the Smith commission to be implemented in a comprehensive way. We want to keep the Barnett formula alongside more powers to make the Scottish Parliament one of the most powerful devolved Parliaments in the world. We also want to put devolution on a stronger statutory basis. We agree with the proposals of the Silk commission but Wales should not be unfairly disadvantaged by the Barnett formula, and we support a fair funding system for Wales by introducing a funding floor. In Northern Ireland we welcome any aspects of the Stormont House agreement, but the current deferment of decisions on welfare mean that the agreement is in a precarious position. I should like to know what the Government are doing with the Northern Ireland Executive to deal with this issue.

On English devolution, I want to pick up the point made by the noble Lord, Lord Rennard. We certainly support the devolution of much greater powers and control of budgets to the city regions and counties, but surely it is for those cities and counties to decide on their own leadership arrangements. Why, when the people of Birmingham made it abundantly clear in a referendum that we did not want an elected mayor, are we now being effectively blackmailed into having one to get powers commensurate with the importance of the greater Birmingham region to the UK economy?

On Lords reform, my noble friend Lord Desai put forward a perfectly coherent set of proposals and the noble Lord, Lord Steel, mentioned the Bryce commission of 1918, which bears a rather uncanny resemblance to the Billy Bragg secondary mandate proposals. The Conservative manifesto states:

> "While we still see a strong case for introducing an elected element into our second chamber, this is not a priority in the next Parliament … will ensure the House of Lords continues to work well by addressing issues such as the size of the chamber and the retirement of peers".

I assume it means that the Government will do absolutely nothing except address the size of the Chamber by appointing even more Conservative life Peers.

I want to ask about the increasing practice, raised by my noble friend Lady Taylor, which we have noticed in the number of Bills coming forward. They seem to be skeleton Bills with lots of Henry VIII powers. My noble friend said that we should look at whether the House should respond in the way in which it deals with statutory instruments. If the Government are using Commons Standing Orders to introduce two tiers of MPs in the House of Commons they should not be surprised if we seek to use Standing Orders in this House to give greater scrutiny to secondary legislation. The precedent will have been set in the other place.

My noble friend is so right. This is a programme aimed at short-term advantage and promotes division. It threatens the union, the reach of our voting system, the rights of our citizens and the strength of our nation as a defender of human rights in the world. Our political system is in trouble. The union is fragile. Our place in Europe is uncertain. Politicians are held in low esteem. Only 43% of those registered aged 18 to 24 voted at the last election. What better illustration of the problems in our political system?

No one should be complacent about the state of the health of our constitution. We have to re-engage and strengthen our constitutional arrangements. If ever we needed to look at the constitution in the round, the time is now. That is why we support the establishment of a constitutional convention. Why will the Government not agree to that?

1.47 pm

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, what a fantastic debate this has been, and I congratulate the noble Lord, Lord Wills, on securing it. He is quite right, I did read history at Oxford, but sadly, I clearly was somewhere else—maybe somewhere involving alcohol and thinking about things. It is another sign of my misspent youth; for example, when they were trying to teach us about Aristotle, I missed it.

When I was told there was to be a short debate on the constitution I looked at my officials in bemusement and asked whether this was not a contradiction in terms or actually a physical impossibility. This debate has been excellent; we have covered a lot of ground. I feel as if I have just been hit by the noble Lord, Lord Hunt, with a tidal wave of questions about the constitution.

I remind your Lordships that Walter Bagehot began his seminal work on the constitution by quoting John Stuart Mill, who said that,

> "on all great subjects, there still remain many things to be said".

Of no subject is this more true than the British constitution. Much more remains to be said but I thank all noble Lords for their contributions, creating what the noble Lord, Lord Rennard, described as a constitutional cornucopia, from which I shall try to pluck some of the fruits.

Trying to sum up is a little daunting. I feel like I am facing one of those test papers in that great source of insight into the British constitution, which I am sure noble Lords know well—*1066 and All That*—where students face questions such as:

> "Examine the state of mind of (1) Charles I, half an hour after his head was cut off (2) Charles II, half a moment after first sighting Nell Gwyn".

As the noble Lord, Lord Norton, said, the exam question before us today, and for me to try to answer, is to note the implications of the constitutional changes proposed in the gracious Speech.

Let me start by rehearsing the intention behind those measures. As has been said, including by the noble Lord, Lord Butler, the Government intend to govern in the interests of one nation. This was a clear theme of the gracious Speech. What does that mean? In practice it means ensuring that our constitution, the institutions and the democratic processes that underpin our nation create a stable polity. Let me try to address my noble friend Lord Norton's excellent exam question: this means that we need a constitutional settlement in which Parliament is sovereign and which is characterised by the principles of giving power to the people—a point that the noble Lord, Lord Butler, made so well. It is also a fair settlement and one that has a pragmatic recognition—two words that I emphasise—of the unique nature and characteristics of the different parts of our union. I am unsure that that answers my noble friend Lord Norton's question, but I would be happy to debate with him further on it.

What does this mean in practice? We have rehearsed a number of these points today. It means that we will meet our commitment to deliver further powers to Scotland, Wales and Northern Ireland. It means—a critical point here on giving power to the people—a referendum on this country's continued membership of the EU. It means, in the interests of fairness, that we will address the English question through the introduction of English votes, a point that I will return to. Further, it means that we will introduce a Bill of Rights, which will uphold fundamental human rights while protecting against the abuses of the Human Rights Act, a point that I will also return to. To answer my noble friend Lord Norton's question about the machinery of government, clearly my right honourable friend the Prime Minister has oversight of all government policy, while my right honourable friend the Chancellor of the Duchy of Lancaster co-ordinates the constitutional reform programme.

I turn to the constitutional convention, or convocation, or however others might like it. I applaud the speech on this by the noble Lord, Lord Purvis of Tweed. He spoke eloquently, as always. I shall answer this not by being coy, as the noble Lord, Lord Steel, suggested; I shall address it head on. The Government do not plan to establish a constitutional convention. Instead, our focus must be on delivering the commitments that we made to the people of the United Kingdom. The Government were elected with a mandate to deliver the commitments that I have listed and that should not be delayed, as the noble Lord, Lord Butler, said in his powerful contribution.

There is nothing to suggest that the public want a constitutional convention. Instead, I point out that they were offered one at the last election by the Labour Party. It was one of the policies that was rejected and no doubt went the same way as the "Ed stone". Instead, I argue that the British people want the Government to get on with the job they were elected to do. It might seem odd to quote Elvis Presley in this context, but I kept thinking of his song, "A Little Less Conversation"—a little more action. That is what I think the British people want on this point.

I know that the noble Lord, Lord Wills, has been keen on such a convention for some time. Indeed, I read his pamphlet back in 2006. He proposed that a convention might consist of 300 members who would be elected at a general election. They would look at everything: from devolution to an issue that I know matters to your Lordships—age restrictions on Peers—the whole gamut. Their contributions would be put to the public in a referendum. I should add that the noble Lord suggested that no one who ever stood for election would be able to serve on this convention, so that includes himself and a number of your Lordships.

I mention this not to put in lights the noble Lord's contribution to the debate, but really to make the point that every person who wants an official convention has their own particular view as to who should be on it and what it should do. To get any agreement, I suspect that we would need a convention on a convention. Furthermore, international experience shows the challenges that lie in dealing with the outcomes of such conventions and then securing public and political legitimacy for their conclusions. In Ireland, of the 18 recommendations made by its constitutional conventions, just two were put to a referendum. In British Columbia and in Ontario the public rejected the outcomes.

Rather than go down this route, I argue that we must press ahead with the package of reforms that we have set out and scrutinise them vigorously, as a number of noble Lords have said. If others wish to look at these issues in a broader context, either here in Parliament or elsewhere, or even to set up their own convention, they are more than welcome to do so. Let a thousand flowers bloom, I say; knowing that your Lordships are not shrinking violets, I am sure they will. As the noble Baroness, Lady Kennedy, implored, your Lordships should do this as we are the best placed to do the job. What we cannot afford is an expensive talking shop that would delay, rather than deliver, reform. If we are really to listen to the people, kicking this issue into the long grass is not the answer. Those are not my words, but those of Margaret Hodge. For once, I entirely agree with her.

I turn to the reforms. Through the measures that we are introducing in this Parliament, the Government will deliver some of the most powerful devolved Parliaments in the world. I dispute with those noble Lords who contend that there is not a programme here. It is important that those increased decision-making powers be accompanied by enhanced accountability to ensure that the devolved Administrations are responsible to the people who elect them.

On Scotland, I dispute what some of your Lordships have said: that the approach the Government are adopting is partisan. The Scotland Bill delivers the Smith commission agreement, on which there was cross-party agreement, in full. We are providing extensive new powers and more control over tax and spending. As set out in the St David's Day agreement, we will devolve additional powers to Wales over areas such as transport, energy and the environment, and empower the Assembly to manage its own affairs. For Northern Ireland, the Stormont House agreement offers the prospect of a more prosperous, stable and secure future. I can tell the noble Lord, Lord Hunt, that my right honourable friend the Secretary of State is meeting the parties again today, having held a series of bilaterals with all parties over the last week.

Lord Purvis of Tweed: The Minister referred to the Smith commission, which was established by the Prime Minister and chaired so well by the noble Lord, Lord Smith of Kelvin. Perhaps that indicates that commissions —which can be cross-party, consensual and result in clear conclusions that the Government then honour a commitment to deliver—need not be "long grass" and need not necessarily be in a party manifesto.

Lord Bridges of Headley: I argue instead that that commission was drawn up in response to a very specific point. It was brought about by the consequences of the referendum. What we have here is a much broader set of issues; as I argued, we do not have agreement on what a convention would do, its terms of reference or those who would sit on it. Furthermore, we have a mandate and a clear plan of action that we need to deliver. No doubt we will return to this in due course. I very much look forward to doing so.

Meanwhile, we are devolving more powers to cities and to communities. The local government Bill that is currently before your Lordships puts in place the legal framework enabling us to decentralise powers to cities and counties across the country. I thank the noble Lord, Lord Soley, for his support on that point. In response to the noble Lord, Lord Rennard, it would be for people to elect their local decision-makers and to hold them to account. I dispute the concept that they would be one-party states.

All this reflects the fact that the Government recognise that a one-size-fits-all approach to constitutional change will not work. The individual devolution settlements reflect the distinct histories and circumstances of the different parts of the United Kingdom. To make sure that those settlements function effectively, we must ensure that the Governments of the different nations of the United Kingdom work together. As such, all four of our Governments are working together to review the formal and informal processes that govern our relationships, and we will collectively agree the best way forward. As part of this, we will explore the recommendations of the House of Lords Constitution Committee's report on intergovernmental relations.

I turn to English votes, another issue that a number of noble Lords have spoken about. Just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within our union, the Government's proposals for English votes will create fairer procedures to ensure that decisions affecting England, or England and Wales, can be taken only with the consent of the majority of Members of Parliament representing constituencies in those parts of United Kingdom.

Once again, I refute the argument made by a number of noble Lords that this approach is partisan. As the noble Lord, Lord Butler, said, this issue and proposal is addressing something that was created by devolution. The West Lothian question is almost as old as I am. It sits there in the triptych of those other constitutional questions: the Schleswig-Holstein question and the Irish question. It deserves to be answered, as the noble Lord, Lord Soley, said.

What we need is a balanced and fair settlement which gives MPs from across the House a role in making legislation but ensures that English matters are approved by English MPs, just as Members of the Scottish Parliament have the final say on devolved matters. Importantly, every MP from every part of the UK will still be able to debate and vote on every piece of legislation in the Commons. English votes for English laws will therefore help safeguard the union by embedding fairness into Parliament's law-making processes.

Several noble Lords referred to the Bill of Rights. As the noble Lord, Lord Wills, mentioned, this is obviously something a number of your Lordships have scrutinised in depth. This Government were elected with a clear mandate to reform and modernise the UK human rights framework. As such, we will bring forward proposals, as was set out, for a Bill of Rights to replace the Human Rights Act.

The Government are currently developing proposals on which we will consult fully in due course. The noble Lord, Lord Wills, and others argued that the Bill of Rights could undermine human rights. Once again, I disagree. Our Bill of Rights will protect fundamental human rights but also prevent their abuse and restore common sense to the system. We want to remain part of the European Convention on Human Rights but the system must be reformed to ensure that British judges decide how to interpret the law. Our Bill of Rights will therefore be based on convention rights but will take into account our common law tradition and make clear where the balance should lie between Strasbourg and the British courts—a point I think the noble and learned Lord, Lord Brown, referred to. We believe that we can make progress as part of the ECHR. However, to repeat what has been said before, we do not rule out leaving it if that proves impossible.

We will of course reflect on the devolution implications of a Bill of Rights as we develop our proposals, and we will engage the devolved Administrations in that process and make the case for reform. I know that this matter, like all the topics we are covering today, is of keen interest to your Lordships. Therefore, I reassure noble Lords, especially the noble and learned Lord, Lord Brown, that there will be significantly more consultation on and scrutiny of the Bill of Rights than there was for the Human Rights Act, which was introduced without formal consultation and within just six months.

The boundary review is, once again, an issue of fairness in order to give votes more equal value. Individual electoral registration policy has cross-party support and has been consulted upon widely and debated extensively in Parliament. The new online application service has made registration easier and more accessible than ever before, and it now takes as little as three minutes to submit an application. Indeed, there were more voters on the register at the general election than when the new IER was introduced a year before. As the noble Lord, Lord Hunt, said, last week the Electoral Commission published its analysis of the registers used to administer the general election in May 2015. I can confirm that the Government will indeed respond to that report in due course.

Our constitutional history is one of change, some sudden, some gradual. Once again, Sir Walter Bagehot put this very well when he referred to,

"an ancient and ever-altering constitution",

full of "hidden inner change".

Our programme for this Session, as set out in the humble Address, aims to create a fair and balanced settlement which empowers people across the United Kingdom. As we proceed, obviously the proposals must be debated and scrutinised. I am sure that those points that have been raised today which I have failed to address will be debated further in full, but here the role of this House will be invaluable. John Stuart Mill was quite right, though: much remains to be said. I look forward to hearing more in the weeks and months ahead.

2.03 pm

Lord Wills: My Lords, it was daunting enough to open this debate. It is even more daunting to close it after such a distinguished and compelling succession of speeches. I thank everyone on all sides of the House who took part in the debate. Every single contribution illuminated these extremely important issues.

I wish to pick up on only one point made by the noble Lord, Lord Butler, before I turn briefly to the Minister's remarks. I do so only to set the record straight because he seemed to suggest that I was opposed to any attempt to deal with the West Lothian question, on the grounds that to do so would be partisan. That is not my position, as I think he will see when he reads *Hansard* tomorrow, as I hope he will. I am simply opposed to the way of dealing with it—the veto—set out in the Conservative Party manifesto. It is interesting that in his comprehensive remarks, the Minister did not seek to deny the story that I cited: that the Government's motivation was to put a bomb on Labour territory. I do not know how the noble Lord, Lord Butler, defines "partisan", but putting a bomb on the opposition's territory seems a pretty good definition of it to me.

I thank the Minister for a very illuminating and comprehensive response to what I agree was an excellent debate. I am extremely grateful to him for reading our pamphlet, which means that I can now start counting its readership on my second hand. That is a devotion to duty that goes well beyond anything that could reasonably be expected of him, so I am grateful to him for that. I am also grateful to him for the wide range of references. I do not think I have ever been bracketed in the same paragraph with Elvis Presley before, something for which I will always be in the Minister's debt.

Apart from that, I am afraid that the substance of the Minister's response did nothing to allay my concerns about the Government's programme. There are a whole range of issues on which we shall have to differ. I was particularly alarmed to note that the Government are still not ruling out leaving the European Convention on Human Rights. However, I have no doubt that we shall return to these issues again and again and again in the coming months. In the mean time, I beg to move.

Motion agreed.

Mental Health Services

Question for Short Debate

2.06 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what action they plan to take in the light of the report by the Care Quality Commission, *Right Here, Right Now*, regarding providing young people with adequate help, care and support during a mental health crisis.

Baroness Thornton (Lab): My Lords, I know that the Minister is now almost a veteran in your Lordships' House, but he is new to me and I have not had the opportunity to welcome him to his position, which is one that I held in the past. I hope that he will enjoy his job as much as I did, and I know that, like me, he will probably by now know his place in your Lordships' House, given its huge expertise on health matters. If he knows that, he will almost certainly succeed in his position.

Earlier this month, the Care Quality Commission produced *Right Here, Right Now*, an investigation into people's experience of help, care and support as a result of a mental health crisis. In your Lordships' House, we fought for, and won, the battle for parity of esteem. Indeed, I am very pleased to say that it was Labour votes in the House of Lords that ensured that the Government wrote parity of esteem between mental health and physical health into law. However, I am afraid that since then it has become clear that the reality does not match the rhetoric. Despite the Government saying that they would protect front-line services, on the coalition Government's watch the budget for child and adolescent mental health was reduced year on year, and we have seen key prevention and early intervention services stripped back, such as child and adolescent mental health services—CAMHS—and early intervention in psychosis services.

This latest report found that people's experience of mental health crisis care was simply not good enough, with children and young people in particular experiencing very poor care. I commend the CQC for this report, which clearly shows significant variations in the help, care and support available to people in crisis, and that often a person's experience depends not only on where they live but on what part of the system they come into contact with. The CQC asked people to share their experiences, and what people told it demonstrates a real weakness in mainstream mental health provision as regards 24-hour crisis care. In some cases, the only recourse for people trying to access crisis services is to a phone line telling them to go to their local emergency department.

For children and young people, the problems are even more acute. There is a lack of health-based places of safety for children and young people. Many units do not accept children under 16, there is the problem of places of safety being already occupied, and there is a lack of CAMHS availability to support out-of-hours care. These issues often mean that children end up travelling many miles away from home. In June 2014, the Royal College of Psychiatrists conducted a survey that revealed that 83% of those surveyed had experienced difficulty at least once in finding an appropriate bed for children and young people, and that 22% of respondents who worked in child and adolescent mental health services had placed a child 200 miles away from their family.

Right Here, Right Now reveals a disparity between adult and child crisis care, particularly in accident and emergency. It found that:

[Baroness Thornton]

"Through our local area inspections on people presenting to A&E in crisis, we found that there were clear differences in the quality of care experienced by those under 16 compared to those over 18 years old. The liaison psychiatry service met specifications set out in the RAID model. Adults were seen promptly and there were clear pathways through to community services. People aged 16 or 17 would be seen and assessed by the RAID team with support from CAMHS, while those under 16 were referred directly to the child and adolescent mental health service … This may be an appropriate referral route, but in practice it meant that if a CAMHS referral was made after 12.00 noon, the child would not be seen until the following day or potentially after the weekend, as the CAMHS team did not offer out-of-hours service".

The disparity in care at accident and emergency is particularly concerning given that the number of children under 18 attending accident and emergency for psychiatric conditions increased by 82.5% between 2010-11 and 2013-14.

Young Minds, an organisation that does excellent work, believes that as well as improving the response to children attending accident and emergency with mental health crises, much more should be done to provide early intervention support so that children do not end up in a crisis in the first place. A freedom of information request by Young Minds found that 74 out of 96—77%—of NHS clinical commissioning groups froze or cut their CAMHS budgets between 2013-14 and 2014-15. It also found that 59 out of 98—60%—of local authorities in England have cut or frozen their child and adult mental health services budgets since 2010-11, and that 56 out of 101—55%—of local authorities that supplied data have cut, frozen or increased below inflation their budgets in this area. It has also been revealed that 80 educational psychologist posts have been lost since 2010.

As well as the disparity between experiences of attending accident and emergency, there is a disparity between adults and children when it comes to health-based places of safety under the Mental Health Act. While I am sure that everybody would welcome the move to end the practice of detaining children and young people in police cells, *Right Here, Right Now* says:

"The decrease in the use of police custody may not mean that people are more likely to be detained under section 136 in dedicated places of safety based in mental health services. It may be that a desire to avoid using police custody has moved the pressure to elsewhere in the local system".

It also says:

"We also had concerns about the provision of appropriate places of safety for children and younger people. We found that too many providers had policies that excluded young people from all their places of safety … These restrictions created untenable situations where people under 18 were one and a half times more likely to end up in police custody. However, there has been a major drive to reduce the number of children and young people in police custody",

which we welcome. It goes on to say:

"Between 2012/13 and 2013/14, the percentage of under 18s detained in police custody fell from approximately 45% to around 31% ... This is a positive achievement, but it still means that nearly one in three people under 18 ended up in police custody rather than somewhere they could receive appropriate treatment".

I have some questions for the Minister. *Future in Mind*, the report of the Children and Young People's Mental Health and Wellbeing Taskforce, states:

"If you have a crisis, you should get extra help straightaway, whatever time of day or night it is. You should be in a safe place where a team will work with you to figure out what needs to happen next to help you in the best possible way".

For many children and young people, as the CQC report makes clear, this is simply not the case. What steps is the Department of Health taking to implement *Future in Mind*? Indeed, what are the Government doing to ensure that early intervention actually happens? How will they persuade the CCGs to give this the priority that it needs, as this is the obvious and oft repeated answer to how to mitigate these crises? Given the paucity of child-appropriate health-based places of safety, as the CQC highlights, does the Minister share the CQC's concern that the banning of police cells, while most welcome, will create pressure in other parts of the system? Does the department have any solutions?

In *Stamp Out Stigma*, the Time to Change campaign seeks to tackle the stigma surrounding mental health and to break the taboo that is often associated with mental health problems. I was recently surprised to read the comments made by a Member of this House about mental health, which illustrates why we need to be on our guard not to perpetuate, even by accident, the stigma that goes with mental health issues. In a discussion about lowering the voting age, a noble Lord said:

"My Lords, does the Minister agree that an important part of due diligence in the policy of lowering the voting age would be to consult child development experts? Is she interested to learn that the view of a child development expert who has treated 16 and 17 year-olds for depression, eating disorders and other health issues over many years is that while quite a few 16 and 17 year-olds would be old enough to make a good decision in this area, many would not?".—[*Official Report*, 1/6/15; col. 157.]

Several arguments can be made about not lowering the voting age. The issue of mental health is not one of them. In fact, it is probably a rather dangerous road down which to tread.

I have a final question for the Minister. Labour committed to enshrining in the constitution a right to mental health therapies. Just before the election, the Conservatives announced that they would do the same. The Government have launched a consultation, which has subsequently concluded. When can we see a response to that, and what action might be taken?

Right Here, Right Now highlights yet again that mental health services are failing and that this is a very unsatisfactory situation that creates terrible distress, stress and heart break, and sometimes even worse, for people with mental health problems and their families.

2.16 pm

Baroness Walmsley (LD): My Lords, I thank the noble Baroness, Lady Thornton, for introducing this debate. I was delighted that she and her colleagues felt able to support the Liberal Democrat amendment on parity of esteem. The noble Baroness has given a very comprehensive outline of the problems highlighted by the report and I will not repeat them. Suffice it to say that we on these Benches will support anything the Government do to alleviate the problems of young people with mental health issues before and during crisis situations. Early access to treatment is the key to reducing the number of crisis occurrences and good planning of adequate services and information to patients are key to making sure that people in crisis can get the help, as the CQC says, "right here, right now".

We are proud of the record of our Liberal Democrat Ministers, Paul Burstow and Norman Lamb, in the last Government. They were involved in announcing: parity of esteem for physical and mental health; an increase in funding for mental health, including more in-patient beds; increased focus on child and adolescent mental health; and equal waiting time targets. The Children and Young People's Mental Health Taskforce report *Future in Mind* is an excellent blueprint for the five-year national programme of improvement commenced under the auspices of my right honourable friend Norman Lamb and it is part of his excellent legacy in the Department of Health. The mental health crisis care concordat was another great achievement and it is good to know that everyone has now signed up to it and that most local authorities have a plan to deliver it. However, resources have been scarce for most of the past five years so this progress has to be seen in the context of an earlier reduction in the number of mental health beds and years of insufficient focus on children and young people.

I welcome the Government's proposal to ban the use of police cells for young people in crisis. However, I want to talk about timing. There are times when Governments, in their rush to do the right thing, forget that if they do not put other things in place before acting, they can make things worse. I can think of the spare room subsidy which the previous Government imposed without ensuring that sufficient smaller properties were available for people to downsize. That is why my party put forward a Private Member's Bill to ensure that tenants would not have to contribute for spare rooms unless they had been offered suitable smaller accommodation and refused it. Sadly, that was defeated in another place. Another potential example is the current Government's plan for seven-day availability of GP services at a time when we have not even got enough GPs to fulfil current demand.

I am concerned that if the ban on use of police cells is brought in before the problems highlighted in this thematic report from the CQC are addressed, we will be leaving young people in crisis with nowhere to go. I do not want to see police officers disciplined for bringing young people into police stations when there are no age-appropriate therapeutic services available for them and that is the only thing they can do. I do not want to see A&E departments trying to cope with these young people, who need time that the staff do not have and a calm atmosphere—which is not going to be found in A&E. I do not want to see young people failing to call for help when they need it because they know that the police cannot protect them—often from themselves—and neither can A&E.

It really does not seem right that people are being turned away from services when they ask for help only to be detained when their condition deteriorates. However, although they are not the appropriate service to help in mental health crises, it has to be said that the police do their best, and many patients in this situation report that they get better help from them than from some other services. Some forces have implemented rather creative strategies. I have heard of at least one force where officers called out after hours to a person who clearly is having a mental health crisis take a community psychiatric nurse with them. These nurses are able to assess the situation and calm the patient, allowing him to be dealt with appropriately. This is an excellent example of thinking outside the box and is to be commended.

I ask the Government to ensure that before this very welcome ban comes into force they have all their ducks in a row, so to speak. My question, therefore, is: how will the Government assess when this is the case so that the ban can be safely implemented once the legislation has gone through?

There is one large group that is particularly at risk in these situations: young people who have recently left care, many of whom develop mental health issues soon after having to live independently. Many of these young people do not have a responsible adult to turn to and do not access services early, and far too many of them suffer a crisis and harm themselves or even commit suicide.

There is evidence that the problems overall may be understated by the official figures. Although only 53 under-15s and 312 16 to 17 year-olds were admitted to adult mental health wards in 2013-14, people were counted only once no matter how many times they were admitted in the year. These figures come from an Answer to a Written Question from Luciana Berger.

Another problem is poor anticipation of a future crisis and poor communication between services. The report we are discussing found that the rate of people admitted to acute hospital via A&E for a mental health condition varied across the country. In 2012-13, more than 4,000 people had attended A&E multiple times—on average, at least once a month—in the five years before being admitted. This is likely to be a sign that local services are not working well together and that people are not getting the specialist help they need. Should there not be guidelines that a red flag is raised when these multiple attendances occur?

Given that the pathways into help in a crisis are several, can the Minister reassure us that local concordat teams are covering all the bases, ensuring good communication and providing services at the right time? Will he emphasise that patients need to know who to call to get help? One of the worst findings in the report was the large number of patients at risk of a crisis who said that they did not know who to call in an emergency—no wonder they land up in A&E.

I realise that the task for local commissioners is a difficult one. They need to predict what crisis services will be needed and at what times, and make those services available. This requires a deep knowledge of the status of patients in their area and a commitment to providing therapies which will prevent problems reaching crisis point. So my final question is: how are the Government assessing how well this is being done?

2.24 pm

Baroness Massey of Darwen (Lab): My Lords, I thank my noble friend Lady Thornton for introducing this debate. She has highlighted many of the problems facing young people that are set out in the Care Quality Commission report, as has the noble Baroness, Lady Walmsley. Both have said that young people are particularly vulnerable and badly served.

[Baroness Massey of Darwen]

As we can see from the excellent Library briefing, there have been numerous deliberations about young people's mental health from a variety of sources. Importantly, the then Minister, Norman Lamb, said earlier this year that these set out a compelling economic case for change, and change is what we have to focus on. The All-Party Group for Children, which I chair, has conducted an inquiry into the development of good mental health and emotional well-being for young people in the face of life's challenges. I shall say a little bit about that but will first ask the Minister: what is happening to all the initiatives for young people and reports that have come out in recent years?

I want to mention briefly the report published by the Association for Young People's Health, based on key data on adolescence. The report points out that half of all cases of psychiatric disorder start by the age of 14, and three-quarters by 24. Around 13% of boys and 10% of girls have mental health problems. The most common issue for boys is conduct; for girls it is emotional difficulties. Mental health issues include eating disorders, attention deficit and hyperactivity disorder, behavioural problems, self-harm and, in extremis, suicide. Mental ill-health is on a spectrum from low-level to severe. It is not necessarily an extreme psychiatric disorder. Good mental health can be encouraged, and I shall say something about this in a moment.

As I turn to the findings of the all-party group inquiry on children's mental health, I thank yet again the National Children's Bureau for its wonderful support, not only in organising the evidence sessions but in recording the findings, and for supporting children in general. The inquiry on mental health was a joint one, involving other all-party groups: those on child protection, penal affairs, and looked-after children and care leavers. We looked at three key challenges: relationships, service provision and transitions. We took evidence from young people, doctors, charities, schools and researchers.

One thing which became very clear at the beginning was that emotional exploitation online has a devastating effect on children. There is good evidence on this from ChildLine. Parents are often baffled by the online world and need advice and help. There is the need for better and more easily accessible support for young people, including online services such as cybermentors and online counselling. Is the law keeping up with technology? Will the Government encourage such services and the provision of extra information for parents?

The manager of a secure children's home told the inquiry that there need to be expert child-centred holistic services to meet the complex needs of young people, including appropriate assessment of health, substance misuse and offending behaviour. Interventions need to include therapy and counselling, such as art therapy. Also important for young people is access to employment and accommodation.

I now want to look at what might be done to help prevent distress in children in the first place. A supportive family is all-important. Sadly some children do not have this and, even when they do, things can go wrong. Early spotting of learning problems such as dyslexia, and of behavioural problems such as bullying or self-harm, is essential. This may happen through a number of agencies, including parents, the voluntary sector, schools, children's services, or the police. The old issue of services being co-ordinated and accessible is important, and we sometimes miss out on problems and the potential for early intervention. Others have asked this question, which I will repeat: how can we improve cross-agency working?

I will say a word about schools. The all-party group heard from pupils, teachers and researchers about how school can be distressing for some children. Focusing on performance and academic success can be unproductive if emotional needs are not met. It was said that student well-being is as important as academic achievement and must be integrated into every part of school life and learning. Children can develop self-esteem and resilience through a school's approach. I have long supported, as has the noble Baroness, Lady Walmsley, the inclusion of statutory personal, social and health education in and outside the school curriculum. I am aware that the Government are considering the call of the Select Committee on PSHE to make it statutory in schools. I hope that the Government will take a positive approach to that.

An earlier inquiry by the All-Party Group for Children calls for action to implement the recommendation of the Children and Young People's Health Outcomes Forum. It states that the Government should make it a legal obligation for public bodies to have due regard for children's rights and that schools should ensure they develop a full programme for personal development, as well as academic skills, and link to support services. A cross-government youth strategy should be established, building on the report *Positive for Youth*. I hope that the Minister will be able to reassure the House that proactive measures, such as those I have mentioned briefly today, will be made concrete so that we can support children and families in preventing mental health problems and offering support and services if they arise.

2.31 pm

Lord Graham of Edmonton (Lab): My Lords, it is a pleasure and a privilege to take part in any debate in this House but I am very grateful to have put my name down to make a small contribution in this Short Debate. The House demonstrates the quality of its service to the nation when people are able to stand up from their own experiences and ideas to stimulate the Government and others into thinking again about how things are done. I begin, as I have many times before, by thanking the staff of the Library for producing such an excellent document to give us a guide. It is not the first time and they never let us down, so I am very grateful. The trouble is that it is like going into a self-service just for a snack. By the time you have decided to be serious, you have read all the briefing—and I did read it all—so you realise that you rely upon other people to give you a nudge and a guide.

It is at least 80 years since I could say that I was a young person of the kind we are talking about. I was 90 about a month ago, so I can reflect on the nature of childhood as it was when I was a child and childhood now. Of course, there is no comparison for the bleakness of the ability of your mum and dad to provide you with toys, outings, books or encouragement, as my

dad was on the dole for 10 years from 1930 to 1940. I passed my 11-plus but could not go because of my circumstances. Eventually, I got a degree from the Open University—a BA. I got an honorary MA afterwards and then became a member of the Privy Council. We need to recognise that the challenges before young people and their parents in the present years are completely different from the challenges when I was a boy in the 1920s and 1930s.

I congratulate my noble friend Lady Thornton on the comprehensive way in which she introduced the subject. She has a point of view and she has answers to the questions. I do not have many questions and I have no answers to any of them. The Minister will realise, as I do and the House does, that the money available in the budget plays a major part. The problems can be exposed, as they are in this debate. Every person who has spoken has a contribution to make. The idea that there is a solution to every problem is not new. There is a solution but it is a question of priorities with the money available. One thing that strikes me about where we are falling down is that there is a lack of co-ordination among the various services. In other words, this is not a political issue—except on the budget, which we could say something about if it was necessary. It is about co-ordination between the services.

One gets terrible news almost every week of a problem among the police, the press or media, or the schools. In the phrase that came before, what has happened to all the reports? What we are debating is not brand new. There is very little in it that we have not had warning about in the past. We have to try to recognise that, while the heart is in the right place, it is sometimes difficult to exercise what one knows to be needed because there are priorities. I would be happy to speak about my own list of priorities but that is not the point here. The problem that the Minister and his colleagues have is: what can we do with the limited resources that we have? It ever was that the amount of money available at any time is insufficient to do everything that one needs.

I have been very impressed by what I have heard this afternoon. What we need is a Minister who will go away and look at the manner in which people slip between the various services. With all the various agencies that there are, it ought not to be possible to slip between. Yet whenever there is a scandal of some kind, it is revealed that the evidence which could have been acted upon was available but not conveyed to the proper people. One thing that the Minister should take away, in a busy life and with limited capacity as far as money is concerned, is to ask his colleagues to come up with ways in which they can collectively make sure that they look at the needs of young people now. More than ever before, they are at risk.

2.39 pm

Baroness Tyler of Enfield (LD): My Lords, I congratulate the noble Baroness, Lady Thornton, on securing this important debate. Failures in crisis care for children and young people often make for attention-grabbing headlines. We have all heard the stories of children being admitted to hospitals hundreds of miles away from their families, and of children held in police cells. The Care Quality Commission's *Right Here, Right Now* report and other findings tell us that these dreadful situations are not isolated incidents but reflect a larger failure to provide sufficient crisis care for children and young people.

The adoption of the mental health crisis concordat last year was an enormous step forward for the provision of crisis care, pioneered by my right honourable friend Norman Lamb when a Minister. Central and local government and leaders of key services agreed to work towards making sure that compassionate and understanding crisis care would be available 24/7; that a mental health crisis would be treated with the same urgency as a physical health crisis; that people should be treated with dignity and respect in an environment that is conducive to their needs; and that appropriate follow-up services would be provided. That sounds great, but delivering the promises of the concordat will require more than generalised statements of support, very welcome as they are. We need to ensure that promises made in local area action plans are delivered. It will mean tackling long-standing failures in commissioning, which in turn will require strong and sustained local leadership and, crucially, the necessary resources. As we have already heard today, children and young people tend to receive a lower quality of crisis care. I thought it was shocking that the CAMHS 2013 benchmarking report noted that only 40% of CAMHS had crisis care pathways, as they are called.

What happens to those young people who cannot find the care they so desperately need—the other 60%? It is not a particularly encouraging picture. The CQC report found clear differences in the quality of care for children turning up at A&E in crisis compared to the quality of care for adults. In accordance with the rapid assessment and intervention model, adults are generally seen promptly and directed to community services, while 16 and 17 year-olds are assessed with support from CAMHS and those under 16 are referred directly to CAMHS. Your Lordships might say that sounds absolutely right but, as we have already heard today, the reality is that CAMHS are often not offered out of hours and if a CAMHS referral is made after midday, the child will often not be seen until the following day or even until after the weekend.

On the plus side, I was pleased to note that the Department of Health and NHS England have committed in their publication *Achieving Better Access to Mental Health Services by 2020* to develop a national all-age liaison psychiatric service in A&E departments. This is both welcome and timely. Such a service should help ensure that children in crisis receive at least some support immediately. However, it is surely unacceptable that access to referral services should be so delayed. Could the Minister say what plans the Government have to establish an out-of-hours mental health service for children, as the recent Children and Young People's Mental Health and Wellbeing Taskforce report, *Future in Mind*, recommended?

What happens if a young person experiencing a mental health crisis needs to be admitted to hospital? The reality is that in hospitals where in-patient treatment is provided, there are simply not sufficient places for children and young people. Although the prevalence of mental health problems has been increasing, there

[Baroness Tyler of Enfield]
was a 39% drop between 1998 and 2012 in the number of mental health beds available in England, and this shortage has particularly impacted on children. In a recent survey by the Royal College of Psychiatrists of its trainees, 83% said they had difficulty finding an appropriate bed for children and young people, compared to 70% who had difficulty finding an appropriate bed for an adult. As a consequence, many children end up being admitted to wards for adults or to hospitals far from home. Of those surveyed, 22% reported having to place a child 200 miles away from home—a fact I find truly shocking. What chance does a young person have to recover without the care and support of their family nearby? Could the Minister say what assessment the Government have made of whether there are sufficient beds to ensure that children with severe mental health needs are able to access appropriate in-patient care in their area?

The availability of effective home treatment teams for children and young people can reduce the number of people who end up at A&E or who have to be admitted to hospital, which of course must be desirable. It is encouraging that the task force's report referred to earlier, *Future in Mind*, found some good examples around the country of dedicated home treatment teams for children and young people. Could the Minister say what steps are being taken to develop improved information about the provision of these services and, indeed, to expand their provision?

Since the concordat, there has been widespread agreement about the need to stop the practice of holding children and young people in police cells as a so-called place of safety. I was pleased to see a specific commitment in the gracious Speech to legislate to ban this practice. This approach is already starting to make a difference, with numbers starting to fall. However, it remains the case that one-third of children and young people detained under Section 136 are held in police custody. Political commitment and the proposed change in the law, although very welcome, will not be enough. The truth is that the excessive use of police cells as places of safety is largely the consequence of operational and commissioning failures—a key theme running through my remarks today.

Too often, police stations are used as places of safety because health-based places of safety do not accept children. The CQC report found that 35% of the health-based places of safety surveyed do not accept under-16s. Similarly, research from the Howard League estimated that 74% of mental health trusts do not provide a specialised place of safety for children. I warmly welcome the Government's announcement that they will commit £15 million to deliver health-based places of safety. What steps will be taken to ensure that clinical commissioning groups prioritise investment in this crisis care provision, particularly for children and young people?

To conclude, when people experiencing mental health crises do not have access to the sort of timely, effective and compassionate care that people with physical health problems do, it is not just unfortunate, it is simply unfair. It is even more unfair when children and young people experiencing a crisis relating to mental health problems do not even have access to the level of care that adults do. We can and must do better.

2.46 pm

Lord Hunt of Kings Heath (Lab): My Lords, I very much welcome the debate and very much support the speech made by my noble friend Lady Thornton. I also welcome the work done by the CQC, which identified some good practice but also raised some very serious failings in services. My noble friends Lady Massey, Lord Graham and Lady Thornton have rightly focused on CAMH services and the failures that have been very well documented. We know that the budget for CAMH services has been cut in real terms from £766 million in 2009-10 to £717 million in 2012-13. As we have heard, NHS England's own 2014 tier 4 CAMHS report confirmed that 16% of patients travelled more then 100 miles to receive treatment, with many going more than 200 miles. It is clear that access for these young people to 24/7 services has worsened, with A&E or a police station often the only place to go.

I have no doubt that the Minister will put his trust in the crisis care concordat. I acknowledge the excellent work that has been done, and the concordat is clear: people experiencing a mental health crisis should have access to the help and support that they need 24 hours a day, seven days a week. But what is the status of the concordat? Is it being performance managed? Who, ultimately, is accountable for its implementation?

The CQC recommends that representatives of local crisis care concordat groups ensure: first, that all ways into crisis care are focused on providing accessible and available support; secondly, that commissioners are to be help to account; and thirdly, that they should engage with partners to encourage innovation. The question is how. If, for instance, their action plans are insufficient, what is going to happen and who is going to make them turn them into effective action plans? The concordat does not specify which organisation should lead this work locally. Why on earth not? The care concordat approach is an excellent one, but it lacks bite because no one is being held accountable for its implementation. Can the Minister sort this out and make sure that someone is truly held accountable?

I read a letter sent very recently by the Minister's right honourable friend Mr Alistair Burt to the mental health crisis care concordat national signatory organisations. It is a remarkable letter of four pages, reading as eloquently as I would expect because DH officials drafted it. I have told the Minister before that DH officials are very good at writing letters and reports. However, it is all words. There is absolutely nothing in it. It has nothing to say about forcing the pace locally on implementing the concordat.

Of course, the Government have form here. I will not cross swords with the noble Baroness, Lady Walmsley, about credit for the parity of esteem amendment. All I will say is that it might have been her amendment but it was our votes "wot done it"—but we look forward to working together in future. Yet, despite the law, the NHS is determined not to implement it. We start with what can only be described as the outrageous decision of NHS England the year before last to discriminate in mental health funding as opposed to other services.

We have been told that funding for 2014-15 in mental health was planned to rise by £120 million. What was the actual outturn figure? Why do the

Government say that more money will go into mental health whereas my understanding is that the forward plans of mental health trusts show that many are planning for a reduction because they have no confidence whatever that clinical commissioning groups will actually do what they were told? NHS England has direct control over CCGs. Why is it not informing CCGs that they must put more money into mental health services?

We now have transformation plans. My understanding is that the Government tasked every CCG with creating transformation plans outlining what they will do to deliver mental health. How will we judge whether those have been successful? We know that mental health data collection is poor. We also understand that the Government are producing guidance for CCGs on how to complete the transformation plans. A key question is: they produce the plan, but then what? Who will actually hold them to account for delivering on it?

That leads me to the better care fund. The Minister knows that this is designed to provide a joint approach to the planning and delivery of health and social care services. Now, given the pressures on A&E, which is really what this is meant to address, and given that we know that because of the cutbacks in mental health services more and more people with mental health issues come to A&E, I would have thought that mental health services would be at the heart of these better care fund plans. However, my understanding from Written Answers to PQs is that of the £5.3 billion of plans submitted in September last year, a mere £370 million was planned for investment in mental health services. That is an extraordinarily low figure. It means that the health service is determined not to implement parity of esteem despite it being a legal requirement. Finally, when will the Government get serious about making the NHS not only respond to guidance or plans but actually act in relation to mental health according to the law of the land?

2.53 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I congratulate the noble Baroness, Lady Thornton, on bringing this really important debate to the House. I also pay tribute to the noble Lord, Lord Graham, for his very perceptive and important contribution. He put his finger on it when he said that co-ordination of services for patients who often have huge and very complex difficulties lies at the heart of all we must do. He also said that although little is new in life, the environment in which young people grow up today is very different from that in which he grew up. Although in many ways the environment has improved, the pressures on young people growing up today are probably greater now than when the noble Lord was a boy. The noble Baroness, Lady Massey, referred to this and I will bring it up again later in my speech.

On 18 May, the Prime Minister underlined in his first major speech following the election that mental health, including the mental health and well-being of young people, is a key priority for this Government. The noble Lord, Lord Hunt, can be assured that the Government will hold CCGs and NHS England strongly to account for delivering the substance of parity of esteem. For too long, parity of esteem has fallen into motherhood and apple pie territory. We need serious resource behind it to ensure that we deliver it on the ground.

Last year, the Department of Health asked the Care Quality Commission to review the experiences of people receiving crisis care. The resulting report, *Right Here, Right Now*, shows that although there is some excellent practice in areas such as Lambeth there is far too much variation across the country in the quality of crisis care—and, as the noble Baroness, Lady Thornton, noted, between services as well as geography.

The report provided powerful insights into the stigma that too many service users face. One patient from the report said:

"A&E was horrible. I felt like I was being judged for inflicting injuries on myself and that certain staff actively didn't want to treat me".

As Dr Paul Lelliott, Deputy Chief Inspector of Hospitals at CQC, who led the review, stated, there is a,

"real weakness in mainstream mental health provision as regards 24 hour crisis care. In some cases, the only recourse for people trying to access crisis services is to a phone line telling them to go to their local emergency department".

As other noble Lords said, going to an A&E department is, for someone suffering a mental health crisis, no solution of any kind.

Another patient said:

"I have a clinical illness. It's not my fault my brain chemistry fluctuated … To be treated as a drunk, an inconvenience and with visible contempt only makes it worse".

That points to a need for greater training in some A&E departments and the importance of having a psychiatric liaison nurse in A&E departments. The report also found that in some areas there are still problems with under-18s being detained in police cells under Section 136 of the Mental Health Act. I agree wholeheartedly with the noble Baroness, Lady Thornton, and others that this practice is wholly unacceptable. I will say more on that a little later.

Dr Lelliott stated that there are reasons to be confident for the future as well. We are beginning to see a shift in public attitudes to mental health, away from the stigma of the past. As the report states, there has been huge progress in improving crisis care, thanks to the crisis care concordat and successful approaches such as street triage.

The crisis care concordat was launched in February 2014 and signed by more than 20 national organisations. It seeks to improve the experience of those in crisis and in particular to prevent those detained under Section 136 of the Mental Health Act being held in police cells. I spoke not all that long ago to a young woman of no more than 17 who had had a mental health crisis and tried to take her own life. She spent two nights in a police cell. It is hard to imagine a worse place for a young woman to spend time. That was two years ago.

All localities signed up to the principles of the concordat before the end of 2014. Detailed action plans are now in place across England and set out how local partners will work together to improve service responses for people in crisis. I have taken on board the words of the noble Lord, Lord Hunt, that we must be able to assure ourselves that effective action is taken on the ground and that there is clear accountability.

[Lord Prior of Brampton]

Since the launch of the concordat in February 2014, the number of times that people of all ages were detained in police cells under Section 136 has fallen by 55% compared to 2011-12. This marks a considerable achievement in meeting the concordat's ambition. There was also a very big reduction in the number of under-18s detained in police cells under Section 136 for the first time since figures began to be collected in 2011-12, with 145 cases, an almost 40% fall within the year. But I agree wholeheartedly with the noble Baroness, Lady Thornton, that one case is one too many. There is good progress but more work to be done.

In May, my right honourable friend the Home Secretary announced that the Government will reform the law on use of police cells to end this practice altogether for under-18s. I am pleased that the noble Baroness, Lady Tyler, supports that move. The Government will also clarify the legislation so that, for people of all ages, police cells are used only in very exceptional circumstances. A number of noble Lords and noble Baronesses have made the point that there is no point in stopping people going into police cells if alternative provision is not made elsewhere. The Government have committed £15 million to improve the provision of health-based places of safety, so that there is better availability of alternatives to police cells.

The insights from the *Right Here, Right Now* report will also directly improve crisis care, influencing the Care Quality Commission's regime for future inspections. In addition, the Department of Health, NHS England and Mind are supporting all localities to develop and improve their local concordat action plans in light of the CQC's review.

The noble Baroness, Lady Walmsley, gave an example of police being accompanied by a therapist. The CQC report makes reference to street triage. These are schemes whereby a police officer might be accompanied by a nurse, therapist or someone else, when they meet people going through a crisis. Paul Lelliott particularly marked that in his report as being a very good development. The Department of Health has funded pilots using street triage with nine police forces, and I believe that 25 police authorities are now using that triage as a way in which to make a bad situation at least no worse. There have been some very encouraging results, with the use of Section 136 to take people of all ages into police custody almost eradicated in many of the pilot areas.

Liaison and diversion services are also being used to help children, young people and adults in crisis. They identify, assess and refer people with a wide range of mental health, learning disability and substance misuse vulnerabilities when they first come into contact with the youth and adult criminal justice systems. NHS England has now rolled out a national liaison and diversion standard service specification and operating model serving 50% of the English population, and it is anticipated that that will cover the whole population by 2017-18.

It is clear that we need to do more to ensure that, for those in need, help can be found in the right places at the right time. The noble Baroness, Lady Tyler, made the very strong point that it must be unacceptable that some young people have to travel more than 200 miles to find an appropriate bed. The previous Government supported NHS England with £7 million to provide additional mental health beds for children and young people. This increased the number of beds to more than 1,400, the highest this has ever been. But I agree completely with the noble Baroness, Lady Massey, that, while we must ensure that help can be found for those in crisis when it is needed, it is not enough simply to provide more and more beds. Home treatment is also very important.

Three-quarters of mental health problems in adult life begin in childhood. It is therefore essential that we focus on improving the whole care pathway for children and young people's mental health, preventing issues arising, and taking action before hospital treatment is required. I can confirm there will be an additional £1.25 billion over the next five years to enable transformation across health, social care and education for children's mental health and well-being. In addition, we are investing £150 million over the next five years in services for young people with eating disorders and those who self-harm. Although this Government can take credit for that, I pay tribute to the Liberal Democrats, and particularly Norman Lamb, for ensuring that mental health was so high up the agenda.

I take the strictures of the noble Lord, Lord Hunt, when he says that we must have clear accountability for spending that money. I place considerable hope in the report that has been commissioned by NHS England from Paul Farmer, the chief executive of Mind.

I have been told that I have only one minute left. That is the difficulty with debates in the House of Lords: all the comments are so helpful that it is hard to do them all justice. I conclude by saying that we have all talked about parity of esteem, in this and the other House, for too long. Until now it has been just motherhood and apple pie. I hope that the resources that we are putting into mental health and the accountability that needs to back them up will make a reality of that expression. I pay tribute to Paul Lelliott of the CQC for his very valuable report and thank the noble Baroness once again for bringing the debate to the House.

Affordable Housing

Motion to Take Note

3.06 pm

Moved by ***Lord Whitty***

To move that this House takes note of the amount of affordable housing in all forms of tenure and the case for increasing the supply of affordable housing.

Lord Whitty (Lab): My Lords, the stark demographics that lie behind this debate and the general dysfunction in the housing market are clear and well known. For at least the past decade, and likely to continue for the next decade, it is estimated that household formation in the United Kingdom has been running at about 250,000 a year. On the other hand, the rate of new build of new dwellings of all sorts and all tenures has been running at about half that level. The inevitable consequence of this is that prices rise in all forms of

tenure, in mortgage conditions, house prices, private and social rents and leaseholds costs, and it hits all parts of the country. However, the reality is that it is particularly harmful to those on average and lower incomes and probably far worse in many of the big cities, particularly to the south of England, although it also applies in many rural areas.

We need a massive increase in the supply of new housing, although I do not see any sign of that coming. Supply and demand are in clear imbalance. In particular, we need affordable housing available to lower-income groups. I should point out that in this debate I am using the word "affordable" in the sense that most people use it—that is, that ordinary people can afford it. I do not use it in the Orwellian newspeak used in social housing these days, whereby affordable rents are deemed to be 80% of private rents and therefore in many parts of the country totally unaffordable to people on middle and lower incomes.

This is a Labour debate and I shall be challenging the Government, but I hope that the Minister does not respond simply by pointing to the Labour record. I am glad to see her either shaking or nodding her head. Noble Lords may experience a bit of déjà vu in my speech, because they may recall that I have been fairly critical of the policies of at least the last three Governments on housing, and I continue to be so. The situation at the end of the last Labour Government was poor, the coalition made it worse and the current Government look to be making it worse still.

Many commentators expected housing to feature large in the recent election campaign. In practice, it did not really do so. All parties made a vague commitment to produce 200,000 houses a year by about 2020, without much indication of how they would do it. The only thing that got any mileage during the election was the Labour Party proposal for some form of rent regulation, which was attacked by the Conservatives as being Venezuelan or Vietnamese socialism when, as no less an organ that the *Sun* pointed out this week, most other cities in Europe have some form of rent regulation and a much larger private rented sector, and the net result is that rents are about half those in Britain. The Tories' main commitment was to the right to buy for housing association tenants, which is due to be presented to this House in legislative form shortly. I and other speakers will, no doubt, revert to that.

Neither of these measures that were debated in the election even pretended to tackle the central problem of housing: the need to provide more housing and thereby to bring down the cost and availability. Right to buy is about change of tenure; it does nothing in relation to supply or availability. The coalition Government at times appeared to be taking housing seriously. Indeed, about a year ago I asked the Minister's predecessor to list all the schemes introduced by the coalition Government. I would read it out, but I have only limited time and there were at least 18 or 19 of them. Some of them had some benefit for a few people and no doubt they had marginal benefits all over the place, but the net result was that they did not change the overall level of supply or bring supply and demand into better balance. Some increased pressure on the demand side, and none tackled the problem of supply. Fundamentally, the situation has not changed.

I shall say a few words about the right to buy for housing association tenants, although I see from the list of speakers that there are speakers who are more qualified and knowledgeable than me to comment on that area. This week, the *Times* revealed how strongly the Government were advised against going down this road. Indeed, the cost to the Exchequer seems to be £5 billion. In one fell swoop the Government seem set on undermining the finances of housing associations, local government and, eventually, the Exchequer. Almost everyone in the housing world has asked them to think again, and we will debate that in due course. I am not an opponent of right to buy, but this particular measure seems fairly cack-handed and not thought through. My main concern about it in relation to this debate is that it will undermine the finances of housing associations, reduce their ability to borrow and therefore their ability, and local government's ability, to invest in new housing stock or improve older stock. It will therefore do nothing to alter the balance of supply and demand and will, indeed, make it worse.

The net result of all this reflects the dual problem of high costs for those seeking first-time buys and a lack of availability in many parts of the country for any access to social housing. That means that real strain is put on the private rented sector, which is rather inadequate and unstructured. Families who, two decades ago, would have got social housing are now either paying for themselves in the private sector or are being paid for by the local authority in the private sector. Families who, two decades ago, could easily have afforded a mortgage are, unless they have the bank of mum and dad to turn to, likewise dependent on the private rented sector. The Government are trying to help landlords in this area by giving tax breaks to buy-to-let landlords, but supply is still well behind demand and, moreover, much of the supply is inadequate and in some cases unsafe. Many of those in housing emergency and other crisis situations end up in the private rented sector, even though they may be paid for out of the public purse. Ultimately—this is the biggest problem, politically—the cost of all this falls on housing benefit.

In recent years, the growth of the housing benefit budget has become a serious issue. It has gone up tenfold over that period, but four-fifths of the increase has been due to escalating private sector rents and only one-fifth has been due to an increase in the number of people seeking housing benefit. The pernicious effect of this is that the escalating cost of housing benefit looks scandalous to those who are not receiving it, and the *Daily Mail* is able to find all sorts of examples where very high housing benefit costs are paid for by the Government and use it as an attack on the welfare system as a whole. It is no coincidence that most of the housing benefit scandals are in areas of high-cost housing, mainly in central London. I say in passing that the real scandal is that housing benefit eventually ends up not in the pockets of small struggling landlords but of large companies, overseas investment trusts and corporations.

We need a root and branch review of housing benefit, but that will involve us in a root and branch assessment of the total intervention of government in housing. Thirty years ago, the expenditure side of government intervention in housing was very heavily

[LORD WHITTY]
geared to the supply side, to council housing, grants for home improvements and so on. Indeed, 80% of government expenditure was on that side. Now, more than 90% of the expenditure is on the demand side—in other words, using housing benefit to meet escalating costs in the social and private rented market.

The social costs of all this are pretty evident. Even people on reasonably high incomes cannot get a mortgage until they are in their late 30s. People are living at home with their parents. There is overcrowding. There is strain on families. There are many people living in bed and breakfast accommodation and in inadequate private rented spare rooms. There is multiple occupation, with several people living in the same room. At the worst end, there are beds in sheds. Indeed, the London Fire Brigade this week issued figures showing that in recent years it has had to deal with more than 400 fires in accommodation that was not appropriate for habitation. Those are the social costs.

The economic costs and the costs to the Exchequer are evident in the housing benefit costs. What is needed is a rethink that will redirect those costs to the housing benefit budget into the provision of new and improved housing. The escalation in housing benefit needs to be seen as a failure of the housing market rather than as a failure of the welfare system. Even at this late stage, I urge the Government to take housing benefit out of the move to universal credit—indeed, that might ease the introduction of universal credit—because it needs to be seen as a whole. Public support for housing and for those seeking housing who are unable to afford it needs to be seen as a whole. I suggest that that needs to be seen as part of a new overall strategy. I want the Government to come up with a clear White Paper proposing a whole new approach. I can make certain suggestions about what should be in that approach, but it is an emergency. It is a serious problem, and it is one that, in their five years in office, the Government will have to tackle or it may well be the failure of this Government.

I suggest that they set a clear target of 250,000 new homes, of which perhaps a quarter should be social housing. There should be an emphasis on local delivery, and we should amend the Cities and Local Government Devolution Bill and the Localism Act so that the new combined authorities and unitary authorities take clearer responsibility for housing and have the means of delivering it. Policy on housing ought to be concentrated in one Whitehall department under one Secretary of State, covering housing benefit and construction as well as the traditional areas of CLG. We need a long-term strategy to switch expenditure on housing benefit into areas to improve housing supply, which will take 20 years. There are some immediate things that we need to do. We can integrate and redirect the Help to Buy schemes into a help to build scheme. We need to end the ability to overturn Section 106 agreements providing for social housing and instead give back to local authorities the ability to negotiate with developers for improvements in affordable housing in their areas. We need a fundamental review of the affordable rents policy. We need to ensure, perhaps most of all, that local authorities are in a position to go to the market to borrow to create housing assets. This should not be regarded as part of the central government borrowing requirement, but as something with which local authorities can build and provide the housing that is needed for their communities.

There are other ways of dealing with this in terms of finances; there are ideas about housing bonds and about corralling the pension funds into providing more private investment in affordable housing. There need to be discussions with the banks and with the construction industry, particularly about bringing some of the smaller builders back into the housebuilding market.

All this will require new legislation. I hope to see in the next Queen's Speech, if not before, a major Bill from the Government—incorporating many of my ideas, of course, but perhaps a few others, too—that would be indicative of their intention to tackle this problem, which affects millions of our fellow citizens, not just in central London, where at this moment some of them face the demolition of their homes, eviction or the buying off of leaseholders and tenants, but across the country. It will become a political problem for the Government if they do not do something substantial about it. I beg the Minister to talk to her colleagues, including those in the Treasury, to ensure that they do just that.

3.21 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the noble Lord, Lord Whitty, for the opportunity to debate the supply of affordable housing. However, while trying not to prematurely run the debate on the right to buy that we will have later in the year, it is extremely hard not to consider the impact that this will have on affordable housing. Everyone is entitled to a home. We need mixed communities with rented properties, low-cost buying, shared ownership and market rents.

I will start with land and planning. There is a proven case for affordable housing. Some believe that Section 106 affects developers' profits. Section 106 is not a gift from a developer; housing associations pay for the housing. In times of austerity, developers build Section 106 houses first. This is often also used to open up new sites; the Docklands development is an excellent example.

Starting developments lifts the local economy. I believe that the Government should encourage local planning authorities to enable rural emphasis in the NPPF, including encouraging the local community land-trust model. In my area two villages, Queen Camel and Norton-sub-Hamdon with Chiselborough, have been exemplars of developing community land trusts, providing an asset lock for the community and the housing associations. The Hastoe and Yarlington housing associations have provided the housing management expertise needed by the communities.

The Government should also encourage villages to take up neighbourhood plans, thus devising the balance of new market to affordable housing for their communities themselves. This process is currently cumbersome and expensive for villages. The Government could assist by reforming the system to make it far more user-friendly. Both these measures would put the community in charge of what is happening in their areas.

What thought have the Government given to tax breaks to rural landowners for providing sites and/or barn conversions for affordable housing? Many philanthropic landowners exist do not need the encouragement of a tax-break system, but others might be tempted by such a system. However, no landowner is going to sell his land at a reduced rate if the houses built on it are then going to be sold on at a discount under right to buy. This will lead only to a drying up of affordable homes, not an increase.

What of the Homes and Communities Agency? Is it not about time that the HCA had a rural quota to achieve, set within the overall programme but outside London, where rural schemes are often of a higher cost pro rata and subject to being outbid by more urban, cheaper schemes? The Government get a good return on their investment through the HCA. There is of course a cross-subsidy to affordable rents, which do not cover the costs, but the strength of housing associations is based on their past performance and individual business plans. Investors will not put money in if the asset is then to be sold off at a discount.

The Government should be encouraged to release more surplus land and buildings specifically for affordable housing. There are some very good examples around the country, such as Borden in Hampshire and redundant MoD land. Although the HCA has been set up as a clearing house for national land, many government departments have been recalcitrant in releasing land for much-needed housing; the Highways Agency springs to mind.

Park homes are another excellent example of low-cost housing that could be promoted on land released from the MoD. In South Somerset, the council leases land from the county council and provides good-quality homes at affordable rates. Are the Government considering promoting such schemes?

The Government have set 10 properties as the national threshold for affordable housing obligations. What was wrong with the localism agenda and allowing the local planning authority to set its own threshold? In a rural environment, this might be set much lower and be based on local evidence. A small infill site in a rural setting could be very lucrative for a developer and yet yield no affordable housing for the community, thanks to the one-size-fits-all approach from the Government.

Currently tenants of existing rural affordable housing become eligible for the spare room subsidy or so-called bedroom tax. Would it not be better to exempt such affordable housing, thus reducing demand from families who are forced to move as a result of the imposition of the tax? This is particularly hard where there is no suitable housing to move to within their community.

It is often said that housing associations have huge balances that are retained for the benefit of their staff. While this is the case for some, it is definitely not the case for all. The majority of housing associations exist to serve the public and those requiring housing. They reinvest their income into the business by providing housing but also by training and educating their tenants and getting them into work. This needs to be recognised, and legislation should not penalise the good because of the poor. We might be in danger of throwing the baby out with the bathwater.

I summarise the two biggest factors in the effect on supply and demand as the proposed extension of the right to buy and the imposition of the 10-homes threshold, which fits the urban context but is far more pernicious in rural areas.

3.28 pm

Lord Campbell-Savours (Lab): My Lords, I thank my noble friend for tabling this debate. My comments today deal with a particular problem that arises with the availability of affordable housing in the Lake District, where a voluntary organisation, the Keswick Community Housing Trust, part of the National Community Land Trust Network, is struggling to deal with a local housing crisis. Trust members and supporters, many of whom are motivated by their Christian beliefs, are truly upset by the prospect of being forced to sell off their cherished housing stock. In that light I asked its chairman, Mr Bill Bewley, a prominent Quaker, to set out in a letter the concerns of the trust, which I now offer to the House as testimony from those on the front line in this debate:

"Dear Dale … First of all a short explanation of how Keswick Community Housing Trust came into existence and my motivation, with others, to forward its aims. KCHT was started by myself and a group of people who had been empowered by a series of meetings organised by Churches Together in Keswick, looking at all aspects of life in Keswick. At all five meetings the problem of a lack of affordable housing in Keswick was raised. Keswick suffers from the double blow of high house prices and low wages. In order to afford an average priced house in Keswick you would need a family income of £70,000. The average wage in Keswick for 2014 was £14,000 for the lowest 25%. So a quarter of the couples in Keswick could not even afford half the cost of an average house. After a public meeting to look at this very point we were strengthened by more … committed people. So in December 2010 we managed to formally establish Keswick Community Housing Trust as an Industrial and Provident Society with Charitable Status. We have a board of 12 active volunteers.

My motivation is based on my deeply held Quaker convictions. If the words of Jesus 'To love God and your neighbour as yourself" mean anything it means to do whatever you can to make a difference in your community. I feel I can do that as Chair of KCHT. Quakers have always had a concern for 'proper housing'. The Cadbury's Bourneville and Rowntree's New Earswick housing schemes strongly demonstrate this. Present day Quakers are also involved in this area with Quaker Housing Trust, Quaker Social Action and The Joseph Rowntree Trust. Others on my board are motivated by a desire to keep Keswick a vibrant community, which is very close in our view to what David Cameron may have had in mind when he so powerfully spoke of 'The Big Society'. We are the living and working proof of that, now-a-days, less mentioned initiative. We completed our first project of 11 3-bed houses in November 2013. One was for local occupancy sale, five for shared ownership and five for affordable rent. In order to keep the shared ownership affordable we do not charge rent on our half. Our current rents are below the National Housing Federation's target of affordability. If we take the previously quoted income figure of £14,000, a couple in the lower quartile could earn £28,000 so rent should be less than £7,000 pa (25% of income). Our rents are currently just over £6,000 pa.

The above financial model is very secure for the moment unless an earthquake in the form of the 'Right to Buy' strikes. If this scheme should badly affect Keswick Community Housing Trust, it will make all of our houses unaffordable and destroy all our hard work. We are currently two months away from refurbishing a disused building into 4 x 1-bed units and 18 months from completing a further 22 affordable homes. These projects were financed using our existing houses as assets, and should we lose a significant number we would be unable to finance future developments. This is because our assets would have been jeopardised by loss of

[LORD CAMPBELL-SAVOURS]

collateral. We all feel very proud of the fact that in under seven years we will have delivered 37 affordable properties to help keep Keswick a vibrant community. We would be heartbroken if all the thousands of hours spent on this fantastic community effort, was taken away from us by some ill thought out idea. I have recently visited Bulgaria, where in the last 20 years over half of the villages have become deserted due to rural decline. I do not want this to happen in Keswick or anywhere else. Just a few years ago, David Cameron was happy to take a drink with Rory Stewart and others"—

he is a local MP—

"to celebrate the work of the Lyvennet housing trust. The Trust had delivered a scheme of 16 affordable houses in Crosby Ravensworth, not far from Keswick. Surely this is the height of hypocrisy in the present light. There are hardly any spare sites in that village and certainly not enough to replace all the houses they have already built, should they be forced to sell them. It is absolutely imperative that this impending disaster is NOT allowed to happen.

The special problem in Keswick is that we need to provide truly affordable housing for people who work here on low wages and to RETAIN available affordable housing against a property market which attracts high prices from wealthy purchasers nationwide seeking second homes or to retire here. To grant a 'Right to Buy' measure in the proposed form defeats the object of our charitable trust and totally undermines our … efforts. I ask you to do all in your power to prevent the 'Right to Buy' being imposed on Community Land Trusts like ourselves. Larger Housing Associations should be adequately compensated for any loss they could incur".

That is signed by Mr Bill Bewley, a man who, with his colleagues, has made a huge contribution, and it would be absolutely wrong if people like that were stopped in their tracks because of the madness of the policies that the Government are going to pursue.

3.34 pm

Lord Best (CB): My Lords, I am grateful to the noble Lord, Lord Whitty, for instigating this debate and for his powerful opening speech. I declare my interest as president of the Local Government Association and various housing interests as on the register.

I thank this House for decisively rejecting the proposed extension of the right to buy to housing associations by a huge majority vote—in 1983. That decision, by a largely Conservative House of Lords, has been of enormous importance over the last 32 years. Had the vote gone the other way, something over a third of these affordable homes would have been sold by now, assuming similar figures to those for sales in the council sector.

Over these three decades, literally hundreds of thousands of families have had the benefit of affordable rented homes which they would have been denied. The housing associations have been able to borrow extensively against all their property assets and, with blood, sweat and tears—illustrated by the noble Lord, Lord Campbell-Savours—extensively borrow against those assets and develop new homes without the fear that all their hard work could be short lived because their properties must be sold.

Now it seems that this House will be asked again to consider a right to buy for housing association tenants when the housing Bill reaches us. Will we be asked to accept exactly the same proposal as was so heartily rejected last time?

There are some changes today compared with the position in 1983. The terms for the council right to buy have become much more generous, with bigger discounts—up to £104,000 per property in London and up to £77,000 elsewhere—and a shorter period of time to qualify: just three years' residence. This time, it is suggested that funding to pay for the discounts be raised by compelling local authorities to sell their most valuable council homes when they become vacant; this means selling off still more affordable housing. In addition, today, because of the much larger size of the housing association sector, the cost of the discounts will be massively more than in the 1980s: the National Housing Federation estimates the total at some £11.5 billion over the next few years.

What could be the justification for bringing back this extraordinarily costly mechanism for helping a relatively small number of currently well-housed households to become owner-occupiers? It cannot be to increase the number of home owners, since the same money could assist three times as many aspiring potential first-time buyers in other ways—for example, by building 660,000 new shared-ownership homes for those desperate for a first home.

When the House of Lords debated the rather less damaging proposition in 1983, two issues were stressed. First, housing associations, as charities, as independent bodies, were not creatures of the state which could simply be ordered to sell their assets. Today, the added danger of accepting that housing associations have become de facto public bodies is that their borrowing—with some £60 billion outstanding in private sector loans—and all their future borrowing, increases public sector debt. That undermines hopes of eradicating the deficit and suddenly caps and limits all future borrowing on which their building programmes depend.

The receipt of government subsidies in the past has not changed the status of these independent bodies any more than it does for private landlords. Lump sum grants to housing associations followed by relatively low rents thereafter—in London, for example, they are at about a third of full market rents—cost the Government less over time than covering private sector rents for those on housing benefit. Yet few would argue for private landlords being subject to a right to buy.

The other argument against the extension of right to buy that was advanced back in the 1980s was that the nation needed to keep the hard-won affordable rented homes provided by housing associations and add more, not sell them off. This consideration is so much more pertinent today. Now, there really is a desperate shortage of homes that are affordable for those on average incomes and below.

I am strongly in support of the Government's manifesto pledge to achieve an additional—note, additional—275,000 affordable homes over the lifetime of this Parliament. This output may not quite keep pace with growing demand but it is a respectable staging post to a more ambitious programme. The trouble is that this important manifesto commitment will be impossible to fulfil if, while the 275,000 homes are being added, a similar or even larger number of affordable homes is being lost for ever under the new RTB proposals and the forced sale by councils of their best homes when they fall vacant—trying to fill the bath with the plug out. One manifesto commitment is being sabotaged by another. We cannot vote for both. One has to go and,

to me, the choice is easy: we need to be rid of the extraordinarily extravagant RTB idea. If your Lordships agree then I believe that, in 30 years' time, our successors will bless us for retaining this precious stock of affordable homes for the next generation.

3.41 pm

Lord Haskel (Lab): My Lords, a common way of measuring our standard of living is to look at household expenditure. When I got married in 1962, the average household spent 24% of its income on food; today, that figure is 9%. We used to spend 11% of our income on clothing; today, it is 6%. On recreation and culture, we used to spend 7% of our income but we now spend 11%. We are better off. We also travel more: we used to spend 9% of our income on travelling; now, it is 14%.

But much of that progress and increased standard of living is thrown away by the fact that in 1962 we spent 13% of our income on housing, whereas today that figure is 26%. This is why the cost of housing is holding down our standard of living. Put in these terms, surely the purpose of our economic policy should be to put this imbalance right, as recommended by my noble friend Lord Whitty, instead of continuously compensating for it.

Noble Lords have mentioned right to buy and help to buy, and these are meant to satisfy our aspiration to be home owners. In fact, generally all they do is transfer public money to the fortunate few, and there is no guarantee that they will be the home owners. This is not responding to the fundamental social need to provide housing, as the noble Lord, Lord Best, explained.

I hesitate to talk economics in the presence of my noble friend Lord Desai, but why do the Government not understand that subsidising something in short supply merely increases the price? If there is a shortage of bread and you give each hungry person £1 to buy it, unless you increase the supply, the price will shoot up. And, yes, economists have worked out that for every pound spent on subsidising housing, the cost goes up by 77p. That is why a house which cost two and a half times the average income in 1963 now costs five times the average income. It is why it makes more sense to use the money to fund social housing. Not only does it cost less, but more people will be housed and it will help to overcome the social costs mentioned by my noble friend Lord Whitty in his excellent opening speech.

Some £24 billion is paid in rent subsidies—one-quarter of our budget deficit. As has been pointed out, paying this subsidises landlords and employers, while it does nothing to increase the housing supply. This arrangement also encourages the wrong kind of economic growth: a housing boom. Instead of subsidising low pay with housing benefit, why do the Government not address this by encouraging firms to be more productive so that they can pay a living wage? Surely that makes sense.

Of course, planning policy is central to this, and both Kate Barker and the Lyons commission spoke a great deal of sense about it. As they pointed out, developer incentives keep land prices rising, especially land with planning permission, and this becomes an incentive to hold on to the land as it rises in value, rather than build on it. The sensible suggestion by Labour to do something about this unused building land was to tax it. This was labelled by the Conservatives as Stalinist. How would the Minister describe the proposed expropriation of social housing: as Leninist, Trotskyist, or what?

This crazy mix of competing policies which push up prices has been identified as one of the biggest threats to our economic growth, and not only in London. Wherever the economy improves, house prices go up. It then becomes more difficult to hire skilled staff and that threatens investment. As housing becomes unaffordable, so services suffer and businesses go elsewhere. The position in London is particularly serious. The GLA says that London needs 42,000 new homes a year, but last year only half that number were constructed.

The right to buy has been criticised by many noble Lords because nobody believes that the homes sold will be replaced, and they are right. Since 2008, London has financed 43,220 subsidised homes, but the net increase during this time has been just 13,585.

Another important factor affecting London is the corrupt funds flowing into London property. In spite of government promises about transparency, a whole industry is dedicated to laundering money by anonymously acquiring properties through companies registered in secrecy jurisdictions. According to Transparency International, one-third of all foreign companies holding inner-London property are incorporated in the British Virgin Islands. Much inner-London property is not even offered to UK citizens any more. Not only does this kind of money laundering raise housing costs in London; it is a major contributor to global poverty. Some justify this through the "trickle down" theory, but rising inequality shows that this is just wrong.

I started by speaking about household expenditure in the 1960s. I also remember a political consensus at that time: a consensus to provide decent housing for everybody. Is there no way in which we could come together again and agree that housing is not a traded commodity which is holding back our standard of living, but a public good that can raise it?

3.48 pm

Lord Horam (Con): My Lords, I think that we are all extremely grateful to the noble Lord, Lord Whitty, for bringing this subject forward today. It is a serious and urgent subject, and I hope that he feels gratified by the quality of the debate which has taken place so far, with so much knowledge and experience readily on show.

The noble Lord said that he was critical of the last three Governments on housing policy; I would take it back 40 or 50 years. I think that the supply of housing has been a disaster for the past 40 or 50 years, and I am afraid that all parties in the UK, perhaps excepting the SNP, are complicit in what has happened. In 1968, we produced 425,000 houses per annum; last year, it was 140,000, when we know that we need roughly 250,000 houses per year to deal with the demand.

The result, as the noble Lord said, is that house prices have rocketed. The average price for a house in London nowadays is about £500,000; rents in London are now double what they are in other European cities; and it adds salt to the wounds when you find that, in 2012, 70% of the houses in central London were sold

[LORD HORAM]

to foreign buyers—the noble Lord, Lord Haskel, made this point eloquently. John Kay, in an excellent column in the *Financial Times* the other day, said that all these trends,

"are … entirely explicable by reference to changes in public policy".

Therefore, it is up to the Government and up to Parliament to rectify this appalling situation.

One proposal that will not improve matters is to extend the right to buy to housing associations, because it will make it more difficult for housing associations to add to the stock of new houses, which is what we need. I can see perfectly well as a politician how the proposal suddenly got into the Conservative manifesto during the heat of a hard-fought general election campaign, but I had hoped that wiser counsels would prevail in the cooler aftermath of victory. So far, that has not happened, but I hope that the wiser heads in government, in the Civil Service, in the wider housing community and in this House will prevail before we go much further—and I note what the noble Lord, Lord Best, said about the fate of a previous attempt to impose this on the country.

That is a bad idea; there are plenty of good ideas around. The Housing Minister has produced some good ideas about how to refurbish estates in London to a much higher density. Ken Shuttleworth, the architect, has produced ideas about densification, which are also very good. The noble Lord, Lord Adonis, who is not in his place today, has produced some excellent proposals for housing. The Government themselves have done a brilliant job in improving and simplifying the planning rules, which are fundamental to all this. So there is a lot of good thinking around, much of it evidenced in the debate today.

However, I sense—with the noble Lord, Lord Whitty—that such thinking needs to be pulled together into a big idea and given much higher priority by the Government. It also needs full-hearted support from the Chancellor of the Exchequer—that is crucial. The important point—here I speak as an economist and, like the noble Lord, Lord Haskel, I invite the noble Lord, Lord Desai, to agree—is that housing is capital expenditure. Capital expenditure has a return over many years; it is not current expenditure. It does not conflict in any way with the Government's necessary desire to contain current expenditure if we spend the money in capital spending on renewing our housing stock. Nothing less will do.

It is a great pity that the Chancellor of the Exchequer is not here today to hear what is being said—I think that he might agree with a lot of it—but I implore him and the Government to take this extremely seriously. Nothing less will do.

3.52 pm

Lord Palmer of Childs Hill (LD): My Lords, first I must declare my interest as the chairman of the advisory board of the Property Redress Scheme. It is clear that there is a shortage of housing—that has come through in the words of every other Peer who has spoken. The Government's response is to make mortgages easier to obtain and to propose the sale of housing associations properties to their occupiers. Let it be said clearly that neither of those profound announcements increases housing supply by even one unit.

On mortgages, 20% of first-time buyers will be paying off their mortgage beyond the age of 65, which is a big increase from a few years ago. With all the Government's boasts about housing, the Office for National Statistics says that home ownership fell for the first time in a century in 2011, while renting and overcrowding increased. The policy of right to buy, particularly of housing association properties, has been mentioned by other noble Lords. But to extend it to 1.3 million housing association homes with discounts, as the noble Lord, Lord Best, said, of up to £104,000, costs at least £5 billion—and not one unit more is made available.

Will the Minister say in detail how the sale of housing association homes for 30% less than their value can conceivably be enough to build a new home? Just selling off a few expensive homes—which again reduces the housing stock—cannot be an answer. Although I thank the noble Lord, Lord Whitty, for introducing this debate, I take issue with him on one point. He said that he had always supported the right to buy. I have always been against the right to buy, not because it gives a bonus to those who live there, but because it reduces the housing stock available to the poorer people in society. That is what was and still is wrong with the sale of council stock and is even more wrong—in spades—with the sale of housing association properties.

In housing, one of the buzzwords is "regeneration". That often means demolition of large tranches of council-owned housing that is replaced with a mixture of private homes and so-called "social housing", often at high density. A point was mentioned in passing by another noble Lord about properties such as these that are compulsorily acquired for leaseholders and some freeholders. What happens on estates that I know is that when there is regeneration and people are forced to move, they are not given enough in the sale of their properties to buy a property on the same estate and therefore have to take out additional mortgages or move further away. I trust that the Government will look at some way in which people who are forced to move because of regeneration can at least have a property in the same development without having to borrow more.

Another buzzword used in the title of this debate is "affordable" housing, but "affordable" means different things to different people. To me, it has always meant social rented housing, which is the obvious way of providing affordable housing. There is also intermediate housing, affordable housing ownership and all the various different schemes where you buy a small part of the property, sometimes at a discount, with a covenant that you have to sell it at 80% of its value. But this is fiddling at the edges of affordable housing for those who really need it. This Government have a paranoia about private home ownership, which is often the nail in the coffin of affordable housing.

I now move beyond affordable housing to introduce another element into this debate that has not been mentioned so far. How do we extend this figure of 200,000 or 300,000 properties without relying on

brownfield sites or the other methods that I and other noble Lords have mentioned? Perhaps the development of garden cities is the way forward to tackle the deficit in the housing stock. Communities need to provide proposals. I hope that the Minister can say what has happened to the proposal of the Liberal Democrats when in coalition to invite bids for £1 billion of investment that was announced in the Autumn Statement 2013 to unlock local housing schemes for, at that stage, more than 1,500 homes. The funding was intended to unlock up to 250,000 new homes between 2015 and 2020 in locally led garden cities. If people locally want the schemes, money should be available. They could be a great boon to the localities of various parts of the country and would provide additional housing in larger amounts than by tinkering with odd bits of brownfield site and increasing housing density, which impinges on the way of life of those who live within them.

3.58 pm

Lord Kerslake (CB): My Lords, I declare an interest as chair of Peabody, chair of the recently formed London Housing Commission and president-elect of the Local Government Association, to follow the noble Lord, Lord Best.

The defining task for this Government on housing is how they can substantially increase the level of supply and, crucially, hold that high level of supply for a sustained period of time. This should be the Government's overriding priority and they should invest considerable time and effort into meeting housebuilders, local authorities and housing associations to discuss the ways in which it can be achieved. Other noble Lords have spoken about this, but by any reckoning, to meet the country's need for new housing we should be building well in excess of 200,000 new homes a year.

This agenda is not just about affordable houses for rent and affordable houses for sale, and it is certainly not just about housing for market rent—it is about all of the above. Unless we address housing shortage and lack of supply in every way possible, we are unlikely to move from our current level of building around 140,000 new homes per annum. It ought to be the Government's most important and defining priority, and I hope very much that we will see proposals that will address the issue on this basis.

The issue is significant across the whole of the country, but it is particularly acute in London, where the price of housing and levels of rent are increasingly moving away from Londoners' incomes. Indeed, the current calculation is that the average price of a property is now 14 times the average salary. That is an unsustainable position, and that is why I am delighted to be taking on the role of chair of the commission, whose aim is to identify how we might more than double the supply of housing in London over the next five years.

When we look back at what has worked and what has not worked on housing supply, we can see that one of the triumphant successes—I think it can be described as that—has been the model whereby housing associations borrow privately and, with support from government grant, deliver new housing and fund the borrowing through rental streams. This has been an enduring success in the new supply of affordable homes. We have seen the level of government subsidy come down and the level of cross-subsidy from houses for sale under Section 106 agreements go up. We have seen innovative new schemes around shared ownership. It is a model that we know works. After an initial wobble, it is interesting to note that the last Government not only committed to a programme of affordable housing, but actually invested in growing the programme by making two crucial decisions which I think will be critical to the future stability of supply.

The first decision was to commit to an increase in rent by CPI plus 1% from 2015-16 for a period of 10 years. This has given housing associations confidence about their rental income streams and enables them to borrow for the long term. The second decision has already been referred to: a commitment to a programme over the whole of the Parliament of capital investment to deliver 275,000 affordable homes. These are two crucial additions to the way in which affordable housing works and I would be grateful if the Minister would confirm that both will remain in place for the duration of this Parliament under the new Government.

The question noble Lords might think was on the minds of delegates at the Chartered Institute of Housing conference that I attended this week was how they could play their role in delivering new supply and how they will respond to the challenge I have just described. Sadly, the debate was entirely dominated by the extension of the right to buy to housing associations and the forced sale of council homes. This risks becoming an overwhelming distraction from the underlying task we face in this country. As time goes on, the contradictions and challenges of this policy will grow. For example, there is a big issue around not just whether the sums add up, but whether funding from the sale of council homes will come through in time in order to fund the discounts for housing associations. If those two things do not match, who will pick up the difference? There are major issues around rural housing where land has been set aside to deliver affordable homes in perpetuity. There are also major issues around Section 106 planning agreements, which again identify affordable housing in perpetuity.

As each day passes, we see more issues and more challenges. With those challenges, people are coming forward with ways in which the policy could be addressed and improved. Potentials ideas are to replace the cash discount with an equity loan; to exclude certain types of properties, such as those in Peabody, where the funding came from private sources; to exclude rural housing; and, crucially to decouple the council house sales policy from the policy of funding right to buy, in order to develop a more sensible policy on this issue. These are creative solutions to try to improve a policy that, as I have said, is wrong in principle and wrong in practice.

I hope that the Government are open to new ideas and that we do not see what the French describe as the politics of the stiff neck. This House will have a significant role to play when the legislation comes forward.

4.06 pm

Baroness Wilkins (Lab): I am grateful to my noble friend Lord Whitty for securing this debate. We hear time and again how this country managed a major

[Baroness Wilkins]
housebuilding programme after the war despite our devastated finances. We could do that again now if we were determined to do so.

I grew up with pictures of the devastated City of London on my father's office walls. He spent his civic life working to rehouse Londoners. In June 1950, as chairman of the City public health committee, he won approval for the Golden Lane Estate, which rehoused everyone on the City of London housing register at affordable rents. Later, as chairman of the Barbican committee, he ensured that thousands more would find a home—these were rental homes—in that war-devastated area. I am proud to say that Eric Wilkins was called the unsung hero of the Barbican in David Heathcote's book about the scheme.

It was war that devastated London then and made a wasteland of it. Now it is short-sighted, selfish financial greed. As we have heard, house prices are soaring way out of the reach of ordinary Londoners. However, there is one area where London has been leading the country for the good, which is the mandatory requirement on developers to build to Lifetime Homes and wheelchair standards.

This Government are putting all that at risk. It is not only the supply of affordable housing that is important but the quality of it, and I want to focus on that issue. Last year, Leonard Cheshire Disability published *No Place Like Home*, its research into the state of the country's housing as it affects disabled people. It found that only 5% of homes in England can be visited by someone in a wheelchair; that one in six disabled adults and half of all disabled children live in housing that is not suitable for their needs; and that 300,000 disabled people are on waiting lists across Great Britain.

The impact that this lack of disabled-friendly housing has on individual lives can be catastrophic: people being unable to reach their bathroom, having to strip wash at the kitchen sink, or no longer having visitors because they have to use a commode in the living room. Making all new homes disability-friendly is an obvious solution, and one that comes at no cost to the Exchequer. Lifetime Homes provides just that. When all developers are required to build to these standards, as has been the case in London, they are all in the same boat. In 2008 the Labour Government committed to building all new homes to Lifetime Homes' standards by 2013, but now things are going backwards for disabled and older people in this as in so many other areas.

The Government have just introduced a new housing standards policy which has put accessible home building at risk. From 1 October this year, category 2 of the standards, which equates to Lifetime Homes' standards, and category 3, the wheelchair standard, have been made purely optional. What is more, additional hurdles have been put in the way of councils wanting to build disabled-friendly homes. They will have to prove "clearly evidenced need" for them against a narrow viability test that is weighted in favour of the developer. The Leonard Cheshire research clearly shows that councils do not have that evidence in place. Given their squeezed finances, they are unlikely to have the time or the money to collect it now, so disabled-friendly housing will not get built. This is at a time when we have a rising population of disabled and older people. More than 5 million people in Britain have a mobility problem. Every year, more than 800,000 people become disabled.

Across the UK, disabled people are facing a growing crisis in finding suitable accommodation. This hits them hard, but it also drives up totally unnecessary costs in the NHS and in social care. Together with the lost employment opportunities that they face, it is costing the Exchequer millions of pounds every year. Delayed discharge from hospitals due to inaccessible housing costs the NHS more than £11 million a year. When people are prevented from being independent in their own homes, the costs of social care are driven up, or costly residential care becomes necessary. One week's residential care for one person equates to the extra cost of building a house to Lifetime Homes'—now category 2—standard.

The Government's current policy of optional accessibility standards and viability testing is economic folly. If we weaken requirements for accessible homes, disabled and older people will continue to be disadvantaged in the future, as they are now. The Lifetime Homes standards, or their new equivalent, need to be mainstreamed for the good of us all, not treated as a solution for a small section of the population. Someone in each of our families will be immobilised at some point in their lives, but instead the Government have decided to favour the short-term profits of private developers, for which not only our generation but future generations will pay the price.

4.11 pm

Baroness Humphreys (LD): My Lords, I add my thanks to those already expressed to the noble Lord, Lord Whitty, for initiating this interesting debate. I am sure that your Lordships, and, indeed, the Minister, will understand if I restrict my comments to the existing supply of affordable housing in Wales, and in particular the case for increasing it.

I remember, perhaps eight years ago, attending a housing conference in north Wales and castigating the Welsh Labour Government for the fact that there were 80,000 households in Wales on waiting lists for homes. Despite all the words, plans and promises I heard from the Welsh Government Ministers and housing officials that day—and, I will admit, all the hard work in the mean time—the situation overall has not improved. Shelter Cymru—Shelter Wales—estimates that 90,000 households are on waiting lists for homes in Wales, with all the personal anxieties that that entails. It also estimates that we need 5,000 new affordable homes every year. It makes the point that we need not only to make the case for increasing the supply of affordable homes, but to find ways to increase the supply. It has been very informative to hear experienced voices here pointing the way forward.

Although there has been some increase in the supply of affordable homes in Wales in recent years, which is to be commended, it does not make up for the lack of building in previous years. It certainly has not met and does not meet demand. As a relatively young borough councillor in the 1980s, I experienced the impact of the right to buy local authority homes scheme and the

frustration that my council colleagues felt because we were prevented from using the receipt from the sales to reinvest in new social housing. The housing associations that were formed at that time struggled, and still struggle, to meet demand, and along with others I despair at the impact of the right to buy housing association homes and the loss to the social housing numbers. To add to an already difficult situation, Shelter Cymru also reports that social housing repossessions hit a seven-year high last year in Wales, with nearly 1,000 social tenant households losing their homes, the majority of them having to turn to the private rented sector.

The area I live in is extremely beautiful at this time of year, as are most rural areas. However, the beauty of the area masks the reality of social and affordable housing in our rural communities. Conwy council has seen house prices soar and, like our neighbouring county of Gwynedd, admits that one of its biggest challenges is to provide affordable housing for people who have been priced out of the housing market. Gwynedd and part of Conwy make up the largest part of the Snowdonia National Park: breathtaking scenery, I know, and a wonderful place to live, but the reality of living in a national park can equate to planning restrictions, a lack of development and industry, and living somewhere that is sometimes described as being preserved in aspic.

People living in Gwynedd and Conwy rely on the tourism industry for employment—employment that is often seasonal and part-time. Well over a quarter of all employment in the Conwy county borough area is related to tourism. In fact, many people have two or three part-time jobs to help make ends meet. In our part of the world, we knew all about zero-hours contracts before the term was invented. In Conwy, the proportion of part-time workers is high at 42%, compared with a Great Britain figure of 31%, and wage levels in Conwy county borough are significantly below levels for Great Britain as a whole at only 88% of the average.

During the last few years, both Gwynedd and Conwy have encouraged the development of attractions that are open throughout the year and give employees the opportunity of a year-round wage, using our natural environment to build the local economy. If you care to visit Snowdonia at any time of the year, you can climb trees and use high ropes to move from one treetop to the other, take a trip on the longest zip wire in the northern hemisphere across a slate quarry, bounce to your heart's content on large trampolines in massive underground slate caverns and, from 1 August, surf on the world's longest man-made surfing wave, which will create six-foot barrels once a minute—I do not really understand that—in Surf Snowdonia's new surfing and water sports park. These are ambitious attempts to increase employee incomes but, with many inhabitants in both Gwynedd and Conwy surviving on part-time or low wages, providing affordable and social housing is obviously a challenge and replicates the situation in rural areas throughout the UK.

I can see that my time is up but, as I make my final point, there is one question which the Minister might want to answer, which is the responsibility of the UK Government. Less than 15% of Conwy's social housing stock is in one-bedroom accommodation, and the council itself admits that this,

"limits the opportunities for tenants to downsize if they are affected by caps on housing benefits due to under occupation in their existing accommodation".

In circumstances such as these, does the Minister agree that, if residents have made two attempts at downsizing and cannot move because of the lack of alternative properties, they should not be penalised by having to pay the bedroom tax?

4.19 pm

Baroness Warwick of Undercliffe (Lab): I thank my noble friend Lord Whitty for enabling this debate, and for his powerful opening speech. I declare my interest as incoming chair of the National Housing Federation.

The Government are committed to increasing the number of affordable homes so desperately needed in this country. Prior to the election, the Conservative Party said that it would place affordable homes at the heart of its plans for home ownership by building 275,000 of them by the end of this Parliament. As I understand it, these are in addition to the 200,000 starter homes available at a discount for first-time buyers under 40, and I hope that the Minister will confirm that. The Prime Minister seemed to invoke the spirit of Harold Macmillan when he talked about housebuilding on the steps of No. 10 on 8 May. I applaud his aim and look forward, in my role at the National Housing Federation, to supporting it.

Everyone in this debate has stressed the importance of a healthy supply of homes of all types, for people of all incomes to buy and rent, in all the different housing markets. A home is where we feel secure as children, can develop as teenagers and are able to support our own families as adults. It is a foundation for success in life. It must not become the preserve of those and only those who can pay. For many people now, not just those on low incomes, that kind of home is not possible without access to affordable housing. We need 80,000 affordable homes every year in this country; that is 80,000 families who need that security to prosper.

The need for affordable housing in Victorian times led to the creation of housing associations. Today, they still house those on low incomes and they can deliver even more of the homes Britain needs, given the right conditions. Their founding principle is that everyone should have a home that is right for them at a price they can afford. That is why they also build homes for people to buy and rent on the open market and homes for shared ownership: to help those who need a bit of extra support to get on the housing ladder. It is a principle that has provided 2.5 million homes to 5 million people and investment in a diverse range of neighbourhood projects. It is a principle that delivers for tenants and the economy too: housing associations directly support almost 150,000 full-time jobs and add nearly £14 billion to the economy every year.

As I have learnt about the sector, I have been surprised by the different types of homes that housing associations provide and impressed with the sector's ambitious vision to do so much more. Last year, housing associations built approximately 38,500 affordable

[Baroness Warwick of Undercliffe]
homes. By 2033, they want to scale that up to 120,000 of the 245,000 homes the country needs every year. Of these, 80,000 would be available at affordable rates. Associations would be housing one in every five people. This would add £70 billion and 170,000 jobs to the economy, representing incredible value for money.

But housing associations do so much more than this. I have been impressed by the ways in which they help to create strong vibrant communities. A secure, safe and stable home is a starting point, but there are many other factors beyond bricks and mortar that people need to succeed in their lives. They need access to jobs, education and health services, and tenants living in affordable homes provided by a housing association will find an open door to many of these services. For example, housing associations have a strong track record of supporting their tenants into work by offering employment and skills support. They have invested their own resources to provide these, together with programmes to aid money management and digital inclusion. They do this so that their tenants can overcome barriers to finding gainful and fulfilling employment.

We have talked a lot in this House about apprenticeships. Housing associations had a target to hire 10,000 apprentices by 2015. They beat that target, and a year early. The Government plan to create 3 million apprenticeships by 2020 and to extend to more people greater opportunity and the security of a pay packet. We welcome the opportunity to work with the Government as delivery partners in this work.

Housing associations also provide health, care and support services, allowing older people and people with complex needs to live independently. This is excellent news for our NHS, as an integrated approach to health and housing can reduce the number of acute interventions and help to reduce pressure on hospitals. Most importantly, it can help to keep people where they most want to be: at home. The sector attracts £6 more from private sources for every public £1 invested. It would be hard to disagree that this is one of the most successful and consistent public-private sector partnerships in recent history.

The noble Lord, Lord Best, and others raised the issue of right to buy. I hope that the Government will balance what they want to achieve with the right to buy scheme and its proposed welfare cuts, both of which will have a major impact on this sector and the people it serves, against what it will lose in the provision of affordable homes, successful communities and support into work.

The sector is full of passionate, energetic and, yes, commercially astute people who want to build homes and communities. I have no doubt that it will achieve its vision, but if the Government were also able to make the right investments, cut red tape and improve access to land, housing associations would achieve even more. I am an extremely proud advocate for the sector and I would certainly welcome an opportunity to talk in more detail about how the Government could help housing associations to reach their potential to end the housing crisis once and for all.

4.25 pm

Viscount Hanworth (Lab): My Lords, one of the questions that must be raised in connection with the crisis in housing concerns the extent to which it has been the consequence of the misguided policies and oversights of successive Governments.

It is fair to raise this question in view of the success of early post-war Governments in meeting the huge demand for housing that arose from the destruction and neglect of the housing stock during the Second World War and from the need to house demobilised military personnel. We ought to remember the role of Harold Macmillan at the Ministry of Housing and Local Government in Churchill's Government of 1951. Macmillan was given the task of overseeing the building of 300,000 houses a year. This objective had been adopted by the Conservative Party conference in 1950, and was amply fulfilled.

The policy of housebuilding depended on close co-operation between central and local government. Local government was empowered to finance house-building by issuing bonds, and there were substantial subventions from the Treasury. The percentage of people renting from local authorities rose to over a quarter of the population—from 10% in 1938 to 26% in 1961.

There was a complete reversal of the housing policies of the Conservatives in the era of Margaret Thatcher. The Housing Act 1980 gave a right to buy to council tenants and by 1987 more than 1 million houses had been sold. Thereafter, the building of houses by local authorities virtually ceased, and there have been almost none built since the early 1990s.

Thatcher's policy of the right to buy envisaged that the market could be relied upon to assume the housebuilding role of local councils. Rules were introduced that prevented councils subsidising their housing from local taxes, and grants for construction of new social housing were to be channelled to housing associations. However, the housing associations were expected increasingly to borrow their funds from banks and building societies, which proved to be less than willing lenders. Within a decade it had become clear that these policies were not providing the needed housing. The problem was belatedly emphasised in a debate in the House of Lords on the eve of the election in 1997.

However, as it transpired, the succeeding Labour Governments failed to meet the challenge. During their periods in office, the ratio of house prices to incomes rose from 3:1 to 5:1, while the levels of housebuilding fell to half of what they had been in the late 1960s. During the Conservatives' recent period in office, the ratio lurched to something approaching 6:1 before falling back to 5:1 when the trade in properties virtually ceased.

The Conservatives have reprised Margaret Thatcher's free-market ideology and have sought to stimulate the housing market from the demand side by offering help to buy. In the run-up to the election, as we have heard, they revived the policy of the right to buy by proposing to dispose of the assets of housing associations at heavily discounted prices. The fact that they do not have the rights of ownership of these assets has not deterred them.

In common with so much that the Conservatives have proposed, the policy represents a remarkable triumph of ideology over reason. It is clear that the market cannot be relied upon to satisfy the housing needs of our nation. What is required is a steady supply of new houses at the rate of 240,000 per year. The unaided market appears to be capable of providing, at most, half that figure, and it cannot be relied upon to do so consistently. Its supply of houses is tied to the economic cycle for the reason that the unsupported demand of consumers is likewise tied to that cycle. Moreover, the provision by banks to housebuilders of loans to finance their building projects is also unreliable and tied to the economic cycle.

Housebuilders have been under an injunction to provide a proportion of affordable houses in each new development but have failed to do so. Among the reasons for this failure have been the various exemptions from the requirement that have been offered by the Conservative Government and, notably, by the Conservative Mayor of London. These exemptions were originally proposed for small-scale developments but have been extended to cover developments where there are pre-existing vacant properties. Under present circumstances, housebuilders in London have found it more profitable to provide houses for speculative investors from overseas, who are prepared to leave their properties empty. There needs to be a radical change in policy with a co-ordinated strategy, overseen at the centre by people charged with fulfilling a national housing policy. The houses have to be built where they are needed by working people and, for this purpose, local authorities must be fully involved. We need to embark on something similar to the early post-war housing strategy.

Apart from the question of the availability of houses, there is the matter of their affordability. The persistent rise in house prices must be staunched if it is not to end in the bursting of a bubble. This will be hard to achieve at a time when the banks and the building societies, which are the suppliers of mortgages, have been stuffed full of money by the programme of quantitative easing. They must be compelled to make their loans elsewhere than to the housing market. House prices should also be constrained by taxation. Stamp duty levied on the buyers of properties is an absurdity. It should be abolished and, in its place, a significant sales tax should be levied on the sellers of properties in order to capture a fair proportion of their capital gains. This would make investment in houses less attractive, which should serve to reduce their prices.

We must act now—decisively—to relieve the damage and pain of the housing crisis and put housing on a road to recovery. If we do not do so, the consequences will be dire. I do not have the time to describe these consequences but I trust that others will have done so fully by the conclusion of this debate.

4.32 pm

Baroness Valentine (CB): My Lords, I thank the noble Lord, Lord Whitty, for his opening remarks. I shall focus my remarks on having the right incentives in place to increase housebuilding. I declare that I am a director of Peabody and London First.

In London, we are building roughly half the houses that we need. Simplistically, if there were a free market, we would be providing everything from cheap and flimsy broom cupboards to penthouse flats. Instead, we have layer upon layer of well-intentioned policy intervention, which has the unintended consequence of building for the very rich and the very poor but not doing much for those in the middle. Those who are the backbone of the London economy—the supermarket checkout people, the waiters, the PAs, the newly graduated, even the professors—are neither rich nor poor enough to be housed. In a recent survey by London First, a lack of reasonably priced housing was ranked as a top three competitiveness risk for the capital.

Our housing crisis is the result of a range of misaligned incentives, from welfare to planning and cumbersome public sector procurement processes. These incentives include: housing benefit underwriting private landlords' rents or indirectly subsidising employers' salary costs; muddled incentives for social tenants when they weigh up staying on benefits versus being in work; local authorities being legally required to house people in need, but having no similar requirement to house London's lower-paid workers; demands for social housing on private developers causing the rest of the housing to be more costly to make the schemes add up; and state bodies that have no incentive to dispose of unused land and property, and instead hoard for the future.

Among the other incentives, a narrow definition of affordable housing for planning purposes makes large-scale provision of private housing for rent less attractive than market sale. Two-thirds of New Yorkers live in rented accommodation. Making a substantial intervention in this space must be part of the answer. The green belt includes more land than is needed to limit urban sprawl. In particular, it includes scrub land near transport nodes which could be used for housing. The planning system continues to bog down development, particularly in negotiations that can last for years around what associated infrastructure will be provided. Resistance to innovation prevents higher-density or new housing products that could serve a market need. For instance, many first-time buyers of studio flats would be happy to start with smaller floor plates than policy typically allows.

There is no silver bullet, but I have three specific requests for the Minister. First, would she consider giving local authorities greater freedom to build homes by granting more borrowing headroom, albeit within existing prudential rules? As alluded to earlier, building at scale was delivered by the public sector until the 1980s, with a substantial and sustained drop in the last 20 years since local authorities were capped. I say in parenthesis that I am yet to be persuaded of the benefit of forcing local authorities to sell property to subsidise housing association right to buy. The long debate that we will no doubt have on that subject in this House is an unwelcome distraction from increasing supply, which the housing associations are well placed to do.

Secondly, although I am enthusiastic about the new London Land Commission, bringing public sector sites to market is easier said than done. Will sufficient resource be given to the commission to get land out into the market and will the Government set a target level of land disposal that will be actively monitored?

[Baroness Valentine]

Finally, on targets, I want to deal with the rhetoric versus reality of London housing targets. Only this morning, the mayor launched another few housing zones, which are set to deliver 100,000 jobs and 50,000 homes. Every year, the London Plan sets targets for local authorities which add up to the number of houses required in London—roughly 50,000. Every year, we fail by a factor of roughly half, and surely we need a much tougher regime. On the one hand, where a local authority repeatedly fails to meet the targets, the mayor should be given step-in rights to start determining more applications; on the other, local authorities could be given a more generous new homes bonus for exceeding targets. Would not a carrot-and-stick approach to housebuilding better align our incentives to meet housing need?

4.37 pm

Lord Desai (Lab): My Lords, thanks to my noble friend Lord Whitty, we have had an excellent debate. Many noble Lords have spoken, about all aspects of the problem, so as the last Back-Bench speaker I have to do something new. It is quite clear that once upon a time, people wanted a house for living in but that is no longer the need. The first 10 places I lived in were all rented, but when I arrived in London, I was told that it was madness to rent and that I had to own. The incentives of owning were such that it would be mad to rent. Since then, we have gone on adding incentives to buy and therefore anybody who has the money buys houses not just for living in but for capital gain. Affordable housing has become a rather exotic item in the social circles that cannot buy, although with the Government having introduced the right to buy, even that bit has now powered on to home ownership.

Home ownership is very good but it is also a very irrational thing. Our last crisis was caused by home ownership, both in America and here. We should not forget that the idea that homes always go on increasing in price is a delusion. But people have delusions, and in democratic politics you cannot tell people that they have delusions—instead you have to feed them delusions. That being the case, how do we increase supply? As my noble friend Lord Whitty and many other noble Lords have said, it is a problem of supply. I have studied the historical gentrification cycles in London. Two noble Lords declared their connections with Peabody. Of course, we know that the London housing situation was dire, as Booth discovered in the 1870s. It was rich, private, charitable people who built a large amount of London housing in the late 19th century. Peabody is a perfect example.

As other nobles Lords said, in the post-war period public housebuilding took over the task of renewing London's housing and keeping affordable houses supplied. In the mean time, a lot of small private builders were involved in the gentrification of various areas. We now face the problem that the public sector can no longer be a sufficiently large provider of houses and the small private builders do not have incentives to build affordable houses. That being the case, we ought to find some way to get big money into housebuilding.

People think I am an economist so I get invited to conferences where very rich people ask me how they can invest money. Sovereign wealth funds, pension funds and other such funds sit on a large amount of money globally. These people have really global ideas of where to invest. They are also, unlike many other private investors, long-term orientated and willing to accept a proposition in which the returns will come over 50 years. That is especially true of pension funds and sovereign wealth funds. The Government ought to be able to do something by which they give an incentive to sovereign wealth funds and pension funds, those people who invest on a 50 to 100-year basis, to revamp the housing stock of the country.

My noble friend Lord Adonis suggested something of this sort but we could do it on a much larger scale if we can harness a lot of money. My view is that there is a lot of money out there. Those in charge of that money, especially if it is private equity or sovereign fund equity, do not have to face shareholders. They have no short-term pressures on them to make money all the time. It is a very rare thing: if you have a little money you have short-term pressures but if you have a lot of money you do not. The Government ought to find some sufficiently clear incentive-based mechanism to attract this money into housebuilding. They may be able to do that through some sort of green bank but it would be very good if we could invite back the Peabodys of the 21st century to invest massively in London housing.

No other agency has the money and the Government will hardly try. We will be told by the Treasury sooner or later that we do not have the money. The fact that housing benefit is costly precisely because we have a short-sighted policy on supplying housing does not impress the Treasury. The Treasury is not an economic Ministry—it is made up of bean-counters who care only about the ins and outs of money. They will not care about that argument on the rationality of saving on housing benefit. If we can get a lot of private money into housing by some clever device, and I am sure we can all think of one, that would relieve the constraint on London's housing supply.

4.43 pm

Lord Stoneham of Droxford (LD): My Lords, I declare my interest as chair of Housing & Care 21. I also join others in thanking the noble Lord, Lord Whitty, for initiating this debate. It takes at least five years to have any chance of getting real change in the housing market, so it is good to have this debate right at the beginning of what is, I hope, a five-year parliamentary term.

Affordability of housing is a growing issue. I think we are all aware of that. Politically it is a very potent issue, not only in owner occupation, with young people finding it increasingly difficult to get on to the housing ladder; there is also a problem in building all sorts of housing when the price of land is accelerating.

I thank my noble friend Lady Bakewell of Hardington Mandeville for talking about rural housing, my noble friend Lord Palmer of Childs Hill for his remarks on the right to buy, and my noble friend Lady Humphreys for talking about Welsh housing. I shall talk mainly about the role of housing associations in providing more affordable housing, so I am very much in the same area that the noble Baroness, Lady Warwick, and the noble Lords, Lord Best and Lord Kerslake, were talking about.

There is a huge undersupply in all markets, as we know. In the last month of the coalition Government, nearly 65,000 households were in temporary accommodation. As the noble Baroness, Lady Valentine, said, there is a concern about the danger of key skills not being available in our urban centres as housing prices force people to buy outside and move outside our cities. There is the huge growth of housing benefit costs, as private rents rise and living standards stagnate; it is a huge, unsustainable problem in public spending. In all sectors, we simply have to build more. That has been a theme of this debate. The figures are quite clear: we have been building an average of 137,000 homes, and we need at least 100,000 more, per annum.

The coalition had a difficult start on housing. With the public sector restraints, it was difficult to get it to sustain some of the plans which the Labour Government already had for affordable housing growth, but we did, as the noble Lord, Lord Kerslake, told us, put in two important reforms: the stability of income growth, and trying to set a plan for five years. We increased the stock of social housing over the period of government for the first time for many generations.

However, I add another problem. It is not simply a problem of shortage of land; there are also significant capacity problems in the construction sector. It has been a very cyclical business, which means that lots of capacity gets lost every time we have a cyclical downturn, not least during the last recession. Small contractors, self-builders, and private developers through consolidation all disappeared in the last recession. There has also been a loss of skills, which is why we had to bring in immigrant skills to help out in the construction sector. Developers are very cautious; they build only when they can sell, and they have an interest in keeping prices moving upwards.

I turn to what housing associations can do. They are an important source of delivery, and we have to look very carefully at what we need to do to encourage them to do more and to meet the affordable market demand. I welcome the increase that the Government have committed themselves to in moving from 175,000 affordable homes built under the coalition Government to 275,000 in the next five years. However, as the noble Lord, Lord Kerslake, said, we have to sustain this. How can we increase the 55,000 homes per annum increase that is projected and get it nearer to the 80,000 that we need to reach the extra 100,000 houses overall?

There is capacity and potential in housing associations. At the end of the Labour Government there was a significant expansion. Under the last Government, the housing associations, with the guidance of the HCA, delivered on the targets set at the beginning of the Government. They have the ambition and the development teams to expand what they are doing. They also have unused security in their assets to help to fund this, and there is further potential if the Government would look particularly at the values of council-house transfers in their stock.

Housing associations have a track record of partnerships with developers and councils to help to rebuild communities and regenerate housing estates. I particularly value the work that has been done by the noble Lord, Lord Adonis, on the concept of city villages to regenerate some of the many old council estates, a concept that has been supported now by the Minister, as I am very glad to see. I have been involved in one of these projects in Rowner, in Gosport, Hampshire. It takes 20 years to do it, but it is immensely valuable. That community alone has been transformed by the work of a housing association, a council and English Partnerships, now the HCA, in that development, along with the private sector.

Housing associations can use their assets better. They have to be cautious. I am always worried when people say that housing associations can be more profitable. They can certainly be more efficient, but we have seen the dangers of HBOS going into the Halifax and turning the treasury department into a profit centre, and where that leads us. We have to be cautious. Property is a very cyclical market, and cash is important in order to survive. Housing associations can be so flexible that if there is a recession they can transfer houses that they were intending to sell into the rented sector, because there will be an overwhelming demand for them. That can provide stability. It also means that they can borrow money at cheaper rates because of the guarantees and security that their income streams can provide.

As the noble Lord, Lord Kerslake, said, we know that housing associations access private finance, which is vital at a time when public spending is under pressure. One of the initiatives not mentioned in this debate is the Government's guaranteed loan schemes. If housing associations can borrow money at 1% less than they would otherwise be able to, that provides money that is almost as good as a grant. We need to look at this. The Government put forward a £10-billion facility. How much has been used, how much is committed, and are the Government going to pursue this over the next five years? That is important for future expansion.

Housing associations must manage their property portfolios well to develop other sources of funding. I am not one of those who oppose selling off expensive council house properties or, indeed, housing association properties, but only if they are being used to build more, new, affordable homes and regenerate old communities. They should not be used simply to subsidise the right to buy. We have huge concern that under the right to buy, properties will not be replaced, but more importantly that if housing associations' assets are subject to this policy we will undermine their whole business plans and their financial viability. We know that when the right to buy council housing was imposed, councils simply stopped building, and we do not want that to happen at a time when we need housing associations to build more.

Housing associations build homes for social, affordable and private rents, for right-to-buy sale, and more importantly for shared ownership. It is the Government's role to galvanise their hidden potential and to increase affordable housing. They have five years to do it with an economy that we hope is improving. They must not miss this opportunity. They will have no excuse if they do.

4.52 pm

Lord McKenzie of Luton (Lab): My Lords, I thank my noble friend Lord Whitty for initiating and leading this debate. His focus on increasing supply and affordable housing is entirely right. The term "affordable housing" has been the subject of comment by a number of noble Lords, but in this debate I understand that it covers a variety of provision, encompassing social rented homes and homes for sale or rent provided at a cost above social rented homes but below market levels, sometimes just below. It encompasses shared ownership, shared equity and homes for intermediate rent. The noble Baroness, Lady Valentine, suggested that that definition is too narrow in planning terms, but I agree with my noble friend Lord Whitty that attaching the term "affordable" to any particular provision does not of itself bring it within the reach of many who are in desperate need of a home.

Today we will doubtless have our ritual exchange of statistics with the Minister using starts or completions and differing times zones, whichever suits, but it is undeniably the case that the Government are simply not causing enough homes to be built to meet the needs of our country. People on low and middle incomes are struggling to get a home to call their own. Home ownership is at its lowest level for 30 years and the number of homes built for social rent has been the lowest for many years.

Despite the rapid growth of private renting, the sector has not changed to meet the needs of those living in it, with short-term tenancies causing insecurity and instability. Rents in many parts of the country increasingly push many to seek the support of housing benefit. Over the five years to 2013-14, the proportion of renters who are in work and claiming housing benefit doubled to 14%. Over that period, average private rents increased by 15%.

The UK has long faced a large and growing shortfall between the number of homes that we need and the number that we are building. Estimates may vary, as they have today, but an additional 250,000 homes per year over the next 10 years seems to be about the consensus. Perhaps the Minister could say what figure the Government are working to. As my noble friend Lord Whitty made clear, we need to build not only more homes, but more affordable homes. The noble Baroness, Lady Wilkins, reminded us that we need to build homes of quality to meet people's real needs. Homes to buy or rent for those who cannot afford the market rate should be part of that.

Shelter has provided us with an estimate of the range of provision that is needed, suggesting that 50% should be market homes to rent or buy, 30% should be for social rent and 20% for intermediate tenancies, renting or shared ownership. Perhaps the Minister can say whether that breakdown of the total is something that the Government would recognise and support.

Of course we know that one of the first acts of the coalition Government was to change the funding model for affordable housing. They cut capital grant subsidies and enabled intermediate rent tenure of rents up to 80% of market rent levels, switching the funding burden in part on to the housing benefit bill but also taking more from tenants. This is part of the reason why we have a burgeoning housing benefit bill. The Government are now encouraging more conversions of social rented homes to affordable rents.

There have been a plethora of other initiatives by the coalition Government, which are documented in the helpful briefing provided by the Library. We have had the affordable homes guarantee programme, affordable rent to buy, the new homes bonus, the growing places fund, the Get Britain Building fund, the builders finance fund, the estate regeneration fund and the single local growth fund, while home ownership initiatives have variously included FirstBuy, Help to Buy and the NewBuy guarantee. We accept that these were all with good intent and with some advances, perhaps of marginal benefit, but what has it all amounted to? The number of affordable homes provided in the last year of the coalition Government fell by 26% from 2009-10 levels, while the number of homes built for social rent fell by a staggering 75% from 2009-10 levels.

Statistics reported today in the *Guardian* quoting DCLG data reveal that there are nearly 50,000 families living in temporary accommodation, a rise of 25% in five years, and a quarter of those are couples with dependent children. There has been a rise of 300% since 2010 in the number of families living in bed and breakfast accommodation and, last year, 111,000 people in England made an application to their council as homeless. Over 1.3 million households are on social housing waiting lists. Rough sleeping in England has increased by 55% over four years—you can see evidence of that outside the very doors of this place.

This is, sadly, not a success story. We should not deny that there have been heroic efforts by many to try to make advances, particularly those associated with the housing association movement. We will doubtless hear today that local authorities are building more council homes than at any time under the last Labour Government, and that is fine; certainly the reforms to the housing revenue account that we devised have helped local authorities to get back into business, but of course it is Labour councils that are leading the way.

The Government's current commitment to build 55,000 affordable homes for each year of this Parliament should be welcome—my noble friend Lady Warwick welcomed it in particular. It is suggested that that would account for at least a third of new housing supply in England over the next five years, so it is a very important component. However, because, as I understand it, that is for intermediate let, can the Minister say where the investment into homes for social rent will come from?

Faced with those huge challenges, what have the Government alighted on as a key policy? The extension of the right to buy to housing association tenants, which most noble Lords have commented on today, is a policy that was highlighted in the general election campaign, no doubt in an attempt to recapture the political benefits of the 1979 announcements. Frankly, it is a cynical way to develop policy in such a crucial area. It drew questions from a number of noble Lords today: my noble friend Lord Campbell-Savours, who described the crucial issues in Keswick; the noble Lords, Lord Horam and Lord Palmer of Childs Hill; the noble Lord, Lord Best, who took us back to the debate in 1983; and my noble friend Lord Hanworth.

Many unanswered questions surrounding the issue have been raised, both today and before. Foremost among those are the concerns that it could lead to fewer affordable homes, not more, and could impair the ability of housing associations to build. The funding that is supposed to come from the sale of the most expensive council houses is supposed to stretch to compensate housing associations for the discount, to enable replacement of the housing association and council houses sold and to contribute to the brownfield fund. How on earth is that all going to fit together?

Have the Government come to a conclusion on the matter of how the most expensive one-third of council houses are to be identified? Will there be separate calculations for properties of different sizes? Will the most expensive properties be identified on a national, regional or some other basis? What assurances will be given that smaller properties needed for those wishing to downsize to escape the bedroom tax will not be forcibly sold, or properties in rural areas? Just what is the legal position of the Government in imposing these sales on independent charities?

Are we not possessed of enough information and advice to deal with this housing crisis? The point made by my noble friend Lord Haskel and other noble Lords about a long-term consensus must be right. As Sir Michael Lyons put it, this needs long-term leadership, which can be achieved by making housing a national priority. We should give powers to local authorities to assemble land and commission development, as well as powers of "use it or lose it" over developers that hoard land. We are certainly for garden cities and engaging the energy and vision of housing associations, but we need to address capacity constraints in the building sector and sort out funding—how we can redirect the enormous funds spent on housing benefit.

Why does all this matter? Because substandard, inadequate and insufficient housing inevitably sits at the centre of deprivation, disadvantage and disillusion. We know that the major influences on a child's life—family income, effective parenting and a secure environment—are all directly or indirectly influenced by a family's housing conditions. I agree with the noble Baroness, Lady Bakewell, that everyone should have a decent home.

5.03 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords who have taken part in this debate and thank the noble Lord, Lord Whitty, for introducing it.

I will start by casting noble Lords' minds back to 2010, to a situation in which the banks were not lending, the builders were not building—as the noble Lord, Lord Stoneham, said, and of course that led to a loss of skills in that sector—and working people were denied the opportunity of home ownership. At that time there was a top-down planning system with regional spatial strategies which produced not houses but the lowest peacetime rates of housebuilding since the 1920s. The regional strategies and the guidance that accompanied them ran to thousands of pages. However, apart from breaking the bookshelves of planning officials across the country, they were notable for building resentment rather than homes for working people. Crucially, the stock of social rented homes had fallen by 420,000 since 1997, with 1.4 million families languishing on social housing waiting lists. Now, we are meeting people's aspirations to own their own home by expanding on improvements in housebuilding and providing support for those who aspire to own their own home.

The noble Lord, Lord Whitty, and many other noble Lords, including the noble Lord, Lord Kerslake, said that we are not building enough homes. It is clear that if we do not supply the homes, there will be a problem. More than 260,000 affordable homes have been delivered in England since April 2010. The Government's 2011 to 2015 affordable homes programme has exceeded expectations by delivering nearly 186,000 affordable homes since April 2011—16,000 more than originally planned. In all, 570,000 new homes have been built since April 2010, and there are now nearly 800,000 more homes than in 2009. The starts on new homes in the year to March 2015 totalled 140,500—the highest level since 2007. Homelessness is now at less than half of its peak level under the Labour Government in 2003.

We have wasted no time unveiling an important set of measures, including a new housing Bill announced in the Queen's Speech which will increase housing supply, support home ownership and give housing association tenants the chance to own their own home.

Lord Campbell-Savours: On that point, I wonder whether the noble Baroness will answer my question. Why should Quaker Housing Trust—another interdenominational-sponsored housing trust—be forced to sell off its assets when it is run by volunteers and linked to all the churches?

Baroness Williams of Trafford: My Lords, I say at this point that we intend not to seize anyone's assets but to enable people who aspire to own their own home to do so. I will come later to the noble Lord's specific point concerning Keswick, if that is okay.

The housing Bill will help more tenants of housing associations to buy a home of their own. It will increase the supply of starter homes, help those wishing to build their own home and ensure more control over planning. I can confirm to the noble Lord, Lord Kerslake, that we will deliver 275,000 affordable homes with £38 billion of public and private investment, achieving the fastest build rate for 20 years. I can also confirm to the noble Lord that the Minister in the other place, Brandon Lewis, is already engaging across the sector, because, as he has said, that is very important. On the 10-year rent policy settlement, the Budget will be on 8 July. As the noble Lord will know, the settlement will then follow, so I cannot give any commitments at this stage.

The noble Lord, Lord Whitty, talked about the lack of affordability for first-time buyers. I can confirm to both him and the noble Baroness, Lady Warwick of Undercliffe, that, in addition, during this Parliament we will be committing to build 200,000 starter homes, to be exclusively offered to first-time buyers under the age of 40 at a 20% discount on the open market value.

[Baroness Williams of Trafford]
The starter homes will also help those in their 20s and 30s to have the opportunity to gain the benefits of home ownership which their parents' generation enjoyed. We have introduced a new planning policy to encourage developers to build starter homes, and we will shortly set out a further package of reforms to support the delivery of these 200,000 starter homes.

The noble Baroness, Lady Warwick, passed me a note saying that she omitted to ask whether she could have a meeting with me. I assume that it would be to discuss housing. I shall be very happy to meet her, although I should add "in due course", as at the moment I am quite busy.

The noble Lord, Lord Haskel, referred to supply constraints. Many noble Lords talked about lack of supply driving up house prices. As I have started to outline, we are increasing supply. We have granted planning permission for 261,000 new homes in the past year. House prices are affected by the economic cycle and we have a strong economy.

The noble Lord, Lord Stoneham, referred to the lack of discussion on Help to Buy. Forty-nine thousand people have been helped to buy, and more than 225,000 households have been helped to buy a home of their own by government schemes such as Help to Buy. Our manifesto committed us to extend the Help to Buy equity loan until 2020. We will introduce a Help to Buy ISA in the autumn to help aspiring home owners save for a deposit on their first home with contributions from government. For every £200 that someone saves through the scheme, the Government will contribute £50.

The noble Lord, Lord Whitty, and the noble Baroness, Lady Valentine, talked about borrowing without caps. The Government have no plans to remove the borrowing caps. They are necessary while we tackle the national deficit inherited from the previous Labour Administration. Local authorities have £3.13 billion of borrowing already.

The noble Lord, Lord Whitty, spoke of the need for a White Paper on a whole new approach to housing and suggested a target of 250,000 new homes—of which a proportion should be social housing—with clearer local responsibilities. As I have said, housing starts are at their highest annual level since 2007. Under Labour, despite the targets, housebuilding fell to its lowest peacetime rate since the 1920s. We are focusing on building more homes.

The noble Lord talked also about the cost of housing benefit rising in the private rented sector. Housing benefit cost rose by 50% in real terms in the 10 years to 2010. In 2013-14, welfare spending fell for the first time in 16 years. Some £470 million in discretionary housing payments has been made available for the period 2013-16 to help vulnerable households during welfare reform transition.

I think that it was the noble Baroness, Lady Bakewell of Hardington Mandeville, who talked about the right to build and neighbourhood planning. Councils will identify and provide land and a right to build for people who want to build or commission their own home. Already, 1,500 communities have started the process of neighbourhood planning, with more than 11% of the population of England living in one or more of the 1,300 designated neighbourhood areas. We will further simplify neighbourhood planning to make it even easier for communities to have more control over housing. The number of homes planned for locally has risen substantially and we saw planning permissions granted to 253,000 homes last year.

Many noble Lords talked about right to buy. As I outlined earlier, we believe in helping people in their aspiration to buy their own home. We will offer more than 1 million housing associations tenants the option to buy their own home in the same way as generations of local authority tenants. Until now, 1.3 million tenants in housing association properties have received little or no assistance in this area, which is clearly unfair. Aspiration should not be determined by the organisation that manages your home nor be limited by it, especially if it is funded ultimately by the taxpayer. That is why we will ensure that housing association tenants have the same opportunities for the right to buy a home at a higher discount level as council tenants. Revenue from sales will be invested in more affordable housing, and for every home sold a new home will be built, which relates to the point raised by the noble Lord, Lord Whitty, about addressing the lack of supply. Through the right to buy refresh scheme, 33,000 homes have been built, with 40,000 since 2010.

The noble Lord, Lord Best, talked about affordable homes being lost for ever because of the extended right to buy. We have been very clear that every home sold will be replaced by another one.

Lord Palmer of Childs Hill: Will the Minister say how the Government will replace them with 30% of the proceeds?

Baroness Williams of Trafford: My Lords, that is a policy announcement to be made later. Given the amount of time left, I am happy to write to the noble Lord in due course, but I am aware that the clock is ticking and I still have a pile of questions to get through.

Pension funds were mentioned by one noble Lord, which brought to mind what is happening in Manchester. Greater Manchester, which has a healthy pension fund, and the city council have signed up to a £30 million joint venture that will see new homes for rent managed by Places for People.

The noble Lord, Lord Haskel, and my noble friend Lord Horam talked about foreign investors in London. The former Government also took action to tackle tax avoidance and to ensure that those individuals who envelope UK residential properties by owning or purchasing them through corporate structures without a commercial purpose, pay a fair share of tax. We are also levelling the playing field by introducing capital gains tax on future gains made by non-residents disposing of UK residential property.

The noble Baroness, Lady Bakewell, also asked why thresholds for exemptions on Section 106 were set at 10 houses and asked why local authorities could not set their own thresholds. Ten homes represents a major development in planning terms and this is accepted across the country. The thresholds policy states that affordable housing contributions should not be sought from sites of 10 units or fewer and 1,000 square metres or less, and a lower threshold of five units applies in national parks, areas of outstanding national beauty

and designated rural areas as a direct result of concerns raised. New developments tend to be predominately smaller scale in rural areas.

The noble Baroness, Lady Bakewell, also said that there should be more targeted funding for rural affordable housing through the HCA. The HCA looks at a range of factors, including local circumstances, when allocating funding. There is no set amount of grant funding. Higher costs that can occur in rural areas are taken into account.

The noble Lord, Lord Campbell-Savours, talked about the impact on community housing trusts of the extension of right to buy. To some extent, I have already started to address that point. The development of that policy is ongoing and we are engaging with that sector.

Lord Campbell-Savours: Is there any chance that this particular group will be exempted from legislation?

Baroness Williams of Trafford: I hope that the noble Lord will forgive me if I do not give a response at this point.

Lord Campbell-Savours: Will the Minister write to me?

Baroness Williams of Trafford: I will certainly write to the noble Lord, but I am not in a position to make policy announcements at the Dispatch Box.

The noble Lord alluded to Keswick, so I will outline how we are supporting housing in Allerdale council. There have been 460 affordable homes delivered in the Allerdale local authority area between 2010 and 2015. In terms of help to buy, there have been 80 equity loan sales to March 2015, 58 mortgage guarantee loans, 158 homes supported by 20 new-buy mortgage loans and, up to 2014, the new homes bonus for Allerdale has been £791,455.

The noble Lord, Lord Best, said that the current right to buy has become more generous with increased discounts and shorter qualifying periods. The qualifying period was reduced from five years to three years under the Deregulation Act 2015, returning to the original qualifying period set in the 1980s, and the right to buy discount has increased to realistic levels after years of stagnation when the discounts became irrelevant.

A question was raised about making land available. We want to make brownfield land available because people want new homes to be built near existing residences while the green belt and the local countryside are protected. They might even want to build their own home. We will ensure that brownfield land is used as much as possible for new development. We will require local authorities to keep a register of what is available and ensure that 90% of suitable brownfield sites have planning permission for housing. I mentioned in this House the other day that we will create a brownfield fund to unlock land. There will also be a new London land commission to identify and release all surplus brownfield land owned by the public sector and fund housing zones to transform brownfield sites into new housing, creating 95,000 new homes.

The noble Lord, Lord Haskel, made the point that no one believes that one-for-one replacement will work, especially in London. There is inevitably a lag between sale and replacement in order to assemble land, get planning permission and so on. That is why in 2012 councils asked for three years to deliver the one-for-one figures that we have published today. They show that 3,053 additional homes were sold in 2012-13, and 3,337 have been started or acquired. The numbers have doubled in the last year, so councils are delivering the one-for-one replacement to date. However, we cannot expect to see the figures on that replacement immediately.

Two noble Lords talked about the definition of affordable housing. It is set out in the *National Planning Policy Framework* and in the Housing and Regeneration Act 2008. The definitions are as follows. The *National Planning Policy Framework* defines it as:

"Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices".

Lord McKenzie of Luton: I hope that the noble Baroness will forgive me for interrupting, but using those definitions, on the affordable programme that the noble Baroness has talked about today, of the 55,000 houses each year, how many of those are social rented homes and how many are intermediate homes?

Baroness Williams of Trafford: Perhaps I may get back to the noble Lord on that particular figure. He always asks specific and detailed questions, so I shall get back to him on that.

I shall carry on with the definition:

"Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision".

The Housing and Regeneration Act 2008 defines social housing as,

"low cost rental accommodation and low cost home ownership accommodation".

"Low cost rent" is simply defined in the Act as "below the market rate", while "low cost home ownership" is defined by its availability for occupation on a shared ownership or equity percentage basis.

I note that time has run out and there is a host of questions that I have not managed to get through. I will write to noble Lords whose questions I have not addressed, and I thank all noble Lords who have taken part in the debate.

5.24 pm

Lord Whitty: My Lords, I thank the Minister for that comprehensive reply. Although comprehensive, it was not entirely comprehensible because when I add up all the figures and work it out, I am not sure what the degree of ambition of the Conservative Government now is in terms of overall delivery. The means of that delivery, despite all the various schemes to which the Minister referred, do not add up to the step change in the delivery of housing supply that we clearly need.

When the Minister looks back she is right to say that the council waiting list was 1.4 million when the coalition Government came to power, but of course,

[LORD WHITTY]
the figure is exactly the same now. All the interventions during that period, which the noble Baroness was praising, made no difference: at the end of the line, there were still a huge number of families who were entitled to affordable housing but did not get it, and far more still never got on the housing list in the first place.

The debate has been characterised by a lot of knowledgeable contributions from people such as the noble Lords, Lord Best and Lord Kerslake, and my noble friend Lady Warwick, who know about housing associations. Housing associations will be required to deliver a large part of whatever targets the Government eventually come up with. It is therefore particularly unfortunate that they are being hobbled by what I referred to earlier as a cack-handed intervention, in terms of the right to buy, in their finances, borrowing credibility and business plans, a point that has been underlined by many speakers.

We have had a good lesson in economics from my noble friends Lord Desai and Lord Haskel. The economics of housing are distorted by two things: first, by the fact that, as my noble friend Lord Desai said, housing is not just a home but an investment. That is a distortion of the British economy to a degree that does not apply everywhere else in the world, and it is probably something we ought to be able to get over, but probably not in the next five years. That benefits home owners—a decreasing proportion of the population. The next generation will not have it as easy as my generation and the previous generation in getting on to the housing ladder.

I thank all noble Lords who took part in the debate. Rural housing and the housing situation in London are important matters for the Government to take on board. The right-to-buy initiative in housing associations is a difficult issue, to which we will return. I say to the noble Lord, Lord Palmer, that my support for the principle of the right to buy is based on the fact that a lot of people have benefited who would otherwise not have been able to get on the housing ladder. However, he is absolutely right that the basic flaw in successive right-to-buy policies has been that we have not replaced the housing stock that they displaced. I do not believe that there are the means of doing so in this policy, either. One-for-one replacement has been impossible in the previous phase of selling council properties, and it will be equally difficult to make the economics and finances work out for housing associations. That is therefore a major hole in the Government's policy.

I was also surprised, given her background, that the noble Baroness did not emphasise more the role of local authorities. The reality is that if we look back over the period to which my noble friends Lord Hamworth and Lady Wilkins referred—after the war—it was largely the local authorities, with government backing, that delivered. I do not believe that we can get back to that level of housebuilding without the major involvement of the larger local authorities. I hope, therefore, that the Government's plans for devolution and the enhancement of the role of London will play a central role in dealing with the housing gap that we need to address.

I thank all my noble friends on this side of the House. I notice that the noble Baroness did not have huge numbers on the Conservative Benches showing an interest, which is a problem for the Government. I am very glad that the noble Lord, Lord Horam, is here, and I agree with much if not all of what he said. It almost reminded me that he was not always a Tory.

This has been a good and very important debate, to which we will undoubtedly return on many occasions when considering the relevant legislation, and I thank everybody who has participated in it. If the Government fall short, millions and millions of our fellow citizens will suffer.

Motion agreed.

Housing: Leaseholders

Question for Short Debate

5.29 pm

Asked by ***Baroness Gardner of Parkes***

To ask Her Majesty's Government what plans they have to review the procedures by which resident leaseholders in blocks of flats agree to a Right to Manage or a change to commonhold tenure.

Baroness Gardner of Parkes (Con): My Lords, I declare my interest as recorded in the register, and as a leaseholder for many years. My continuing interest in this subject will not surprise Members, as I have been concerned about progress in these leasehold matters for a long time and have taken an active part in most new property legislation since I took my seat in the House years ago.

Some of the key issues are simplification of the law, regulation of managing bodies, transparency in the complaint processes, closing loopholes, protecting leaseholders' rights, standards of service and value for money. I raised these same issues in a debate in March 2012—three years ago. Progress has been made only on regulation of managing bodies—managing agents must now be members of the Association of Residential Managing Agents—and in the complaint process; there is now access to a redress scheme. While I regret the loss of the process whereby ordinary individuals had access to less expensive means of raising issues through the leasehold valuation tribunals, brought in under the Housing Act 1980 and price pegged in the later 1985 Act, in which I was involved, their replacement by the First-tier Tribunal Property Chamber from 1 July 2013 is a change consistent with consolidation, which is my aim. The substantive law should now follow to create an efficient and coherent system.

It is estimated by the Federation of Private Residents' Associations—the FRPA—that there are more than 4 million leaseholders in private blocks, retirement homes and local authority and housing association properties. I commend their latest leaflet, *Empowering Leaseholders*, to all, as it sets out the problems and needs very clearly.

I am delighted that the Minister is speaking on this subject today as he is a Scottish law officer. I look forward to hearing my noble and learned friend Lord Keen's maiden speech, which I can add my appreciation

for only now because I am not allowed to say anything after he has made it. Property law is, in my opinion, much better in Scotland than in England. People seem to have a better understanding of their property positions and rights, and conveyancers honour the long-established system of letters of obligation. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 abolished the feudalism feu whereby blocks had a head lessee owner—would that we could produce a similar situation in England.

For years I have been trying to get answers from the Ministry of Justice on property law. Whenever I have tabled a Question—even when a former Lord Chancellor advised me on the wording to attract a reply from the Ministry of Justice—the replies have always been from the Minister for Housing, whose view on these matters seems to overlook, or fail to appreciate, the unsatisfactory legal situation in which many leaseholders find themselves caught.

Property law has been covered piecemeal for years and I have participated in the work done on Act after Act, each one amending a previous Act, so that any solicitor working in this field now has to refer to many Acts. This is a time-consuming and costly process and we need a consolidation Act to make it simpler for people to understand and to avoid many hours of expensive legal work. I quote the FRPA reference to the,

"glaring need to consolidate all … landlord & tenant legislation".

In reply to an earlier discussion of this point, the then Minister replying agreed that laws should be able to be understood by ordinary people, rather than only the professionally qualified, who will of course always be needed for their expertise on complicated points.

The 2002 commonhold Act allows leaseholders to agree to convert their blocks to this tenure, but only if there is 100% agreement. In reply to my many questions on this point in your Lordships' House, it has been admitted repeatedly that 100% is impossible to achieve. The same applies in too many cases where 50% of leaseholders in a block must agree if they want right to manage. This should not be impossible to achieve but it is still very difficult, particularly in London, as there is such a high proportion of foreign owners who simply do not reply to any correspondence on these matters. They expect the standards of the blocks to be maintained but are either unwilling or unable to play any part in ensuring that a block is efficiently managed and money wisely spent.

Not long before the general election, I was present in the other place at a very well-attended meeting chaired by Sir Peter Bottomley. The difficulty of getting any response from some of the leaseholders in a block was raised. A verbal reply from a civil servant present was to the effect that they were considering whether it would be appropriate to treat the non-replies as having been "deemed" to support the majority view. This seems to be an idea that could provide the solution that would benefit those who are presently so frustrated when all attempts fail to get any response.

Dr Lu Xu, senior lecturer in property law at Lancaster University, in a report due to be published shortly on a study funded by the British Academy, has been in contact with more than half of the existing 16 commonhold schemes. That is all there are—16 of these schemes. There are up to 100,000 new leaseholds being created every year. There is little appreciation or understanding of the commonhold system. His findings are that commonhold has never had any support from government. The lack of willingness on the part of mortgage lenders is also a very serious problem at present, particularly for those who already own commonhold property.

The Title Conditions (Scotland) Act 2003 introduced to the statute book the system of real burdens, a more practical system developed by the court and conveyancers in Scotland so that the owner of a flat could be legally obliged to pay for the repairs and maintenance of parts such as the roof of the building. English law apparently does not allow such onerous obligation on property ownership unless there is legislative intervention. Scotland has been very effective in introducing important property law statutes in the 21st century. In 1994, Lord Templeman observed in this House that nothing had been done to legislate on the recommendation of Lord Wilberforce's committee, which reported on this issue in 1965. I am not good at maths but even I can work out that that is 50 years ago.

In 2011, the Law Commission produced another recommendation and draft Bill for land obligations. The government response in 2012-13 was that they intended to respond in 2014. However, despite

"good progress … in analysing the recommendations",

they never had time to respond in the last parliamentary Session. We now have a new Parliament and so the time for the overdue consolidation of housing and property law should come.

Commonhold took more than 20 years of consultation and deliberation to reach the statute book. This Parliament can address any flaws in the present legislation so that it can reach its potential as part of the consolidation process. As I said, land obligation has been a legislative proposal for 50 years, in spite of being promoted by successive Law Commission reports. This Parliament should carefully consider its merits and make something happen. We need a consolidation Act for property in England and Wales.

5.39 pm

Lord Trefgarne (Con): My Lords, I thank my noble friend Lady Gardner for introducing this debate. It provides an opportunity for two things: first, to listen to the important points she has made and on which, I confess, I am no expert; and secondly, for my noble and learned friend Lord Keen to make his maiden speech, to which I look forward.

My noble and learned friend comes to your Lordships' House following a distinguished career at the Scottish Bar. He also comes with form. In 1999, the House of Lords Bill was going through this House. My friend Lord Gray introduced the proposition to the Committee for Privileges that the Bill contravened the provisions of the Union with Scotland Act 1706, which provided for a number of Scottish Peers, elected from among their own number, to come to this House on a regular basis. The proposition was that the House of Lords Bill contravened that provision and that it should be amended accordingly. My noble and learned friend

[LORD TREFGARNE]
Lord Keen represented that proposition to the Committee for Privileges. I am sorry to say he did not persuade it. No doubt he will do better this evening.

We put another proposition to the Committee for Privileges at that time: that a Writ of Summons could not be cancelled in the middle of a Parliament. I am afraid that proposition failed as well—that is that but I am very sorry about it. In the midst of all these proceedings the Bill was amended to allow for 92 of our hereditary colleagues to remain and I have the privilege to be one of them. I look forward very much to the maiden speech of my noble and learned friend Lord Keen and I thank my noble friend Lady Gardner for making that possible.

5.42 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Baroness, Lady Gardner of Parkes, for putting down this Question for Short Debate. As usual, she raises an important issue, which the Government should look at and take action on. The noble Baroness has an impressive record in raising these matters and the Government would be wise to listen to her.

I warmly welcome the noble and learned Lord, Lord Keen, to the House. I look forward to his maiden speech, responding for the Government. I looked at the noble and learned Lord's biography and it makes impressive reading indeed. As the noble Lord, Lord Trefgarne, said, he is a lawyer with a distinguished legal career, a Queen's Counsel and a member of the Bar both in Scotland and in England and Wales. He joined Her Majesty's Government as the Advocate-General for Scotland immediately after the general election last month. He is a law officer of the Crown and advises the Government on Scottish law. He derives considerable power from the Scotland Act and one of his roles is to consider all Scottish Parliament Bills as they progress, in consultation with interested UK departments, to assess their legislative competence. I, together with all Members of this House, wish him well in his new responsibilities at the start of this Parliament.

As the noble Baroness, Lady Gardner of Parkes, pointed out, the law in respect of leaseholders, commonholders and other aspects of living in a property which is leasehold rather than freehold is complex and not easily understood by people. That is not a good place to be in. The law should always aim to be clear, simple and understandable for ordinary people, particularly when it affects where they live. This must surely be an aim of the Government. It would be useful if in his response the noble and learned Lord could address what plans the Government have to ask the Law Commission to look at these matters, with a view to producing a Bill that consolidates all the various property Acts, as the noble Baroness, Lady Gardner of Parkes, referred to. I think it is long overdue and will be warmly welcomed.

I have never lived in a leasehold property, having grown up with my parents, brother and sister in a council property; each property I have bought and sold as I have moved around the UK has always been freehold. But I have a number of friends who live in flats that are leasehold and I have seen some of the quite unsatisfactory arrangements and conditions they live under. It is not something that I would find acceptable in all cases and the Government really should seek to act on it.

I am also aware of the considerable number of new flats being built in the London Borough of Southwark, where I grew up, and the London Borough of Lewisham, where I live, and other parts of London, which will have these similar leasehold arrangements. The system of leasehold tenure that we have in England and Wales is fairly unique. The lease can be as long as 999 years and ensures that the leaseholders of a property with communal areas are equally responsible for its maintenance. There are significant problems with this type of tenure and the managing agents, who have no responsibility to the leaseholders; the leaseholder is in effect frozen out of any involvement in the effective management of a property they own, which may be their home.

We should all expect good service and value for money but living in a leasehold property with a managing agent, where there is little competition, can be something of a lottery. It is very difficult to change your managing agent or to challenge a service charge. The leaseholders can find it extremely difficult, having to go to the leasehold valuation tribunal to receive a satisfactory remedy. There are further problems with connected companies where a freeholder also owns the management company. Of course, leaseholders have sometimes been successful at the leasehold valuation tribunal and been awarded sums of money, having suffered unacceptably high service charges.

This is a huge issue. We have up to 5 million people living in 2.5 million leasehold properties spending as much as £2.5 billion in service charges per annum. I would like to see the introduction in this sector of an independent regulator which would be able to ensure that agents act in a professional manner and adhere to minimum standards of competence. I would like to see all managing agents subscribing to an ombudsman service guaranteeing leaseholders free and accessible arbitration. I would also like to see reform of the leasehold valuation tribunal, and the order that prevents freeholders reclaiming their tribunal costs retrospectively through service charges should be automatic unless the freeholder can prove that they should be able to reclaim charges and that the threat of forfeiture of properties for failure to pay charges is disproportionate.

The Commonhold and Leasehold Reform Act 2002 created commonhold tenure, designed to be used in both new and existing tenure. Similar forms of tenure are used across the world, which offer perpetual ownership of blocks of flats alongside a share of a company responsible for common-area management. The commonhold community association is owned by the unit-holders and they decide who manages the property. The major barrier, which the noble Baroness, Lady Gardner, referred to, is the 100% requirement for converting existing leasehold properties. This should be relaxed because we are giving one leaseholder a complete veto on transferring to commonhold. That is one of the key points the noble Baroness made in her contribution.

That 100% requirement should be reduced to a figure in the region of 75%, which still means that you need three-quarters of the leaseholders to agree, but

no one individual has a veto on making this change. I will be very interested in the response to this point from the noble and learned Lord, Lord Keen. Will the noble and learned Lord also tell the House what plans the Government have to promote commonhold and whether they are considering incentives to sell new blocks of flats as commonhold?

The Government should also do more to promote the right to manage, which allows leaseholders to assume control over management of their properties without having to pay to own the freehold where they get 50% qualifying support to do so, although the freeholder should be required to assist the leaseholders in making contact with each other as they may not be in residence at any particular point in time. Again, the noble Baroness, Lady Gardner of Parkes, referred to this. This is an important policy matter that affects many people and the time has come for the Government to take positive action to help leaseholders and create more flats in commonhold. I particularly like the idea of non-responders being regarded as having accepted. That may be one way of injecting some life into this policy.

In conclusion, I again thank the noble Baroness, Lady Gardner of Parkes, for raising this important issue in your Lordships' House, and hope that the noble and learned Lord, Lord Keen—in what I am sure will be a very eloquent contribution—will be able to set out some hope for the future.

5.49 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con) (Maiden Speech): My Lords, it was a singular honour to be introduced to your Lordships' House. I am obliged for the consideration and courtesy extended to me by Members and staff, and more immediately by my noble friend Lord Trefgarne and the noble Lord, Lord Kennedy of Southwark. My first week in this House was one of lost and found: I got lost and was found by the doorkeepers. Matters deteriorated slightly when I attempted my first Division on Wednesday of this week. I moved with alacrity to the not-content corridor. I passed through that corridor, turned right and right again. I became slightly confused but joined a group of Members standing in the vicinity of the Chamber. After a minute or so chatting away, I noticed that we were shuffling in a particular direction. It occurred to me that I was re-entering the not-content corridor. I rather thought at this moment that not even the Chief Whip would welcome my attempts to vote twice in a single Division, and I slipped away quietly to reconsider the geography of your Lordships' House.

I thank my noble friend Lady Gardner for raising this Question and for the contribution from the noble Lord, Lord Kennedy. Two particular issues are touched upon: commonhold and the right to manage. Although they appear to converge and to be related, they are of course materially very different. They are quite distinct concepts. The right to manage is, as it says, about the right of leaseholders to take over the management of a multi-unit block. Commonhold, on the other hand, is a matter concerned with the law of property—a more fundamental issue of rights and obligations.

The Government welcome suggestions to improve the working of the law of property for property owners who live in multi-occupation buildings and will of course consider all proposals carefully. However, the Government are also mindful of the need to strike a balance between the interests of all those who would be affected by any change, whether as freeholders, leaseholders or commonholders. We are also mindful of the need to avoid putting unnecessary regulatory burdens on property owners, whether they are freeholders or leaseholders.

On the matter of right to manage, that specific statutory right was conferred on long residential leaseholders in 2003. The right to manage can be assumed by an administrative process. There is no legal process required and in that way, expense is kept to a minimum. It can be achieved effectively by a majority of the leaseholders in a multi-unit building. It has clearly been, in relative terms, a success. We know that because we have seen the registration of at least 4,000 right-to-manage companies at Companies House. The process is straightforward and fair. It does not involve the long leaseholders in the expense of having to acquire by enfranchisement the freeholder interest in any property.

However, one has to remember that the right to manage brings with it very material obligations and, in that context, it is important that there should so far as possible be a consensus between leaseholders as to whether they wish to assume those rights and obligations. There can be difficulties in tracing some leaseholders, but there are means by which this can be achieved if a right-to-manage company is incorporated with the intention of taking over the management of a block.

Pursuant to Section 93 of the Commonhold and Leasehold Reform Act 2002, the RTM can require the landlord to provide information with regard to the whereabouts of leaseholders. There are similar rights under Section 82 of the same Act. Our perception at this time is that the right to manage is a welcome addition to the armoury of leaseholder rights and is proving effective in the protection of those rights.

I turn now to the matter of commonhold. My noble friend Lady Gardner observed that we could trace matters back to the Wilberforce committee of 1965—that is true. The coining of the term "commonhold" dates back to 1984 and a report from the Law Commission. Thereafter, I think it would have to be accepted that matters moved slowly until we had the 2002 Act, which came into force in 2004. Part of the difficulty, which I intend to address in a moment, can be discerned from the title of that Act—the Commonhold and Leasehold Reform Act 2002. Hand in hand with the introduction of commonhold came very material improvements in leasehold. In a sense, that carried the seeds of the difficulty encountered by commonhold as a form of land or property holding.

It was anticipated by the then Lord Chancellor in 2004 that some 6,500 commonholds would be created in each year after the Act came into force. In the event, there were not 6,500 a year; there were not 650 a year; there were not 65 a year; and there were not six a year. There have in fact been a total of 17 commonholds created since 2004. A great deal of effort, intelligence,

[Lord Keen of Elie]
research and work went into the creation of commonhold. It sailed under the fair wind of good intentions into a legislative Bermuda Triangle and nothing—nothing—came out.

Why should that have been? As I say, at the same time as commonhold was created, leasehold reform appeared. With those improvements, it became apparent that market forces would move in favour of continued use of leasehold rather than the adoption of commonhold. That carried with it a multitude of potential difficulties, we see now with the benefit of hindsight, including: the need to incorporate a company limited by guarantee; the need for there to be directors of that company; and the need for the directors of that company to accept the obligations of directors, including their fiduciary duties and the obligations now contained within Section 174 of the Companies Act. So we had a concept unfamiliar to property lawyers involving a further concept—corporations subject to guarantee—that was not particularly familiar to company lawyers. In these circumstances, the market has simply moved away from the idea of adopting commonhold. That is something we have to accept.

Reference was made by my noble friend Lady Gardner and the noble Lord, Lord Kennedy, to the employment of something other than the 100% rule for commonhold. But that is not an answer to the problem; that is a means of creating a further layer of complexity and difficulty. I say that in this context: if you were to allow commonhold by virtue of the votes of a majority of those in a unit, would you, first of all, be excluding the rights of the freeholder, whose rights would be extinguished? If so, that is a deprivation of property, contrary to Article 1 of the first protocol of the European Convention on Human Rights.

Secondly, will you deprive those non-consenting leaseholders of their rights as leaseholders, which are substantial because of the statutory protections now available to them? If so, that is a potential deprivation of property contrary to Article 1 of the first protocol.

Alternatively, will you allow those non-consenting leaseholders to remain as leaseholders of the commonhold, in which case you create not the intended community that commonhold was intended to bring about but something quite different: a division or pepperpot. There will be on the one hand commonholders of units and on the other long leaseholders who wish to remain long leaseholders within the same unit. Yet the commonholders may find that they then have a responsibility to the leaseholders because the leaseholders continue to have statutory rights about the level of service charge quite different to those of commonholders.

The commonholders' rights and obligations in respect of the service charge are determined by contract and agreement. They do not have to be reasonable; they simply have to be agreed. However, the leaseholders who remain are entitled to the statutory protections already conferred on them. You could have a situation in which the commonholders decide on a service charge at one level—let us say, £10,000—and the consequence is that the leaseholders then have theirs reduced to £5,000. Who will pay the difference? As I say, introducing the idea of commonhold is an attractive way forward for property law—but only up to a point.

I am reminded that I have only one minute and have traversed but little territory. I apologise, but let me say this: despite being a Scot I cannot embrace the idea that Scotland has a better system. It has a different system, which traces its roots to the introduction of the feudal system by David I in the 14th century. There were proposals to abolish the feudal system in the 16th century but it took a further 500 years of consideration before that came about. However, the distinction is that real burdens could always be carried by property in Scotland—that is, perishable property title—because of the superiority. Even when that was abolished in 2003, real burdens could continue. It is not easy to compare the two systems because of the fundamental differences in property law and property title, so we can gain only little assistance from what happened there.

On consolidation, while the law is still in a state of flux, consolidation is not the way forward and therefore there are no proposals for it at present. On a review of the right to management, there seems no pressing reason for review. On commonholding, it is a voluntary scheme. It is open for the market to embrace it and perhaps there are steps that can be taken to encourage the market to do so. But as we have seen, the market finds it an unattractive offering despite all the efforts that were made to bring it to the market. It remains and will remain a voluntary scheme for those undertaking multi-unit development but we can see that it has not taken off at present. I apologise if I have overstayed my welcome and thank noble Lords for their attention.

House adjourned at 6.03 pm.

Volume 762
No. 21

Thursday
25 June 2015

CONTENTS

Thursday 25 June 2015