Vol. 768
No. 92

Wednesday
13 January 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
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House of Lords

Wednesday, 13 January 2016.

3 pm

Prayers—read by the Lord Bishop of Rochester.

Bus Services: Local Government Funding

Question

3.06 pm

Asked by ***Lord Greaves***

To ask Her Majesty's Government what assessment they have made of the effect of reductions in local government spending on local bus services in 2016–17.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, decisions about the provision of bus services requiring local government subsidy are a matter for individual English local authorities in the light of their other spending priorities. The majority of public funding for local bus services is via the block grant provided to local authorities in England from DCLG. The Department for Transport also provides £40 million in bus service operators grant funding directly to English local authorities to help deliver local bus services.

Lord Greaves (LD): My Lords, that is a factually correct account. However, all over the country there are horrific stories about local bus services being cut as a result of cuts in council subsidies which are as a result of cuts in the funding of local authorities. In my own county of Lancashire, the proposal that will go before the county council is to abolish bus subsidies for services to villages, services in rural areas, and the little buses that go around the towns, which are so important. Is this really the legacy that this Government want to leave?

Lord Ahmad of Wimbledon: It is not. I mentioned the bus service operators grant. In Lancashire, last year, we provided £1.86 million directly for the purposes of retaining services. The Government are looking at the overall offering of bus services, particularly in rural areas, to ensure both connectivity and the sustainability of essential transport links.

Lord Snape (Lab): My Lords, did the Minister happen to see the BBC "Countryfile" programme last Sunday, which set out starkly the decline in bus services throughout this country, particularly in rural areas? Does he agree with the conclusions of that programme that this decline is largely due to the reduction in government payments to local authorities and direct grants for bus services? Can he assure the House that the much-vaunted devolution of these services will be accompanied by proper finance? Otherwise, some of us might suspect, that decline will continue, with the blame moving from Whitehall to the town hall.

Lord Ahmad of Wimbledon: I did not see the programme. Part of my Sundays are taken up with my own "countryfile" responsibilities of helping my children build their country projects—in this case, however, it was a chocolate cake.

To get back to the question, the noble Lord is quite right to point out that there are challenges in funding. However, this is not about apportioning blame to one over the other; it is about ensuring that essential services are sustained, and the Government are moving forward on this. Indeed, yesterday, during the debate on the devolution Bill, I talked about the creation of STBs, which I intend will ensure that local decisions on transport are made by the people who know best.

Lord Rosser (Lab): My Lords, given the drop in fuel prices, what action have the Government taken to ensure that there is now a reduction in bus fares to reflect the reduced cost arising from that?

Lord Ahmad of Wimbledon: As the noble Lord will be aware, one of the legislative proposals coming forward is the buses Bill, which will ensure again that local authorities are empowered—through the purposes of franchising, for example—to ensure better, sustainable fares and the sustaining of essential bus services. That will form part and parcel of the Bill.

Baroness Randerson (LD): My Lords, Conservative councillors in Wiltshire, Dorset and Somerset are all among those proposing swingeing cuts to bus services across the country. Indeed, Somerset plans to cut community transport schemes which are usually the last refuge for rural services. The Government proposed after the election the reform of the bus service operators grant. That is clearly now delayed. Can the Minister tell the House when announcements will be made on this? Can he assure us that any reform of this grant will include an element for mileage which would protect rural bus services?

Lord Ahmad of Wimbledon: I am sure the noble Baroness is aware that the grant she talks about is being protected. Indeed, in the last spending round that is exactly the commitment given by my right honourable friend. The announcements are imminent and will be made quite shortly. I also draw the noble Baroness's attention to the total transport pilot fund we are currently allocating to 37 local authorities which are looking at an integrated form and retention of transport funding, which includes the bus services operators grant, local bus services support through DCLG, home-to-school transport provided through DfE and DCLG, and non-emergency patient transport. We need an integrated approach to long-term solutions and sustainability at a local level.

Baroness Perry of Southwark (Con): My Lords, does my noble friend agree that it is unfortunate that some local authorities are making cuts in services when they are sitting on substantial reserves?

Lord Ahmad of Wimbledon: I agree with my noble friend but, as I have said already, it is very much a decision-making matter for local authorities. We are,

[Lord Ahmad of Wimbledon]
through various legislative measures that we have taken in the previous Government and in this Government—only yesterday through the devolution Bill—underlining the importance this Government attaches to local decision-making, including on transport.

Baroness Royall of Blaisdon (Lab): My Lords, local decision-making is extremely important but it requires funds to underpin it. However, much has been made about the need for good rural bus services. At the moment the cuts in rural bus services are hitting students particularly harshly. Will the Minister have a discussion with his colleagues in the Department for Education so that we can ensure that students choose their post-education studies on the basis of what is best for their future and not on the availability of buses to get them to and from their courses?

Lord Ahmad of Wimbledon: I assure the noble Baroness that I have regular discussions and conversations with colleagues across a vast range of areas and across different ministries. The total transport pilot fund I have highlighted again underlines the Government's commitment to look at how funding works and how government funding is sourced and provided at a local level across a range of different departments. We are half-way through the pilot and I shall report back once we have completed it.

Lord Lea of Crondall (Lab): My Lords, do the Government agree that public services are part of our living standards and that when measuring the cost of living it is not only the retail prices index that is not moved by these affairs? People have to go to a supermarket a long way away and pay for a taxi or make some other arrangement. Is there not a case for an inquiry into how we measure the cost of living when it does not include these major elements?

Lord Ahmad of Wimbledon: As a public servant I agree with the opening statement of the noble Lord: the public sector is an important part of this. I do not agree with the premise that an inquiry is required. When it comes to transport, we need to ensure that we have schemes in place that work for ensuring sustainable transport at a local level. That is the Government's priority.

Gross Value Added

Question

3.14 pm

Asked by ***Lord Wigley***

To ask Her Majesty's Government what are the latest figures for the gross value added per head in England, Wales, Scotland and Northern Ireland respectively.

Lord Ashton of Hyde (Con): My Lords, the latest figures published by the Office for National Statistics show that in 2014 gross value added per head was £25,367 in England, £17,573 in Wales, £23,102 in Scotland and £18,682 in Northern Ireland.

Lord Wigley (PC): My Lords, last week the Chancellor of the Exchequer boasted in Cardiff about the UK Government's role in securing a small improvement in the Welsh economy. That being so, do they also take their share of the responsibility, at least, for the fact that the average Welsh income per head is still more than 25% below the average for England? That has stubbornly been the fact for the past three decades. Are the Government totally complacent about that?

Lord Ashton of Hyde: My Lords, as the House knows, my right honourable friend the Chancellor is a modest man and will take credit only where it is due. The fact is that since he became Chancellor, some 70,000 jobs have been created in Wales, unemployment has fallen by 30% and we have invested £69 million in rolling out superfast broadband to 500,000 homes and businesses. But as the noble Lord has said, it is also true that since GVA statistics started in their current form in 1997, under all Governments GVA in Wales has been around 70% of that in England every year. Certainly, the Chancellor is not going to take responsibility for all those years, but the good news is that since 2010, Wales's GVA has grown at a faster rate than England's.

Lord Forsyth of Drumlean (Con): My Lords, can my noble friend confirm that the figures for Scotland would be disastrously lower had Scotland voted for independence in the referendum, given that the oil price has fallen from what the SNP said it would be, which was $110 a barrel, to $31 today?

Lord Ashton of Hyde: Obviously, the premise of the independence party was based to a large extent on the oil price, but as my noble friend has said, it has fallen, from $120 per barrel in 2012, and is predicted to fall as low as perhaps $25. That is a very important factor to take into account.

Lord Anderson of Swansea (Lab): Does the Minister agree that a similar picture of comparative poverty emerges from tax receipts in Wales? The last figures I saw suggested that only 4,000 Welsh taxpayers are in the top tax band. The question is surely this: what are we going to do about it? Does that not have implications for the Barnett formula, and will the Minister confirm that the comparative position in Wales is deteriorating?

Lord Ashton of Hyde: The trouble with comparing England and Wales is that England has a population of about 53 million, while the population of Wales is some 3 million, so it is a difficult comparison to make. A better comparator would be the regional differences in England. But obviously, what we want is for more people to go into higher tax bands in Wales because the economy is booming and we are doing our bit to help that through investment. We hope that, when the devolution settlement is reached under the new Wales Bill, the Welsh Assembly will be able to play their part in growing the Welsh economy.

Lord Thomas of Gresford (LD): My Lords, in 1999 the GVA index for Wales was 79.2 as against a UK average of 100. The Labour Government of the day

promised to increase it to 90 by 2010, but in fact it has dropped to 71. Perhaps I may employ my family motto, ar bwy mae'r bai—who can we blame?

Lord Ashton of Hyde: My Lords, I think we should take a more positive view and work out what we are going to do about it. Certainly in Wales, there is plenty that the Government are doing. For example, capital spend is increasing by £900 million over this Parliament. Infrastructure investment through the block grant in this Parliament will rise by just under 17%, and among other things we would like Cardiff to agree to a city deal which will help its economic growth.

Lord Geddes (Con): Does my noble friend agree that the economy of Wales would be greatly improved if the Severn barrage project went ahead? What progress has been made on that?

Lord Ashton of Hyde: I believe that my noble friend has raised this point before. I am not sure that I can make much more progress, except to say that the Government have started a due diligence process on this project. But it is very important to work out the cost-benefit analysis of tidal lagoon energy. This is an ongoing process. It is important that we understand the costs of this project and the technology in detail, particularly in the broader context of energy needs and prices, and availability.

Lord Davies of Oldham (Lab): My Lords, the Minister said that the Chancellor was a modest man. Well, he certainly used to boast about the fact that he was going to achieve a balanced economy in terms of manufacture and finance, as well as regional balance. Since 2009, London's economy has grown by 20.9% but in one region—Yorkshire and Humberside—the figure is 12.8%. What on earth have the Government got to boast about in achievements in that area, particularly when, for the first time in a decade, wealth inequality in this country has increased? Is it not clear, in this the seventh year of the long-term economic plan, that this Government are utterly incapable of creating fairer growth across the economy and ensuring that all citizens participate to some extent in improving conditions?

Lord Ashton of Hyde: The noble Lord should not decry the fact that gross value added wealth creation takes place in the south-east and London: that is obviously a good thing for the country. However, we do want to make sure that that same growth applies to the regions. He is right that it is less in the regions of England and the devolved Administrations than in London, which is bigger by far than the rest of the regions. Of course, we do have a comprehensive plan to rebalance the economy and strengthen every part of the UK. It involves major investment in transport infrastructure, science and skills, and support for local businesses. We have set up the National Infrastructure Commission, for example, which will spend £100 million in this Parliament, of which £61 million will be on transport.

Saudi Arabia: Executions

Question

3.22 pm

Asked by ***Lord Hoyle***

To ask Her Majesty's Government what representations they have made to the Government of Saudi Arabia about their reported plans to execute 50 people.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the British Government are firmly opposed to the death penalty in all circumstances and in every country. We are deeply concerned about the execution of 47 people on 2 January. We have expressed these concerns to the Saudi authorities. The British Government do not shy away from raising legitimate human rights concerns and we believe that we would be more successful discussing cases privately with Saudi Arabia than criticising it publicly.

Lord Hoyle (Lab): I thank the Minister for that reply and I am pleased that she has taken a stronger attitude in relation to the plans, because there appeared to be a craven silence in relation to them, particularly as this is the largest number since 1980. What view does she take of the opinions that have been expressed that these are intended to derail the Syrian peace process talks taking place in Vienna?

Baroness Anelay of St Johns: My Lords, throughout my time at the Foreign Office, I have made it clear on every possible occasion the strength of feeling that the Government have about the death penalty. It is wrong in principle and wrong in practice. Clearly, the noble Lord and I agree on that. There is a concern that any changes in behaviour by any country in the region may have a destabilising effect on the important discussions to which the noble Lord rightly alluded. We understand from both Iran and Saudi Arabia that they expect to continue to support the negotiations on Syria.

Baroness Falkner of Margravine (LD): My Lords, the noble Baroness accepts that Saudi Arabia not only uses the death penalty but uses it against political prisoners, which is a significant point. It also wages illegal wars, as with its neighbour Yemen, and supports jihadi groups in Syria. Will she tell the House how she thinks that the UK Government supporting and collaborating with it to get it elected to the Human Rights Council of the United Nations advances international peace and security or the UK's interests? Does it advance human rights?

Baroness Anelay of St Johns: My Lords, there are at least five questions there. Of course, I am supposed to try to address just two. I will choose perhaps the two most contentious. First, with regard to Yemen, it is not an illegal activity. I remind the noble Baroness that the request for support was made by the legitimate President, President Hadi, to the United Nations Security Council.

[Baroness Anelay of St Johns]

Regarding the Human Rights Council, I say now, as I have said throughout, that the matter to which the noble Baroness referred was an uncontested election—I know that that has not got into the media, so many people are not aware of it—and therefore the Saudi Arabian place, by the interesting way in which the Human Rights Council works, was taken because it is a member of the Asian group.

Lord Singh of Wimbledon (CB): My Lords, by any sort of measure the regime in Saudi Arabia, with its beheadings, amputations and public floggings, is one of the most barbaric in the whole of the Middle East, yet our Government continue to look more benignly at that regime than at others in the area. There is a Christian hymn that states:

"They enslave their children's children who make compromise with sin".

Does the Minister agree with this sentiment and agree that the overriding strategic interest for the 21st century is even-handed respect for the human rights of all people?

Baroness Anelay of St Johns: My Lords, we do indeed subscribe to that very value: there should be even-handed respect for the human rights of all people. But we have to recognise, whether we like it or not, that Saudi Arabia follows sharia law, as other states do, and that the death penalty is part of that. Clearly, we do not support that and we work towards its eradication around the world. Saudi Arabia is a country with which we continue to work strongly. It is an important partner for security purposes. Indeed, it has provided information that has enabled us to avoid serious security incidents in this country.

Lord Tugendhat (Con): My Lords—

Baroness Corston (Lab): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): I am sorry to interrupt. We have not heard from the Conservative Benches, but it would then be right to come back to the Labour Benches.

Lord Tugendhat: My Lords, I congratulate the Minister on her reply. Would she not agree that, while megaphone diplomacy is never very helpful, it is important that the Government should make clear privately to the Saudi Government that the indignation and concern felt about their policy crosses all political boundaries in this country and that therefore, if they persist in their present line of policy, it will make it very difficult indeed for the British people, let alone the British Government, to support the continued close relationship that we have enjoyed with Saudi Arabia in the past?

Baroness Anelay of St Johns: My Lords, my noble friend makes the excellent point that all states around the world need to balance very carefully their actions against how they will be seen by the international community.

Baroness Corston: My Lords, given what the Minister said in reply to other noble Lords, and in view of the fact that she and I were on a Speaker's delegation to Saudi Arabia in December 1997—probably the only time in our lives when our ankles had to be covered because they were considered provocative—and remembering the experience of that visit, would she agree that it would have been much better if the Prime Minister had said something a little more emphatic than that it was "disappointing" that 47 people had been executed?

Baroness Anelay of St Johns: My Lords, we do not talk about disappointment with regard to individuals—we say that it is wrong for the death penalty to be used and we are deeply concerned when it is—because it is wrong to pick out one individual as against another. Every death is to be mourned and grieved. It is wrong and we need to work together to change the future. Saudi Arabia may be changing slowly, but it is. The noble Baroness reminds me of that visit. However, we may have been the first ladies to visit Riyadh—indeed, even into the mosque in Riyadh, where we were not asked to cover our heads.

Sugar Tax

Question

3.29 pm

Asked by ***Lord Clinton-Davis***

To ask Her Majesty's Government what plans they have to impose a sugar tax on fizzy drinks.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, we will be launching our childhood obesity strategy soon. It will look at everything, including sugar, that contributes to a child becoming overweight and obese. It will also set out what more can be done by all sides.

Lord Clinton-Davis (Lab): If we had a league of government U-turns, this one would surely head the list. Not so long ago, the Prime Minister said that a sugar tax was not worth while. Now, urged on by experts and MPs of all parties, he says that it is not a bad idea. What should we now do? My view is that we should follow the example of Mexico. Why wait for many months when the evidence is very clear? Why do the Government not act immediately?

Lord Prior of Brampton: My Lords, I think the Prime Minister's position is that he will want to think long and hard before imposing a tax that would fall by and large on those least able to afford it. On the other hand, the Prime Minister and the Secretary of State for Health recognise that obesity is a scourge in this country, affecting young people in particular, and will want to implement a comprehensive range of measures to tackle it.

Baroness Hollins (CB): My Lords—

Lord Ribeiro (Con): My Lords—

Noble Lords: Cross Benches!

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I was just going to say that perhaps the House itself would like to indicate who it would like to ask a question because we are at that point in the cycle when it is not anybody's turn next. However, I think the House has indicated that it would like to hear from the noble Baroness, Lady Hollins.

Baroness Hollins: My Lords, what assessment have Her Majesty's Government made of evidence provided by the BMA—I should declare an interest here as chair of the BMA's Board of Science—Public Health England and others on the anticipated positive impact of implementing a sugar tax? Does the Minister agree that we need a range of regulatory and educational measures to reduce the intake of added sugars, particularly among children and young people, but also adults with learning disabilities who are vulnerable to some of the same market pressures?

Lord Prior of Brampton: My Lords, the Government have taken into account a range of evidence from Public Health England, the McKinsey institute, the SACN and others in coming to their strategy. The noble Baroness is absolutely right that the response will need to take into account issues such as reformulation, portion size, availability and a whole range of other issues that affect sugar intake.

Lord Ribeiro: My Lords, while the sugar tax for fizzy drinks is a regressive tax, the very people it would target stand to benefit from such a tax because, leaving aside obesity, which is a long-term problem, dental caries are a short-term problem. There is no doubt that sugary drinks are causing a massive amount of dental caries, the cost of which falls on the NHS, as these unfortunate children have to have dental extractions which will affect their well-being and quality of life for years to come.

Lord Prior of Brampton: My Lords, reduction of sugar is a critical part of the Government's obesity strategy. It has been made clear by the reports of Public Health England, the McKinsey institute and others that there is no silver bullet. It is not just a question of passing a tax and getting the results that you wish to have. If a tax were to come in, it would be part of a whole range of other measures.

Lord Rennard (LD): My Lords, does the Minister accept that the introduction of a modest sugary drinks tax should be a win-win policy in that, if it works, people would be deterred from consuming those drinks, switch to alternatives and lead healthier lifestyles, and, if it does not work, it would raise money much needed by the NHS to deal with the problems of the obesity and diabetes epidemics?

Lord Prior of Brampton: My Lords, as I said earlier, the Prime Minister and the Secretary of State for Health are thinking long and hard about what should be part of the obesity strategy. I am not sure that the noble Lord is right when he says that a modest tax would have much of an impact; it would have to be a significant tax to have a major impact on the consumption of sugary drinks.

Lord Brooke of Alverthorpe (Lab): My Lords, does the Minister agree that the campaign against tobacco and cigarettes has been particularly effective? It has been applied across all sectors of the economy with no differentiation between any particular sectors. He mentions that, this time round, we have to be concerned about how sugar might impact on particular parts of the community but, surely, we should make our approach similar to what we did with cigarettes and tobacco and we should apply it right across the board so that we all gain from the change.

Lord Prior of Brampton: My Lords, I think that the noble Lord is right; indeed, the Prime Minister has called this the new smoking. Obesity is as important to public health as smoking has been in the past. We have to build a much stronger case among the public at large before we can start to introduce the full range of tax and other measures that we have had for cigarettes and alcohol.

Baroness Walmsley (LD): My Lords, has the Minister tried the Sugar Smart app on his mobile phone, which can be found on the Change4Life website? I tried the app this morning—it is very clever; it reads a barcode and tells you how much sugar is in a product. Unfortunately, however, I tried it on five sugary products and it did not have any of them in its database. Has this very good idea been under resourced?

Lord Prior of Brampton: My Lords, fortunately I, too, tried the Sugar Smart app this morning. Interestingly, 600,000 people have downloaded that app and the PHE Change4Life programme has had considerable success in raising awareness of the amount of sugar that you consume when you buy a product in the supermarket.

Housing and Planning Bill

First Reading

3.36 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Strathclyde Review

Motion to Take Note

3.36 pm

Moved by ***Lord Strathclyde***

That this House takes note of Command Paper Cm 9177, Secondary legislation and the primacy of the House of Commons.

Lord Strathclyde (Con): My Lords, I am flabbergasted by the number of Peers who have put their names down to speak this afternoon. For a moment I wondered whether they realised that we are discussing statutory

[Lord Strathclyde]
instruments, then I thought that perhaps I had been more controversial in my review than I had originally intended. I think, however, that it is a sign of the importance that we attach as a House to the way that we pass legislation and to the powers that we have. All are, therefore, extremely welcome, perhaps none more so than the two maiden speeches that we will hear this afternoon, from the noble Baroness, Lady Bowles of Berkhamsted, and the noble Lord, Lord Darling of Roulanish. The noble Lord, Lord Darling, brings recent and genuine breadth of experience and knowledge from the House of Commons, which I know will be extremely valuable to this House. Another reason I welcome his words is that I think he was probably the Minister responsible for the introduction of tax credits in the first place. So long as he can keep his words uncontroversial, it will be interesting to hear what he has to say.

This debate goes to the heart of what we believe we are here to do—what we are for. It goes to the heart of the relationship between this House and the House of Commons and how we conduct our affairs, particularly given that the Government are, and always are, a minority in this House. There has been nothing new in that since 1945. I have heard some people say that the Government have overreacted in all this because it is the first time that a Conservative Government find themselves not in control of the House of Lords. I have some sympathy with why people say that. I do not think that it was always quite as easy as some people imagine when we had about 400 Peers in the House of Lords, mainly because they did not always turn up, but I understand the point that is being made. The answer to that, of course, is that the Government need to learn lessons about how to handle the House of Lords. However, it is also the first time that the Labour Party finds itself in a position of power and authority as the Opposition in this House and, therefore, a great responsibility falls upon its shoulders.

I also presume no greater qualification than anybody else to be leading this debate, but between 1994 and 2013 I was either the Chief Whip or Leader in opposition and in government. Therefore, I had a rare view and a period of study of the theory and practice of how we deal with secondary legislation in this House, particularly how statutory instruments are dealt with, and of the various conventions that guided us during that period. I am sorry that the noble Lord, Lord Hennessy, is not here, because it is what he might have said was a study in the emotional geography of the House, and in how it has changed over the last 20 years.

We need at least to understand and agree on the nature of this House. Without a government majority, it is a very strange beast. I was in opposition for 13 years, and there is always an obligation in opposition to know that there is often an opportunity—a requirement, in fact—to pull your punches: a self-denying ordinance. If not, the House can virtually always defeat the Government, and that way chaos lies and the patience of the House of Commons will be tried. You have only to look at the history of the 20th century. The House of Lords behaved foolishly in the run-up to the 1911 Parliament Act, and of course the 1949 second Parliament Act is a reminder of what happens when the Commons loses trust in the ability of the House of Lords to complement its work.

To avoid these problems, in the latter part of the 20th century we developed a whole series of practices that developed into conventions of the House, such as the one I contend existed on statutory instruments. There are others on reasonable time and, of course, the far better-known Salisbury/Addison convention on Second Reading amendments. I am delighted that one of the speakers this afternoon is none other than the noble Lord, Lord Cunningham of Felling. When he was in the House of Commons, he chaired a Joint Committee that did a comprehensive study about the conventions that govern the relationships between the two Houses.

Noble Lords: He was in the Lords.

Lord Strathclyde: Well, he had been in the House of Commons, my Lords, and therefore it would be fair to say that he had a pretty good view of the relationship from both sides of the argument. He was then a supporter of the Government; I am sure that he is still a supporter of the Labour Party. These things are important, because when you reread his work from 2006 you find that it is still fresh and interesting, and I urge noble Lords who are so interested to go back and have a look at it. Perhaps the Library could be persuaded to give a small extract from it on the conventions of the House of Lords to remind us.

Why conventions? Conventions require us to behave in ways that we would rather not. They require us to sign up to a series of obligations that constrain the way the powers of the House of Lords are used. To work, they need to be binding on those who agree them; and they are of course based on trust, because there is no legal basis for them.

My view is that the convention on statutory instruments has been fraying for some time, for a number of reasons. First, the House of Lords has changed substantially over the last 17 years. There is undoubtedly a new confidence in the House of Lords; I applaud that. There has been an influx of new Peers over many years. There has been a fundamental change from a more hereditary House to one that has been appointed, with people here on merit. On the other side of the equation, however, there has been a loss of collective memory and less understanding of the implications of what happens when we use our powers too aggressively. I tried to avoid that after 1999, when it should be remembered that nearly half the Conservative Party in the House of Lords was expelled by the Government. I do not want to give this Government any ideas, but it was quite effective at the time.

In 2000, I declared in a speech that the convention was now dead. I did so quite deliberately and pointedly, and we then went on to defeat the Government on some order to do with the London mayoral elections. Two things happened immediately afterwards. First, we agreed a process by which the offending order was put into legislation and, secondly, Lord Williams of Mostyn and I agreed that of course the convention should stay on and that it was not true that there was no need to continue the conventions from the old

hereditary House into the new House that had been created after the 1999 Act. He understood, as a Leader of the House and leader of the Labour Party in this House, that it would help the House of Lords to work better to maintain this convention.

There is a similarity between that and what happened in 1968. Incidentally, one of the remarkable things about this House is that my noble friend Lord Trefgarne, who is going to speak in a few moments, was around in 1968 and voted on the Rhodesia orders, on which the House foolishly voted to vote down the orders to impose sanctions on Rhodesia. My noble friend Lord Carrington and Lord Shackleton, who were then the Leader of the Opposition and the Leader of the House, agreed that there should be a convention that this should never happen again—and nor did it, until 2000. In the 1970s came the start of the Motions to Regret, which were a sensible way forward. However, that agreement of my noble friend Lord Carrington and Lord Shackleton was a sensible and pragmatic understanding between two parties. They accepted that the Lords may have the power to reject but that they should not use it, because they did not have the authority to do so.

In 2007, the super-casino orders were also lost in the House of Lords. There was no Conservative Whip but it was interesting that 15 Labour Peers voted against the Government and there was a dramatic last-minute intervention by the then most reverend Primate the Archbishop of Canterbury. No more was heard of the super-casinos after that.

That brings us to tax credits, because what was so interesting about the votes that took place on them is that the House divided along entirely political lines. In fact, what was so unusual is that several senior Labour Peers voted to support the Government—not, I hasten to add, because they had any affection for what the Government were doing on tax credits but because they understood the constitutional implications of what was to take place and that a practice was going to change. In the Chamber itself, there was some confusion as to whether the delay Motions of the noble Baronesses, Lady Hollis and Lady Meacher, were in tune with the convention or broke it. At a stroke, there was then more than one interpretation of what the convention was; hence there has been a need for clarity and the Prime Minister, in his wisdom, invited me to conduct my review.

I should say at this point that I absolve completely, if any absolution is required, the two noble Baronesses in their Motions. I do not think for one moment that they were seeking to undermine the conventions that existed. In fact, they had rather cleverly and innovatively found a frame of words that technically did not break the convention. These were words that were neither fatal nor non-fatal; this is the cleverness that succeeded.

My view is that, in practice, whatever the technicalities, they proved fatal because they took the order hostage and would not pass it unless certain conditions were met. The noise from the opposition Benches exemplifies what has gone wrong, because if we cannot now agree what the convention is, we have to either re-establish it or find another way to try to get it right.

My review was greatly helped by an excellent team of officials from the Cabinet Office and a group of parliamentary advisers whose combined knowledge of Parliament and the passing of legislation is, I think, unparalleled. However, it was my review and my report, and I am entirely responsible for all the views held in it.

One issue that exercised us perhaps more than anything else was that of financial privilege. In my report, I discuss the old conventions between the two Houses on tax and supply, which go back to the 17th century—some argue to the 15th or the 14th century. Sometimes these things are not well understood these days. What is true is that financial privilege is very much a matter for another place, which, rightly, jealously guards its financial privilege. I have made recommendations that government and parliamentary authorities ought to discuss more, perhaps with the House of Commons Procedure Committee, exactly how to deal with financial privilege in future.

Of the three options that I have put forward, the first two are pretty self-explanatory. The first is to remove the House of Lords from debating and discussing statutory instruments, which I think would be a loss of scrutiny and an encouragement for the Government to use statutory instruments and secondary legislation even more. The second is somehow to rebuild the convention, but the convention can be rebuilt only if it comes from the House. Governments cannot impose conventions on the House. That is why I came to my third option, which is a genuine attempt to find a new procedure and give the House of Lords a new power, a very practical power that we have never had before. I also have to admit that there was nothing original in it. As part of my studies, I looked at previous debates and discussions. As early as 2001, in the great Royal Commission on Reform of the House of Lords chaired by my noble friend Lord Wakeham, he and his team of commissioners came up with a plan that looks remarkably similar to my option 3, and it has been echoed in other studies as well.

By having the ability to do what the House of Lords traditionally does so well, which is to ask the House of Commons to think again, we are doing what we have always done. To limit it to—if I may call it this—a ping without a pong, we are giving the House of Lords certain rights that it does not have at the moment. In other words, we have a conversation between the two Houses but the other House has the final say.

I should also like briefly to mention the scrutiny committees. One thing that became apparent very quickly was in what high regard the scrutiny committees of the House of Lords, chaired by my noble friends Lady Fookes and Lord Trefgarne, are held by government departments, Commons committees and outside commentators. There is no question in my mind that secondary legislation—statutory instruments—are an absolute requirement in the modern era, but it is very important that we have the right tools for scrutiny. We should question very strongly when framework Bills are put before us whether the requirements for ministerial powers are necessary.

Since the Statutory Instruments Act was passed in 1946, we have enjoyed unfettered powers to vote on secondary legislation. In this context, I asked myself

[LORD STRATHCLYDE]
these questions. First, is there a problem that now needs to be solved? I concluded that there was. Secondly, should the Lords retain this veto power? I concluded that the answer was no. Thirdly, is this the right time for a new power and a new procedure for the House of Lords to do what it does best? That is, to ask the House of Commons to think again, and the answer to that was yes. It is now up to your Lordships and the Government to decide not only whether these are the right questions but whether they are also the right answers to find a sustainable process that will serve the interest of Lords and Parliament alike over the next few years. I beg to move.

3.56 pm

Baroness Smith of Basildon (Lab): My Lords, I have greatly enjoyed listening to the noble Lord, Lord Strathclyde. At the outset, I thank him for his service to your Lordships House' through this report. For years your Lordships have, without any recognition, fanfare or glare of publicity, dutifully and with great expertise considered and advised Governments on statutory instruments—or SIs as we affectionately call them. Rarely if ever has there been any interest outside Parliament. Now, with the Government having been asked to reconsider just one such SI, their massive over-reaction means that suddenly SIs are the hot and exciting political issue. In the language of social media, SIs are trending in UK politics. Part baffling and technical, part exotic with lots of promise, they have, some may say, even added a frisson of excitement to parliamentary proceedings. For that I thank the noble Lord.

More seriously, I also thank him for his report, and for the extraordinary speed with which it has been produced and the vigour with which he has sought to defend the Government's exceptionally weak rationale for undertaking it. Like him, I look forward to this debate and welcome that there is such interest across the House from those speaking today. I am also pleased that we have two maiden speeches, from the noble Baroness, Lady Bowles and my noble friend Lord Darling, whom it is a great pleasure to welcome.

The noble Lord, Lord Strathclyde, is a jovial man of great integrity. He was a popular and effective fellow leader during the last Labour Government. Before he spoke today, I must admit that I was starting to worry that his memory was failing him. When I read his report, I thought that he had forgotten his speech, the date of which our memories may differ over—I think it was in 1999 but he says it was in 2000—in which he declared that the convention was dead. He disabused me of this when he spoke. So what has changed, now that he now sits on the government side of the Chamber? As I have said before, I think that there are two versions of the noble Lord, Lord Strathclyde: one for opposition, and now we have a shiny new one in government.

Across this House we are proud of our well-earned reputation for effective legislative scrutiny. It is what we do, and we do it well. As part of that, SIs are normally examined in Committee by Peers who have knowledge of or expertise in the issues. Any member of your Lordships' House is entitled to ask questions or express an opinion in an SI committee. Very occasionally, there is a vote. Exceptionally this House may reject an SI. It last did so in 2012, on legal aid, and prior to that in 2007, under the noble Lord's leadership. In his report the noble Lord recommended that the Lords' power be limited to asking the other place to think again only. But SIs are sent to your Lordships' House from the Government, not from the Commons, and it is perfectly proper for us to consider an SI first. Perhaps more importantly—and it is probably easier for me to admit this as a former Member of the other place—your Lordships' House's processes are more robust.

In the other place the Government ensure they have a majority on any SI committee and MPs are chosen by Whips. Other former MPs may recognise that the two most common questions asked by MPs selected to serve on an SI committee are, first, "Why me?" and secondly, "How long will it last?". It is a rare Minister who welcomes Back-Bench interventions.

Of course, we should examine our procedures to see whether they remain effective, appropriate and relevant, but that should be in the interests of good governance and with respect to the role of your Lordships' House, not for the advantage of any Government. If we are seeking to change how we scrutinise legislation, even in the narrow way outlined in the report by the noble Lord, Lord Strathclyde, we surely have to consider not just our own procedures but whether any change here should be undertaken alongside the creation of a more effective process in the other place.

We know that this report has been produced only because of our decisions to support two Motions on tax credits, one from the noble Baroness, Lady Meacher, and the other from my noble friend Lady Hollis. The result was that the Chancellor took that opportunity substantially to change his position. Indeed, perhaps Mr Osborne learnt a valuable lesson—that this House can be a Minister's friend. As the noble Lord, Lord Forsyth, who will forgive me for quoting him, so perceptively pointed out recently in a Question to the Leader of the House,

"had this House passed the secondary legislation on tax credits, it would have had the immediate force of law and prevented the Chancellor of the Exchequer abandoning his proposals in his Autumn Statement".—[*Official Report*, 3/12/15; col. 1199.]

He is quite right. We provided a breathing space for the Government to reconsider.

There was also the fatal Motion in the name of the noble Baroness, Lady Manzoor, which was rejected. The noble Baroness and I sought the same end, but we on these Benches chose to use the procedures of this House in a way that was both principled and sustainable. Even that was too much for this Government. Before any Motion had even been tabled, we had threats that the Government would pack the Lords with 150 new Conservative Peers or, more bizarrely, that this House would be suspended.

Challenge and scrutiny are not new. They were not invented by this Opposition. Indeed, unless the noble Lord's is memory is failing, he will recall his time on this side of the House. He alluded to it in his comments today. As Opposition leader and Chief Whip, he could boast well over 500 government defeats, including

145 during the 2005-10 Labour Government and 245 during the 2001-05 Labour Government, which had an elected majority of 167. Those many defeats included a government Bill at Second Reading, two fatal SIs and a number of key national security measures that involved ping-pong late into the night. Those were hugely significant defeats for the Labour Government, so we understand that challenge and scrutiny are never easy for any Government or any Minister; but any changes must be in the public interest, provide for better legislation and be agreed by this House. They cannot be forced on Parliament by an Executive who fail to understand the role of and reason for effective challenge. As the Hansard Society points out in its excellent report, this is no way to undertake reform. An independent inquiry into the legislative process is required.

Every year around 1,000 SIs are debated here following consideration by our highly regarded Secondary Legislation Scrutiny Committee. The committee flags up the issues it knows we will take an interest in or where the Government have fallen short, and we welcome those reports as essential to proper scrutiny. So, given that hundreds of SIs have already gone through your Lordships' House, is it really the case that the Government are failing to get their business through? Of course not. The reality is that we seldom use our powers to their limits, but that does not mean they should not exist. It means that this House is respectful of when it is appropriate to use them. That was recognised in the Cunningham report of 2006, and I look forward to the contribution from my noble friend Lord Cunningham later today.

The Government's case for weakening Lords' scrutiny of secondary legislation is feeble. It is an unnecessary solution to a fictitious problem. We have to ask: is the overreaction to the tax credits vote symptomatic of the Government's attitude to scrutiny and challenge? We should not see this as a stand-alone report; rather, it should be seen alongside other legislation and proposals—for example, the lobbying Bill in the previous Parliament that restricted the ability of charities and other groups to campaign for their causes; new limits on freedom of information; and the Trade Union Bill, debated this week, which will strip the Labour Party of its funding, quite contrary to the balanced proposals from the Committee on Standards in Public Life. We have seen reports of Ministers being told to make increased use of statutory instruments to drive through legislation without proper scrutiny; and now we have the proposal to remove this House's power to veto the same secondary legislation that the Government favour. It is hard not to see this as an authoritarian Executive waging war on the institutions that hold them to account. The Government are seeking to stifle debate, shut down opposition and block proper scrutiny. They are a Government who fear opposition and loathe challenge.

The noble Lord's report is entitled *Secondary Legislation and the Primacy of the House of Commons*. This is not about the primacy of the House of Commons over your Lordships' House; it is about the Executive seeking to brush this House aside. The noble Lord asks for responsible opposition. We provide that. What we seek is responsible government.

4.06 pm

Lord Wallace of Tankerness (LD): My Lords, I join the noble Baroness, Lady Smith of Basildon, in thanking the noble Lord, Lord Strathclyde, for setting out so clearly and comprehensively the preferred recommendation in his report, and indeed, during the preparation of his report, for meeting my party leader, Tim Farron, and myself to discuss his review. I also thank the noble Baroness the Leader of the House for giving the House an opportunity so swiftly to consider the important matter of the noble Lord's report. Like previous speakers, I look forward to the maiden speeches during this debate from my noble friend Lady Bowles of Berkhamsted, whom I welcome to these Benches, and our long-standing and very much respected political colleague the noble Lord, Lord Darling of Roulanish.

It is fair to say that, with some noble and honourable exceptions, not many pulses start racing when you mention the subject of statutory instruments. As your Lordships' House knows only too well, though, the reality is that SIs often contain very important and far-reaching policy detail. I am not going to rehearse all the events surrounding the tax credit regulations; suffice to say that it was a statutory instrument that brought forward policy changes that would have had a significant effect on millions of working people on low incomes. One might be forgiven for having thought that a policy proposal with such far-reaching consequences would have been brought before both Houses of Parliament as a Bill, as primary legislation, giving both Houses the opportunity to discuss the policy in detail at Second Reading, in Committee and on Report, and to propose amendments to it. Indeed, it was possible and conceivable that it could have been put in a Finance Bill, in which case this House would have had no locus at all.

However, that is not what the Government did. They proposed the change in a statutory instrument, for which the scrutiny process is considerably weaker. It is a matter of regret to me, as I am sure it is to other Members of your Lordships' House, that because of how the Government approached this matter there was no opportunity for Members of this House, nor indeed for those in the House of Commons, to propose amendments to the policy, or for the two Houses to have a conversation and potentially reach an accommodation. As a consequence of the Government's decision, this House took the only action that I believe it could take to make its voice heard: we voted to delay the implementation of the changes to tax credits until transition measures could be put in place.

On reflection, as the noble Baroness, Lady Smith, has indicated, the Government did of course change their mind, and that also led to the review that has been carried out by the noble Lord, Lord Strathclyde. His report has recommended that the House lose its important power to ultimately reject statutory instruments. This House has long recognised that, although some statutory instruments can be minor, others, such as the one on tax credits, contain significant policy issues, the consequences of which may have a deep and lasting effect on the people of this country.

As a consequence of the Jellicoe report in 1992, this House radically reformed the way it looks at statutory instruments by setting up the Delegated Powers and

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Regulatory Reform Committee, and the excellent work that that committee carries out has been complemented by the Secondary Legislation Scrutiny Committee. It is disappointing that the House of Commons does not seem to have availed itself of the opportunity to update its procedures in a similar way and to enhance its scrutiny of secondary legislation. As Mr Matthew Parris said in the *Times* on 19 December:

"MPs need procedures for early whistleblowing when dodgy secondary powers are sneaked into draft legislation".

The consequence is that, in the vast majority of cases, meaningful scrutiny of statutory instruments is carried out by your Lordships' House. That is why we on these Benches support and fully endorse the Motion that was proposed by Lord Simon of Glaisdale and carried by this House in 1994, and which is now enshrined in the *Companion to the Standing Orders*:

"That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration".

This long-cherished freedom means that, if a parent Act agrees that a delegation is appropriate, this House is entitled to discuss, scrutinise and, yes—in exceptional circumstances—reject statutory instruments. It is an incontrovertible truth that this House rarely rejects statutory instruments. This has only happened now in six instances since the 1946 legislation. We can safely say that six occasions in 70 years means it is a rare event.

My party believes that both Houses of Parliament should be examining better ways to work together to achieve more comprehensive, more informed and more effective scrutiny of the Government's legislation and their actions. We continue to reject the notion that any Government who achieve a majority in the Commons should have the absolute power to prosecute their business without the burden of proper checks and balances, particularly as voter turnout declines and Governments are elected by a smaller and smaller share of the vote. We believe that a second Chamber, however it is constituted, should not be a mere echo of the House of Commons, and we are interested in ways to strengthen the role of Parliament as a whole, not to convert the House of Lords from an effective revising Chamber into something more akin to an impotent debating society.

I firmly believe that there is a strong case for enhanced parliamentary scrutiny of secondary legislation. This is particularly important when the primary legislation introduced by the Government is a so-called skeleton Bill, with statutory instruments flowing from it which contain provisions that are more suitable for primary legislation. If Governments make increasing use of skeleton Bills, it stands to reason that the statutory instruments stemming from them should be afforded much closer scrutiny.

To that end, my party submitted formal written evidence to the noble Lord, Lord Strathclyde, proposing two different mechanisms by which this House—and the House of Commons—could propose amendments to statutory instruments. We suggested that a controversial SI could be "parked" while a Motion is moved with the wording of the SI embedded in it. Amendments could then be moved and voted upon, at the end of which there may be an amended Motion for the Government to reflect upon. An alternative would be to amend the Government's Motion to approve statutory instruments to suggest that specific provisions of the SI are removed or replaced with alternative wording. We believe that either mechanism would allow the House of Commons to think again and would in fact reduce the number of incidents where this House withholds its approval of a statutory instrument.

This is in contrast to the recommendations from the noble Lord, Lord Strathclyde, which I fear could diminish the ability of Parliament to hold the Government to account, and, as the noble Lord admits in his report, might lead to an increase in the instances where the House withholds its approval of a statutory instrument. Will the noble Baroness the Leader of the House give some assurance that the Government will not only consider the report of the noble Lord, Lord Strathclyde, but also examine the option of bringing forward procedures which would allow statutory instruments to be amended—or at least proposals to be made as to how they might better be amended—as part of their consideration of the review, and that they will do so within the appropriate committees of this House?

We maintain that it is an important right of both Houses of Parliament to vote on, and occasionally reject, statutory instruments. We do not believe that this House should be required to give up its power of veto when this is such a rare occurrence. To do so would change the arrangements agreed by both Houses following the report of the Joint Committee on Conventions in 2006, to which the noble Lord, Lord Strathclyde, referred. I am somewhat disappointed that the report proposes such a drastic step without suggesting any innovative way to ensure that the effective scrutiny of statutory instruments continues.

On some specifics, I am further concerned by the suggestion that there should be no fixed period for the Government to reflect on concerns raised by this House before pushing a statutory instrument through the Commons for a second time. The noble Lord's reasoning is that,

"it might in a particular case overrun the time specified in the draft or instrument for its commencement … The Commons needs the ability to override the Lords rapidly in cases of urgency and the extent to which decisions of the House of Lords should be fatal to a particular instrument should not depend on arbitrary factors, such as the commencement arrangements for the instrument".

Does not the same logic apply to primary legislation, where ultimately this House has the ability to delay a Bill for a year? This particular contention undermines further the ability of the two Houses of Parliament to have a conversation about the policy proposals put forward by the Government. We frequently see in primary legislation that, through a dialogue between both Houses, good sense allows Parliament to reach an accommodation. Instead, what is proposed here could potentially allow a Government to ignore concerns raised by your Lordships' House. I do not believe that is in the best interests of scrutiny.

Furthermore, I draw attention to page 20 of the noble Lord's report, where he suggests that removing the ability of your Lordships' House to ultimately

reject a statutory instrument could actually lead to an increase in the number of occasions where your Lordships' House would approve such a Motion. The report says:

"If that were to happen, there are a number of ways in which it might be dealt with. The House of Commons might need to find ways to expedite its override procedures, which would have the effect of reducing the consideration given to the Lords rejections or it might lead to demands to proceed with option 1".

That is, the House of Lords might lose its ability to scrutinise secondary legislation entirely. I am deeply concerned that this paragraph contradicts the intention on a previous page of the report that a Government should give "serious reconsideration" to the instrument in question and that they should do this both "seriously and well".

In fairness to the noble Lord, Lord Strathclyde, he did mention this again today, if only in passing, but I am also disappointed about the problem I have already raised about skeleton Bills. One might say that his report is rather skeletal as to how the matter might be addressed. The noble Lord does not address the issue of a Government using statutory instruments as a means of implementing new policy, rather than putting that new policy before Parliament as primary legislation.

This is not a matter simply a matter for the Prime Minister and the Government: it is, as I think has been recognised by us having this debate today, a matter for Parliament. It is about the relationship between the two Houses, the role of Parliament as a whole in providing effective scrutiny, and the burden of proper checks and balances on the Executive. We on these Benches believe that it would be appropriate for Parliament to deliberate on any further discussion, and it may well be that the Joint Committee could be reconstituted. Whether the noble Lord, Lord Cunningham, wishes to chair it again is another matter, but he proved to be a very capable chair the last time that he did so.

As less and less detail appears on the face of Bills and statutory instruments become more complex and more important, they should be accorded more scrutiny, not less. I regret to say that, alongside the points made by the noble Baroness, Lady Smith, I can do no better than quote from Monday evening's contribution by the noble Lord, Lord Kerslake, on the Trade Union Bill. Referring to the provisions of the Bill, he said:

"When this is taken with the other measures being put forward by the Government—the curtailing of the powers of this House, the moves to water down the Freedom of Information Act and the reduction in so-called Short money to support opposition parties—there appears to me to be a worryingly authoritarian streak emerging from this Government, who are uncomfortable with scrutiny and challenge".—[*Official Report*, 11/1/16; col.79.]

Finally, the noble Lord, Lord Strathclyde, has admitted, as echoed by the noble Baroness, Lady Smith, that he did once pronounce the convention dead. I think he did it in a lecture in 1999, and surely the noble Lord does not want to give it the Lazarus effect. We await with interest to see how the Government will respond.

4.18 pm

Lord Wakeham (Con): My Lords, we have had three powerful speeches so far. A great deal of what the leaders of the two opposition parties said was about criticising what went on in the House of Commons. I have some considerable sympathy with that but want to restrict my remarks to what I consider to be the role of the House of Lords.

The issue of this debate has not arisen particularly because of recent events, but has been a long time coming. As the noble and learned Lord, Lord Wallace, mentioned, there was a very interesting debate in 1994, when the wonderful former law officer Lord Simon of Glaisdale set out with clarity that the House of Lords had absolute, unfettered power to reject secondary legislation. He was followed by my successor as Leader of the House, my noble friend Lord Salisbury, who accepted Lord Simon's proposition but then set out clearly the way that conventions had influenced how the House operated. It is a debate well worth rereading, but in the end it demonstrated to me that the conventions were not powerful or clear enough to be an acceptable way to run matters in the House as it is now constituted. It may well have been when the House was mainly hereditary but not now in a House with so much greater political wisdom and experience.

That was one reason why, in my royal commission report some 15 years ago—when I was an opposition Member but was supported by all parties at the time—I recommended that we changed the way that secondary legislation was dealt with in this House and made a proposal not very dissimilar from option 3 proposed by my noble friend Lord Strathclyde.

Secondary legislation is here to stay. It is important to remember the advantages which government, Parliament and society derive from the existence of delegated powers. Ministers and other statutory authorities are able to legislate by secondary legislation on detailed points within the limits of the delegated power in the original Act. In consequence, Bills can be restricted to their essentials, Parliament can concentrate on the key principles and Acts will be better drafted and understood. There is less need for subsequent corrective amendments to primary legislation. Secondary legislation can be amended or replaced much more easily than primary legislation.

In my royal commission report, we said that the number of statutory instruments had increased substantially over the last 100 years, but my noble friend Lord Strathclyde reports that the number has stabilised since then. Nevertheless, it is important that they are dealt with effectively. The proposal before us is to give the House of Lords not less but more influence over secondary legislation. In my view, it is ironical that the present powers of the House of Lords are more absolute over secondary legislation than they are over primary legislation, but we have got by because of the conventions, which, as I indicated, some of us felt were at breaking point even 15 years ago.

Over the years, all Governments have got secondary legislation passed in the House of Lords, even when the House of Lords would have preferred to ask the House of Commons to think again. My noble friend's proposal would change all that and allow the House to ask the Commons and the Government to think again, and thus give the House a revising function over secondary legislation that it at present lacks by contrast with its role in relation to primary legislation. The proposal

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before us is to give the House of Lords more power and influence over secondary legislation, which in the right circumstances they should use.

These proposals are entirely consistent with our constitutional practice. The Lords' role is to review and, if not satisfied, to ask the House of Commons to think again. The Commons' role is to think again but in the end to decide. Recent events indicate that it is a course that can be effective. However, our democratic system requires the House of Commons to prevail.

4.23 pm

Baroness Hollis of Heigham (Lab): My Lords, I very much welcome this debate and look forward to the maiden speeches that we will enjoy later, particularly that of my noble friend Lord Darling, my former boss at the time when legislation on tax credits was introduced in this House.

Why have this review? Is it because of tax credits? As I think has been conceded, that was a delay Motion and, happily, the Commons did indeed reconsider, as this House wished. But even if it had been fatal, which it was not, it would not have been a constitutional threat, as is acknowledged, because between 2000 and 2010 the Conservative Opposition, under the noble Lord, Lord Strathclyde, ran 11 fatal Motions against the Government. Five of them were led by former Ministers, including a former Leader of the House, and two of them were successful. No one had a tantrum; no one called for a review; no one proposed to legislate on the subject; no one threatened to create 100 Peers. The only difference now, as my noble friend Lady Smith said, is that the then Opposition are now in government.

Was the tax credits issue, none the less, a constitutional outrage because it dealt with financial matters? No, that will not run either. Most of what our work involves concerns finance, whether it is defence, transport, childcare or social security. The Government know perfectly well that SIs are not financially privileged and do not need to be if they are used, as they should be, for fairly minor matters according to our conventions. So in my view, it was not the tax credits vote that strained our conventions but the Government in the first place using a statutory instrument for a highly controversial measure that would take millions of pounds away from millions of families, despite the Prime Minister's election promises to the contrary.

With tax credits, an SI was used not to apply the original policy intent of the Bill, which is what SIs are for, but to subvert it. As has already been said, that task should have been done by primary legislation, if that was the Government's intent. Having chosen an SI route, which cannot carry financial privilege and to do what SIs were never intended to do, the Government then claimed retrospectively that financial matters come under some sort of informal financial privilege, which, even though it had not been sought, they wanted us to respect as though it had been—when it had not. That is indeed a straining of conventions.

Why then do we have a review? Is it petulance from the noble Lord, Lord Strathclyde? Surely not. But the Government do seem to feel hard done by, victimised, with their 30.5% of the vote. As Ministers, we had 31% of the vote. We did not whinge, despite huge majorities down the other end; we worked for our votes the hard way. No, the issue that really matters is not the tax credit vote, as the noble Lords, Lord Strathclyde and Lord Wakeham, have acknowledged. The issue is the expanding role of SIs and their lack of scrutiny. Thanks to the noble Lord, Lord Strathclyde, this debate allows us to discuss this more fully, to which I now wish to return.

More and more, we have framework legislation—for social security, childcare, the Cities and Devolution Bill—where key decisions are to be carried by SIs beyond reach of amendment, sometimes drawn down months, even years, later. That role was never intended: nor, I believe, is it appropriate. Bills are now being future-proofed for future Secretaries of State with open-ended SIs that place future policy development beyond effective scrutiny.

The noble Lord, Lord Strathclyde, calls for greater clarity and certainty surrounding SIs. That is nice—for the Government. But what is really needed is effective scrutiny. I doubt that the Commons can do it, and I think that we can and that we should. Only we have the admirable delegated powers and scrutiny committees, and your Lordships have relevant expertise. We spend twice as much time as the Commons on debating SIs, even though we all know that we are wasting our time. As the Hansard Society says, we have the interest, appetite and time to do effective scrutiny.

So why do we not? We know why. The noble Lord, Lord Strathclyde, is right: we should, but do not usually, get draft SIs during the process of the Bill so that we can consider them. We cannot, as a result, amend SIs that are passed and brought to us subsequently. Motions to Regret deplore and are ignored; fatal debates debate and destroy. However, in certain circumstances, either may be appropriate.

However, in 65 years, the Lords has rejected only five of the 169,000 statutory instruments before it. In 35 years, the Commons has not rejected one. As the noble Lord, Lord Goodlad, said in his report on page 147, why bring SIs to Parliament at all if parliamentary scrutiny makes no difference? The noble Lord, Lord Wakeham, called for a suspensory veto to "force"—which he italicises—the Government and the House of Commons to take our concerns seriously. They were strong words from the noble Lord and he was absolutely right. Every review of Lords practices has called for a power of delay requiring the Government to think again while ensuring that the final say rests with the Commons.

Would option 3 in the report of the noble Lord, Lord Strathclyde, do that? It could, but only if it specified, as the noble and learned Lord, Lord Wallace, said, the period of delay—say 30 sitting days—before the SI returns to the Commons. Otherwise we could pass a delay Motion and the Government could take it back to the Commons, without reflection, with irritation and within 48 hours. The noble Lord, Lord Strathclyde, assures us that a Government would never behave like that. You think? He writes that the Commons may need to override the Lords rapidly in cases of urgency. If something is indeed urgent—such as national security—would we really delay? It seems deeply implausible and, in any case, the usual channels would sort it.

He then fears that the specified delay might run past the proposed implementation date. That is pretty feeble, too. With the Library's help, I checked the 60 or so statutory instruments we have had so far in this Session. As we know, they have three stages: they are laid, debated and implemented. I agree that with perhaps four of those 61 there was less than six weeks between laying the SI and its implementation date—for example, the Northern Irish election order last July and the Asian banks immunity order last October—but most of the rest were laid three to six months before their implementation date. There is adequate time for a delay Motion if those SIs are debated in good time. What struck me was the length of time, often three months or more, between laying and debating them. However, that can be sorted by effective departmental and business management; it is not a pretext for denying us and the public effective scrutiny.

The only real argument against a specified delay period is the one the review will not admit to: that it would be highly inconvenient for the Government. Yes, it is meant to be. I would not expect a delay Motion to happen very often—perhaps half a dozen times a year—but the fact that it might—

Viscount Younger of Leckie (Con): My Lords, I am sorry to interrupt but the noble Baroness might be aware that the guide time for speeches is six minutes.

Baroness Hollis of Heigham: It is an advisory time and I am coming to the end.

I would not expect a delay Motion to happen very often—perhaps six times a year—but the fact that it might would transform the value of our scrutiny; it would transform the care with which departments bring SIs to this House. The Lords would be doing exactly what it should by asking the Government and the other place to think again and then respecting their decision, as we should, when they have done so. So I hope that we can move down that path but with appropriate specified delay periods.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, perhaps I may interrupt before the next noble Lord rises to speak and add to the comment of my noble friend. We put in the guidance time because we know that the House will wish to rise at around 10 pm. We can do that only if everybody respects the speaking time. So I urge noble Lords to co-operate. When I get to my bit at the end I shall try to be brief but I know that the House will also want me to be fulsome in my reply.

4.34 pm

Lord McNally (LD): My Lords, I was intrigued by the very first sentence of the executive summary in the paper of the noble Lord, Lord Strathclyde, which states:

> "Since 1968, a convention has existed that the House of Lords should not reject statutory instruments (or should do so only rarely)".

To my mind, that is exactly what has happened over the past 50 years. The Motions that caused the establishment of the Strathclyde report, and even the noble Lord, Lord Strathclyde, himself has accepted this, were not in any way breaches of the convention in terms of rejection.

I am taking part today because it is 20 years since I first took my seat in the House, and therefore I thought it would be useful to contribute to what the noble Lord, Lord Strathclyde, referred to as the collective memory. During that time, I have spent nine years as Leader of the Liberal Democrats, three very pleasant years as the Deputy Leader of the House under the noble Lord, Lord Strathclyde, and three and a half years as a Minister. I have never made any secret of my view that although this House has many admirable qualities and does some extremely useful work, in its present form it is an affront to democracy. I regret the opportunities missed more fully to reform the House in 1999 and, as the noble Lord, Lord Wakeham, knows, I regret the missed opportunity of the Wakeham commission in 2000. However, we must not be seduced today by the argument that because the recommendation of the noble Lord, Lord Strathclyde, is close to one of the proposals made by the noble Lord, Lord Wakeham, it has greater weight and authority. The Wakeham proposals were, as I am sure the noble Lord would agree, a carefully balanced package of powers and responsibilities, not a single measure designed to weaken and undermine the authority of this House. I may want to see this House reformed, but I have no wish to see it become Mr Cameron's poodle, and a neutered poodle at that.

One of the most useful experiences I have had in the past 20 years was to serve on the Cunningham committee, and I am delighted to see that the noble Lord, Lord Cunningham, is here today. It is worth remembering that the impetus for the setting-up of the Cunningham committee was that the then Labour Government thought that the House of Lords was getting too big for its boots. This is not a new phenomenon. Every former Leader of the House will be able to show you the scars of being hauled over to No. 10 to explain some defeat or other in the Lords. I well remember having to prepare, as Leader of the Liberal Democrats, a tribute to the late Lord Belstead, who had been a Leader of the House under Mrs Thatcher. I thought I would find something nice to say about him by looking at the Thatcher memoirs. The only reference I could find was to a handbagging he had received from Mrs T following a defeat in the House of Lords. That is the nature of the relationship. I freely confess to my own impatience as a Minister when the House shredded some carefully constructed inter-departmental compromise or spotted a piece of legislative corner-cutting which had escaped the scrutiny, or lack of it, of the other place.

I do not believe that the Lords over-reached themselves in the matter before us, but the whole furore has exposed the need to look at the increasing use by the Government of skeleton Bills backed by secondary legislation, as well as the increasing tendency of the clerks in the other place to affix financial privilege to an amendment. I remember the surprise and relief in the Ministry of Justice when some mainly legal amendments to one of our Bills suddenly had financial privilege attached to them in the other place. We all breathed a sigh of relief that they did not come back to the Lords.

[LORD MCNALLY]

It is 40 years since the late Lord Hailsham warned against a Parliament without checks and balances becoming an elective dictatorship. That warning is even more pertinent today, when the flaws in the first past the post system provide us with a Government with 100% of the power and only 36% of the vote. We are now living with our past failures to reform both the House and the voting system. In those circumstances, it is essential that this House should retain the right to say no. It is the paragraph of the Cunningham committee report that I fought hardest to have included, and that report was endorsed by both Houses. Let us be clear: that Cunningham report is the baseline; it is not Salisbury/Addison, which was never endorsed by other than the two political parties, and never by these Benches. I urge this House not to abandon its right to say no: use it prudently, yes; use it sparingly, yes; but retain it we must.

I can only say to the Conservative Benches, on which there are some very wise heads, that the best service they can provide is gently to tell the Chancellor and the Prime Minister that the best way to avoid the hubris which overtakes all long-serving Ministers is to retain the safety catch which accident rather than design has left here in the House of Lords to protect us from that elective dictatorship which Lord Hailsham so wisely warned us against.

4.40 pm

Baroness Hayman (CB): My Lords, the noble Lord, Lord Strathclyde, was asked to review in haste. He did so and he produced a review that is an enormously valuable starting point for a more comprehensive approach to how we improve the scrutiny of secondary legislation not only by this House but by the other place as well. When he introduced this debate, the noble Lord said that it took us to the heart of what we are here for as parliamentarians. I agree with that. We have a responsibility to look very carefully at the proposals before us and to approach them, I hope, in a way that looks forward rather than backwards. But it is impossible completely to disregard the circumstances that gave rise to the review and to allow a mythology to grow up that this House had overstretched itself and had broken with convention.

I find it extraordinary that when everyone agrees that the convention is that only in the most exceptional circumstances should the House vote down an SI, the Government bring into the argument the fact that this was an exceptional SI. It was to do with a major plank of government policy. It had huge financial implications. They defeat their own argument by arguing its exceptionality. What I think was exceptional was that the House found a constructive way forward on this occasion, which was not to kill stone dead.

When there was a murmur of disagreement as the noble Lord, Lord Strathclyde, said that we had killed off the tax credits legislation, he said that it illustrated that there was not clarity about the convention. It did not illustrate that at all. People were arguing with whether the vote in this House killed off the tax credits legislation. It did not. The SI had still been through the House of Commons. It could have been brought back to this House in exactly the same form. It could have been incorporated in a short, sharp Bill that was a finance Bill that never came to this House. None of those things happened. What happened was that the Government thought again. They thought that there was some sense in what was being said here and changed their policies. That was a good example of what this House is for.

We have to look at the proposals in the report of the noble Lord, Lord Strathclyde, and, building on the work that has been done by the noble Lord, Lord Wakeham, and others, we have to ask ourselves whether there is a way of effectively asking the House of Commons to think again. Effectively asking it to think again is not as easy as simply having a delay Motion. It will not think again at all on a large proportion of statutory instruments that have not been thought about at all in the House of Commons—those that come here first. It will not think again effectively if that means that the Government can bring forward a vote on a deferred Division within 48 hours of it coming back from this House with no debate.

If the House is to be asked to give up a very precious, very rarely used freedom to kill off an SI, it should not sell that freedom for a mess of pottage. It should do so only when it is absolutely convinced that the scrutiny that Parliament as a whole would thereafter be able to give to statutory instruments would be improved dramatically. That is the test to which I would put these proposals.

I worry about legislation. It will not do what the Government want it to do unless it is retrospective, and I do not like retrospective legislation. It will not do what the Government want it to do if we do not recognise that the reason, in the words of the noble Lord, Lord Strathclyde, that the convention had become "frayed" was because, over the years, use of statutory instruments, culminating with the tax credits regulations, has gone way beyond their original purpose.

4.46 pm

The Lord Bishop of Rochester: My Lords, I, like other Members of your Lordships' House, am grateful to the noble Lord, Lord Strathclyde, for the work that he has undertaken and for giving rise to what is clearly an important debate about the role of this House, which probably goes much wider than some of the specifics in front of us today. By way of introduction, I will add a little correction to the text of the noble Lord's report. He ascribes to my right reverend friend the Bishop of Southwark the tabling of an amendment that was not, in fact, put to a vote. Although they would not argue over it, it was actually my right reverend friend the Bishop of Portsmouth who tabled that unvoted on amendment, which was, as it happened, an amendment that asked the Government to consider again—precisely the kind of amendment under consideration here.

I am conscious that in speaking in this debate there are many in this Chamber who have many years more experience than I do in these matters of constitution and convention, as has already been amply illustrated. However, there are one or two things I would like to offer the debate.

If we are to change the present convention, perhaps we need some criteria against which we assess any changes that we might make. Three might be: would

any change enhance or diminish the ability of your Lordships' House to scrutinise legislation and thereby hold the Government to account; would it improve or worsen relationships between this House and the other place; and what might the impact be on the reputation and status of your Lordships' House? As a relatively new Member of this House I understand its primary function to be that of a revising Chamber, thereby holding the Executive to account and occasionally, it has to be said, saving the Government from themselves. If we can achieve that, it will be a hugely valuable contribution.

One of the difficulties with SIs, as has already been indicated, is that our capacity to revise them is severely restricted. Indeed, we cannot revise them; there is no power to amend. Therefore, the increased use of SIs presents this House with a problem in fulfilling its function as a revising Chamber because we are left with a blunt instrument of yes or no. That seems to be part of the problem we face. I am encouraged that there are some helpful suggestions in the noble Lord's report and elsewhere in the conversation. Establishing some clarity over the respective roles of the Houses on finance Bills and other financial matters will clearly be helpful. Indeed, it will be very helpful if the proposed review by the Procedure Committee established some guidance on that. A strong encouragement to government to rein in the excessive use of secondary legislation and put more detail in Bills, as stated in the noble Lord's report, is clearly important too. If we are to establish or re-establish relationships of trust, we need to be confident that that will take place as it is a necessary ingredient in balancing the roles of the two respective Houses.

It seems to me that beneath the detail and the circumstances of this debate there is an assumption that trust between this place and the other place has been lost to some degree, and that we are being asked to consider surrendering part of our self-regulation relating to our role within that relationship of trust. The suggestion, or implication, of the proposals in the noble Lord's report is that we have gone beyond the point where the present self-regulatory framework can be allowed to continue, and that something formally laid down in statute may be required in place of the current convention. If that is the case, there is a sadness to it. Even if we do find ourselves going down the line of changing the arrangements, I encourage noble Lords to consider also the underlying question of the level of trust that exists between the two Chambers and between government and Parliament.

My most reverend friend the Archbishop of Canterbury is currently in another other place, where he is trying to deal with the re-establishment of relationships of trust within the worldwide Anglian communion. Therefore, there is experience of these kinds of processes. If we are to pursue changes, I encourage noble Lords, through whatever channels are available to them, to look also at the wider culture of the relationship between this House and the other place to see whether we can find ways of improving that and building on the existing depth of trust because whatever we put in place will work only if that environment of trust is in place.

For my own part, I would regret your Lordships' House no longer having the power to veto SIs but accept that the introduction of another way of tackling them may prove necessary. I hope that might be combined with a consideration of the possibility of amending them. That could enhance the whole process, enabling SIs to be improved and their purpose to be more fully achieved. I encourage us to have that conversation so that, whatever our powers may be, we can fulfil them responsibly within a rebuilt and re-established spirit of trust.

4.53 pm

Lord Trefgarne (Con): My Lords, in rising to intervene briefly in this debate, I start by explaining that I am chairman of your Lordships' Secondary Legislation Scrutiny Committee, which has the task of looking at virtually all the secondary legislation coming before Parliament and reporting, as necessary, to your Lordships. We see about 1,200 or so such items each year, but, happily, only need to trouble your Lordships with a very much smaller number. Your Lordships' Select Committee intends to study my noble friend's review, taking into account your Lordships' views expressed today, and will no doubt submit a report in due course. I must therefore emphasise that everything I say today reflects my personal view only.

I turn now to the events of 26 October and subsequently. While I accept that in theory—and in theory only—your Lordships' decision on that day was not formally fatal, fatality was, indeed, the practical effect and Ministers and the other place were entitled to take that view. Furthermore, there was never any doubt that that would be their reaction.

There are two reasons why I think that your Lordships were mistaken on that day. First, there is a long-standing convention that secondary legislation is rejected only in the most exceptional circumstances—a mere political disagreement is not sufficient. When your Lordships came to express your opinion in the Division Lobby, not a single Conservative supported the amendments. The matter was pure politics and nothing else. The second argument in relation to the tax credits order was the plain and simple fact that it dealt with essentially financial matters, for which your Lordships have long accepted House of Commons primacy. For these reasons, I consider that your Lordships took a mistaken decision on 26 October and I am, therefore, not surprised that my right honourable friend the Prime Minister asked my noble friend Lord Strathclyde to conduct his review, for which we are grateful to him.

I turn now to my noble friend's conclusions set out in Cm 9177, in which he offers three alternatives. I deal first with his first possible change, namely primary legislation to remove your Lordships from all future consideration of secondary legislation, leaving it to be entirely a matter for the other place. While I can see that that would be a possible reaction, it would be, I believe, a mistake. The fact is that your Lordships have always, through relevant Select Committees, offered much more detailed and constructive consideration of secondary legislation than has ever been possible in the other place. It would be a great pity if all that was brought to an end. It is, I suggest, highly unlikely that the other place would find it possible to create a mechanism for such detailed scrutiny.

[Lord Trefgarne]

My noble friend's second alternative is for your Lordships simply to rewrite the existing Standing Orders relating to secondary legislation and hope that they would stand the test of time. The snag with that arrangement, as my noble friend points out, is that Standing Orders can of course be changed by a simple resolution, and I can well see that the other place would regard this as an inadequate response.

We are, therefore, left with my noble friend's third alternative, namely setting out a new procedure in statute providing for your Lordships to invite those in the other place to think again when a disagreement arises and allowing them to insist, if they so decide, on primacy. As my noble friend suggests, this would be a not dissimilar process to the one set out in the Parliament Acts relating to primary legislation. It is the way forward that I personally support.

I end by saying that I recognise that there is room for more than one respectable point of view on this matter. My view is the one that I have described, which I hope will in due course find favour. I look forward to the two maiden speeches that we shall hear in a little while.

4.57 pm

Lord Grocott (Lab): My Lords, the noble Lord, Lord Strathclyde, presented his report in his characteristically emollient way. I do not think we should be too taken in by the gentle way in which he presented it, because what he is suggesting is a substantial constitutional change that will transfer power to the Executive from Parliament and will alter the relationship between the two Houses. I do not object to constitutional change but the responsibility for arguing for it must come clearly from those proposing it and we should review it with all the skills of forensic examination that are at our disposal.

I want to look at the two key arguments that the Government and their supporters—or, I should say, the noble Lord, Lord Strathclyde, and his supporters—have advanced on the need for this constitutional change. The first is that, somehow, the decision on 26 October had considerable impact on our primary concern, the primacy of the House of Commons, and threatened that primacy. The title of the noble Lord's review even refers to the primacy of the House of Commons. But it did not. If the Commons or the Government had decided that they did not like the decision that we made on 26 October, they had several simple options open to them. One would have been, as the noble Baroness, Lady Hayman, said, to resubmit a statutory instrument in a slightly modified form, which this House would have then had to consider. It would probably have been like ping-pong but it would, sooner or later, have been sorted out. Alternatively, the Government could have brought in a simple Bill and timetabled it strictly, and no doubt it would have been designated a Bill over which this House should have no control. They easily had the capacity to remedy and to enshrine the principle of primacy.

The other argument advanced, including by the Leader of the House in her presentation on the report, is that the decision on 26 October somehow threatened the constitutional convention about the Lords not throwing out statutory instruments; she went so far as to say that it was "broken". I took the precaution of asking one or two Questions of her. First, I asked her how often since the Second World War the convention had been broken. The reply came back that it was on five occasions, in 1968, 2000, 2007, 2012 and 2015; I remark in passing that three of those were when Labour Governments were in office. So we find that in 71 years since the Second World War, on the Leader of the House's own acknowledgement, the convention has been challenged on five occasions.

I asked the Leader of the House how often the convention had been broken on those five occasions when the Lords threw out a statutory instrument that had come from the Commons, and the answer is once—the last time. I am conceding the Government's whole case now and saying that the amendment passed here could have been interpreted as a fatal amendment, but even on those grounds—the Government's own terms—only once in 71 years has the convention been threatened, and now they propose to change the constitution to deal with it. By the way, during the whole of that time there were 41 years of Tory Government, and they suffered two defeats on statutory instruments. If that is the rate of defeat, I do not think it is enough to get in a lather about. So why are the Government determined to go ahead when, quite plainly, on their two principal arguments, the primacy of the Commons is intact and the convention is intact?

I cannot resist doing this; I apologise in advance to the noble Lord, Lord Strathclyde, but he had this to say about secondary legislation and statutory instruments in a debate on the Cunningham committee:

"although many have argued … that a power to reject might be replaced by a power to delay, or even a power to amend, the practical difficulties are great … I think that we need … more legislative restraint by government with fewer skeleton Bills backed by reams of regulation … Sometimes, as the committee acknowledged, rejection may be needed—very rarely—but the circumstances must be exceptional and extremely rare".—[*Official Report*, 16/1/07; col. 632.]

They are exceptional and extremely rare, on any reading of what has happened.

So why is this change proposed? It is part of a wider concern of the Government: they do not like it when they are defeated. No Governments like it when they are defeated but all I can say is, "Join the club". I know what it is like to be defeated. In the five and three-quarter years of this Government, they have suffered 123 defeats. In the five and three-quarter years with which I am particularly familiar, between 2002 and 2008, the Government suffered 325 defeats. I know the response but, even allowing for the undoubted ineptness of the Government Chief Whip at the time, 325 defeats against 123 hardly gives this Government grounds for their persecution complex. They have a very easy time in relation to the House of Lords most of the time. In the 115 years of my dear old party's being around, only for eight of them has it even been the biggest party in the House of Lords, despite years of Labour Governments. If you do the maths, in 107 of the last 115 years the House of Lords has had the Conservative Party as its biggest party.

The ball is really in the Prime Minister's court. He has the power and can do what he likes. He can cut our powers, if he brings in legislation and is able to get it

through. He can create large numbers of Conservative Peers, as he has already been doing, but if he wants to carry on then no one can stop him. He can even abolish us if that is his wont, since he has a Conservative majority—although he might find it tricky. But I very much hope that he will go away, calm down and decide that, "This isn't broke, so don't fix it". Governments do not like being defeated and I believe that there are enough people in the House of Commons who do not like this unnecessary encroachment of executive power. I certainly hope that should any firm proposal come to cut our powers in this House, enough people here will be certain enough about our responsibilities to ensure that it is rejected.

5.05 pm

Baroness Bowles of Berkhamsted (LD) (Maiden Speech): My Lords, I rise for the first time, deeply conscious of the honour that it is to serve in your Lordships' House. I am grateful for the kind way in which noble Lords have received me, for the friendliness of all staff and for the elegant and discreet way in which the attendants and doorkeepers have steered me from uncertain manoeuvres. I thank the noble Lords who introduced me, my noble friends Lord McNally and Lady Falkner of Margravine, and all those who have enriched my life and learning, without whom I would not be here.

I hope to contribute to various deliberations drawing upon my experience from both strands of my career. The first strand was that of scientist, engineer and patent attorney for over 25 years, running a professional business and immersed in leading-edge technology. The second strand was nine years in the European Parliament, culminating in five years as chair of the Economic and Monetary Affairs Committee, facing a vast and profound agenda due to the financial and eurozone crisis.

Many noble Lords have long-standing experience of the conventions of your Lordships' House, so I speak now with great respect. None the less, secondary or delegated legislation exists in other legislatures and I have been deeply involved in the establishment and scrutiny of European secondary legislation, while keeping a watchful eye on that of the United States. My somewhat unoriginal observation is that secondary legislation works well until you hit a problem: then it works rather badly and does not fail-safe.

Financial services legislation is highly delegated in most countries and Europe now has delegated Acts and regulatory technical standards, the latter also involving the European supervisory authorities. Scrutiny is by the European Parliament and the Council of member states; each can veto independently, but not amend. From that well-populated setting, and with your Lordships' indulgence, I will elaborate three experiences that resonate with the wider debate around delegated legislation.

The first is that of overarching constraint. Europe has the ECJ's Meroni constraint, which limits delegation of discretionary power. Despite debate, constraint has had useful benefits. It reduces the likelihood of secondary legislation doing extraordinarily large or unexpected things. But perhaps even more importantly, it fosters vigilance on how to frame the delegated power with objective, legislation-specific guidance: an important aid for transparency, benefiting individuals and businesses as well. In the context of the review of the noble Lord, Lord Strathclyde, I venture that greater vigilance over the framing of delegated power is a natural response to other curtailments, even if the drafting of that guidance will rarely seem as exciting as other amendments or may even upset the odd Sir Humphrey.

The second experience is the inability to amend. On the technical standards for the European Markets Infrastructure Regulation, EMIR, a committee stage motion to reject was carried. Only a couple of parts in a complex, interconnected proposal were wrong, but they were important parts affecting small and medium-sized business, and it also went against the grain of prior understandings. A subsequent plenary rejection would have meant deadlines missed and various embarrassments to be felt all round, so a clarifying interpretation was obtained from the European Commission and, although it was not as good as proper correction, the fact is that without corrective opportunity, secondary legislation risks being, if not second-rate, at least second-best legislation. I also extracted a commitment to consultation for future proceedings—effectively, a correction in advance opportunity—but it is still thought that limited corrective amendment has a place.

The third experience is of a scrutinising Chamber feeling conflicted, which also came to light in our EMIR adventure. The Council privately agreed about the identified problems, but it emerged that various member states were embarrassed to vote against technical standards that had been signed off by their national regulatory authorities—which is a story in itself. However, they were glad that the European Parliament could take responsibility for the remedy. Of course, the constructs are different, but this shows the usefulness of independent veto powers for separate Chambers.

Europe has travelled in the direction of fuller framing of delegated power and, in contrast, I cannot disguise consternation about the extent and scope of some of our delegated legislation. What I have read and heard in your Lordships' House on this subject, as in all things, is thoughtful and has raised similar remedies to those that I favour. I do not see a single silver bullet, but constraint, guidance and corrective amendments are tools for avoiding secondary legislation becoming second-best.

5.12 pm

Lord Hannay of Chiswick (CB): My Lords, it is a very great pleasure to have been placed on the list after the noble Baroness, Lady Bowles of Berkhamsted. As a member of your Lordships' EU Select Committee for a number of years, I watched with fascination and admiration the work that she did in the European Parliament. The work that she did then was inestimable. The Ancient Mariner was always said to have stopped only one in three, but the noble Baroness quite often stopped two or even three in three of the dafter ideas that came out of the Commission or the other members of her own Assembly. We all hold her a debt of gratitude for the way in which, as chair of that committee, she handled the large amount of legislation that came forward after the crisis of 2008.

[Lord Hannay of Chiswick]

In my view, she has in her maiden speech this afternoon demonstrated very clearly the sort of skills that she will bring to this House and her knowledge of financial regulation, which is remarkable—and that subject occasionally comes before us. I am sure that her plea to consider enhancing this House's power to send an amendment back to the other place—which we do not have at the moment—is very wise. So I look forward very much to her future work in this House.

Turning to the matter we are debating, I suggest that we should not focus too much in today's debate on the events which triggered the Strathclyde review last October. Panicky and opportunistic its origins may have been, but, in truth, a review of the way we handle secondary legislation was long overdue. The present arrangements are hard to sustain and hard to defend. Of course, one might have hoped for some recognition by the Government that this House, by the action it took last October, enabled the Government to avoid falling into a trap similar to the one which their predecessors fell into over the poll tax in the 1980s—but I am not holding my breath for that recognition.

The noble Lord's review is admirable: short, crisp and persuasive. Of the three options for reform that he considers, I am sure that he is right to have excluded the idea of simply cutting this House out of any role in secondary legislation. That would have been to make a mockery of the very existence of this House as a scrutinising and revising Chamber. To place the House, as the other two options do, in a position that is analogous to that which we have on primary legislation—being able to propose amendments and ask the other place to think again—must be the right way to move.

The loss of the so-called "nuclear option", which we hardly ever dared to use, is no particularly serious cause for regret. Incidentally, I have doubts about the noble Lord's speculation that we would not often make use of the new powers—the "non-nuclear options"—which he suggests that we should have: I suspect that he may find that that will not be borne out by events, but time alone will tell. As for the choice between a new system based on primary legislation or one based on convention, I share the noble Lord's view that the former is clearly preferable. Surely we do not want to risk falling back again into muddle and dispute.

Putting the preferred option into primary legislation will not be without its complexities. There is the issue of time factors that has been referred to. I agree that the Government will need to be able to return a measure again, overriding this House's view, within the same Session of Parliament—which is a difference from the Parliament Acts of 1911 and 1949. It is important to note that the noble Lord's review was silent on whether the measure to be returned by the House of Commons could be an amended version of the original statutory instrument, perhaps taking account of the views expressed by this House when it sent the matter back. Such a possibility is sensible and desirable, but it is not what is envisaged in the Parliament Act, which requires that the overriding measure be identical to the one that was first rejected. I look forward to hearing the Government's response on that point.

There is also the tricky issue of financial privilege, which the noble Lord managed to duck. That, too, has given rise to plenty of controversy, most recently when it was invoked, unnecessarily in fact, in the case of the EU Referendum Act last month. The least that needs to be done is to introduce a bit more proportionality and transparency into the system's operation. Invoking financial privilege over a sum that represents expenditure of a vanishingly small percentage of overall government expenditure, as happened in December, risks bringing every single piece of legislation and amendment that this House proposes within the ambit of financial privilege. That would not be a defensible or proper use of the power and I hope that the Government will now consider how in future to bring about a more proportionate and transparent approach to those determinations.

In conclusion, I congratulate the noble Lord on his review and hope that the Government will move ahead and introduce primary legislation on the basis of his preferred option. That could well result in a more effective House, but one operating clearly within the spirit and parameters of the 1911 Act.

5.19 pm

Lord Jopling (Con): My Lords, I have put my name down to speak this afternoon with a background as a former business manager and a former instigator of procedural changes in another place. Quite frankly, it is time that we faced up to the problem of statutory instruments. We have argued about it for years. It is not a new issue. We have had references this afternoon to Lord Simon of Glaisdale and to the reports by my noble friends Lord Wakeham and Lord Goodlad. We need to get on with it. The noble Lord, Lord Hannay, who has just spoken, made exactly the same point.

I shall begin by making one or two general points. In my experience, some Ministers are sometimes tempted to cut corners in getting their policies agreed by Parliament. It has nothing to do with the matter before us, but I remember cases where Ministers produced huge draft Bills to the Cabinet committee on legislation and the Cabinet committee said, "Oh no you don't. You cut that down", and made them take a third of it out, and that seemed all right. Then, to the fury of the business managers, one found that they put all the things they had taken out back as Schedules to the Bill at Committee stage. One has to put up with the enormous appetite of some Ministers to legislate. That was an abuse.

It is also an abuse to cut corners and try to enact policies through statutory instruments rather than through primary legislation. I deplore that trend. I have never been able to convince myself that the tax credit issue should not have been done through primary legislation. I commend the last few words of my noble friend Lord Strathclyde's executive summary, where he says that,

"it would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".

I believe very strongly in that. I also cannot get my mind around why the tax credit issue came here at all, because it seemed to me that it was a financial issue that we should never have been asked to discuss.

In his report, my noble friend gives us three options. I am very strongly opposed to the first option of taking the consideration of statutory instruments away from this House. That would be a travesty of the bicameral basis of our parliamentary procedures. For the first three or four years, I was a member of the Select Committee on the Merits of Statutory Instruments where, as my noble friend Lord Trefgarne pointed out, we looked at more than 1,000 statutory instruments a year. That consideration of legislation in the form of statutory instruments is hugely important and thorough and is far better than what is carried out down the corridor in another place. Indeed, I was one of the instigators in that committee of the recommendation to reject the draft Gambling (Geographical Distribution of Casino Premises Licences) Order 2007, which this House, quite rightly, kicked out.

I also do not like option 2 because it does not take us much further than the current contentious situation. It seems to be a recipe for continued argument.

I see much more merit in option 3. It preserves the right of the Commons to ride over us. I cannot see the logic of this House being able to delay primary legislation whereas on the other hand it can veto statutory instruments; that seems to me to be the wrong way round, and the two ought to be comparable together. My old friend, the noble Lord, Lord McNally, who I think is no longer here, said that we must preserve the right to say no. Option 3 maintains that right. It is an extension of the Wakeham all-party proposals as well as the similar Goodlad all-party ideas. I suggest that the Government should listen to our views, have this report debated in another place and bring legislation that develops the option 3 proposal. The Leader of the Opposition said in her opening speech that the tax credit event gave the Government the opportunity to think again. So does option 3, and I believe that that is the way we should go.

5.26 pm

Baroness Andrews (Lab): My Lords, I sought to speak in this debate for one specific reason. It has been my privilege in recent years to be a member of the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee, as well as of the Goodlad committee. Noble Lords may wonder what I have done to deserve such cruel and unusual punishment, but it has been a genuine privilege to see the way that the House does scrutiny.

I am speaking personally now. I am concerned about anything that might reduce the legitimate use of our powers of scrutiny in this House and diminish the power of Parliament. I believe that the weight of opportunistic changes to our political system, some of which has been rehearsed in the House, has reached a tipping point in terms of executive power and away from Parliament and, with respect, the noble Lord's review sits at the heart of that. Far from having a quarrel with the other place, we are here today making a defence of Parliament as a whole and its ability to hold the Government to account—a Government who, as many noble Lords have already said, find it difficult to face losing votes. Sometimes they seem to behave as if it were 1796, not 2016. I advise the party opposite to remember that there is an ineluctable law in politics that no Government have an endless shelf life.

Talking of hubris, despite the elegant way in which the noble Lord, Lord Strathclyde, delivered his speech, in 1999 he declared that the convention that this House did not vote against statutory instruments was dead. In 2005, he conceded that it had had a lively revival and was rather robust, but now, awkwardly, the Government have required him to declare it conveniently dead after all, and have charged him with finding a way of resuscitating the patient. The problem is of course that the patient is not actually dead; as we have heard today, it is sitting up and having a hearty breakfast. Unfortunately, that means that the noble Lord's review started on a false note with a false premise. Since there is no evidence of the excessive use of statutory instruments being rejected in this House, no case can be made for the abolition of our power to veto.

Having been invited to address the wrong question, the noble Lord, not surprisingly, came up with the wrong answer. It appears that we are the problem, with our apparent "failure" to understand the conventions. We are also told that the convention has been fraying for many years; indeed, to quote from the report, it,

"has been stretched to breaking point".

I know that the noble Lord has a fine sense of irony—we saw it in operation many times when he was Leader of this House—but to say that it is stretching the convention to breaking point for the House of Lords to reject five statutory instruments in 65 years, and four in the past 16 years, itself stretches credibility to breaking point. What is frayed and stretched is the other important and very long-standing convention, the distinction between primary and secondary legislation, which has already been alluded to. As *Erskine May* itself puts it, the purpose of secondary legislation is to deal with the application of detail. The fact that secondary legislation is increasingly not about detail at all but about the scope, the impact and the implementation of primary legislation and making substantial variations to it is the source of the crisis that this Government have manufactured, and is exemplified by the tax credits regulations.

This is evident in the raft of Bills, some already cited by noble Lords, which have been described by the DPRRC in one instance as simple mission statements. Most notoriously, perhaps, there is the Childcare Bill, which led that committee to say that the delegated powers,

"go to the very heart",

of the Bill. My experience on both the scrutiny committees of this House leaves me in no doubt that the Government find us a thorough nuisance. Time and again in the past two Sessions the Government have been reprimanded by both committees for excessive and inappropriate use of delegation. We have had to refer back to this House secondary legislation which contains substantial policy changes with substantial impacts—for example, the draft hunting regulations, immigration changes, and universal credit. In this Session alone, 32 SIs have had to be corrected by government after serious flaws were identified and 16 have had to be withdrawn completely.

[Baroness Andrews]

If we add to that ministerial failure to provide impact statements, or Explanatory Memoranda which do what they are supposed to do, a picture emerges of a Government who not only deliberately exploit secondary legislation and reduce parliamentary scrutiny in the process but are resentful of proper scrutiny. If we were to lose our exceptional power to reject SIs, Parliament would lose a legitimate brake on government excess. However, it would also reduce the credibility of the scrutiny process as a whole and open the gate to greater abuse. What is needed, which the noble Baroness, Lady Hayman, anticipated, is a wholesale review of secondary legislation to remind Ministers of their public duty to be open and transparent about policy and legislation, to be accountable, and to respect—in fact, invite—the role of scrutiny.

Instead, we have the three options before us. We are invited to focus on option 3, which involves a new procedure to be set out in statute which would allow the Lords to invite the Commons to think again when a disagreement exists and to assert its primacy. Sadly, this option raises more questions than it resolves. Where is the timetable which will allow the House of Commons to think again? Where are the provisions for legitimate delay? Where is the guarantee that the House of Commons—either as a whole, or in Committee—would be able to show that it had indeed thought again, by debate, or by vote? Where, in short, is this additional provision for scrutiny which would compensate the House for the loss of our veto?

Many commentators are already alarmed by what this implies. We have heard the Hansard Society quoted. Meg Russell of the Constitution Unit says:

> "If a Lords defeat did not trigger a debate, and a full-blown vote, peers could find themselves overridden by MPs who had no clue what they were voting on".

The reality is that we could end up with the worst of all worlds: having lost important competence in this House but with no extra scrutiny in place.

Finally, when the noble Baroness winds up I hope that she will give some indication of the issues raised by the proposal to legislate for these changes. The legislation, we are cheerfully told by the noble Lord, is likely to be short. That will not stop it being problematic. It will be extremely difficult. Nothing like this will have been done before. I know that the noble Baroness is aware of the pitfalls. I detect a certain wistfulness in the noble Lord's tone when he says that when the conventions go, Parliament and the people it serves will miss their value. Indeed they will, and they will miss nothing more than the power of this House to have a veto over a Government who sometimes act far too hastily, which is when we save them from themselves.

5.33 pm

Lord Empey (UUP): My Lords, following the general election and the opening of the new Parliament, it is fair to say that a number of us looked forward to a period in which reform of this House was not on everybody's lips but instead we had an opportunity to get on with business, scrutinise legislation and do the job which we are sent here to do.

Sadly, as the summer progressed, the Sewel scandal had a huge impact on the standing of this House, and of course another major controversy erupted in the autumn over the tax credits issue. A number of noble Lords have already questioned whether that piece of secondary legislation should have been brought to your Lordships' House in the first place. Maybe, on reflection, there could have been another way, but the temptation in this case to stop such a controversial measure was irresistible.

My main concern about option 3 is, in part, shared by the noble Lord, Lord Strathclyde, himself. In the final paragraph on page 6 of his review, the noble Lord expresses the concern that I share, when he uses the words,

> "Finally, in order to mitigate against excessive use of the new process which I have proposed under option 3",

et cetera. My anxiety is that the temptation will be to ping-pong piece after piece of secondary legislation down the corridor and say, as the scorpion did to the frog, "It's what we do". It could lead to further confrontations rather than fewer.

Perhaps we need to look at other measures. These could include, as mentioned by many Members this afternoon, those around the question of secondary legislation. Anybody who has ever had any role in a formal legislative process, either nationally or regionally, will know that Ministers all like statutory instruments. They are easy and quick, and difficult to amend. You can achieve quite a lot with them. Of course there is now future-proofing of legislation—I have no doubt that the draftspeople will deny it, but I do not accept that—where provision is made so that Bills can be subsequently amended by statutory instrument. The temptation is undoubtedly there.

I sincerely hope that we can look at some kind of change. However, although it may certainly be required, I am anxious that we will escalate the number of confrontations rather than reduce them. The temptation will be to send any statutory instrument back to the other place to amend it. It would open up a huge degree of additional traffic between the two Houses, which would not necessarily be helpful.

I am of course a very strong believer in the primacy of the other place, but I also believe that, to do our job properly, this House needs to be able to express a view in order to improve legislation and cause the Government to rethink their position from time to time. However, where we may be starting to go wrong is that this House should not allow itself to become the national Opposition to Her Majesty's Government, which I fear is the temptation to which a number of Members of your Lordships' House have yielded in recent months. That is not helpful to the balance in this Parliament.

There is growing hostility towards us among some Members in the other place, which is concerning. This is in part as a result of confrontation coming so soon after the Government secured a mandate. I fear that there might be far less support expressed for this House in the Commons today than there was when the Clegg proposals were being pushed through a few years ago. It would be churlish not to acknowledge the work done by the noble Lords, Lord Cormack and

Lord Norton of Louth, and their very effective group in trying to get a proper balance in the relationship. Knee-jerk reactions and changes always carry risks.

The fundamental weakness in all this is the uncoordinated nature of the changes occurring to our unwritten constitution at so many different levels. Devolution to the home nations is evolving rapidly, with no thought given to accountability to Parliament; major changes are taking place at local level, with the new council and mayoral arrangements being introduced; and, finally, we saw last night another attempt to resolve the West Lothian question, with EVEL being used for the first time in the other place. Only a coherent and comprehensive examination of all our constitutional arrangements taken together will provide the platform for a fully thought-through constitution for the 21st century. That must involve consideration of what role this House plays.

What we are discussing today is an understandable attempt to resolve what is seen as a challenge to the primacy of the other place, and I do not believe there is real support in this House for any challenge. That is the weakness that is so apparent in the way successive Governments have chosen to handle the constitution. I sincerely hope that we can promote a more joined-up approach and that the noble Baroness the Leader of the House will address this matter during her contribution later in the debate. I thank the noble Lord, Lord Strathclyde, for the work he has done, but I believe we need further refinement, perhaps around option 3 or variations thereof. Otherwise, I fear we will increase, at a dramatic rate, the number of issues which we will be sending back to the other place.

5.39 pm

Lord Naseby (Con): My Lords, it may help if I explain my background as Chairman of Ways and Means in the other place. First, it was a post that I held when the Government of the day had a small majority rather similar to that of the present Government. Secondly, we took through the Maastricht treaty, which has probably been the most controversial piece of legislation since the war, with four clauses, 500 amendments and four all-night sittings. Our guidance then was not convention; it was that wonderful bible *Erskine May*, and, when quoted from the chair, every Member accepted the ruling.

Furthermore, there was a secondary role for the position of Chairman of Ways and Means and it related to SIs. They were handled primarily by Speaker's Counsel and the clerks, but when an SI was controversial I was shown it and, if I thought it really was controversial, I shared that with the Leader of the House. If we both thought it was controversial, the Secretary of State was called in and the matter was discussed in some depth. I suspect that that procedure has gone by the board. I cannot believe that it happens today, otherwise the SI that arrived here would never have been in the state in which it was, and it most definitely should not have ever got to this House. I say in parenthesis that I suggested to my party that the whole thing should be pulled.

Of course, there is the other side of the coin. We all knew that there was a convention in this House. We all knew that this was a major issue with £4 billion at stake. A number of my former colleagues from the other place sitting on the opposition Benches did not vote for the Motion before the House that night—they saw how important it was that that particular convention was not abused. However, we are perhaps all politicians and the temptation was for the Opposition to give the Government a bloody nose, which they certainly did. We have to recognise that that is what happened.

My noble friend Lord Strathclyde was asked to look at this issue. He has produced a report with three recommendations. I reject the first but think that both the second and third are possible. If option 3 has more certainty, I should like to know what safeguards there are to ensure that the other place does think again and does not just nod through a measure, producing exactly the same result. There needs to be some clarity there. I also commend my noble friend on the last paragraph on page 6 of his report. It says in patent terms, "You must look again at what used to happen to SIs and clearly is not happening today".

However, I am sorry to say that I question Appendix C to the report. I have worked with the Library and have carried out research using legislation.gov.uk. That shows that in recent years, on a calendar basis, the volume of SIs has increased—from around 2,000 in 2009 up to nearly 3,500 in 2014, and, looking at the graph in the appendix, it seems that in 2015 the record will go even higher. It is not just a matter of the numbers. When I used to look at SIs, they consisted of just two pages; now, on average they consist of four pages and some are considerably longer. Added to that is the size of an average Bill today, which I would guess is at least double what it used to be in the early 1990s.

From that research I am now much clearer about the issues. I think the word "convention" has to go. Of course, we have our *Companion*. I have it here, and it is a wonderful document, but the other place has *Erskine May*. *Erskine May* has 1,097 pages and our *Companion* has just 296, including the contents and index. But the really interesting point is that there are 432 pages in *Erskine May* of direct relevance to and with mention of your Lordships' House. I suggest to my noble colleagues that the time has come for a complete review of the *Companion*, including the parts that are in *Erskine May*, and for putting the whole lot together. Colleagues may ask what that would really achieve. It would give this House, in our bicameral Parliament, a framework similar to the Commons but geared to our needs and to the needs highlighted by *Erskine May* on the law, privileges, proceedings and usage of Parliament as relevant to your Lordships' House.

In conclusion, unless we take such action ourselves along these principles, I foresee ever-increasing arguments and diktats from Governments of the day. Surely it is wiser to pre-empt such action and produce our own comprehensive equivalent of *Erskine May*.

5.46 pm

Baroness Williams of Crosby (LD): My Lords, I ask the indulgence of the House for a moment to say just a word about my friend and colleague who gave her maiden speech a few moments ago. There is no doubt that my noble friend Lady Bowles of Berkhamsted is one of the most remarkable economists, with incredible knowledge of very complex financial matters. She has

[Baroness Williams of Crosby]
already been a great asset to the European Parliament, and anybody who follows its work will know that, time and again, she has intervened in order to establish a more sensible, more rational, more thoughtful and less bureaucratic approach by the Commission to many of the things that it does within Europe. I believe that she will make a major contribution to our discussions over the next few weeks and months with regard to the referendum and its outcome, one for which the House will be extremely grateful. She made in her maiden speech a compact, short but extremely wise contribution to what will be a future discussion perhaps even more than to the present discussion today.

One of the subtle things about the noble Lord, Lord Strathclyde, is that he is very good at hinting at what he wants to say without shouting about it; he just leaves it to sink in so that people understand the complexities of what he is trying to get across. What I am saying in another kind of language is that if one reads his review carefully, one will see that it points to the weaknesses in the whole structure that we have for how we deal with statutory instruments.

Let me take two examples from his compact, well-worded and thoughtful review. In it he points out, as the noble Lord, Lord Jopling, pointed out, that there is a real problem with the sheer scale of statutory instruments. He does not say that in so many words, but he makes it quite clear that in making his own proposals work, he hopes that there would be a much greater recognition by government of the limitations of and obvious flaws in relying on statutory instruments as a way to get across complex legislation. In that context, I have to say that, frankly, I do not think that the tax credit system was one that lent itself to having a statutory instrument explain it rather than the proper procedure of primary legislation. The House has already indicated the ways in which that could have been done.

I believe that the House sometimes sells itself short. It is more than just a revising Chamber. It is a Chamber that, on many occasions, has reiterated the fundamental foundations of what it is to live in a constitutional democracy. In that context, to deal with legislation on issues as sensitive as the level of income of people already hard-pressed as a result of the economic crisis is not appropriate for a statutory instrument. It is much more appropriate for what the Lords does well: to bear in mind the balances and challenges that make it possible for a democracy to survive. Although it is not itself democratic, as my noble friend Lord McNally pointed out, the Lords is often very conscious and sensitive about the constitutional issues that have to be taken into account.

Among those constitutional issues, the noble Lord, Lord Strathclyde, pointed to what he calls the conventions. Therefore, I think that the acceptability of his third option, which has certain attractions, would be much enhanced if he was able to show that there is a balance, in constitutional terms, for it. That balance needs to be of two things, as he himself has hinted. The first one I have mentioned already: a real study of whether statutory instruments are becoming out of control in terms of the sheer weight and volume of them—over 3,000 a year in years that do not have an election within them.

The second one, as he also made clear in his review, is the deep and profound undesirability of statutory instruments replacing primary legislation. That is why he also very sensibly said that primary legislation must be enriched by being clearer and by spelling out in more detail what the implications of it are; and that the steady retreat of Governments of all kinds from primary legislation which is detailed, sensibly set out and clear into statutory instruments is a substantial threat to the best workings of parliamentary democracy.

I am inclined to agree with my noble friend Lord McNally that we would be unwise to give up at this stage the concept of losing a veto over a statutory instrument, rare though its operation is, because we do not yet have the reassurance that we would need that the Government on their own side would be responsible for changing the ways in which legislation is drawn up in order to enable this House to continue to do its valuable and essential work, not only of scrutiny but, as I have tried to say more widely, a genuine commitment to the principles on which democracies depend.

I wish to say two other things before I conclude. A more appropriate approach would have been for the two Chambers' Leaders to meet and discuss whether this matter could not have been handled much more responsibly and consensually. That would have been good not only for the House of Lords but immensely good for the House of Commons. It would have enabled us to say what the House of Commons' responsibilities were in relation to any change in the current actions and powers of this House. To have the reassurance that we need, that means that they would properly respond to the new responsibilities vested upon them. However, some of recent history does not suggest that one can be sure of that.

I have great sympathy with what the noble Lord, Lord Jopling, and the noble Baroness, Lady Hayman, had to say about the way that this issue should have been handled more properly—not by the Government, despite the brave attempts of the noble Lord, Lord Strathclyde, to find a sensible and thoughtful response, but rather through the parliamentary system and our constitutional structures. I would advocate strongly that we do not in future allow any Government of any colour to determine what should be the powers of this House.

5.52 pm

Lord Cormack (Con): My Lords, it is always a privilege to follow the noble Baroness, Lady Williams. She brings great experience and wisdom to all the debates in which she takes part. I echo what she said about her noble friend Lady Bowles, who made a notable maiden speech. I also echo her perceptive and truly appreciative remarks about my noble friend Lord Strathclyde and the work he has put into what is certainly a thoughtful and constructive report. However, it is not the last word. I am grateful to the Leader of the House for ensuring that this is a "take note" debate and that we can all reflect on what is said in it.

We have to begin by recognising that this debate has come about because of a paradox. Rarely has there been a more popular vote in the country, as far as the

House of Lords is concerned, than the one that took place on 26 October; and rarely has there been a greater change of policy on the part of a Government as a result of the vote. I recognise that, even though I voted enthusiastically in the other Lobby. The Labour constitutionalists, as I call them, and noble Lords in other parts of the House thought that this was a step too far. However, because of the enormous financial cost involved, it was understandable that the Government reacted—but I believe that they overreacted.

It is very interesting that wherever you sit in this House you are conditioned by the position of your party. Position lends difference to the view. I well remember that in another place I fulminated—sometimes from the Front Bench as well as from the Back—against some of the changes of procedure to the House of Commons introduced by the Labour Government. I deplored Programme Motions; I deplored the proliferation of what we called Henry VIII clauses on skeleton Bills; I deplored deferred Divisions; and I very much hoped that when my party came into government those things would go. I even said from the Front Bench that they would go—but of course I was not then in a position to do anything about it. But some of those who had made promises became members of, first, the coalition Government and then the Conservative Government and felt it inconvenient to carry them out because all of those changes were helpful to the Executive. This is really what it is all about.

The noble Lord, Lord Grocott, referred to this in a whimsical way. I almost thought that he was going to quote Corporal Jones from "Dad's Army"—"They don't like it up 'em". The fact is that Governments do not "like it up 'em"—which is why we are in this position today.

Having said all that, we do have a real problem: what should this House do about, and what should its powers be over, important legislation with financial implications—secondary legislation particularly in this case? My noble friend Lord Strathclyde has pointed the way. It is important that we follow some of his suggestions but address them in a manner in which the House of Commons, the other place, has to learn to behave: with more robust independence when it comes to secondary legislation.

I hope that as a result of my noble friend's report there will be a realisation on the part of government that skeleton Bills should become a thing of the past. Governments are not there to create Christmas trees on which Ministers then hang balls. I hope, therefore, that following today's "take note" debate there will be a discussion in government. I also hope that a Joint Committee of both Houses will be established to look at the whole issue of secondary legislation and that it will take on board the wise advice given a few moments ago by my noble friend Lord Naseby. We cannot stay where we are—we have to have clarification—but we have to preserve the position of this House, to which I am passionately devoted, to have a real role in legislation while never subverting the superiority, in legislative terms, of the other place, the elected House.

So let us go forward from here having taken note of this sagacious and helpful report. Let us have a Joint Committee of both Houses; let the Government realise that they were largely responsible for the debacle on 26 October. My position then was very like that of my noble friend Lord Lawson, who said that he was determined to vote as he did—as we both did—but that he had considerable sympathy with the points being made by those who were going to vote in another direction. We have had our lesson, I hope. Let us now move forward constructively so that this House's position in our country's legislature is properly recognised and confirmed, so that the supremacy of the Commons is not challenged but legislation, both primary and secondary, is thoroughly scrutinised.

5.59 pm

Lord Kakkar (CB): My Lords, I join in thanking the noble Lord, Lord Strathclyde, for the thoughtful way in which he introduced his review, and indeed for the very thoughtful approach he has taken to it. I believe that a review was necessary because there is a difference of opinion both within your Lordships' House and between this House and another place over the role that this Chamber should play in the scrutiny and disposition of secondary legislation. A convention can exist only if there is consensus. On this occasion, it is clear that the consensus has started to break down and, therefore, the matter must be addressed. The noble Lord's review is a starting point, as indeed is this important debate to take note.

We need to recognise that the debate on 26 October raised an interesting and important issue. My understanding previously had been that with regard to statutory instruments, the role of your Lordships' House was to scrutinise them, but that our response was binary; that is, either to accept them or to reject them. A new, potentially helpful concept was introduced that the House should be able to consider a statutory instrument and provide an opportunity for the Government to think again in a meaningful and real way, and indeed that is what happened on that occasion. The third proposal in the report of the noble Lord, Lord Strathclyde, seems to provide that option in a more definite way, and if one reviews the debate of 26 October, many arguments were made. I was particularly taken by that of the noble Lord, Lord Rooker, when he said at col. 1015 that the powers of your Lordships' House with regard to secondary legislation were "too drastic". There must be a possibility for your Lordships, in looking at the development and evolution of conventions, to consider seriously the proposal made by the noble Lord, Lord Strathclyde.

In his review, the noble Lord also makes an important point about the need to look in addition at the way that primary legislation is drafted and, in particular, at the use of delegated powers if this new convention is established for your Lordships' House. This is important, particularly in terms of the use of delegated powers that may have constitutional ramifications. We have only to look to the previous Session of Parliament and the passage of the Fixed-term Parliaments Act 2011 to note that there are delegated powers in that Act which provide for the extension of the life of this or any Parliament by two months on the basis of a statutory instrument. Two months is a short period, but there is an important principle here with regard to the constitutional implications of that statutory instrument.

[Lord Kakkar]
Therefore, any criteria that are developed with regard to the drafting of primary legislation and the appropriate use of delegated powers must make special reference to those with a constitutional implication.

There is then the question of the many Acts of Parliament currently on the statute book that have delegated powers, some of which may also be used for constitutional purposes. I should like to ask the Leader of the House how the Government would go about providing an opportunity for an understanding of the implications, with regard to existing legislation and delegated powers, in this specific area of constitutional importance so that we can be certain that our important role as guardians, to some extent, of our constitution can be maintained. The Parliament Act 1911 made specific reference to an ongoing and important role of your Lordships' House at that time to ensure that the life of a Parliament could not be extended beyond five years. That provides the context of our constitutional responsibilities and therefore the need, in taking forward these proposals, to ensure that there are no unintended consequences that serve badly our country, our fellow citizens and this Parliament in the future.

6.04 pm

Baroness Fookes (Con): My Lords, I rise to take part in this debate from the perspective of the chairman of the Delegated Powers and Regulatory Reform Committee. I am speaking for myself because I have an extremely active and assiduous committee and I would not dream of speaking on its behalf, so anything I say is my own view alone.

I have come to value very much the work that we do in a quiet way, which is certainly of no interest whatever to the media. But we perform a valuable role and therefore option 1 in my noble friend's report fills me with horror. That is because there is nothing in the House of Commons as it is currently constituted which would replicate the work we do.

For those who may not be so familiar with the committee's work, perhaps I may be allowed to explain that we look at each Bill as it comes through, usually between Second Reading and Committee. We have the help of an assiduous team of very experienced lawyers and we look, first, to see whether the delegated power is appropriate—in other words, is it delegated legislation that ought to be on the face of the Bill?—and, secondly, whether the degree of parliamentary scrutiny is appropriate for that particular work.

We are guided, hopefully, by a departmental memorandum which is supposed to explain why the powers have been taken and the justification for them. I have to say that the quality of these memoranda is extremely variable, and indeed we produced a report on this subject before I became the chairman. If the Government want to make a modest start, they should take a look at how seriously the various departments, and the Bill committees in particular, take those duties. I think that the Cabinet Office, which actually tells the departments what they are supposed to be doing, should take a good, hard look and make sure that they do so. This might deal right at the outset with some of the problems that subsequently come forward.

Much greater attention should be given to allowing draft regulations to be brought forward while we in the House of Lords are looking at the main Bill, because often they are not available. They do not become available for ages, and again a lot of difficulties could be overcome if the regulations were with us so that we could discuss them without coming to the final point where we have to accept or reject or, as I rather vulgarly call it, swallow it whole or spit it out.

Furthermore, the Government should be looking seriously at the way in which they think about the development of legislation. I can remember a time when, before important Bills ever appeared, they would have a Green Paper making suggestions, then a White Paper giving the Government's views and finally the Bill. Where has that system gone? I am absolutely certain that, if we had more of that, we would have far fewer problems that then arise subsequently.

Noble Lords: Hear, hear!

Baroness Fookes: Alternatively, we have the draft Bill approach, which again can be valuable, but how often is that used? In my view, not often enough. If the Government are really keen on improving the quality of legislation and not having the various difficulties that have been so eloquently expressed, they ought to take a hard look at how they approach the whole possibility of legislation.

Let me turn to the options. As far as I am concerned, I have already ruled out firmly option 1. Other people have already explained that option 2 has its shortcomings. I tend to favour option 3, but with considerable caveats. Unfortunately, in his excellent report my noble friend failed to give any detail as to how the option might be implemented, and that is absolutely key to whether it will work well or not. I think he suggested that it might be considered by the Procedure Committees of both Houses, if I remember correctly, but I think we need considerably more than that.

Perhaps I may put forward a few suggestions, which no doubt will be fired upon and lost. If the House of Lords decides that it does not want or disapproves of a statutory instrument, a committee should be set up to set out the reasons—this is used in other matters—which would then be sent to the House of Commons and the relevant Minister. The Minister would be required to formulate a Written Statement setting out his views on whether he agreed or whether there should be a modified statutory instrument. Built into it, there should also be some time delay to make sure that the House of Commons had the opportunity to consider it and have a full debate.

Those would be my suggestions. No doubt fault will be found with them, but I am not going to go for option 3 unless I am pretty sure that it will be a useful and practical solution.

6.10 pm

Lord Darling of Roulanish (Lab) (Maiden Speech): It is a pleasure to follow the noble Baroness, who makes some very trenchant criticisms of the way in which statutory instruments and legislation are dealt with. It is a pleasure, too, for me to have this opportunity to deliver this my first speech in your Lordships' House.

I had not expected to end up here, but it was a great pleasure to meet so many people whom I have not seen for, in some cases, many years. I particularly thank my noble friends Lord Bradley and Lady Armstrong who introduced me to the House just before Christmas. The three of us were elected on the same day in 1987 and we have known each other for a long time.

I am grateful to the officers and staff of this House for all their help in what turned out to be a long and arduous process of getting from nomination to arriving here a few weeks ago. I am also grateful for the warm remarks made by the noble Lord, Lord Strathclyde, and my noble friends Lady Smith and Lady Hollis, who indeed toiled with me in the vineyard of tax credits some years ago.

I know that, rather like in the other House, the first speech should be uncontroversial and should not be phrased in such a way that it would provoke someone to stand up in outrage at anything I may say. Despite the subject, I shall try not to be controversial. I start off in that vein by saying that I come at this from the experience of having spent nearly 28 years in the other House, 13 of which were in government. I understand fully the frustrations of being a government Minister in a Government who get turned over in this place rather more often than one would wish. As a member of the Opposition for almost 15 years, I understand, too, the concern when opportunities to hold the Government to account are being taken away.

Obviously, the merits of tax credits were discussed last October when I was not a Member of this House. Suffice it to say that there has been some debate today about exceptional matters. That depends on where one stands in all this. The nature of tax credits is that they are designed to support the income of people who would otherwise be on a very low wage. It is not dissimilar, philosophically, from universal credit, which the Government are somewhat struggling to implement. From the point of view of the people who stood to lose very substantial sums of money, this was an exceptional measure. As I understand it, exceptional measures do not happen that often in relation to tax credits. Therefore, to react without giving the whole matter proper consideration might simply store up other problems for the future. So I hope that the House will reflect on that.

Speaking as someone who served in government for 13 years, the substantial point is that it is no bad thing that the House of Lords has the opportunity to revise legislation and to say that, no matter how inconvenient or uncomfortable it may be to the Government of the day, they should go back and think about the matter again. This is particularly apposite in relation to tax credits. I sometimes reflect that Members of the government party in the other House might be profoundly grateful for being spared several months of being, quite rightly, harangued by their constituents who would have lost substantial sums of money.

I am sure that my successor as Chancellor, perhaps in his private moments, is also very grateful. I am almost certain that he would have been bound to have had to reverse the measure at some point. I have been there before. I had to deal with the consequences of our decision to abolish the 10p rate of tax and, a decade and a half ago, when we raised pensions by rather a small amount. Without wishing to remind my colleagues of that pain, I know what it is like to make a decision and then look at it and think, "Well, perhaps I should have done something different". The present Chancellor was given the opportunity to change his policy. In the Autumn Statement, he said that, having looked at it—remember that at that time the sun was shining on our economy, although I understand that clouds have subsequently arrived to make the outlook less rosy than it was last December—he did not need to do it. It is a classic case of where the House of Lords said, "Think again", and a lot of people, perhaps silently, have said, "Yes, I am glad that we did". But it turned out that the Government said that they did not actually need to introduce the measure.

I make the point that if you take away or restrict the opportunity to revise, the obvious problem will arise that Parliament—I use that term advisedly—will pass, on occasions, legislation which has unintended consequences, or sometimes consequences that are very adverse on the population which looks to Parliament to protect its interests. I understand that when I was in the Government what we proposed was defeated in the House of Lords on nearly 500 occasions. That may have been on a temporary basis but on a number of occasions we had to think again. When you are making policy, you just have to take it on the chin. You have to ask yourself, "Can I get this through the House of Commons? Can I get it past a Select Committee? Can I justify what I am doing in front of a Select Committee for a couple of hours without stumbling? Can I get it through the House of Lords?". It is important to do that.

I fully accept some of the criticisms made of statutory instruments. There are far too many of them. They are an easy way out for Ministers. In relation to tax credits, I have every sympathy with what the noble Baroness, Lady Williams, and the noble Lord, Lord Jopling, said as to why on earth was this not introduced by primary legislation. That is where it should have been introduced because it was an issue of some principle.

My conclusion is twofold. The need for revision and for questioning of the Executive is essential. I live in Edinburgh, where the Scottish Parliament is getting more and more powers. It is unicameral. It was never designed to be run by one party. As that Parliament gets more and more powers, the lack of questioning and scrutiny will become an increasing problem. We should bear that in mind.

Finally, as the noble Lord, Lord Empey, said, I am increasingly concerned at the amount of constitutional change that is taking place in this country on a piecemeal basis. The Scottish Parliament is getting more and more powers, including complete power over income tax very shortly. The imbalance of devolution in the United Kingdom is becoming a real problem. The whole concept of English votes for English laws is fraught with difficulties, particularly if you get into something that undermines the fiscal union that underpins the political union in this country. Other Members have referred to other measures. I know that reform of the House of Lords is difficult. I can understand why the Prime Minister and all his predecessors said, "Look,

[Lord Darling of Roulanish]
forget this. Let's leave it for another day". Yet, every year we do a little bit more. If it is not looked at as a whole, one day the whole thing will topple over. Outside, people may say, "Hurrah to that", but it would be far better for us to look at this and come up with a sensible way to scrutinise and revise legislation, and to make sure that we have a Parliament which reflects what people want, especially at a time of growing dissatisfaction and alienation from our current political structures. It cannot be put off for much longer.

I hope that the House will think further about this, so that it does not look like a political fix and perhaps resembles a more considered view as to what we need as a second Chamber in the 21st century.

6.18 pm

Lord Hope of Craighead (CB): My Lords, it is a very real pleasure for me to congratulate the noble Lord, Lord Darling, on his fascinating—indeed, outstanding—maiden speech. It is, of course, a much easier task for me than it would be for a shadow Chancellor to try to reply at short notice to one of his speeches from the Front Bench in the other place. At least I have that advantage. I can look back over the noble Lord's career for over 40 years, ever since he joined the Faculty of Advocates, of which I was already a member, in 1984. For a time he was a member of a remarkable group of members of that body, which included the late John Smith, the noble and learned Lord, Lord Wallace of Tankerness, and the noble Lords, Lord Campbell of Pittenweem and Lord Selkirk of Douglas, who sought to combine practice at the Scottish Bar with politics. He was already a member of Lothian Regional Council, if I recall correctly, when he joined the faculty. Not long after that—I think within three years—he became a Member of the other place for an Edinburgh constituency. That led to a decision, for very good reasons as we now all know, to give up a future career in the law and instead move into politics. It is as a result of that that he comes to this House with a remarkable fund of knowledge and experience. We also owe him an immense debt of gratitude for the work he did as leader of the no campaign in Scotland last year. It was an outstanding service to the country, appreciated very much in this House. It is against that background, too, that we all welcome him to our number. I am sure that we all look forward very much to many contributions from him on that subject and others.

I shall say a few things about the review by the noble Lord, Lord Strathclyde, not in my capacity as Convenor, but in my personal capacity. I begin by drawing attention to points made by the noble Lord, Lord Butler of Brockwell, who unfortunately cannot be here to speak himself, on 17 December last year in reply to the Leader's Statement on the publication of the review. He pointed out that for many years now there has been dissatisfaction in all parts of the House with the binary choice available to us for either accepting or rejecting statutory instruments. He was speaking, after all, with some knowledge, because he was a member of the commission under the noble Lord, Lord Wakeham, which reported on that issue as long ago as 15 years, and of the Leader's Group under the noble Lord, Lord Goodlad, which reported a year later. For that reason, he encouraged us to look positively at the proposals as pointing the way forward to resolve a problem that has been with us for far too long. He urged us not to be diverted by the circumstances that gave rise to the review, but rather to concentrate on the way forward. He emphasised, as other Members of the House have today, that the problem is one of long standing that needs to be resolved, and the sooner that happens the better.

Of course, a balance has to be struck. I welcome the careful attention that the noble Lord, Lord Strathclyde, gave to the work of the scrutiny committees—both the Joint Committee and the committee of this House—and that work's importance. It is vital that it should continue. Of course, for that reason, option 1 is not one that anybody in this House can take seriously at all. To add to the point that others have made, I draw attention to a memorandum that the noble and learned Lord, Lord Walker of Gestingthorpe, sent to the noble Lord's review, in which he drew attention to some important examples of the use of statutory instruments that now have statutory authority. We have moved far away from the primary purpose of delegated legislation, as set out on page 667 of *Erskine May*, which is to deal with,

"details of an essentially subsidiary or procedural character".

The noble and learned Lord gave two examples of that, one from the European Communities Act 1972, where, in Section 2 and Schedule 2, provision is made for remedial legislation to cure incompatibility with convention law; and the other from Section 10 of and Schedule 2 to the Human Rights Act 1998, to deal with incompatibility with convention rights. A mechanism is a statutory instrument. It really would be absurd if this House, in dealing with issues of considerable difficulty and, indeed, possibly constitutional importance, could not comment on and examine them.

I shall say nothing about option 2, except to endorse the point that the noble Lord, Lord Jopling, made, that it really would be a recipe for continued argument. We really do not want that any more.

So we are left with option 3, which certainly has its attractions and which I, for my part, would endorse, but certainly there is more work to be done. I shall mention just one or two points. First, I welcome the point that the noble Lord, Lord Strathclyde, made about the need for clarity over what amounts to a denial of approval. We simply do not want to go through the kind of arguments that we had last term on that point. Although there may be difficulties about a fixed period, it is crucial that we have clarity as to what happens next if the thing goes to the other House. We really need to be sure that something proper will be done, that proper scrutiny will be given and, furthermore, that good reasons are given by the Executive if the decision is to reverse the decision of this House.

I endorse the point that others have made, in particular the noble Baroness, Lady Bowles, about amendment. Amendment has a great value. If you make an amendment it focuses the point of dispute. It requires an answer designed to deal with the particular point raised by the amendment. I hope that that point can be taken very seriously.

Lastly, I go back to the point that the noble Lord, Lord Empey, raised. He drew attention to what would happen if the reform takes the form that option 3 suggests. I think that the noble Lord, Lord Strathclyde, has played down the extent to which use would be made of that option. If given legitimacy, I am sure people would begin to use that route. I am not as pessimistic as the noble Lord, Lord Empey. I do not think that it would be overused, but it would be unwise to assume that it would not be used. I suspect that it would be used quite frequently in circumstances where, in the past, quite rightly, we have shrunk back from something that would, in effect, run the risk of contravening a convention of which we were rather uncertain.

6.25 pm

Lord Norton of Louth (Con): My Lords, the review undertaken by my noble friend Lord Strathclyde may be pointing us in a direction that is worth pursuing, but for very different reasons from those advanced by my noble friend and not in the way recommended in his report. Our debate, following my noble friend's report, has tended to focus on whether the House, by its vote on 26 October, broke a convention of the constitution. We are in danger of getting into a muddle. There has been no attempt to define what we mean by "convention". The Joint Committee on Conventions did not offer a definition. My noble friend in his report offers a definition that is not incorrect, but it is incomplete.

There is much misunderstanding of what we mean by constitutional convention. Conventions are non-legal rules that determine a consistent, indeed invariable, pattern of behaviour. Those who comply with them do so because they accept that they are, as David Feldman has cogently expressed it, "right behaviour". Conventions do not become such by the words of a particular person, be it Viscount Cranborne in 1945 or Lord Sewel in 1998. They are not created, but develop. A convention exists once there is an invariable practice. Kenneth Wheare distinguished between conventions and usage—in effect, a distinction between invariable and usual practice. The Cranborne doctrine of 1945 developed into the Salisbury convention. The statement of Lord Sewel developed into a convention named after him, even though the convention is such only by departing from the words that he used. It is a convention because seeking a legislative consent Motion is an invariable practice.

It is our usual practice not to withhold agreement to statutory instruments, but it is not our invariable practice. As we have heard, the House has asserted its right to reject statutory instruments and has on occasion exercised it. This House therefore does not regard itself as bound, and has not been bound, by a moral imperative that we should not reject statutory instruments. So long as that is the case, there is no convention. The Joint Committee got itself into something of a confusion on this issue, partly because of a failure to define conventions, but it recognised that no convention was breached if the House defeated a statutory instrument. As it reported at paragraph 228:

> "The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree".

The fact that there is no convention is borne out by the words of my noble friend in the course of asserting that there is. My noble friend's report states on page 15:

> "The convention that the House of Lords should not, or should not regularly, reject SIs is longstanding but has been interpreted in different ways, has not been understood by all, and has never been accepted by some members of the House".

The very wording draws attention to the absence of any agreement on what this supposed convention constitutes. Some Members, like my noble friend, may believe that there is a convention but, for it to be one, Members generally have to consider themselves bound not to vote down SIs. There is no such acceptance by the House. There was thus no breach of convention in respect of how this House deals with statutory instruments. That was not the problem. The problem derives from the fact that we exercised our power in respect of a statutory instrument that engaged the financial privilege of the Commons. The key section of my noble friend's report is to be found on pages 21 and 22. That should have been the focus of his report. As my noble friend recognises, there is nothing to stop us developing procedures particular to delegated legislation that cover financial privilege.

I am not against reviewing our powers in respect of statutory instruments, but I take the view that if our powers in respect of delegated legislation are to be restricted, the powers should at least be analogous to those provided in the Parliament Acts in respect of primary legislation. My noble friend's recommendation in favour of option 3 claims on page 18 that it is, but then admits, on page 20, that it is not, since there would be no suspensory veto. If we are to go down the route recommended by my noble friend, there needs to be something else built into the procedure to ensure that the reasons for objecting to an SI are taken seriously. I therefore endorse what several others noble Lords have argued—in other words, what may be termed option 3 plus.

In short, while I think that my noble friend's report has come up with some stimulating proposals, it derives from a false premise and comes up with recommendations not geared to the mischief that prompted my noble friend's inquiry. In the short term, there is a case for acting in respect of SIs that engage the Commons supremacy in respect of tax and spending. In the longer term, as several noble Lords have said today, there is a case for a substantial review of how we deal with statutory instruments. We have had recommendations from the Wakeham commission and the Goodlad committee. There is also a report on the subject produced by the Hansard Society, which has made the case for revisiting how Parliament as a whole deals with secondary legislation, recognising the limitations of the other place. Rather than a rushed quick fix, a more holistic approach is the way forward.

6.32 pm

Lord Cunningham of Felling (Lab): My Lords, first, I apologise for the state of my voice. Secondly, as the first speaker from this side of the House to follow the incisive and commanding maiden speech of my noble friend Lord Darling, I think I speak for the whole House when I say that we look forward to hearing him on many more occasions.

[Lord Cunningham of Felling]

I begin by quoting from the preface of the report of the noble Lord, Lord Strathclyde, in which he states:

"Conventions exist because they provide a basis for orderly government. They will survive only so long as there is a continued understanding of why they were originally brought into being. But when they go, Parliament and the people we serve will, I believe, come to miss their value".

Yet he goes on to recommend just that—the abolition of the convention—in his report. I make it clear to your Lordships' House that statutory obligations are not the same as conventions; they are entirely different. Therefore, the convention would go if the only one of the recommendations of the noble Lord, Lord Strathclyde, worth considering—that is the third one: I do not think the other two are worth considering at all—were enacted just as it stands, and we would be left in almost as big a morass of uncertainty as, apparently, some people claim we are now. I am sure that none of us wants that.

The noble Lord, Lord Strathclyde, has adopted many different positions on the convention. In 1999, he declared that it was deceased. He said that the convention on statutory instruments was dead. By 2005, he had given it the kiss of life, and said that it had been,

"surprisingly robust over the decades".—[*Official Report*, 26/01/2005; col. 1375.]

Those two statements cannot be reconciled. However, the reality is that, whatever his personal views, between the votes on the Greater London Authority orders in 2000 and the end of the 2004-05 Session, this House divided nine times on Motions potentially fatal to a statutory instrument. On three of those nine occasions, the Motion to annul was moved from the opposition Dispatch Box, so there is no doubt at all—as the record shows—that whatever any individual thought about the convention, there was an attempt to use it on those occasions. There were no cries of a constitutional crisis then. There were five rejections in all under this convention in about five decades; three of them, incidentally, were defeats for Labour Governments. One was a defeat for the coalition Government and one—the most recent one—was a defeat for the current Administration.

This is not to say that we do not face serious problems with statutory instruments in this House; of course, it would be foolish to deny that. However, let us be clear: if the number of statutory instruments coming to this House was cut by 50%, there would still be occasions on which strong opposition to some or other of those instruments would arise. Therefore, cutting the number of statutory instruments—I would be in favour of that and I certainly share the view of the noble Lord, Lord Strathclyde, on that, as, I am sure, do most Members of your Lordships' House—would not obviate the problem of this House wanting to disagree with however many statutory instruments remained.

In 2006, foreseeing some of these problems, or perhaps just recognising them rather late in the day, the then Labour Government set up the Joint Committee on Conventions, which I had the honour and privilege to chair. The remarkable thing about the committee—which was made up of Members on all sides of the House, here and in the Commons—was that all its decisions and recommendations were approved unanimously. There was not a single vote in the whole of the committee's deliberations. Therefore, the report was unanimous, which, in turn, was unanimously approved by this House and the other place. However, here we are, 10 years later, asking ourselves more questions about how we operate. The report, which we deliberately entitled *Conventions of the UK Parliament*, has stood the test of time. If we want to re-examine these matters—I am certainly not against that—it is surely not sensible to do it in a piecemeal way on the back of an angry, intemperate reaction to one defeat of the Government in this House. That is not the way we should deal with this problem. Frankly, it is simply not credible to suggest that this House has abused the use of the convention on statutory instruments in any way at all. It has not exceeded its powers and I do not believe that statutory codification of these issues will improve the working of the House or improve our relations with the other place.

In reality, the Government have decided to strip this House of its ability to reject any statutory instrument because of the one defeat sustained in October last year. That strengthens the Government and the Executive against Parliament because, if it happens, it will weaken not just this House but the position of the other place as well. That is not what we should be seeking to agree to, in my opinion. The reality is—I am overrunning my time, I apologise—that this House has a far better record of scrutiny of statutory instruments than the other place. I believe that it is time we looked at this, as previous speakers have indicated, in a far more comprehensive, effective and collective way than simply to accept the diktats of the Government because of their annoyance at their defeat.

6.40 pm

Lord Higgins (Con): My Lords, I join those who congratulate my noble friend Lord Strathclyde and his team of experts on a really excellent report; it is extremely useful in setting out the position with regard to statutory instruments and, to some extent, financial privilege. I have only one technical quibble: it would have been helpful, particularly in relation to this debate, if the paragraphs had been numbered.

It is a great pleasure to follow the noble Lord, Lord Cunningham of Felling, because I had the pleasure of serving under his chairmanship on the Joint Committee on Conventions, which was a remarkable committee. As he has just said, it was unanimous, and its reports were approved by both Houses as an appropriate way forward. It is worth referring to a passage in the report of the committee concerning statutory instruments, which was quoted in my noble friend Lord Strathclyde's report. It states:

"The Committee concluded that 'the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it might be appropriate for it to do so'. A number of specific circumstances were identified, for example, when the provisions of an SI were of the sort more normally found in primary legislation or in the case of certain specific orders".

It went on to say that under particular circumstances, opposition parties should not simply vote against something because they had disagreed with it.

The crucial point is that one needs to put that in the context of the catalyst that gave rise to my noble friend's report, namely the debate that we had on the tax credit order. It is absolutely clear from the passage I quoted that the convention was not breached. Quite clearly, that statutory instrument involved something that ought to have been in primary legislation. That being so, it was quite appropriate for the Opposition to take the view that it was legitimate to vote against it. The reason that I did not vote with them was because it involved financial privilege and it seemed to me that that overrode the issue as far as the convention and the ability to vote against it were concerned.

The whole issue arises from the extraordinary fact that this statutory instrument involved financial privilege to such a massive extent. I find it totally puzzling that the Treasury ever allowed this to happen. It looked as though it was trying to pull a fast one, which I do not believe was so. I can understand that the primary legislation enabled it to do that but, in political terms, not to foresee the problems that it would create in this House is, I think, quite extraordinary. We must, therefore, look at this whole issue and the report of my noble friend as a reaction to what was an extraordinary, and not a normal, situation. In that context, we need to consider our position. I had great trouble, as I said, in knowing which way to vote. There is no great problem in dealing with the financial privilege point; the simplest solution would be for the Treasury never to do the same thing again. Or it could be dealt with by the unusual procedure of being debated only by the Commons.

I come to the broader question of how to deal with the situation. I believe that the report 10 years ago had, basically, the right approach. It is not right to cite the tax credits fiasco, if I may put it that way, as a reason for saying we cannot maintain the convention. There is a lot to be said for it. My noble friend Lord Strathclyde and I share the view that conventions are better than legislation, if that can be done, although, strangely, he comes down in favour of option 3; I would prefer option 2.

We need to give this very careful consideration. Perhaps we should reconvene the committee on conventions —I am not volunteering, necessarily—to look at this issue again. There was no breach of the convention. My noble friend's report is wrong, I think, in suggesting in a later passage that, somehow, the fact that this event took place shows how difficult it is to agree on what the conventions really are. We are fairly clear and we could in fact enumerate the various exceptions that might be appropriate. It is at least worth an attempt to do so, because it avoids legislation. I view the idea of more legislation on matters involving the House of Lords with considerable alarm. The issue of composition was cleverly avoided by my noble friend in his report by stating that it was outside his terms of reference, but that will not necessarily apply in the case of legislation. That is a dangerous and rather heavy road to go down. The report says that a Bill may not need to be very long. It is not a question of whether it is long but of whether it is dangerous. That is an important point that we need to bear in mind.

There have been various comments by people outside who take a profound interest in the operation of your Lordships' House. I noticed that Meg Russell, who comments frequently on our affairs, suggested, perhaps optimistically, that this was a marvellous opportunity to have a negotiation on whether we should reduce the size of the House by capping our numbers in exchange for more restriction on the operation of this House. That is rather optimistic—it would certainly confuse the negotiations.

Overall, we should have a shot at option 2. I rule option 1 absolutely out of court, not least because, as my noble friend Lady Fookes said, it would affect our two extremely valuable committees that do this work that the House of Commons does not. But I think that that is a better option than suddenly rushing in on the back of an event that was controversial to legislate on this matter and to limit and control the powers of your Lordships' House.

6.48 pm

Baroness Thomas of Winchester (LD): My Lords, ever since I joined my party's Whips' Office in 1977, the threat by all Governments of curbing the Lords' power if the Opposition tried to vote down statutory instruments has been part of folklore. The threat was enough because all Governments eventually turn into the Opposition and then take a different view. It is ironic, as other people have said, that it should be a Conservative Government who are now proposing to take action, given that Conservative Oppositions have used the power far more than Labour have. As my old friend, the noble Lord, Lord Strathclyde, said in his Politeia lecture in 1999:

> "Governments—all governments—are increasingly, and dangerously, insouciant about powers taken under secondary legislation … those powers are often so far-reaching that they must … undergo improved Parliamentary scrutiny. Parliament must, in turn, be ready to reject bad regulations. The new House of Lords will certainly assert that right".

So is this Government in danger, perhaps, of becoming "insouciant" about powers taken under secondary legislation? If so, parliamentary scrutiny should be improved—as the noble Lord, Lord Strathclyde, promised —not curtailed.

I am in favour of improved scrutiny and have put forward my own proposal, also mentioned by my noble and learned friend Lord Wallace of Tankerness; briefly, it is that the substance of controversial SIs might be debated on a Motion which was amendable and on which Peers would be able to vote, while the instrument itself was parked and unaffected at that stage by votes. That two-stage procedure might enable the Government to give certain assurances, or even to withdraw and re-lay the instrument with some amendments of their own. In putting forward such a proposal, I am keen to show that I am not against a change in procedure for controversial SIs, but I am totally against legislating in this area for any diminution of this House's power over secondary legislation. Without the ultimate threat of a veto, why would Governments with a majority in the House of Commons bother to be careful how they used their increased power? What nobody has referred to so far are the times when Governments have withdrawn an SI when the hostile Motion has been tabled. I know that from personal experience, but it will not show up in any records.

[Baroness Thomas of Winchester]

Option 3 of the review says that the Commons should have the last word. That is fine in theory but, as others have said, will that last word be a proper debate? I am full of admiration for Commons debates, but often one searches in vain for a Commons debate on an SI, only to find that there has not been one and that the SI was nodded through.

To take this whole matter forward, could we not ask our Procedure Committee to work up some of the various proposals, particularly those put in this debate, and even to conduct pilot schemes?

I end with a rhetorical question asked by the late great Lord Simon of Glaisdale, who was an expert in this field: "Do we want executive Government or parliamentary Government?". That is still a question that we need to pose today.

6.52 pm

Lord Judge (CB): My Lords, I had a very bad night's sleep last night. I had a nightmare in which King Henry VIII came to visit me. The monstrous tyrant had been allowed out of hell—I assure you, that is where he is—for a few weeks to read all those wonderful books by Philippa Gregory, Alison Weir and Suzannah Dunn, all of whom give his long-suffering wives rather a good press and a very bad press to him. He was so offended by it that he started looking into what we were talking about. He said, "There's a piece of history none of you knows. You have all these wonderful books about why I cut off Thomas Cromwell's head, but I'll tell you the truth about it. I said to him, 'I want the Reformation Parliament to give me an Act of proclamations', and he said he'd get it for me. I said, 'I want the widest powers to regulate Tudor life. A good regulatory system would really organise Tudor life better'. 'Yes, Your Majesty.' Unfortunately, he couldn't get Parliament to give me control over—let me just think—inheritance, goods, chattels, liberty and all the things I really did want to control. So I had his head cut off".

The nightmare was this: we have too many Henry VIII clauses, and we call them Henry VIII clauses because they are draconian and potentially tyrannical. Many of them come to us by way of subordinate or secondary legislation and, although we have to consider many different aspects of this debate, I want to focus on this: this debate could actually be about secondary legislation and the primacy of Parliament, because our processes—in both the House of Commons and this House—have led to a situation in which legislation is enacted which creates the most awesome powers.

Let me give you an example. I thank the noble Lord, Lord Darling, for his speech, and remind him that there was a time in 2008 when life was rather tough, so we had the Banking (Special Provisions) Act 2008. I take this example not to embarrass him—his maiden speech was absolutely delightful and wonderful—but to make the point that we are talking about all Governments. The focus is on what happened in October, when we had a Conservative Government, but it is true of all Governments and always will be unless we do something about it. The Act gave all sorts of powers to the Minister and the Treasury, including to,

"disapply … any … statutory provision or rule of law".

Any statutory provision or rule of law? What on earth was going on there?

Let us not get too carried away with the rather important disaster that was going on. The Childcare Bill was debated here in October 2015. Who could argue with free childcare? Who could argue with regulations made for "extended entitlement"? Then you see that extended entitlement regulations may cover no fewer than 11 different subjects, including the power to "impose obligations"—notice—

"or confer powers on the Commissioners for Her Majesty's Revenue and Customs".

Another power that Henry VIII would not have got is to,

"create criminal offences in connection with",

so-and-so, for which another part of the statute said that you might go to prison for two years. Another is to make reviews of a First-tier Tribunal decision—that is interfering with a court's decision—and another is to make provision in regulation for people to be fined. Not content with no less than 11 areas where secondary legislation could be enacted, we end up with Section 4 on "Supplementary provision", on which I will now focus. It states:

"Regulations may—

(a) confer a discretion on any person"—

any person—

"(b) make different provision for different purposes"—

well, I cannot argue about that—

"(c) make consequential, incidental, supplemental, transitional or saving provision"—

who could argue with that? Until you come to—

"(d) amend, repeal or revoke any provision made by or under an Act (whenever passed or made)".

You know, there was a revolution here in 1688. We ended up with a Bill of Rights that made it clear that there was no dispensing or suspending power. And here we have statutory instruments capable of destroying an enactment by both Houses. So we have an interest in anything which interferes with what we have agreed to in the legislative process, do we not?

I am nearly done. I could go on. Let us take another one. We looked the other day on the education Bill at what failing schools might be. What do we provide? "Failing school", two perfectly ordinary English words—we all understand what they mean. But there will be regulations, not for the Secretary of State to say, "You are a failing school, and for these reasons"—somebody has to decide that; I have no objection to somebody deciding it—but saying, "You, the Secretary of State, will define what a failing school is". That is very different. That is saying, "I am the Secretary of State. I say that you are failing because I do not like this, that or the other about what is going on".

I have done. We have to examine this problem, which has arisen from a parliamentary dispute in this House, in the context of the primacy of Parliament, so that we take a proper overall look at what we are being asked to do when we legislate.

6.59 pm

Lord Lexden (Con): My Lords, I shall hope to avoid having a disturbing and dramatic dream of the kind that the noble and learned Lord, Lord Judge,

has experienced but it helped to inspire a truly excellent speech. I follow in more mundane fashion.

Whatever the background circumstances, a defeat in this House on secondary legislation relating to a major political issue is bound to incur the wrath of a Government, regardless of their party complexion.

"Practically every newspaper confidently anticipated that the Prime Minister would announce in the House this afternoon a Bill to limit the Lords' powers".

That, in the words of Richard Crossman's diary entry for 20 June 1968, is what followed the narrow defeat of the order on sanctions against Rhodesia, nearly 50 years ago. The fury died away, of course, and no legislation was brought forward. Calm was restored and sustained by conventions agreed between the parties.

The Strathclyde review is designed to provide the basis for the start of a new era. I am with those attracted by the third option for change that my noble friend Lord Strathclyde commended to us with his customary vigour. Indeed, I would always hesitate to challenge him in any way, having entered this House five years ago now with his kindly tutelage. But I am also with those who believe that any changes here need to be accompanied by changes in the other place. They need to proceed hand in hand; one should be conditional on the other.

The entire system by which secondary legislation is dealt with is the subject of an authoritative report, *The Devil is in the Detail*, to which my noble friend Lord Norton of Louth referred, from the Hansard Society, of which I am proud to be a trustee. It enjoyed until recently the wonderfully benign and gentle chairmanship of my personal friend the noble Lord, Lord Grocott. This detailed Hansard Society study confirms what many have readily acknowledged for years. It states:

"The scrutiny process for delegated legislation has become unnecessarily complex … most MPs simply don't understand it … Many of the MPs we interviewed simply weren't aware of the practicalities relating to the scrutiny of statutory instruments".

It is that state of affairs which has made the existence of our power of veto extremely important.

The Hansard Society's report also stated:

"The existence of a veto power gives purpose and leverage to the Lords' scrutiny committees … Remove it, and the influence of the House of Lords will be neutered to the government's advantage unless steps are also taken to improve scrutiny … by the House of Commons".

That is surely the nub of the matter. Without improved scrutiny arrangements in the Commons, it is very hard to see how the third, preferred option in the Strathclyde review will really advance the interests of Parliament. If the procedures of the other place do not provide adequately for substantive consideration of the Lords view on a rejected statutory instrument then, instead of underpinning the primacy of the elected Chamber, the process will serve the interests of the Executive by granting an override power for MPs without requiring anything of them as regards actively engaging with or making an informed decision about the concerns raised by this House—a danger underlined by my noble friend Lady Thomas of Winchester.

I now serve on the Joint Committee on Statutory Instruments. We meet week by week in the presence of an array of legal luminaries. The work is extremely important but the contribution that members of the committee can usefully make is severely circumscribed. Our terms of reference limit us to checking whether a statutory instrument is technically sound and properly drafted. We are explicitly precluded from considering its merits or the policy behind it. It is not difficult to see how better arrangements could be made.

Do we not need to see the Strathclyde review, so judiciously conducted by my noble friend, in a wider context? Do we not need a reform process within which it would take a most useful place? For without such a process, the loss of our veto is likely to strengthen the Executive at Parliament's expense.

7.05 pm

Baroness Taylor of Bolton (Lab): My Lords, the noble Lord, Lord Strathclyde, opened this debate by posing three questions. First, he asked: is there a problem? I think that there is a problem, but not the one that he defined. Secondly, he asked: should we retain our veto? I am inclined to say that we should. Thirdly, he asked: was there scope for change? There is general agreement that there is scope for change, but his report is not a definitive answer.

I go back to the noble Lord's first question on whether there is a problem. He quoted the events of 26 October in justification for the fact that there is a problem, yet he said today—I wrote down his words carefully—that the two noble Baronesses, my noble friend Lady Hollis and the noble Baroness, Lady Meacher, cleverly found a form of words that did not break the convention. If they did not break the convention, why is the noble Lord quoting that as the case for the changes that he is suggesting? It makes it very puzzling—

Lord Strathclyde: I wonder if it would be worth clarifying that point. I completely stand by the words that the noble Baroness cited but they were in the context of saying that there was now more than one interpretation of what the convention actually was. There was the one propagated by the noble Baronesses while others, including me, regarded those Motions as being in practice fatal. Once you can no longer agree what the convention is then you have to have the kind of debate that we are now having.

Baroness Taylor of Bolton: It was not the words of the Motions that were fatal but the political consequences that the Government were fearing, not least because their Members in another place then woke up to what these regulations were all about. The hype that we saw, which my noble friend Lady Smith mentioned, about the threats of extra Peers and the suspension of this House was more to do with the political consequences than the actual point about a convention being broken.

For several years, I was part of the business management team in the House of Commons. I was leader of the Commons and its Chief Whip; before that, I was the shadow leader of the House when Tony Newton was the leader of that House. One of the main problems that government business managers had—looking at what the noble Lord, Lord Jopling, said earlier, I think that it is the case on all sides—was in trying to keep Ministers realistic about what they

[Baroness Taylor of Bolton]
could achieve in their legislation. They always wanted to do more and to have wide framework legislation. They always wanted to load the legislation so that a lot could be done by statutory instruments. There were mechanisms for dealing with that, but it was very difficult to contain Ministers at times.

We have to acknowledge that the whole process of using statutory instruments, while absolutely vital to the machinery of government, is or can be open to abuse. The noble and learned Lord, Lord Judge, said that that is possibly the case with all Governments. I accept that there have been occasions when all Governments have pushed the limits further and further, but we are now in a new ball-game with the framework legislation that we get and in terms of the SIs. The example that the noble and learned Lord gave about the provisions in the Childcare Bill during the previous Session prove the point. The idea that you can make a criminal conviction through an SI is just outrageous and we should not even be contemplating it.

I think that we have a great deal of agreement this afternoon that we need change, but it is not a question of what changes need to affect this House. It is a question of what changes need to be implemented in Parliament as a whole to deal with the whole question of secondary legislation and how we scrutinise and hold the Government to account.

My noble friend Lady Smith reminded us of the difficulty in the House of Commons of getting Back-Benchers to serve on SI committees. It was and is a real problem, because people saw little mileage in it for themselves and very little point, because it is a very limited debate. Often, the problem was getting a quorum rather than being challenged on the issues thrown up. At the moment, we see minimal scrutiny in the House of Commons by government Back-Benchers who are told to keep quiet and opposition Back-Benchers who do not think that they will make any difference.

We have three problems here: framework Bills, the number of SIs—and, probably more importantly, their scope, which is much greater than it used to be—and the problem of lack of scrutiny in the House of Commons. When we are considering what the next stage should be, it should not be a simplistic Bill, as the noble Lord, Lord Strathclyde, has suggested; it should be a comprehensive look at this problem. We have had some interesting suggestions during this debate of a Joint Committee, with the noble Baroness, Lady Fookes, making some very pertinent points and the noble Lord, Lord Higgins, talking about implications of financial privilege for SIs. I would say that most SIs have a financial implication. Are we to have a threshold or to say that we can never look at any of them?

There is general agreement on all sides of this House that this is a bigger problem than one of a convention that may or may not have been broken. Therefore, I urge the Government and the Leader of the House to think about not only what is convenient for this Government in the short-term but—I know that it is unlikely in the near future—what they may have to and want to do in opposition. Do not think about the short term, because that will not be good for Parliament as a whole. We have a big responsibility in this House to Parliament as a whole. That is the way that we should go forward in considering this issue.

7.12 pm

Lord Maclennan of Rogart (LD): My Lords, following the thoughts of the noble Baroness, Lady Taylor, I would say that the House of Commons is not undertaking sufficient scrutiny of the Government. That is a change. I spent 35 years in another place. Subsequently, committees were set up to scrutinise the work of different departments, but the legislative scrutiny is defective. It seems to me that this House has a duty to fill that gap, but not without discussing it with the other place.

Professor Meg Russell, in her book on this House published a few years ago, pointed out that 40% of the amendments carried against the Government in this place were ultimately accepted by them. That is indicative of the role of this House. The convention that we rarely look at subordinate legislation or statutory instruments needs to be examined. It ought to be examined with another place. We should be coming together on how to change these matters.

The imbroglio about the tax credits was very well handled at the time by the leaders of that debate. It was a ghastly proposition, with hardship being suffered by the least well-off members of society. It was certainly necessary to ask the Government to consider again what they were proposing. Indeed, that could be said to have been successful, because the Government largely withdrew their proposals.

I would prefer option 3 of the suggestions of the noble Lord, Lord Strathclyde, but it should not be implemented without dialogue with another place. There is one lacuna in the proposal, which is that there is no indication of the time that it might take to allow the Government to reconsider their proposal. I hope that, when winding up the debate, the noble Lord will give us some thoughts about that. If it was fed back immediately after this House had exercised its exceptional right, it would not be as effective as the report of the Joint Committee on Conventions in 2006 wanted. In the report, which was cited earlier, the Joint Committee took the view that,

"the House of Lords should not regularly reject Statutory Instruments, but … in exceptional circumstances it may be appropriate for it to do so ... The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree".

That disagreement was very helpful. We have seen five or six statutory instruments thrown out in the past 65 years. I hope that that will be taken into account in considering whether it is necessary to have regulation, a parliamentary Act. It seems to me worthy of consideration whether the convention should be prolonged. I do not necessarily advocate the third proposal without modification.

This debate is very worth while and needs to be taken outside this Chamber, because we all accept the primacy of the other place, yet we all accept that the function of the two Chambers is to oversee and scrutinise with great care what is being done or proposed by the Government.

7.20 pm

The Earl of Kinnoull (CB): My Lords, I begin by joining in congratulating the noble Baroness, Lady Bowles, and the noble Lord, Lord Darling, on their engaging maiden speeches. As a Perthshire resident I also echo the thanks of the noble and learned Lord, Lord Hope, to the noble Lord, Lord Darling. I do not thank that he has ever really been thanked enough for his efforts. In very trying circumstances he was immensely dignified and effective. We should also thank the noble Lord, Lord Strathclyde, for his review. It is much more difficult to write a short letter than a long one. The review is short, well written and readable. Really, it contains everything that one might want to have on the topic.

I will confine myself to three areas or themes that came out of the review. The first is that of clarity. I notice that the word appears on the first page and the last, and it appeared in the speech of noble Lord, Lord Strathclyde, earlier on. As a relatively new Member of the House, I found it interesting to be asking on 26 October quite a lot of more experienced Members of the House about the conventional position. There was a total lack of clarity among the membership of the House, particularly among the more junior Members, as to what the position was. So I thought that I would do a bit of research on this, because, as a newish Member, I had recently been handed all the relevant bits and pieces of paper—and that was difficult.

My first suggestion, on which it will be very interesting to hear a comment, is that there could be in some place some recording of what the conventions might be. I say very carefully here that I have read the relevant parts of the Joint Committee on Conventions report of 2006 and I agree that it is fresh—a word used by the noble Lord, Lord Strathclyde. I agree with it all. I am not suggesting that anything should be codified in any way. I am merely suggesting recording it, so that there is at least somewhere to which people like me can go in order to form a view on what the conventions are.

My second point is about skeleton Bills. In my mind these have been rebranded by the noble Lord, Lord Cormack, as Christmas tree Bills. That is a better way of thinking about them. I will read out again the relevant bit that appears twice in the review, about the Government taking,

"steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".

As a quid pro quo that is good news if the third option is taken. However, it deals with future Bills and not with the problem of Christmas tree Bills already on the statute book. In six minutes it is not possible to develop that, but it occurs to me, considering this point further, that one has to deal with old Christmas tree Bills and old provisions for statutory instruments as well.

I will make some more general points, and my next comment is on timing. As has often been observed today, there was another choice for those tabling legislation for the Government as to the route that they took. There was a certain route and even if that was a bit clunky, the Government have the ability to conduct their business. As we grapple with the issues that have been raised in this debate, I do not therefore feel that this House or the other place should be in any rush; it is important to get it right.

Building on that, of course the functions, powers and composition of this House are interrelated. If you are going to tinker with those functions and powers, then, as the noble Lord, Lord Norton, said, there are quite a few difficulties that, as you scratch the surface, you come across. A number of people have suggested that a Joint Committee of the two Houses would be appropriate, and I would support that. But anyway, the document is pithy and would be very valuable were such a Joint Committee to be formed in the future. However, I do not feel that the document is a good basis today for piecemeal constitutional meddling.

7.25 pm

Lord Skelmersdale (Con): My Lords, at this point in the debate I wish to put a rather different slant on it, even though I know that what I am about to say will not endear me to many of my noble friends. I believe that there is a four-letter word that best describes the debate's background. That word is "myth". In fact, it is worse than that. It is myth based on myth.

Why do I say that? On his own admission, the Prime Minister asked my noble friend Lord Strathclyde to look at the relationship between the two Houses in relation to statutory instruments, having been frightened that there were two Motions on successive days to defeat SIs on tax credits and electoral registration. The indisputable fact is that these Motions were indeed laid. Both were defeated by reasonable majorities, in accordance with the conventions—pace my noble friend beside me. The noble Baroness, Lady Smith of Basildon, was spot on when she said on 17 December:

"Let us be clear that in this Parliament three attempts at a so-called fatal Motion to reject an SI have failed".—[*Official Report*, 17/12/2015; col. 2191.]

I take it from that statement that the Opposition, while complaining loudly, did the decent thing in not supporting such Motions, according to the convention—which unfortunately only some of us understand. How can you have a convention when Members of the House either do not agree with it or do not understand it? The net result of the Motions was that, as we all know, the Government's policy, announced in the Autumn Statement, came to a grinding, if temporary, halt.

This brings me to another myth. In the debate on the Motion, several noble Lords expected the order to be covered, as we have heard today, by financial privilege. The trouble is that this option is never available for statutory instruments. They further thought that the affirmative Motion should have been included in a finance Bill, or a Bill specifically for the purpose, which would have been certified as coming under yet another convention: financial privilege—again, not regularly understood by all Members of the House, and sometimes by the Front Benches when they want to confuse the issue.

Both would have taken several weeks to get on to the statute book, which would have taken too long for the Chancellor's plans. In fact, as I understand it, tax credits can be amended only through the Tax Credit Act 2004, which stipulates the use of affirmative statutory

[Lord Skelmersdale]
instruments to change them. I do not know whether the Government of the day knew that they were creating an elephant trap by so stipulating, but, as events transpired, they most certainly did. After all, several SIs under that Act were agreed by both Houses during the coalition Government, so this Government very naturally thought: why not this one? It was laid and, importantly, accepted by another place—but not, obviously, here. It is worth repeating that your Lordships did not throw it out—to which, of course, there is no recourse.

I hope that I have not taken too long to explain why I think that my noble friend Lord Strathclyde was asked to solve a problem that did not exist. None the less, being him, he stuck to his brief that the existing conventions might soon break down. He has come up with a positively brilliant solution that can reasonably be worked upon. I would look at it perhaps as the basement of a future building. There is much to be thought about, as evidenced by the Hansard Society's brief and Professor Russell's comments from the Constitution Unit—not least, how do we cope when your Lordships consider a statutory instrument before another place? Will another place—this has already been mentioned in this debate—be able to use a deferred Division? Both these things need a lot of thought. Another vote in another place will settle the matter once and for all, without a further vote in this House.

The real damage on 26 October was that although everyone agreed that tax credits are a financial matter, the relevant SI cannot be given a Speaker's certificate of financial privilege. I therefore ask my noble friends whether the Speaker should have this power and whether it should now be added to my noble friend's preferred solution number 3.

7.30 pm

Lord Foulkes of Cumnock (Lab): My Lords, like the noble Lord, Lord Skelmersdale, I shall take a slightly different tack, but first I say that I have great respect—indeed, affection—for the noble Lord, Lord Strathclyde, although he organised the Conservative campaign against me in election after election in Carrick, Cumnock and Doon Valley. Mind you, my majority went up each time, so maybe I should thank him.

We have to remember that this report was not requested by this House or Parliament, but was instructed, as it were, by the Government in a fit of pique, and we have to take account of that. The heading of this debate is "Secondary Legislation and the Primacy of the House of Commons", but, as others have said, it is not really about that at all. This is really about Parliament's scrutiny of the Executive. That is coming up again and again in this debate.

We could ask why we need a second Chamber. After all, not all countries' parliaments have a second Chamber. Mind you, as my noble friend Lord Darling said in his excellent maiden speech, in Scotland, we are seeing the effect of having a one-Chamber Parliament with one party in control, and that raises some concerns.

There are other arguments. For more than 50 years, I have supported first past the post for the House of Commons. It was right and defensible, not just because of the link with Members, as I found in my constituency, but because when nearly 80% of the electorate voted—as happened in my constituency, certainly in 1979—about 80% of the people who voted did so for one or other of the two main parties. Now we have a multiparty system, and a lot of people—even me—are beginning to question whether a party with less than one-quarter of the electorate supporting it really has a mandate and can say that this House must accept what the other place is doing because of that mandate. We must remember that the legislation is put forward by the Government in that place.

Meanwhile, we particularly need an effective revising Chamber. I am in favour of major reform, of a senate of the nations and regions replacing this unelected Chamber with a more responsible and accountable Chamber. Meanwhile, we need to look at how we can improve the existing system. The current proposals are entirely the wrong way of doing it, as a number of people have said. Look at yesterday's House of Commons *Hansard* and see whether anyone here can understand what was happening. There was absolute chaos in the House of Commons. The noble Lord, Lord Lisvane, predicted exactly what would happen. It was total chaos as the Speaker ruled that the Bill could be voted on only by English Members. The Deputy Speaker took a vote by acclamation. I think she had to work out whether only English accents were saying "Aye" or "No" to decide whether the legislation passed. What happened was absolutely ridiculous.

We have had too many of these quick political fixes, as my noble friend Lord Darling said. We need a comprehensive review. The Labour group in this Chamber produced an excellent report. My noble friend Lady Taylor was one of the joint chairs. It did not just deal with how SIs are dealt with in this House but looked at the whole question of the structure, composition and role of the House. With respect to the current Leader of the House, she has paid scant attention to that report. A lot of work was put into it by a lot of people over a long period, looking at all aspects of the House. Frankly, unless we look at the House in that comprehensive way rather than go on with this piecemeal reform, we will get into more difficulties.

This has been an excellent debate. I have sat through most of it and found it really fantastic. I enjoyed Monday's debate on the Trade Union Bill, but this debate has been even better. A tremendous range of suggestions has been put forward by noble Lords including the noble Lord, Lord Norton, and my noble friend Lady Hollis. The Leader of the House needs to treat this debate really seriously. I do not think anyone here would expect her to deal with the individual suggestions and proposals—there have been so many really good proposals—immediately in her reply, but we need to get from her an assurance that the Government will look at each and every one of the proposals, alternatives, additions and suggestions that have been put forward. With no disrespect to my noble friend Lord Strathclyde—he is my personal friend—I do not think his is the only way forward. There are many other ways forward. I hope the Leader of the House will look at this in a comprehensive, coherent and holistic—I think it was the noble Lord, Lord Norton, who used that term—way. I hope that will be the

guiding principle as we look forward so that we do not continue with piecemeal reform, which is causing so much disrespect and so many problems within not just this Chamber but in the other Chamber, and does not enhance the reputation of this Parliament.

7.37 pm

Lord Bowness (Con): My Lords, I have not generally participated in debates of this kind, leaving them to noble Lords with greater constitutional and parliamentary expertise. However, this month it will be 20 years since I was introduced. As a member of the Secondary Legislation Scrutiny Committee chaired by my noble friend Lord Trefgarne—of course, I speak personally—I feel able, on this occasion, to offer an opinion.

I start from the position, as I think most of us do, of believing in the primacy of the House of Commons and that your Lordships' House is complementary to the House of Commons. Over many decades, an ethos was established in this House, largely by the hereditary Peers, which was followed by the life Peers and ensured that the Government should ultimately get their business through and that the conventions should be observed, but that, for good or ill, under the present system this House had certain rights, which were rights of Parliament as a whole, not just of this House. That way of working encourages compromise, courtesy and a less partisan approach than exists elsewhere in Parliament.

That spirit survived the exclusion of the majority of hereditary Peers, but I perceive a change which began under the coalition and continues in this Parliament. It is on the part of the Government. I do not know whether the change was brought about by the dynamics of coalition or the political arithmetic that now exists. The change on the part of the Government that I perceive, rightly or wrongly, may be subtle, but it involves not just the acceptance of the traditional role of the Government getting their business, subject to the proper exercise of our rights, but a change which is turning towards seeing this House as an instrument of securing government policy, rather than as an instrument of the rights of Parliament. The rejection of the tax credit instrument, which was seen by the Government as a breach of convention—my noble friend has confused me: was it or was it not?—has led to my noble friend Lord Strathclyde's report. To rush into legislation to change the current position would be a mistake. Hard cases make bad law.

I respectfully suggest that this measure was badly handled at both ends of the Palace. Whatever the original legislation said about changes to be made by statutory instrument, it could have been foreseen that, given the numbers on the Floor of this House and the concern both inside and outside Parliament, trouble was likely. Despite what has been said by my noble friend Lord Skelmersdale, the Government could have found a different way of dealing with it. Equally, this House—and we could have endless discussions about whether or not the amendment was fatal or in breach of convention—was not well advised to take its powers to the limit, and perhaps to breaking point.

Although we are grateful to my noble friend Lord Strathclyde for his report, I wish that this had been dealt with through parliamentary channels, not by a hasty decision of the Executive to seek a solution. We are where we are, however, and my noble friend's report recommends option 3, a power to delay, which, if introduced properly, could improve the scrutiny of statutory instruments by Parliament as a whole. My membership of the Merits of Statutory Instruments Committee has opened my eyes to the scale, complexity and range of secondary legislation. That scrutiny is certainly needed, and I support the suggestion made in option 3.

I have not been a Member of the other place, but the scrutiny there of statutory instruments appears not to be intense. In the case of tax credits, without the benefit of the impact assessment requested by my noble friend Lord Trefgarne on behalf of the committee, it was voted on. The article referred to by the noble and learned Lord, Lord Wallace of Tankerness, by Mr Matthew Parris, a former Conservative Member of Parliament, described statutory instruments as,

"the fat, hidden underbelly of our lawmaking. Peers are good at small print, but the Commons should worry about the mountains of SIs it waves through".

If the power to delay were to be the abandonment of our veto, then before that is agreed some conditions should be applied and some questions answered. Is the veto removal limited merely to financial statutory instruments? If so, how will financial instruments be defined? Is the right of veto to be retained over non-financial instruments? How many of them are without financial impact? I believe that a power of delay has to be for a set period to ensure that the House of Commons has and allots time to debate and consider our reasons for rejection, and to return the instrument with amendments or with reasons for maintaining its position. This is power for Parliament, not for your Lordships' House. My noble friend Lord Strathclyde argues against a set period for delay on the grounds that there may be urgency, but that should be an exception, not the rule.

I am not a noble and learned Lord. Reference has already been made to the Fixed-term Parliaments Act by the noble Lord, Lord Kakkar, which repealed a provision in the Parliament Act and replaced it with a power for a statutory instrument put forward by the Prime Minister to extend Parliament for a maximum of two months. As he said, that is a principle that needs looking at. Our House is also bound into the process. The Statutory Instruments Act itself, as amended, deals with what must occur if an instrument is to come into force before being printed and laid before Parliament, and involves notification being sent not just to Mr Speaker but to the Lord Speaker together with an explanation. These are all matters that need consideration and discussion.

I am glad that my noble friend chose not to respond to representations about composition, nor to comment on ideas to reduce the overall numbers to reflect the votes cast in a general election, which is a recipe for a change that would lead to a further weakening of the independence of this House and its Members and create a Chamber much more in tune with whatever party formed the Government and, hence, a stronger Executive. The present situation regarding numbers in this House is not the fault of the House or any of our colleagues in any part of the House, and needs not legislation but the spirit on the part of all the parties

[Lord Bowness]
here that led to the Salisbury, Addison, Carrington, Shackleton and, indeed, the then Viscount Cranborne and the noble and learned Lord, Lord Irvine, agreements at various times in this House.

Lastly, if there is to be legislation, I ask my noble friend the Leader of the House to confirm that it would be a House of Lords Bill, not one subject to the Parliament Act.

7.44 pm

Lord Desai (Lab): My Lords, we know that the noble Lord, Lord Strathclyde, is a very nice man. I have known him for all the 25 years that I have been here, and he has shown great courtesy, charm and ability. So the question before us is: why does the Prime Minister not like him? Why has he given him what in rugby terms is called a hospital pass? He has been given the thankless task of trying to make a major tactical mistake by the Government, which was shown by your Lordships' House to be worth definite rejection, seem respectable, retrieving the disaster that was visited upon the Government by pretending that the fault was somehow that of your Lordships' House.

We have had an interesting and wide-ranging discussion today. We have had a kind of admission by the noble Lord that, strictly speaking, conventions were not broken on 26 October by the two Motions that were put to the vote. In the debate on the day, the noble Baroness, Lady Meacher, said she was introducing her Motion because she knew that within three days the House of Commons would be holding a discussion on precisely the tax credit issue, so she was genuinely asking the House of Commons to think again. We all thought what would happen, after we had debated and passed the Motion, was that the House of Commons would think again. Indeed it did, and the Chancellor thought again too. As the noble Lord, Lord Cormack, said, it is the most popular thing that the House of Lords has done as far as the British public were concerned, and the most effective thing, in that the Chancellor dropped the policy. He had to revise his policy, come the Autumn Statement.

Given that all these things have happened, why do we have to consider all sorts of questions about the position of this House vis-à-vis the House of Commons, matters of power and privilege and all that? Why can we not just admit that, strictly speaking, had the Government wanted drastically to cut tax credits—they have the privilege to do so if they want to—they should have done it via primary legislation? That would have been the end of the matter and we would not have been able to do anything about it. So why did the Government do it by statutory instrument? It is precisely because there are 1,000 of them every year. I was privileged to be on the first committee of your Lordships' House on the scrutiny of secondary legislation and, let me tell you, they are mind-numbingly boring. However, you have to go through the details because those details matter; they have to be examined. I think someone in the other place thought, "Statutory instruments are so boring that no one's going to take this one seriously and it will pass". It is precisely because secondary legislation is overused that a trick was tried on us that failed.

I remember Lord Simon of Glaisdale, whose name was mentioned earlier, who used to warn us about Henry VIII legislation and so on. There is indeed a problem; if we are going to have 1,000 or 1,200 pieces of secondary legislation, someone has to scrutinise them. I also agree with the many noble Lords who have said that your Lordships' House would scrutinise them with much greater care and attention than would the other place. However, given that, we also ought to ask whether a lot of those sorts of decisions should not be much more open and transparent and be part of primary legislation, and not in skeleton Bills? Therefore, those are the issues.

I want to make one slightly radical suggestion about financial privileges. I accept that since the 17th century or before that it has been the House of Commons' privilege to have powers with regard to financial matters. In 1911 the House of Lords blotted its copybook and got smashed for that reason—quite rightly so—and in 1949 our powers were again curtailed. Coming to today, the relationship between our two Chambers is quite different, because your Lordships' House is no longer a seat of privilege or a place of feudal Lords. It is a place as representative of the great British public as is the House of Commons. Yes, we are unelected, but we are not unrepresentative. Also, as was proved on 26 October, we sometimes have better judgment on financial matters than another place.

Therefore, when we examine all the big questions of our constitution, we ought to ask ourselves: is it not time that we used the expertise of this House and its representativeness to have a greater input into financial matters than it is allowed today? It will not happen any time soon—if we ever have this great constitutional convention we may be able to consider that—but we should certainly not leave that question undiscussed in our future deliberations.

7.51 pm

Lord Greaves (LD): My Lords, at this stage of the debate I do not want to do what so many noble Lords so far have done. I have listened with great admiration and have been bowled over by so many cameo presentations from noble Lords that summed up the position from their point of view based on so much distinction, experience and wisdom. I was particularly fascinated by the speech by the noble Lord, Lord Norton of Louth, and his explanation of the difference between conventions and usages. I shall dine out on that for quite a long time.

The noble Lord, Lord Empey, asked, "Is there a crisis?" and said that there was not. I agree with him. The noble Lord, Lord Foulkes of Cumnock, pointed out that a fit of pique by the Prime Minister and an outbreak of anger at the top of the Government does not amount to a constitutional crisis. However, this whole process, if it is handled well, could lead to better procedures in Parliament as a whole. I will therefore just chuck one or two little pebbles into the pond.

First, in the foreword of the report—that shows that at least I read the first page, if nothing else—the noble Lord, Lord Strathclyde, calls for "more certainty and clarity" to be brought to the process of bringing statutory instruments and their passage through

Parliament. I thought about this. Yes, we want clarity of process and procedures and quality of scrutiny, which is very important. On certainty, clearly we do not want chaos, where everything is being thrown to the winds all the time, but absolute certainty makes a mockery of proper scrutiny. The Government ought not to be in a position where they are 100% certain to get their statutory instrument through every time, otherwise the ability to make changes when things go wrong is taken away.

My second point leads on from that. This House has very good procedures for dealing with statutory instruments, particularly the Secondary Legislation Scrutiny Committee and others, which, as many noble Lords have pointed out, do better than the House of Commons. However, that all depends on the willingness of the Government to take seriously the concerns and representations that are made. A veto used five times in 60 years is hardly a threat to any Government or to the constitution, but it is important as a backstop. There is a lot of anecdotal evidence one can cite of civil servants writing statutory instruments and Ministers putting them forward, having to think hard and to rewrite drafts and so on because they know that that power is ultimately there and that scrutiny will take place to find out if the legislation is necessary. If that veto goes, there could be far more objections by noble Lords, as has been suggested by various Members in the debate. It will be easier to reject because it will not be fatal, and that could diminish the process; the process that we have could have less effect than it does at the moment. The noble Baroness, Lady Andrews, said that it could lead to greater abuse, and I agree with her. That is one of the unintended consequences.

My third pebble is that we must be very careful to ensure that this process does not lead to unintended consequences. One could be that when we are discussing primary legislation, there is greater pressure to refuse to accept a ministerial power to make orders and regulations in the Bill because the process of scrutinising those when they are made may be less useful, which could cause more unnecessary and irrelevant debate at the Bill-making stage. The Government ought to be careful about what they wish for.

The noble Lord, Lord Strathclyde, also said that his third proposal gives us what we do not have now—an ability for a conversation between the two Houses. It does not; all it provides is the ability for this House to reject and for the House of Commons perhaps to reject the rejection within days—certainly it would not come back and there would not be ping-pong. However, if we look at ping-pong on Bills, very little conversation takes place between the Houses. Conversation takes place informally, outside the formal structures, among politicians within the Government and between the parties, but there is very little conversation between the Houses. I suggest that the exchange of brief, inadequate messages is not a conversation. If we need conversation between the Houses, let us think hard about that issue and think of ways to set up some kind of mediation committee or negotiating system between the Houses to do a much better job than coming here occasionally in our pyjamas at 4 o'clock in the morning and traipsing through the Division Lobbies on the fifth ping-pong on some Bill.

The noble Baroness, Lady Smith of Basildon, in a superb introductory speech from her side, pointed out that at the moment statutory instruments are in a direct relationship between the Government—in the form of their Ministers—and each House of Parliament. That is the formal system; I accept that political discussions also take place informally. However, if we want to introduce a new formal system in which there is a relationship between the two Houses on statutory instruments as there is on Bills, we need to think of better ways of doing it than ping-pong, as I have just said. That at least is a constitutional issue that needs thinking about carefully and not just rushing through because the Prime Minister was piqued.

My final pebble is this: everybody thinks that House of Lords procedures have been here for 700 or 300 years, or whatever it is, and that they are historic and traditional, but of course it is completely untrue. They evolve all the time in a sensible, pragmatic way so that this self-regulating House can do what it wants to do. Therefore, let us not do anything which stops us doing what we might want to do on some occasion in the future. Let us do it in a careful, evolutionary way, and when we do that, three weeks later everybody will think that it has been here since 1215, probably.

7.59 pm

Lord Cromwell (CB): I join those thanking the noble Lord, Lord Strathclyde, for his very thoughtful and thought-provoking review, not least because of the quality of the debate that it has provoked here today, which has brought forth two such excellent and educational maiden speeches. I was a little more nervous to hear about the dreams that the noble and learned Lord, Lord Judge, has of beheading Cromwells, even if they are not my kinsmen, but I hope he sleeps rather better tonight after the very powerful speech he gave us earlier on.

When I first read the review, I found a great deal to like in it. Option 1 is, I suspect, a straw man, while option 2 is almost the status quo. Option 3, to which we are therefore ineluctably led, has an appeal. All the options in the report are designed with one purpose, which is to reduce the ability of this House to thwart the will of the other place. That is, of course, as it should be. Noble Lords may cite examples of where that thwarting has saved the Commons from itself, and we may even have reflected the popular mood on an issue better than the other place on occasion, but that is not our job. The role of this revising Chamber, which it does brilliantly, is, first, to assist the other place in avoiding the unintended consequences of the Government's legislative programme and, secondly, to provoke thought rather than confrontation. This is achieved through a combination of the wealth of experience in our House and our role in painstaking examination of proposed legislation. However, in the end, the elected Chamber must have its way. That includes the right to pursue policies and legislation that are unpopular, including with some Members of this House, and taking the electoral consequences.

The second thing that appealed to me about option 3 was that it stresses the need for clarity and simplicity. We have talked very inwardly tonight, but out there beyond the Westminster village there is a great need

[Lord Cromwell]
for that clarity of understanding. Many citizens—lamentably few of whom know what this House does or contributes—need a clear understanding of the valuable role of this House, the areas where it excels and where its authority starts and finishes. Option 3 goes a long way to making clear and giving practical effect to the primacy of the House of Commons in interaction between the two Houses. I believe that is what the people of this country would expect.

However, there are difficulties, as ever, in the details of the report, particularly with option 3. First, as a number of noble Lords have said—notably the noble Lord, Lord Empey, and the noble and learned Lord, Lord Hope of Craighead—what is to prevent the House of Lords overusing the ability conveyed in option 3? There is a real risk of option 3 enabling political skirmishing between the Houses. That would be regrettable and I hope that the closing speeches we will hear tonight will tell us how that will be avoided. Conversely, on the other side of that coin, what is to prevent the Commons—a number of speakers have touched on this—simply adding a tick-box process to dismiss the communications from this House and paying little heed to their content? This is a real concern, widely mentioned this evening. A number of commentators have raised worries about the quality of scrutiny in the Commons anyway: both before statutory instruments even come to us and how they would be scrutinised and debated in the Commons if this House sent them back. The review suggests that a requirement for a Written Ministerial Statement might be used, but is that really going to be enough? Again, I hope that we shall get more clarity on this in the closing part of the debate.

The review ends with two further recommendations. The first is a review of when Commons-only procedures should apply. That makes sense if it avoids the abuse of the system to smuggle through aspects of policy and legislation that deserve proper debate and scrutiny. It would be helpful to know if or when this review has actually been scheduled. Secondly, there is not so much a recommendation as an appeal to the Commons to provide Bills and instruments that are more fully written—or, to use the language of tonight, less skeletal. This is something which has often been expressed in this House and is devoutly to be wished for. However, we may wonder whether it is more of a hope than an expectation. Were any signs of progress in this area detected during the course of the review?

Finally, I see the merits of option 3 as a one-off updating of the conventions of this House. But—and again it is a substantial but—it is of course risky to adjust, as this review does, one part of the machine in isolation from other, wider changes in this House and, crucially, in the other place. But that is probably a debate for another day, or perhaps even a Joint Committee.

8.05 pm

Lord Elton (Con): My Lords, a few moments ago, the noble Lord, Lord Greaves, suggested that anything we did now would be thought by everybody outside this Chamber to have been going since 1215. One of the things I find quite incredible about this country, and particularly the political class in it, is the ignorance about what did happen in 1215, which was the creation of a desperately needed organisation to control the Executive—not one to facilitate them. The Executive were not permitted to enter it until the reign of George I, who did not speak enough English to deliver the King's Speech and had to have a Prime Minister in here to do it for him. Now we have more than 100 of his kin, as it were, in the two Houses.

That makes it increasingly important that we guard the power not just of this House but of Parliament to control the Executive. On occasion, the Government—the Executive—get control of the other place to the extent that it loses its ability to control the Government. I refer to the occasion when the Labour Party wanted to introduce 90-day detention without habeas corpus or any access to lawyers. That was only stopped because this House sat from 2.30 pm on a Thursday until 7.31 pm on a Friday evening. Your Lordships may think this is a long session, but it is nothing to what we did then. That actually stopped it. That was such a close demonstration of how difficult it is when we are really needed to restrain the excesses of an Executive that I, for one, am certainly not tempted by options 1 or 2. Option 3 is defective in two respects, to which I will return.

The other thing that amazes me about people in Parliament since 1973, when I joined it, is that I see endless processions of Oppositions clamouring for more restraint of government and coming on to the Front Bench, both here and in the other House, promising to do something about it. Within months—my noble friend Lord Higgins made this point rather well—they are saying it is not convenient or timely and actually find they like things as they are and that it makes business easier. The departments tell them that they should not build obstructions to the policies the department wants to put in, and the result is that nothing much happens in the right direction after the first six months or so in power. Incidentally, it was in her first six months that Lord St John of Fawsley got Margaret Thatcher to accept departmental Select Committees in the House of Commons, which has been tremendously important but is something she would never have done in the following years.

I come from the wrong camp: I am a Conservative, but a parliamentarian, and my view is that we should hang on to all the powers we have. The fat underbelly of legislation, as it was described a moment ago, exists in the huge amounts of legislation that go through in statutory instruments. How do we ever stop the excessive powers put into statutory instruments? If the Henry VIII clause has gone through, if the Minister has the power and if the department wants the legislation, how do we stop excessive powers and excessive expenditure—things that should not happen without proper and full parliamentary scrutiny—if we cannot say no? We can send them back for the House of Commons to think again, but if the Commons just nods them through, the same faults will be repeated.

There is much in option 3 that is desirable. I think it is necessary to have a specific time limit within which the House of Commons should make up its mind. There should be machinery to see that legislation is actually debated. My noble friend said that you could not do that because debate might go on—or there

might be no debate—before the statutory instrument fell due to be implemented. The answer to that is to have a timetable for the tabling of statutory instruments by departments such that there is time for them to be scrutinised and discussed by both Houses in an interchange before the implementation date. Departments are sometimes pretty slack in getting these things out. What is now needed is a review of the whole SI process from drafting through to the instrument's scope and the powers it confers, followed by the tabling and the procedures in Parliament. If those matters can be matched into a discussion of the wider question of the arrangements between the two Houses, all well and good. However, we need to get on with something.

If the commissioning of this report was a reaction to what was thought to be an unpopular exhibition, with the House of Lords being out of date and unpopular with the country, my response is that I think that in the country as a whole it was thought that we did rather a good job. If we want to do something to show that we, the House of Lords, wish to make ourselves more effective, easier to run and less expensive, we should address the question of the numbers in this House. I have a Private Member's Bill on the stocks and am working on a Standing Order which, between them, would achieve that reduction without changing the balance between the parties.

I hope that your Lordships hang on to your powers for as long as you can.

8.12 pm

Lord Haughey (Lab): My Lords, I begin by congratulating my noble friend Lord Darling on a first-class maiden speech. I am sure he will be a fine addition to this noble House. I also congratulate the noble Baroness, Lady Bowles, on a wonderful maiden speech.

Much has been said today about the rights and wrongs of the vote taken in this House on 26 October last year and I have no intention of repeating what your Lordships have already heard. I would like to dwell on what happened because of that vote and may take a different slant, as my noble friend Lord Foulkes did in his speech. My speech will, I hope, be short and to the point. I should have mentioned earlier that I was giving the noble Baroness, Lady Hollis, three minutes of my allotted time.

At the end of October last year, this House was asked to scrutinise the tax credit regulations. After much debate it became apparent that there were various degrees of opposition from all sides of the House. The subsequent vote demonstrated that the majority of this House felt that the regulations should not be passed.

The uproar from the Government that followed that decision was absolutely astonishing. The knee-jerk reaction created headlines once again calling into question the legitimacy of this House. This led to the Prime Minister instructing the noble Lord, Lord Strathclyde, to carry out a review of the House of Lords. There followed media reports outlining how the decision was unprecedented and broke with convention. Some even suggested that this House had overstepped the mark. None of that is true. What we did in the tax credit regulations vote was exactly what this House was set up to do. The combined wisdom of this House prevented truly unjust financial misery being heaped upon nearly 2 million people. The banner headlines were all about opposition victory and government defeat. There was no victory and no defeat. After serious debate, common sense prevailed. We were asking the Government to think again.

Over the next few weeks, as the dust settled, the Government began to realise the ramifications of the regulations—that they were maybe a step too far. The Chancellor had the opportunity to lighten their burden. Even some Tory MPs on the Back Benches welcomed the opportunity to revisit them. The Chancellor, to most people's delightful surprise, took the decision to do a major U-turn. This was met with great cheers from most Members of all parties in the other place, and the Chancellor actually made it look like a victory speech. Some commentators believed that it had greatly enhanced his chances of promotion.

In recent times, never has a decision been made in your Lordships' House that has so overwhelmingly been proven to be the correct one. Over the past five years, this House has attracted numerous unsavoury and unwanted headlines—unfortunately, most of them warranted. Our legitimacy and very existence has been called into question. We could not have afforded to pay the PR bill for the positive response that this House got after that vote. There is no greater example of the worth of this Chamber and of the reason that it should exist than the outcome of the tax credit regulations vote. Suddenly millions of people throughout the UK realised that we had a major role to play.

The noble Lord, Lord Strathclyde, has now concluded his review and I imagine that most noble Lords will have read it. The noble Lord's favoured option is option 3. Like most Members of this House, I absolutely welcome a review of the structure of this great institution. However, it is a sad day when a decision made in this Chamber, which is now accepted by all parties to be the correct one, creates a situation where we are now discussing constitutional change. This is absolutely absurd and wrong.

Looking at the structure is one thing; changing the parameters or the remit of this House because of one vote is highly dangerous. If this is allowed to happen, where will it end? I personally believe that if option 3 were adopted it would be a sad day for this House. If this option had been in place when we had the vote in October, 1.8 million people would be suffering horrendous financial hardship, because a measure that is now widely accepted as being wrong could be in place.

I thank the noble Lord, Lord Strathclyde, for all his efforts in the review, but I honestly believe that adopting option 3 would diminish the worth of this House. The review smacks of an instrument that would deliver the Government's desired outcome, no matter what. This "scope creep" by the other place is not healthy and should be resisted vigorously. As has already been stated by the noble Lord, Lord Cormack, in relation to public response the outcome of the vote on 26 October last year was certainly the most popular that this House has delivered in many decades. People on the outside looking in must be bemused by the fact that

[LORD HAUGHEY]
this has resulted in a debate around constitutional change. We must always remember whom we are here to serve.

8.18 pm

Lord Craig of Radley (CB): My Lords, I venture to speak in this debate because, when it comes to tabling and then moving an annulment Motion to an affirmative instrument, I have form. I tabled an annulment Motion to the Transfer of Tribunal Functions Order 2008, an affirmative instrument. One long-standing tribunal, the Armed Forces Pensions Appeal Tribunal (England and Wales), dating back to 1919, was to be scrapped. Its work was to be taken on by a widely drawn social entitlement chamber. The Royal British Legion, COBSEO and senior members of the existing tribunal all told the Government that this did not make sense, well before the order reached your Lordships House.

It was clear that the order had had little consideration in the other place, and it was being taken for granted by the Government that your Lordships would also nod it through. So I tabled my annulment Motion just before the 2008 Summer Recess. I was of course made aware of the convention about such an amendment, but I felt that the issue was of such importance to Armed Forces veterans that I should proceed in the hope that the Government might think again. Indeed, during the Recess, the Government took greater heed of the expert advice that they had received. They decided to set up a separate Armed Forces chamber. The Lord Chancellor, then Jack Straw, and the Senior President of Tribunals signed a joint undertaking that no later attempt would be made to unpick this arrangement unless first approved by Parliament. This was subsequently incorporated into a Written Ministerial Statement on 16 October by the Lord Chancellor, and repeated by the noble Lord, Lord Bach, for this House. When the House came to debate the order on 23 October, I moved my annulment Motion but had already agreed with the Government that, in the light of the changes they had made and the Written Ministerial Statement, a key undertaking, I would not divide the House on my amendment.

In keeping with his terms of reference, the review by the noble Lord, Lord Strathclyde, offers three options for consideration to replace the present arrangements on the debatable ground that the Government have an explicit, invariable right to carry all their proposed legislation—a position where, to quote from the review,

"the veto is left unused".

None of these three options seems to be a widely favoured runner, being either too extreme or having to rely on achieving a legally binding or codified consensus across both Houses.

My proposal, for what it is worth, based on my experience in 2008, is not to seek to change the current "convention"—it should by now be in quotation marks. The House should not readily surrender its very long-standing power to move a veto in exceptional cases. The historical record of the rarity of annulment defeats, going back to the 1950s, is well known. Since my Motion in 2008, there have been only nine attempts in over seven years to reject, as opposed to regret, an affirmative SI. In only one were the Government actually defeated before the recent case and the heavyweight, OTT reaction to it. In the same period, more than 1,500 affirmative SIs were passed by this House; a success rate for the Government verging on 99.5% of their business—surely close enough to the "certainty" that the Strathclyde review envisages.

Given such figures, it seems statistically most premature to be doing more than considering a possible way forward—contingency planning, as it were—in the event that the examples relating to tax credits and electoral issues prove to be the harbinger of frequent and successful attempts in this Parliament to thwart government SI business. Although the recent experience was a greater setback for the Government than my case in 2008, the principle of expecting the Government to think again, ahead of a debate, a vote or on an annulment Motion, is sound. It is a fine example of holding the Government to account and gives them the opportunity to reconsider, modify their original intention and seek a better consensus and more widely acceptable outcome. It would be wrong to give the Government a freedom from expert scrutiny, which this House demonstrates, time after time, in the course of its work. Government should welcome that scrutiny and not seek in narrow party interest to weaken, let alone bypass, that input to legislation.

With the benefit of hindsight, I see that it was a mistake for the Government to have relied so much on the supply argument in the tax credit SI. In casting my vote, I supported this, but I did so with a heavy heart because I felt that the arguments so forcefully put for the other side during the debate needed far greater consideration. Indeed, the outcome indicates that the Government have, in part, acknowledged the strength of the counterarguments.

To conclude, I do not favour any of the three options. I would prefer to remain, for the moment, with the current "convention". It is the least objectionable of the possibilities before us. Indeed, I shall not hold my breath in expectation that any of the options put forward by the noble Lord, Lord Strathclyde, will be adopted. Perhaps if a wider look were to be taken at the complex constitutional issues involved, a better solution than the present one might evolve. Again, however, I do not propose to hold my breath.

8.25 pm

Lord Crickhowell (Con): My Lords, in the course of my remarks I will say something about what was said in this House on 17 December about the proposals made by my noble friend Lord Strathclyde—and, just as important, what was said in the Commons on the same day. My noble friend recommended his third option, but it is clear from what was said in the other place that the first option,

"to remove the House of Lords from statutory instrument procedure altogether",

remains a powerful runner, despite the fact that, to quote the Hansard Society, it would risk,

"turning a deeply flawed process into a farce".

The noble Baroness, Lady Smith of Basildon, and indeed my former pair, the noble Lord, Lord Cunningham of Felling, appear to believe that they are engaged

entirely in a battle with the Executive so that Parliament can hold the Executive to account. The reality, as I will show, is that if we are engaged in a battle, it may be as much with Members of the House of Commons as it is with government Ministers.

Several noble Lords have said that this is not the way to effect constitutional change and that there would be no proper scrutiny of what is proposed. The noble Lord, Lord McNally, and the Liberal Democrats have argued that the House of Lords must have the right to say no and that without retaining that right, used sparingly, carefully and rarely, we become a mere debating society. The noble and learned Lord, Lord Wallace, supplemented his hostility to what is proposed with a procedure to allow SIs to be amended.

In the face of such strongly expressed objections to the conclusions of my noble friend Lord Strathclyde, a very powerful contrary view was expressed by the noble Lord, Lord Butler of Brockwell, as was referred to today by the noble and learned Lord, Lord Hope of Craighead. The noble Lord, Lord Butler, spoke in December of the dissatisfaction in all parts of the House with the binary choice that is open to us to either accept or reject statutory instruments. He pointed out that my noble friend Lord Strathclyde's recommendations were very similar to those recommended by the royal commission chaired by my noble friend Lord Wakeham, who then intervened to confirm that the royal commission had made its recommendations because it wanted a better way for the House to discuss statutory legislation, and to suggest that there was a great deal of support in this House for the proposal.

He reinforced that judgment today, and I share that view. It was significant that, later, the noble Lord, Lord Richard, said:

"There is a good case for this House giving up its veto".—[*Official Report*, 17/12/15; col. 2200.]

It is also significant that the noble Baroness, Lady Meacher, said that my noble friend Lord Strathclyde's third proposal could be a useful way forward.

In arriving at a conclusion, we need to take account of what was said in the other place. I fear that it may not be as helpful a coming together as that advocated by the noble Lord, Lord Maclennan. Those who argued here that this was being pushed through without the opportunity for proper debate, and those who pointed to the shortcomings in Commons procedures for handling statutory instruments, appear to overlook the fact that it is to be dealt with by primary legislation. Mr Bernard Jenkin, who chairs the Public Administration and Constitutional Affairs Committee, said that his committee will wish to look at this, just as the Procedure Committee will. He posed a number of key questions and finished by saying:

"I assure my right honourable Friend that we will be looking at these matters in great detail".—[*Official Report*, Commons, 17/12/15; col. 1743.]

I am sure that both Houses will do the same. It may be that that is one of the opportunities that will arise for dealing with the important constitutional point raised by the noble Lord, Lord Kakkar.

We would be incredibly foolish if, in reaching our own conclusion, we ignored the opinions expressed in the other place about this House and its role. Even if we unwisely discount the unanimous opinion of the four Scottish nationalist Members who spoke on 17 December, who believe that the second Chamber should be abolished as quickly as possible, it would be folly to ignore the strongly expressed views of the seven Conservative Members who also spoke, who I am sure reflect opinions very widely held in the other place. Two of them favoured the first option; only one welcomed option 3. He urged action to deal with some of the things that make this House, as he believes, almost a laughing stock. One referred to the archaic features of our constitutional arrangements; two pressed for an elected House; and one, the new Member for Yeovil, thought we were a completely ridiculous anachronism.

With views of that kind being expressed so forcefully in the Commons and with a great many in this House wanting the sensible compromise suggested by my noble friend Lord Strathclyde, to delay everything for a Joint Committee would be a mistake. There is a need for a Joint Committee for the powerful reasons that have been put to us today. As a former member of the Constitution Committee, which has frequently criticised the manner in which SIs are used and the far too frequent use of Henry VIII clauses—I enjoyed the contribution of the noble and learned Lord, Lord Judge, on that subject—I would also like to see a major independent review of the whole legislative process, as advocated by the Hansard Society. But that would take years, and its implementation even longer.

If I am even half-right about the strength of feeling in the other place, there has to be a compromise now, even if it is only an interim step. We need to get on with things, just as we need urgently to get on with our own reform of the membership and conduct of the House of Lords.

8.31 pm

Lord Williams of Elvel (Lab): My Lords, I follow the noble Lord, Lord Crickhowell, in two senses: first, we must listen to what happens in another place; and, secondly, we must not resile from our duty to be a revising Chamber.

In passing, I endorse the view of the noble and learned Lord, Lord Hope of Craighead, that option 1 will not fly. I also endorse the view of the noble Lord, Lord Norton of Louth, that conventions are not really substantial. I remember sitting on the Opposition Front Bench, as the noble Lord, Lord Strathclyde, will remember, for 10 years in opposition. Every time an SI came up, we consulted: "Shall we try to jump them on this or not?". The argument generally was no, we should not, because they will do it to us if we come into government. So it is realpolitik; there was no convention in it.

I was most impressed by the noble Lord, Lord Kakkar, and the noble and learned Lord, Lord Judge, because I think that there is a distinction in statutory instruments between those which are the normal run of business and those which seek to amend primary legislation. I shall follow up that argument. Since 2010, 34 Acts have been passed by Parliament with Henry VIII powers. Before us at present there are five Bills with Henry VIII powers. In case your Lordships

[Lord Williams of Elvel]
are not familiar with Henry VIII powers, I should like to read from Clause 68 of the Scotland Bill, which states:

"The Secretary of State may by regulations make … such consequential provision in connection with any provision of Part 1, 3, 4, 5 or 6, or … such transitional or saving provision in connection with the coming into force of any provision of Part 1, 3, 4, 5 or 6 … Regulations under this section may amend, repeal, revoke or otherwise modify any of the following (whenever passed or made)"—

and so it goes on. In other words, if your Lordships think that you have passed a Bill, you have not—because the Secretary of State can amend it by statutory instrument.

If we are considering the passage of SIs in this House, we ought to distinguish between those SIs, as the noble Lord, Lord Kakkar, pointed out, which try to amend primary legislation and those which do not. If they try to amend primary legislation, I would argue that we in this House should adopt procedures, such as Third Reading procedures, where we could discuss the primary legislation which is to be amended—and, indeed, amend it and send it back to the Commons for consideration. If we resile from that possibility, I am afraid that we are giving up our primary function, which is to revise primary legislation when it comes before us and send it back to the Commons if we do not agree. I would like the Government to consider that when they follow up the report of the noble Lord, Lord Strathclyde.

My second point is whether option 3—which is the only one seriously on the table—should be introduced through primary legislation or Standing Orders. The noble Baroness, Lady Fookes, made a very powerful case when she said that we have got to sort out what would be the result of option 3. I would support primary legislation for option 3 if there is a general agreement between us and the House of Commons about what should be the general thesis of how both Houses approach statutory instruments. I cannot understand any idea that this House's approach to statutory instruments should be decided unilaterally by the House of Commons. In other words, if there is to be a unilateral decision I would prefer it to be by Standing Orders.

The noble Lord, Lord Strathclyde, quite rightly points out that Standing Orders can be suspended. That is true, but the *Companion* states quite clearly that for Standing Orders to be suspended, there has to be agreement within the House; in other words, between the usual channels. So any idea that Standing Orders can be suspended in order to try to pass a contentious statutory instrument does not really fly.

With those two caveats, I basically welcome what the noble Lord, Lord Strathclyde, is putting forward in option 3. It is about time we had an idea of how both Houses should deal with statutory instruments generally. We lack a definition of how the House of Commons can establish its financial privilege and how we should obey it in this House, with the primacy of the House of Commons. So I give the proposal half a fair wind—but I hope that the noble Lord, with all his experience, will recognise that half a fair wind coming from me is not bad.

8.37 pm

Lord Clement-Jones (LD): My Lords, we have had some hugely interesting and expert contributions to today's debate. I am not a constitutional or procedural expert, and no doubt the noble Lord, Lord Crickhowell, will find me boringly predictable in agreeing with my colleagues that we should retain the veto, but essentially I want to draw some conclusions from my experience in March 2007 in persuading the House to reject by three votes an order which proposed the location of the first super-casino in east Manchester. I am glad to say that the angels, in the form of the then most reverend Primate the Archbishop of Canterbury, were on our side for a change, and of course the noble Lord, Lord Strathclyde, referred to that occasion earlier.

I take very little credit for the outcome of that debate because the arguments had been made in advance. Of huge importance was the fact that the Merits of Statutory Instruments Committee, now known as the Secondary Legislation Scrutiny Committee, had in no uncertain terms drawn special attention, first, to the change in the remit of the Casino Advisory Panel from the one originally announced by Ministers, and secondly, to the problems in the way that the panel interpreted and carried out that remit in producing its recommendation to site the super-casino in east Manchester; and that therefore, in the time-honoured phrase, the SI might "imperfectly achieve its objective". I probably do not need to remind many noble Lords that the committee was chaired by the noble Lord, Lord Filkin, who at the time sat on the same Benches as the then Government.

During that debate, we had some procedural discussion as to whether it was proper to vote down a statutory instrument of that nature. I pointed out Lord Simon of Glaisdale's 1994 Motion, which many noble Lords have cited today, about our unfettered freedom to vote on subordinate legislation, which of course is contained in the *Companion*. It was also referred to particularly by my noble and learned friend Lord Wallace of Tankerness.

But as it happened, a few months before that debate, the Joint Committee on Conventions chaired by the noble Lord, Lord Cunningham of Felling—who I was very glad to hear speak today—had published its report. I also quoted paragraph 216 of that report in the chapter relating to secondary legislation, which again referred back to the merits committee:

"The Lords SI Merits Committee considers that powers and conventions in this area are adequately codified in each SI's parent Act and in the *Companion*, and that nothing further is called for. Parliamentary scrutiny of SIs is a growth area; the power to reject SIs gives Parliament 'leverage', and should if anything be exercised more, not less".

The report went on to broadly agree, apart from that final sentiment, that the power should not be exercised frequently but that there was no constitutional convention against doing so, and that indeed it was legitimate to threaten defeat in a number of specific circumstances, one of which relates to special attention being drawn by the Secondary Legislation Scrutiny Committee. That particular occasion fell foursquare within the terms set out by the Cunningham committee. At the time the House, as it does, listened carefully and

accepted that the Cunningham report was essentially correct, and I believe that the vote reflected that, by a narrow margin.

I believe that the report still makes good sense, and that is why I was delighted to hear from the noble Lord, Lord Cunningham, today. It is given weight by the fact that the committee chaired by the noble Lord, Lord Goodlad, with a Government and a chair of a different party stripe, subsequently took a not dissimilar view and made sensible suggestions about returning SIs which had been rejected and were coming back to this House.

A number of noble Lords, including the noble Lord, Lord Strathclyde, himself have mentioned the fact that back in 1999 or 2000, the noble Lord seemed to agree with those on this side of the argument. He referred to his statement about declaring the convention dead, and all credit to the noble Lord, Lord Grocott, for digging out further compromising statements by the noble Lord, Lord Strathclyde. After that, however, the noble Lord seems to have done a complete about-face both in his evidence to the Goodlad committee and now in this report. His views seem to have changed, and the shadow Leader of the House referred elegantly to the fact that when Ministers are in government they take a somewhat different view. The noble Lord, Lord Cormack, took a rather more crude approach, if I may say, but used a none the less vigorous expression in terms of the "Corporal Jones rule" that we must now refer to, and I entirely agree. But to be quite fair, the noble Lord, Lord Davies of Oldham, made exactly the same points when the casino order was up for debate, and I believe that life was ever thus.

By contrast, we in this House should remain consistent in the absence of wider reform of the Lords. We should stand on the very firm ground established by the reports of the noble Lord, Lord Cunningham, and of the noble Lord, Lord Goodlad, and not on the shaky arguments set forth by the report of the noble Lord, Lord Strathclyde. Governments often huff and puff, but they benefit from reconsidering a measure when it is defeated in this House. In the case of the casinos order, the Government of the time, under Gordon Brown, could have brought back a new order or rerun the process of selection. But they did not. That speaks volumes, as does this Government's acceptance of the vote on tax credits.

To give credit where it is due, the report of the noble Lord, Lord Strathclyde, has stimulated debate. But I urge all sides to consider some of the ideas suggested to do far more effective scrutiny of legislation and to have far more effective primary legislation in terms of the way in which powers are delegated, perhaps through another Joint Committee such as that established previously. However, I urge this House to take the Strathclyde report no further.

8.45 pm

Lord Balfe (Con): My Lords, I begin by welcoming the maiden speeches of our two new Members. I have not been privileged to know the noble Lord, Lord Darling, who was in a different establishment from me. But I served in the same Parliament as the noble Baroness, Lady Bowles, who was a very widely respected United Kingdom chair of one of its committees. In the European Parliament, many people look and say, "What country are you from?" and not "What party are you from?". She represented our country admirably during her period as chair. I am afraid that that is about the only thing I am going to say that is not controversial.

First, it is no use having a House of Lords if it cannot defeat the Government. Secondly, I did not contribute to the debate on 26 October but I sat through it. I have to say to noble Lords on this side that not only did we lose the vote, we also lost the argument. The noble Baroness, Lady Hollis, deployed her arguments extremely effectively and legitimately. Paragraph 2.4 of the report of the noble Lord, Lord Strathclyde, states that the 2006 committee,

> "concluded that 'the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it might be appropriate for it to do so' … A number of specific circumstances were identified, for example, when the provisions of an SI were of the sort more normally found in primary legislation or in the case of certain specific orders".

There are three areas in that where this vote was justified. First, the House does not regularly reject; it does that very seldom. Secondly, there were exceptional circumstances and the fact that the whole issue was withdrawn by the Chancellor is a pretty clear indication of that. Finally, surely expenditure of this level should be in primary legislation.

There has been a mission creep in SIs over the years. They are seen as a very convenient way for the Minister to get something put through the Commons where, as someone has said, the first reaction of any MP to being put on the SI committee is, "Why me?" and the second is, "How long do I have to stay here?". The SI procedure needs looking at. It is not the reference as to how we deal with it in this House; it is the whole procedure and the way in which this mission creep has allowed SIs to get a place in the British constitution and law making that they were never intended to have.

I am reluctantly in favour of option 3 as a starting point. Above all, if we are to change the regulations, we have to have consensus. Having been in both major parties, I am always conscious that one day the positions will be reversed. We have to make the democracy of this House work. In other words, we cannot say, "We have a majority today and we are going to run away with it". Whatever way option 3 is developed, we have to have a consensus broadly across the House.

Going back to what I said as regards the Lords having to be able to defeat the Commons, for 10 years in the European Parliament I was fortunate to have a job which took me around the Community on behalf of the Parliament. I can claim to have been in every Chamber of every Parliament in the original 15 member states, before the big enlargement of 2004. Whatever our defects may be, there is great admiration for the fact that the House of Lords is seen as an independent and an intellectually credible Chamber. I do not want to get into trouble with too many embassies, but if noble Lords look at a number of other Chambers, the Irish Chamber is completely tribal, to the point where, if the elections for the second Chamber produce the wrong result, the Prime Minister can top up the second Chamber to give the Government a majority.

Noble Lords: Oh!

Lord Balfe: That would be a nice thing, would it not? The German upper House has very circumscribed powers. It basically looks after the Länder. It divides its powers with the lower House. It has very little say in the way the federal republic is run, other than within its circumscribed limits. The French upper House is a body of people who are largely delegates from their regional authorities. We all know how that happens: "Pierre is the leader and Françoise, she's the number two, and we must give the committee on education to so-and-so". Then they get to the end of the list and say, "Christ, we've got to send someone to Paris. Oh, I know: Jean-Marie has been a really good servant of this House and he does like travel, you know".

There is no perfect way to construct a second Chamber, but we have one. It is a valuable second Chamber. We have to safeguard our rights, one of which is to say to the people down the corridor, "You've got it wrong". If we ever said it at the right time, it was on 26 October, when we said to them, "You've got it wrong", and what did they do? They agreed with us and actually withdrew it. Let us not lose sight of the fact that the vote was followed by decisive government action that basically accepted that this Chamber was right, even though I was, as ever, in the wrong Lobby.

8.51 pm

Lord Gordon of Strathblane (Lab): My Lords, the fact that the report by the noble Lord, Lord Strathclyde, was commissioned as part of a somewhat hysterical overreaction to the defeat that the noble Lord, Lord Balfe, just referred to should not blind us to the fact that it is none the less a very good report. I congratulate him on the speed with which it was produced, its brevity and the contribution of his expert advisers.

The report is a very good start to a debate that needs to commence very quickly because of abuse of SIs not by this Chamber, but by successive Governments dating back over a number of years. The quotation that we heard from the forthcoming Scotland Bill is simply one indication of what the noble Lord, Lord Cormack, earlier referred to as a Christmas tree on which to hang baubles all over the place. The way legislation moves through is a joke. When I came here there was a statutory instrument in a field to which I was vaguely related that required a small amendment. The Chief Whip told me, "Sorry, we don't do that. We can either vote to veto it or not at all". That is ludicrous. If statutory instruments are part of the legislative process, they should be subject to the same rules. We must move in that direction. I am quite happy to lose vetoes. Vetoes do not matter. They are, in fact, equivalent to a nuclear option: they are an inhibiting factor rather than an encouragement to proper dissent.

On page 6 of the report, the noble Lord, Lord Strathclyde, states that,

"I believe it would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".

That is a very polite way of agreeing with what the Hansard Society says today: that the distinction between the two has long since been abused by successive Governments and we need to start doing something about it.

Option 1 cannot really be a serious option; it is a bit of a joke. Meg Russell very kindly said that it is probably there to make the other two options look attractive. That is perhaps a legitimate objective. Option 2 is essentially staying the way we are, which I do not think works. I would go for option 3, with some amendments, which would be as follows. First, we should be capable of amending secondary legislation, because in many cases it simply needs a tweak, not a rejection. Secondly, we should have a specific time limit for the Government to respond. Thirdly, this should be decided not by statute but by a further Joint Committee on Conventions.

The statutory option worries me more than somewhat. If Option 3 is delivered by statute, what a temptation there is for a future Government to say, "Look, this worked for this statutory instrument stuff, why don't we stop them doing that with primary legislation as well?", and we will end up with legislation preventing us offering more than token opposition to anything the House of Commons puts through. I disagree with the noble Lord, Lord Crickhowell: the enemy here is not the House of Commons but the Government—the Executive. The Hansard Society pointed that out in its document published this morning. The noble Lord quoted the reference in that document to a "flawed process" becoming a total farce. The next sentence in that document stated that such a process would neuter the House of Lords. The enemy is not the House of Commons but the Government. They are the only people who would benefit from our being neutered in this manner.

I come to my final point. I am trying to save time to allow those noble Lords who are still trying to get something to eat to do so. It was not our vote that changed the stance on the tax credits issue; it was the fact that it struck a chord within the Conservative Party, some of whose members realised that this was a ghastly mistake and they had better get out of it very quickly. They at least had the sense to change their minds. As has already been pointed out, had the Government wanted to introduce such a measure, there are thousands of ways in which they could have done it. In fact, they dropped the whole idea altogether despite all their claims that it was an election pledge and we could not possibly vote against it because they believed in it so firmly. Nevertheless, they ditched it very quickly in the Budget.

The important thing that we do is focus attention on something and MPs then ask themselves, "My God, I didn't vote for that, did I?". Then they realise the mistake they have made and they change their minds. It is the fact that they change their minds that matters and it is that power that we need to retain. Vetoes are unnecessary. I am quite happy to have time limits reduced from a year to six months; it does not worry me at all provided that you give MPs enough pause to have a chance to think again.

8.56 pm

Lord Wigley (PC): My Lords, I enter this debate from a somewhat different angle in that I am only here—that is, here in this Chamber—because of statutory

instruments. The reason Plaid Cymru changed its policy in 2007 and decided to accept an invitation to put forward three names for this House was specifically related to the provisions of the Government of Wales Act 2006, which were then coming into force. That Act allowed the National Assembly for Wales to legislate on devolved matters, but only if orders were passed by both Houses of Parliament in each specific instance in which the Welsh Government wished to legislate. In practice, that meant that the unelected House of Lords could block the wishes of the elected Government of Wales. If the wishes of Wales could be frustrated in such a manner, we felt that we should avail ourselves of the three places on offer and make the case for Wales in this Chamber. We were warned, incidentally, by our friends in the SNP not to believe promises made to us, and I am afraid that events rather proved the SNP right.

It was not until January 2011 that I took my place in this Chamber. Within two months, there was a referendum in Wales through which primary legislative powers were accorded to our National Assembly, and the need to get orders for that purpose through this Chamber ended. Sadly, the use of such orders to constrain the powers of the Assembly will arise again in the context of the forthcoming Government of Wales Bill—a proposal that is currently highly controversial in Wales.

In my five years here I have had opportunities to debate numerous orders. One thinks of the pneumoconiosis orders, for example, so relevant to industrial dust sufferers in Wales and elsewhere. Statutory instruments are an essential part of the legislative process. To the extent that this Chamber has a legitimate role in the process of formulating and amending legislation, that process must include secondary legislation as much as primary legislation.

In the context of the Strathclyde review—I congratulate the noble Lord, Lord Strathclyde, on his brevity and focus—a number of detailed issues need clarification, and previous speakers have alluded to some of them. The noble and learned Lord, Lord Judge, in his excellent speech highlighted Henry VIII powers. Incidentally, as the noble Lord, Lord Williams of Elvel, mentioned a moment ago, those powers are today being used in a draconian manner. Clause 42 of the Immigration Bill gives Westminster Ministers powers by regulation to amend, repeal or revoke any enactment of the National Assembly for Wales or the Scottish Parliament in the context of the children's measure in which that provision is located.

There is one detailed implication that I should like to highlight tonight, which is the acceptability of legislation that has been passed over the years on the basis of details being fleshed out by statutory instruments or updated by such a process, with the underlying assumption that those instruments will be adequately scrutinised. If there had been any question at the time of the passing of the original Acts that the orders would not be scrutinised, or might be subject to a much weaker form of scrutiny, those primary Acts might not have been passed, or at least not in their eventual form. MPs and Peers might have insisted on greater detail in the Bills. That begs a far-reaching question: does changing the way we deal with orders trigger a question as to whether the original Acts, under which those orders are made, lose some of their legitimacy?

I first entered the House of Commons in 1974, when there were some 2,000 statutory instruments each year. Since that time there has been an ever-increasing dependence on statutory instruments to fill in the detail that has been omitted from primary legislation, so that, in 2001, when I left the Commons, there were more than 4,000 statutory instruments. This is unsatisfactory for two reasons. First, orders cannot be amended and so the two Chambers are left with draconian choices of voting them down or approving what they know to be deficient. Secondly, the House of Commons just does not seem to have the time, capacity, or interest in giving secondary legislation the scrutiny it needs.

If ever there is a justification for having a second, revising Chamber—and I believe that in the UK context there is such a need—then it is to do the detailed revising work that the first Chamber has been unable to undertake adequately. If that role is taken away from this Chamber, or our powers are eroded to the extent now being considered, this begs the question of the very purpose of this Chamber. Let us remember that, once the principle of restricting the powers of this Chamber to intervene in secondary legislation has been accepted, it is only a short step thereafter to curtail its powers to amend primary legislation—arguments about which will no doubt be made by Governments who want their programmes bulldozed on to the statute book.

That brings me to the nub of the argument as I see things. It is perfectly reasonable for people outside this Chamber to argue that an unelected House should have no right to amend primary legislation or to block secondary legislation. After all, in any democracy, it is the elected representatives of the people who should legislate on their behalf. It is my view that, until we have an elected second Chamber at Westminster, the role of this Chamber will always be limited and, to a large extent, unclear. We can argue the details of any electoral process necessary to give this Chamber legitimacy but, eventually, we will have to face that reality.

The noble Lord, Lord Foulkes of Cumnock, was absolutely right in saying that these matters, therefore, must be viewed in the overall context of the future of Parliament itself. It is my view that the Strathclyde proposals bring that day of a democratically elected second Chamber very much nearer. I believe that they will have two direct consequences, if they are implemented. First, far more legislative detail, currently consigned to statutory instruments, will have to appear in primary legislation with all that that means in terms of ensuring adequate scrutiny, as indeed the noble Lord, Lord Strathclyde, has himself recognised. Secondly, to legitimise that necessary scrutiny, the second Chamber—to give it an undisputed role in formulating legislation—will have to become a directly elected Chamber. The Strathclyde review has far-reaching consequences and, in going down that path, we should do so with our eyes open and a willingness to embrace those consequences.

9.03 pm

Lord Cope of Berkeley (Con): My Lords, those of your Lordships who have been Members of this House for a few years may remember that I was the Opposition Chief Whip for some years during Mr Blair's Government. That Labour Government did not have a majority in this House and nor did we. Sometimes, when we had support from other parts of the House, we could and did use the Lords' full powers, as has already been referred to on various occasions, but we did so sparingly. I am grateful for that word, which was suggested by the noble Lord, Lord McNally, as the correct way to refer to our use of those powers—and, for that matter, other parties' use of them. That was of course because we respected the role of the elected House and recognised our unelected status here, but also because we did not wish to build up the case for the abolition of the House; in passing, I do not agree with the noble Lord, Lord Wigley, in what he just said, but he will not be surprised by that at all. Both those considerations are still entirely valid.

Rightly or wrongly, the whole issue of statutory instruments and their use—it goes far wider than my noble friend Lord Strathclyde's report—has now been put on the table. That is as a result of the ingenuity of the noble Baronesses, Lady Hollis and Lady Meacher. My noble friend's report is the best course immediately in dealing with the situation that has arisen. I am in favour of option 3, but it needs a little further thought before we implement it. Of course it is right that this House should not be in a position to entirely overrule the elected Chamber. At the same time, we should place secondary legislation on a basis more nearly the same as that of primary legislation. If my noble friend's proposal has logic, it implies—it does not actually say it—that affirmative instruments should always be debated first by the House of Commons and secondarily by this House. That is usually but not always the case, and it would need to be.

Another aspect has drawn a lot of attention in this debate: when there is to be a second Commons consideration, it should always include an opportunity for debate. That is easy to say, but we should recognise that it involves alterations to the Standing Orders of the House of Commons and is not within our gift. However, it should be part of what you might call the deal. The opportunity for debate is more important, and actually a better approach, than the idea of a particular time lapsing after a defeat in this Chamber.

As I said, this debate has gone a lot wider than just the immediate considerations that my noble friend dealt with. The table in appendix C of his report suggests that the number of statutory instruments has remained broadly static since 1997, but a longer view shows that they have considerably increased in both number and importance over the years—certainly in the time that I have been in one or other House. Particularly after the speeches of the noble and learned Lord, Lord Judge, and the noble Lord, Lord Williams of Elvel, I subscribe to the view that the number of statutory instruments has increased, is increasing and ought to be diminished. I am also a supporter of the Hansard Society's call in its note on the Strathclyde proposals that there should be a new and wider review on the preparation of legislation, on the lines of the excellent 1975 report by my late friend Lord Renton. It is regrettable that David Renton's report was only partially implemented at that time, and of course it went a lot wider than this issue. It called for an overall look at the process of drafting legislation in the first place, and therefore what goes into a statutory instrument, for example, and the way in which legislation is debated once it gets into the two Houses of Parliament.

I also support the suggestion in my noble friend Lord Strathclyde's report that further thought needs to be given to the precise definition and effect of Commons financial privilege. We are all aware of the general idea, and of some of the ways in which it impinges on primary legislation, but it needs further thought as to how it should work in respect of secondary legislation.

9.10 pm

Lord Morris of Aberavon (Lab): My Lords, I, too, express my thanks to the noble Lord, Lord Strathclyde, and to his advisers for the speed with which he has produced his report. My contribution today will draw on my written submission to the noble Lord and is much wider than his terms of reference. My noble friend Lord Darling, whose most excellent speech I welcome, said that he was concerned about piecemeal changes. It is my long-standing belief that piecemeal reform will not do.

I played a small part in encouraging my friends to set up the Kilbrandon commission on the constitution. It was effective as a catalyst for devolution and major legislation. I believe that there should be another constitutional convention to consider, deliberate on and opine on a wide range of options and, having done so, with a hope for a more permanent and comprehensive settlement for Parliament as a whole.

In my time, I have seen many attempts at House of Lords reform. Drawing a veil over the Clegg-inspired reforms, my mind goes back to the joint attack of Michael Foot and Enoch Powell on the reform attempt in the 1960s. When the plug was pulled on that Bill, Michael Foot uttered memorable words regarding the efforts of the two junior Ministers who were left in charge of it. They were the future Lord Merlyn-Rees and the noble Lord, Lord Elystan-Morgan, whose speedy return to this House we wish for. Mr Foot said that never had so much bravery been shown,

"since the boy stood on the burning deck".—[*Official Report*, Commons, 14/4/69; col. 885.]

And that was the night the plug was pulled on the Bill.

I confess that I did not vote in the tax credit Divisions last October. As many noble Lords have said, the Government should not have used the statutory instrument procedure, with its inadequate discussion in the Commons, to deprive a large number of the poorest people like those whom I had the privilege of representing in the Commons for more than 41 years. But I do not buy the argument that a convention was broken. In the words of my noble friend Lord Richard, primary legislation should have been used. Nevertheless, it was not right to deny the Commons its right to change taxation, despite the machinery adopted.

I believe in the paramountcy of the elected House and that there is a way to put that beyond peradventure for almost all occasions and, at the same time, to spell out a role for our own non-elected House for the future. I surmise that my radical solution—the one that I would propose—will not appeal to most of your Lordships. I believe that the way forward is to revisit the Parliament Acts of 1911 and 1949 together, to learn from the simple mechanism that they adopted. Incidentally, we forget the rather plaintive words of the 1911 Act's preamble as to the substitution of a hereditary House with a popularly based House. It said that,

"such substitution cannot be immediately brought into operation".

Rather than pursuing that aim more than 100 years later, my suggestion is that we should copy and adopt that machinery for this House's power to delay legislation which shortened the period in the 1911 Act to the 1949 Act by what amounts to one year. I propose removing this House's powers to delay legislation altogether—hence, I am sure, it is too radical for most of your Lordships. The shearing away of this House's power to delay would result in this House having power only to consider Commons legislation—in short, to review it and scrutinise it. This would apply to both primary and secondary legislation, with which the noble Lord, Lord Strathclyde, has been wrestling.

This House could of course then debate amendments, and any amendments made would be returned to the Commons. They would have the benefit of our discussions. If, then, the Commons disapproved of our amendments, that would be the end of the matter. The Commons, unless directed to the contrary, would present the Bill for Her Majesty's approval and it would become an Act of Parliament on Royal Assent being signified thereto, notwithstanding that the Lords had not consented.

It would be essential to include a maximum period for your Lordships to consider any particular Commons Bill, so that consideration did not become delay by another name. When I said earlier that I was dealing with almost all occasions, of course the present exclusion as amended of the Parliament Acts as regards extending the maximum period of the length of the Parliament would remain. That would be fundamental.

My simple amendment would end the argument about the overuse of statutory instruments and reaffirm the primacy of the Commons in all respects. There would then be no danger of gridlock between Commons and Lords. I was a witness to gridlock between the Senate and Congress in Washington on that fateful weekend in July 2011. It is my belief that the result would be a substantial weakening of any case for an elected House, and it would be a matter for another time to consider the fettering of the Prime Minister's power to top up, in the words of the noble Lord, Lord Balfe, the membership of this House. The noble Lord's words regarding the Irish Senate were perhaps too close for comfort.

9.17 pm

Lord Beith (LD): My Lords, if I were to explain why I profoundly disagree with the noble and learned Lord, Lord Morris, I would lose the time I need to say what a wealth of experience came from the two maiden speeches that we heard today—experience of both the Treasury and the European Parliament. My noble friend Lady Bowles's speech would repay careful reading in *Hansard* by anybody who wants to take these issues any further.

I am a new boy in this House; my experience is of the ineffectiveness of the House of Commons in dealing with delegated legislation. In her Statement, the Leader of the House said that,

"as a revising Chamber … we complement the work of the other place".—[*Official Report*, 17/12/15; col. 2189.]

I have to say that there is an awful lot of complementing to be done. There is complete reliance on the extensive work carried out in this House on statutory instruments. That should remind us of the danger of weakening the ability of this House to question and challenge the Executive and require them to think again. The very rare instance of an order being defeated by your Lordships underpins the ability of this House to question and challenge ill-thought-out delegated legislation, particularly when it deals with matters of principle or policy, which should be dealt with by primary, amendable legislation.

I should add that my experience in the Commons includes the one occasion when a statutory instrument was overturned by the House of Commons. It related to paraffin oil price control, and it was a mistake. We shouted "Aye" in support of the annulment Motion, the Prayer, and the Government Whip forgot to shout "No", as a result of which one of his colleagues had to go along to the Palace and come back in his tailcoat with his white wand of office and bring back a Message that the Queen was happy to comply with our Prayer. As I said, that was not intended to happen.

Indeed, in the previous Parliament, the average amount of time spent in the House of Commons Chamber debating delegated legislation was just over five minutes per day. You might say that it is all done in committees. One of the means by which late-night sittings were largely abandoned in the Commons in pursuit of family-friendly hours was by consigning almost all statutory instruments, which we used to have to debate between 10 pm and 1 am, to committees, but the situation in the committees is not much better than in the Chamber. The noble Baroness, Lady Smith, has referred to the press-ganged MPs who want to know whether it will be over in 10 minutes or whether they have to be there for 20. If there is a negative-procedure instrument, no meaningful vote can take place. Even if the committee votes that it has not considered the instrument, that vote is not reported to the House and no other procedure ensues or follows from it.

This is much more than a minor procedural issue. Governments of all kinds use delegated legislation to enact new policies and principles to change the impact of the criminal law, and amend the very legislation on which the instrument is based, as a number of noble Lords have mentioned. Committees of your Lordships' House have produced egregious examples of this, such as the Childcare Bill 2015-16, which was described by the delegated legislation committee as little more than a mission statement. Yet even the mildest of the alternative proposals in the report of the noble Lord, Lord Strathclyde, rests on the utterly implausible hope that Governments will,

"take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".

That will never happen. It would be like relying on an alcoholic promising to drink only moderately in future. It is just not realistic.

Why is that? There are several reasons. Often a Bill is introduced before enough work has been done on it. Departments like the freedom to rewrite and extend the legislation as they go along. Frequently the reason is that entirely new provisions are introduced into a Bill at a late stage without time to include key aspects in it. Opposition parties and campaign groups often feel obliged to accept this defective way of legislating, because it is a means of implementing a concession that they have sought and won from Ministers. How often have I heard it said from the Dispatch Box that the amendments are defective, but the Government will accept the principle and implement it by regulations? The phraseology gives it away. It is a matter of principle and importance, but it will be done by regulations and everyone says that that is fine. It is a victory, but one that undermines the effective scrutiny of legislation.

My conclusion is that we have to plan for the real world as we know it to be. The integrity of the legislative process and its ability to protect the rights of the citizen will always be threatened not just by the Executive's fondness for power but also by the short cuts taken very often to promote quite good intentions. It will always be like that. We should therefore continue to develop the scrutiny role to which many of your Lordships devote a great deal of time and effort, and do nothing that could weaken the underlying authority for that role. There is lot wrong with House of Commons scrutiny of delegated legislation, and I believe that improvements could be secured and discussion between the Houses could well be profitable. However, the basis on which the House of Lords gives or very rarely withholds its consent for statutory instruments is basically sound. It is not broken and we should not risk weakening the work of this House by trying hastily to fix it.

9.23 pm

Lord Forsyth of Drumlean (Con): My Lords, at this hour even I can think of very few original things to say, but I congratulate my noble friend Lord Strathclyde on an excellent report, which provides a basis for going forward. I suggest to the Prime Minister that he invites him to take over from Sir John Chilcot, in order to finish Sir John's report. I apologise that I had to leave the Chamber for a meeting and missed the maiden speech by the noble Lord, Lord Darling. I look forward to reading it. We all owe him a great debt, especially now that oil prices are down to $32 a barrel in Scotland, and I look forward to seeing his contributions.

Let us be frank about this: it is unfortunate that we are having to discuss this in the context of the tax credits regulations of 26 October. That was not the Government's finest hour—let us be fair about that. I tried on several occasions through Ministers to get information on the impact of the regulations on families, who would lose and how much would they lose, and in the end I had to rely on the Institute for Fiscal Studies. The consequences, had those regulations been implemented, would have been disastrous for many vulnerable families up and down the country, and I certainly did not come into politics to do that, and nor, I believe, did the Chancellor or many of the MPs who voted for them. The facts of the matter were that the stushie in this place drew people's attention to how savage and immediate the impact would be and to the consequences for the poorest families and for the Conservative Party and the Government because the political consequences would have been very severe. I therefore say to the noble Baronesses, Lady Manzoor, Lady Meacher and Lady Hollis, thank you so much for what you have done to help the Conservative Party in the country.

I would have supported the Motion moved by the right reverend Prelate the Bishop of Southwark. Indeed, my noble friend the Leader of the House almost invited us to do so, if you look at column 979 of *Hansard* for 26 October. That would not have been a fatal Motion, but nor were other Motions, other than that moved by the Liberal party, fatal Motions.

My noble friend the Leader advised us that if we voted for those Motions,

> "It would have the practical effect of preventing the implementation of a policy that will deliver £4.4 billion of savings to the Exchequer next year—a central plank of the Government's fiscal policy as well as its welfare policy. It is a step that would challenge the primacy of the other place on financial matters".—[*Official Report*, 26/10/15; col. 979.]

Actually, the impact was to make the Government think again. No one in this House suggested that the policy should not be implemented. The argument was that it should be phased in over a period of time, but the Chancellor chose to abandon it altogether.

I am not sure whether I am grateful to the noble Baroness, Lady Smith, for starting to quote things that I have said in her speeches, but I did indeed say that if the Motion moved by the noble Baroness, Lady Hollis, had not been passed by the House, the tax credit changes would immediately have become law and the Government would not have had an opportunity to think again and make the necessary changes. Indeed, the key point is that if the Chancellor really felt that the primacy of the House of Commons had been challenged, it was up to him to table exactly the same Motion again the following day. He could have done that. He chose not to do so because, as my noble friend pointed out, she had been to see him and had told him of the feelings in the party and in the House and he had undertaken to think about it again. That is what I thought we all came here to do. I thought that is why we are all here at this hour of the night—to try to encourage the Government to think again if they have got it wrong.

The response from those around the Prime Minister and from the Prime Minister himself was a tad ungrateful. It was as if the captain of a ship which had been driven on to the rocks by the first mate after being safely rescued responded by inviting his crew to begin scuttling the lifeboat. That was the effect. It may have been unwise to vote for the Motion moved by the noble Baroness, Lady Hollis, which was not fatal, but it was certainly not out of order. As has been pointed out by a number of people in the course of this debate, the report of the Joint Committee on Conventions, which was approved by both Houses of Parliament, makes the position crystal clear.

The effect of our intervention was to give the Commons time to see the impact of their proposals, and I do not believe—perhaps the noble Baroness, Lady Hollis, can help me—that had the Chancellor of the Exchequer brought the proposal back a second time this House would have rejected it for a second time.

So what is the problem that we are trying to solve here? In his report, my noble friend Lord Strathclyde points out that there were two Motions on SIs on consecutive days. Just because two buses come along at once does not mean to say that you have to change the entire bus route. The second Motion was defeated; it failed because your Lordships chose to vote accordingly. It is true that on very rare occasions the House has voted against SI Motions but, according to my noble friend's own report, there have been 55 occasions when the House has refused to vote through Motions of that kind, so those five have to be seen in that context.

I accept of course, that something has to be done about the use of statutory instruments and secondary legislation, and option 3 probably has within it the means of a way forward. What I do not accept is that this should be done by primary legislation. The conduct of Parliament is a matter for Parliament, not the Executive. The Executive is accountable to Parliament, not the other way round. I believe that we need to have a Joint Committee to review those procedures and agree them. The joy of my noble friend's report is that it illustrates how wide the context is in which this needs to be looked at in terms of the Standing Orders of both Houses.

I say to my noble friend the Leader of the House that despite Mr Corbyn's best efforts, we will be in opposition one day. My noble friend Lord Strathclyde says in his foreword that the Lords must,

"complement the work of the Commons and not … block its will—too often".

We have never blocked the will of the House of Commons. He says:

"It would be regrettable if the Lords simply became a highly politicised 'House of Opposition'".

Quite so, but it would be equally regrettable if the Executive were to drift towards treating Parliament as an irritating inconvenience and limited its ability to ask the Government to think again.

9.31 pm

Lord Howarth of Newport (Lab): My Lords, we do not have a constitutional crisis on our hands. We are dealing with two problems, both of which are much more mundane: the problem of Ministers feeling frustrated and sore, and the problem of a system of scrutiny of statutory instruments that we all agree does not work well.

As to statutory instruments, the vote on tax credits and the complaints about that, it is clear that it was not your Lordships who breached any convention governing relations between the two Houses. As we have noted, the report of the Joint Committee on Conventions, agreed unanimously by both Houses, made it clear that the House of Lords is entitled to go so far as to vote down a statutory instrument in exceptional circumstances, and the circumstances attending the tax credits SI were exceptional. It is entirely outside the conventions of Parliament, as is made clear in *Erskine May*, that the Chancellor should have tried to sneak through Parliament in an SI radical and massively contentious legislation on tax credits. He was not candid about the impact of his measure, so that the House of Commons voted it through in ignorance of what it would mean for millions of people on low incomes. It was this House that ensured that the appalling damage the SI would have done to so many of our fellow citizens was correctly understood by Parliament. The Government duly thought again and withdrew the measure.

Wise Ministers recognise that effective opposition benefits the quality of government. Indeed, it has long been one of the most valuable roles of this House—performed sparingly; for sure, only on rare occasions—to rescue a Government from themselves. The pattern in these events is that a Government take it into their head to do something ill-considered and unacceptable; the House of Commons wakes up to what is amiss too slowly; the House of Lords obliges the Government to pause and think again; the public are delighted; government Back-Benchers are relieved; and Ministers go into a sulk and get all huffy about the constitution, but the misguided element of policy is dropped, tempers die down and life then returns to normal.

This Government have behaved true to the pattern so far. First, there was an absurd briefing that the House of Lords was to be suspended. Then there was the threat of the mass creation of new Tory Peers on top of what we have already had. Then the heavy artillery was rolled out: the noble Lord, Lord Strathclyde, was commissioned to carry out a review. As the noble Baroness, Lady Williams, noted, the noble Lord does not bark, but on behalf of the Prime Minister he growled in his foreword that,

"the patience of the Commons is not unlimited".

Then, on page 18, he resorted to the assertion that this House had acted in defiance of the Government's "electoral mandate". But the Conservative Party never told voters that it intended to make massive cuts to in-work benefits, and it won a House of Commons majority of only 12 seats on the votes of just 24% of the total electorate, so the claim that the Lords defied an electoral mandate is tosh.

In his menu of recommendations the noble Lord set out an outrageous option 1, to remove the House of Lords altogether from consideration of SIs. Almost as threatening to the principle of bicameral government and effective accountability, he also proposed that the House of Commons should consider annexing a greater range of SIs, not just on financial matters, to Commons-only procedures. He made this proposal, notwithstanding that scrutiny by the House of Commons of SIs is perfunctory in the extreme. In committees on SIs, all too many MPs scrutinise their Christmas cards more thoroughly than the legislation before them. If the House of Commons persistently fails to scrutinise legislation adequately, of course more responsibility falls on the Lords, and we should not shirk it. Finally, the noble Lord proposed, as a so-called compromise, statutory regulation of the relationship between the two Houses.

I dread to think what the process of legislation that the noble Lord has advocated would be like. Consideration of such a Bill would be prolonged and expansive. The House of Lords would not—surely it should not—willingly give up its present power to strike down SIs. At the very least, agreement would need to be secured on three points. The first—relatively easy to deal with, but insufficiently guaranteed in the prescription of the noble Lord, Lord Strathclyde—would be that Commons reconsideration must be genuine, with adequate time given to debate and proper explanation of the Government's position. The second agreement that would be needed is more complex still. It would have to be agreed that statutory instruments were not to substitute for primary legislation. I agree with those noble Lords who have said that we need a Joint Committee of both Houses to review and clarify the appropriate use of SIs and the appropriate means of scrutiny of them in both Houses of Parliament.

The third, and much more difficult condition, but which is essential for the health of Parliament, would be that a limit must be placed on the Prime Minister's power to pack the government Benches in the Lords and thus disable this House by another means. Surely we will make better progress if we apply ourselves to a renewal of the conventions rather than attempt such legislation.

It is healthy if Governments are nervous of what it is in the power of Oppositions to do. That is a strong argument for our not renouncing fatal Motions. However, it is not an argument against the development, within the conventions, of an additional power that is less devastating than a fatal Motion but less futile than a regret Motion. The precedent has now indeed been set for use by this House, on an important issue, of a delaying power where an SI is concerned. A series of reports, the latest being the report of the noble Lord, Lord Strathclyde, have proposed the formalisation of a new delaying power on SIs exercisable by the Lords. I hope Ministers will now be willing to accept that. I do not see, however, that such a power would need to be created by statute, and I see good reasons why it should not.

The kind of mature relationship that the two Houses need cannot be legislated for. As Professor Dawn Oliver says in her excellent pamphlet, *Constitutional Guardians: The House of Lords*, what is required in dealings between the Houses is emotional intelligence. The noble Lord, Lord Strathclyde, knows this really. He opens his report by saying, rightly:

"Conventions in parliament are a cornerstone of our Constitution".

But he then wrings his hands and despairs of conventions any longer being able to work.

My advice to the Government, if I may be so bold, is to lighten up, and certainly to stop trying to bully this House. It is time now to restore to working relations between the Houses, and within this House, an atmosphere of tact, forbearance, proportion, mutual respect, courtesy and good sense.

9.39 pm

Lord Goodlad (Con): My Lords, I join other noble Lords in congratulating my noble friend Lord Strathclyde on his report. Its recommendations on secondary legislation are in line with those of the royal commission, chaired by my noble friend Lord Wakeham, and those of the report of the Leader's Group on Working Practices, which I chaired—option 3 in my noble friend's report—to create a new procedure. I think that is the way forward. Although I entirely agree with the noble Lords, Lord Howarth and Lord Cunningham, that that convention must be maintained, the time has come for something more to be done.

I strongly support the report's suggestion that future Governments should ensure that Bills contain more detail. I agree with my noble friend Lord Jopling and the noble and learned Lord, Lord Judge, that less is contained in primary legislation, with implementation by statutory instruments, and that Henry VIII clauses should be discontinued as far as possible.

In my experience, your Lordships' House plays an extremely effective role in scrutinising secondary legislation. When I chaired the Secondary Legislation Scrutiny Committee, which is now chaired by my noble friend Lord Trefgarne, its work—not mine I hasten to say—led not only to well-informed debates in your Lordships' House but to essential revisions to ill-prepared statutory instruments before they ever came to this House. The work of the clerks in this process was, in my observation, beyond praise. I do not see how the other place could in practice do the same job.

The primacy of the House of Commons has been accepted for well over a century. We heard from the noble Lord, Lord McNally, about an elective dictatorship, but I have to say that when I was Chief Whip in the other place for the Government about 20-odd years ago, it did not feel like an elective dictatorship. I see a number of heads nodding on the other side, including those of the noble Lords, Lord Grocott, Lord Howarth and Lord Beith. I do not think that is a danger. What is needed now is a redefinition of the roles of the two Houses.

During recent decades, the world has changed radically—technologically, socially, economically and in every other way. It will continue to do so in the future with ever-increasing velocity, which will lead to the continuation of the torrent of legislation coming before us, and the distinctive roles of the two Houses of Parliament will be ever more important. In the absence of a written constitution, we must proceed, as we usually have, by negotiation, compromise and agreement. There are many details to be addressed in option 3 of my noble friend's report. We can make progress only by agreement, which would be best achieved by discussing his excellent report, as my noble friend has suggested, in a Joint Committee of both Houses, despite the fact that we do not know which way it will go off.

9.43 pm

Lord Lisvane (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Goodlad, whose 2011 report—particularly at about paragraph 154 in the context of today's debate—is a source of great wisdom. The report of the noble Lord, Lord Strathclyde, is technically an excellent piece of work. I say this not merely because he has been kind enough to refer in it to two works in which I myself had a hand. I cannot

fault his description of the constitutional background and the procedural arrangements. He has been very well served by his team of expert advisers, all of whom I know well and have worked with, and for whom I have the very greatest respect.

I do not want to be unduly churlish to the Government Front Bench, because I suspect that it was not master of its fate, but what happened on 26 October was at least in part a failure of business management. If defeat was likely or possible—and that must have been apparent—then several options were of course open to the Government. They could have delayed and sought some sort of accommodation; they could have achieved what they wanted by inserting new clauses in the Welfare Reform and Work Bill, which was conveniently to hand; or they could have made the required changes in a free-standing Bill, which as the noble Lord observes—and I respectfully agree—would most probably have been certified under the Parliament Acts and would therefore not have touched the sides, so to speak, in your Lordships' House.

Of course, in the event of defeat on an SI, the option is always there of withdrawing and re-laying. The substitute instrument has to be slightly different to avoid breaching the rule about deciding the same question twice in the same Session, but it does not have to be very different, and that simple pragmatism is always at the disposal of Governments who suffer defeats on SIs in either House.

So what about the three options that the noble Lord has put before us? They need to be seen against the asymmetry of consideration of delegated legislation in the two Houses. This is not in itself a problem, because one of the strengths of Parliament is that the two Houses are complementary and not competing. But that is also a powerful argument against diminishing the role of your Lordships' House, as the House of Commons is not in a position to take up the slack.

In the latest edition of *How Parliament Works*—I am not seeking to advertise here but it was written before I left my previous post—I described Commons scrutiny of delegated legislation as a "legislative black hole". The noble Lord, Lord Beith, has drawn attention to the average time—averaged out per day over a Session—taken in considering SIs in the Commons Chamber.

I hope that option 1, simply excluding this House from the consideration of statutory instruments, will be rejected out of hand. Indeed, I think that the noble Lord is very nearly counsel for the prosecution in terms of the significant disadvantages of this option that he identifies in his report. If it were decided to go down that extremely ill-considered route, I think that the legislation would have to be Parliament-Acted, with all the collateral damage for a considerable period to the Government's legislative programme.

Option 3, the recommended outcome, has some attractions, although of course it does not guarantee a proper debate at the Commons second stage—a point raised by a number of noble Lords. And it is not without hazard. In the context of Article 9 of the Bill of Rights, I have an instinctive dislike of legislating for proceedings in Parliament. There is a more immediate hazard—and here I take the timely warnings of the noble Lord, Lord Crickhowell—because the scope of a Bill, and the relevance of amendments to it, is determined not by the Long Title but by what is actually in the Bill. I do not think anybody can guarantee that there could not be in the Commons more wide-ranging amendment of the noble Lord's apparently simple proposition—and then where should we be?

Then there is option 2, a non-statutory resolution of both Houses. The noble Lord expresses scepticism about this route and whether it can be achieved because,

"a wide range of different views has been expressed about what the convention is".

That seems to me an excellent argument for redefining the convention—or, with a nod towards the noble Lord, Lord Norton, the doctrine—probably using a Joint Committee to achieve a cross-party and inter-House agreement rather than rushing to legislation, although I accept that legislation will be there as a potential penalty, should that route fail. If there were to be such a Joint Committee, I agree with many noble Lords that it could be a forum for a much more comprehensive examination of how Parliament as a whole deals with delegated legislation.

Briefly, I have two other observations. The noble Lord suggests that the Government should review, with the help of the Commons Procedure Committee but not with the help of a committee of this House, when SIs should be subject to Commons-only procedures. However, there is a quid pro quo to this. If SIs receive less scrutiny in the Commons than in your Lordships' House, it must be clearly understood, and delivered, that Commons-only SIs must contain only matter which engages Commons financial privilege and must not be freighted with non-financial matters simply because of the attraction of an easier ride.

My last point is also the noble Lord's last point. In the review it is almost a throw-away line, but it is the real reason that we are in this fix. The threshold between primary and secondary legislation has been steadily rising, no doubt because SIs are more convenient for Governments, and SIs are being used for matters of policy and principle which should find their place in primary legislation. Both the Constitution Committee and the Delegated Powers Committee have consistently pointed this out, and the searing indictment of my noble and learned friend Lord Judge is still ringing in our ears.

I could wish that we were not in this fix but, now that we are, that is the real mischief that needs dealing with. I think it is reasonable to say that we should expect a striking and sustained change of culture before your Lordships give up any powers over delegated legislation.

9.50 pm

Lord Young of Cookham (Con): My Lords, as the last Back-Bench speaker in this debate—I wonder whether there is some alphabetical bias in the selection of the order of speakers—I join others in commending my noble friend Lord Strathclyde for his report and for his speech introducing the debate. His report is a "best buy" in terms of value for money. Indeed, such good value is his report that the Command Paper publishing it does not even have a price on the back.

Picking up a point made by my noble friend Lord Forsyth, I wonder whether there are some broader lessons to be learned from this type of inquiry, as the law of diminishing returns sets in quite quickly as the size and length of inquiries develop. With the Chilcots, the Levesons and the Scotts at one end, and the Strathclydes at the other, should we not have fewer of the former and more of the latter? Without being dogmatic, we need more sprints round the greyhound track with a small field, and fewer London marathons, where some entrants find it difficult to finish.

Turning to the report itself, I believe it offers the basis for a settlement. I have been encouraged by the number of noble Lords who have spoken in this debate who have been quite careful not to close the door on further discussions building on what is proposed. There are real advantages for both Houses. I am a recent refugee from the other place after 41 years there and, in my capacity as a former Leader of the Commons, I see real advantages for it, in that the will of the Commons will prevail in secondary legislation as it now does in primary. Indeed, it seems somewhat perverse—a point made by my noble friend Lord Jopling—that the will of the elected House can prevail with Bills but not with the statutory instruments that derive from them.

I would make a number of clarifications. For example, if we were to reject an SI, it must be debated in the other place and not simply approved on a deferred Division without substantive discussion; it should be treated like a Lords amendment. As far as this House is concerned, I think that we get a new weapon that is more appropriate to our role as a revising Chamber. In his report, my noble friend Lord Wakeham said:

"At the cost of weakening the formal power of the second chamber … we believe it would actually strengthen its influence and its ability to cause the Government and the House of Commons to take its concerns seriously".

It is worth reflecting on what might have happened in October had option 3 been available. This House could, of course, have rejected the SI. I suspect that it would have done so by an even bigger majority, because many noble Peers felt inhibited against voting it down for constitutional reasons, and those would have been dealt with under option 3. It would have gone back to the House of Commons with a bigger majority and the House of Commons would have then had to consider what to do with it. We will never know the answer, but my guess is that it would have done exactly what it did in November. The key difference would have been that the House of Commons would have had the last word on the SI and not this House. That is why I think there are real merits in the proposal.

We read on page 18 of the report that the preferred option requires legislation. My noble friend must have come to that decision on the basis of the professional advice that he got from his team. There may be some in my party who will want to legislate straightaway, using the Parliament Act if necessary, but I hope we do not proceed too hastily, precipitating a wholly unnecessary constitutional crisis. There should now be discussions between the parties, and it may be that issues not addressed by the Strathclyde report—for example, the SI procedure in the other place—need to be put on the table, together with other issues such as the time lag between rejection by this House and consideration by the other.

The Government could set the tone for constructive discussions by indicating that they are sympathetic to the recommendation referred to by the noble Lord, Lord Lisvane: that about not using SIs where primary legislation is more appropriate. This is not a pain-free decision for the Government, in that it inevitably squeezes out other legislation from their programme if what would have been an SI now becomes primary legislation. However, if the Government were to indicate that they are sympathetic to that proposition, I hope that that would encourage other parties to come to the table to see whether we could then reach all-party agreement on the way forward. If it is then indeed necessary to legislate to introduce option 3, that can be done on the basis of mature consideration and not the hasty, shooting from the hip exercise that may be advocated by some.

9.55 pm

Lord Tyler (LD): My Lords, this has been a fascinating and thoughtful debate. The contributions and the expertise that have been displayed in the past few minutes have been particularly helpful to your Lordships' House.

I will refer briefly to two remarkable maiden speeches. My noble friend Lady Bowles brings not only professional expertise and experience to this House but particularly interesting experience from the European Parliament. The direction of travel there is to have more democratic control over secondary legislation while in this House this evening it looks as though we might be going in the opposite direction. That is a useful lesson for us. I suspect that the parliamentary experience and touch in the Treasury would never have let the noble Lord, Lord Darling, ride into this House and fall into the elephant trap that the present Chancellor fell into on 26 October. His expertise and experience will be welcome in this House, too.

If there has been a theme during the debate today, it is that this is not a new problem. It is complex, it is not simple—and to that extent we are all indebted to the noble Lord, Lord Strathclyde for trying to simplify it—but it is not new. Therefore, it is up to us to realise that there is no novel, simple one act that could suddenly transform the situation.

As a non-expert, I have at least enough humility to listen carefully to previous wisdom. With the noble Lord, Lord Higgins, and my noble friend Lord McNally, I served on the Joint Committee that the noble Lord, Lord Cunningham, so brilliantly steered in 2006 which produced the report on conventions at the UK Parliament. I read again last night some of the excellent evidence that was put before us on 20 June 2006, when we heard from three distinguished witnesses. This was their first key statement:

"The only inference to be drawn from these proposals is that the Government intends further restriction of the freedoms and powers of the House of Lords. We would start from precisely the opposite premise—the freedoms of both Houses should be upheld and, where possible, extended. We further disagree with the government's view that 'codification' is necessary as a prelude to the reform of the House of Lords. Even if true, which it is not, it could never justify further weakening of Parliament".

The delegation that produced that evidence included Mrs Theresa May MP, then shadow Leader of the Commons and the noble Lord, Lord Cope, then Opposition Chief Whip here. It was led by none other than the noble Lord, Lord Strathclyde. Members of your Lordships' House may have guessed that the evidence they gave was given on behalf of the Conservative Opposition. Colleagues may also recall that the Joint Committee was set up by the previous Labour Government because Mr Jack Straw wanted to clip the wings of your Lordships' House—is that not, too, familiar?—as my noble friend Lord McNally reminded us today.

The evidence of the noble Lord, Lord Strathclyde, continued powerfully:

"'Codification' could cause more problems than it solves … We therefore agree with the Government that it would be undesirable to legislate on the conventions and other relations between the two Houses. That would lead to judicial intervention in and resolution of parliamentary and political difficulties".

I agreed then and I agree now, because there is a real danger that we could drift into justiciable decision-making, which would put us in a very awkward position.

This has been referred to during the debate today by a number of colleagues on all sides of the House, including the noble Lords, Lord Cunningham and Lord Higgins, from the committee, my noble friend Lady Thomas, the noble Lord, Lord Forsyth, who spoke forcefully a few minutes ago, the noble Lord, Lord Howarth, and, most recently, the noble Lord, Lord Lisvane. That is a dangerous route for us to go down without thinking it through very carefully indeed—and I will come to how I think we should do that.

Those witnesses then turned to the specific subject with which we are engaged today. They said:

"The conventions on secondary legislation are equally well understood. We propose no alteration. We uphold the right of the Lords to reject secondary legislation, while considering its use should be exceptional in the extreme. However, there is an important balancing convention to this, namely that governments should not use their majority in the Commons to introduce skeleton Bills as a basis for introducing unamendable secondary legislation".

There is nothing new under the sun. It has been said again today several times that we have skeleton Bills which have become more and more skeletal.

A reference was made earlier by, I think, the noble and learned Lord, Lord Judge, to the Childcare Bill. I draw the attention of the House to the work done on that Bill by the Delegated Powers and Regulatory Reform Committee, chaired by the noble Baroness, Lady Fookes, and on which I serve. It pointed out admirably that the Childcare Bill was not sufficiently well thought through to put before either House of Parliament. It was indeed so skeletal as not to be worth consideration by either House. Some time ago in the debate the noble Baroness, Lady Hayman, referred to this issue, as did my noble and learned friend Lord Wallace. We believe that that is a major problem so far as the House's consideration is concerned.

Having previously argued that the convention on secondary legislation was "dead", the noble Lord, Lord Strathclyde, came before the Joint Committee with a slightly modified view. He said:

"However, on many, many occasions the House of Lords has asserted its unfettered right to maintain its power to throw out secondary legislation; I think the custom and practice that has built up, in combination with the long-stop power in the House of Lords, works extremely well".

He has changed his mind since then.

There was a good deal of support from other witnesses and in the Joint Committee for that approach. I shall quote from the committee's report. The noble Lord, Lord Norton of Louth, who has also spoken today,

"likewise argues against codifying a convention that the Lords do not reject SIs. He observes that:

(a) It is not agreed that there is any such convention;

(b) SIs do not normally involve 'great issues of principle', and any argument in Parliament is usually only about fitness for purpose;

(c) A rejected order can be re-laid;

(d) The power to reject supports the work of the SI Merits Committee;

(e) Power to reject orders under the Legislative and Regulatory Reform Bill will be even more important than power to reject mainstream SIs".

The work of the Delegated Powers and Regulatory Reform Committee of your Lordships' House makes his case even more powerful; it is a critical part of our job and it is very effective in undertaking that responsibility.

As has already been quoted once or twice in the debate, the eventual recommendations of the Joint Committee are unequivocal and bear repetition. The committee states that,

"we conclude that the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so. This is consistent with past practice, and represents a convention recognised by the opposition parties. The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree ... The Government's argument that 'it is for the Commons as a source of Ministers' authority to withhold or grant their endorsement of Ministers' actions' is an argument against having a second chamber at all, and we reject it".

That, like every other recommendation of the Cunningham committee, was not only debated in both Houses but unanimously and enthusiastically approved by both Houses.

It was also welcomed enthusiastically—unsurprisingly, since we had accepted so much of his evidence—by the noble Lord, Lord Strathclyde. I find it difficult, as my noble friend Lord Clement-Jones hinted earlier, to understand what precisely has happened to that noble Lord, Lord Strathclyde. The contrast between the evidence to the Joint Committee, written and oral, and what we have heard today and read in his report is so remarkable that it makes one slightly suspicious.

Lord Strathclyde: My Lords, perhaps I may clarify that to the noble Lord, because he has made quite a meal of it. I stand by every word I said until 25 October of last year. On 26 October, it all changed. That was when I got my review. As a result of that, I conducted my review and produced it for the debate today. The noble Lord can poke as much fun as he would like about what I said, but, as I have just said, I stand by every word of it.

Lord Tyler: I do not think that the House fully understands that, and I think that it has taken a more measured view of these issues. Perhaps I may say that it has been all across the House. It has been remarkable

how much consensus there has been in the debate today. These issues clearly are inappropriately dealt with by an internal government review. These matters are of great importance to the whole of Parliament—both Houses.

The memorandum from the Hansard Society sent to Members today makes a very powerful case on this point. The society suggests an independent inquiry. But I have been arguing for some weeks that an evidence-taking, properly constituted and properly advised Joint Select Committee of Peers and MPs would carry even more authority. During this debate, I have lost count of how many Members, from all sides of the House, have supported the idea of a new Joint Select Committee. It would meet the requirements of so many Members who have contributed today. The noble Lords, Lord Cormack and Lord Cunningham, and a number of other Members have said that that is the appropriate way for Parliament together to think through these issues. This is not us against the House of Commons. It is both Houses of Parliament having to think together about how we best operate in undertaking our responsibilities to hold the Executive to account. That is the proper, effective constitutional role of the two Houses.

If we pursue option 3—a powerful case was made for option 2—there would be all sorts of difficulties. Every Member who said that they are in favour of option 3 also said that there were difficulties. Where are we going to elucidate how we can deal with those difficulties? The only appropriate way to do so is of course in a Joint Committee. If there is to be any revision at all of the way in which the two Houses interrelate, modifying the agreed position set out in the 2006 Joint Committee report, there must be a new Joint Committee to take evidence to make new recommendations.

I hope that the Leader of the House, in responding to this debate, will specifically answer that point. All sides of the House have said that that is the appropriate way forward and it is the one thing on which there is clearly a consensus across the House. I trust that when evidence is given to that committee by, I hope, a "Strathclyde mark 2", he will be as forthright and as protective of the proper role of your Lordships' House as he was when he was "Strathclyde mark 1".

10.07 pm

Lord Hunt of Kings Heath (Lab): My Lords, this has been an excellent debate. I warmly welcome the noble Baroness, Lady Bowles, and, of course, my noble friend Lord Darling, to the House. I congratulate them both on excellent maiden speeches. Right at the start, at about 3.35 pm, the noble Lord, Lord Strathclyde, said that this debate goes to the heart of the work of the Lords as a revising Chamber. Of course, that is true.

Interestingly, as we have developed during today, what has become clear is that, whatever view one has about the conventions, financial privilege and what happened in October, this debate is really about the role of Parliament and the fears that many Lords have expressed about the encroaching approach of the Executive seeking to gain more control over the legislature. That is why we have to be wary, at the very least, of giving up our veto on the strength of what, in the noble Lord's report, are essentially vague possibilities that the Government will reduce their use of statutory instruments or even that the other place might take statutory instruments rather more seriously in the future.

We are, of course, highly indebted to the noble Lord, Lord Strathclyde, for his report and for opening the debate. Clearly, he has a new role ahead as chairman of numerous public inquiries. But he will know that, like my noble friend Lord Grocott, we cannot accept his arguments. We did not break a convention; we did not challenge the primacy of the Commons; there is no constitutional crisis. In October we overwhelmingly declined to support a fatal Motion. Instead, we asked the Government to reconsider and bring forward changes. As the noble Lord, Lord Lisvane, pointed out, the Government had many options for doing that, either through primary or secondary legislation. They chose not to do so. The Chancellor accepted the logic of the Lords position, as the noble Lord, Lord Forsyth, pointed out. As my noble friend Lord Haughey said, there was no victory or defeat, common sense just prevailed.

My noble friend Lady Hollis remarked that it was not our vote on tax credits that strained the conventions, but the Government deploying a statutory instrument in the first place to introduce by the back door highly controversial measures affecting millions of people and, essentially, to avoid proper debate in the other place. My noble friend Lord Cunningham put it so well. The resulting fit of pique by the Government is not the basis on which to make far-reaching changes without a careful examination of the long-term consequences.

So we come to the detail of the report by the noble Lord, Lord Strathclyde. For me, the most important part of that report is the last paragraph, on page 23, concerning the appropriate use of statutory instruments as opposed to primary legislation. Many noble Lords expressed worries about the increased use of statutory instruments, in particular the growing use of what are now being called skeletal Bills, backed up by a host of statutory instruments including Henry VIII powers. The noble and learned Lord, Lord Judge, made a most telling contribution. My noble friend Lord Williams spelled this out: 34 Acts since 2010 contained such Henry VIII powers. Let us be frank: the Government of which I was a member was also guilty of that.

In that paragraph, the noble Lord, Lord Strathclyde, said that,

"in order to mitigate against excessive use of the new process",

which he proposes under option 3, he believed that,

"it would be appropriate for the Government to take steps to ensure that Bills contain an appropriate level of detail and that too much is not left for implementation by statutory instrument".

It is the most important point he makes in the report. The question I put to the Leader of the House is this: how is that to happen? What guarantees are there for this House were it to give up its veto on secondary legislation? I hear what the noble Lord, Lord Young, said, but in this case warm words are simply not enough.

We then come to the question of the role of the Commons in dealing with statutory instruments. It has been confirmed by many Members of your Lordships' House who have come from the other place that the way the Commons deals with statutory instruments is frankly nothing short of disgraceful, with minimal interest, discussion and scrutiny. The Lords would be asked to take an awful lot of things on trust were it to accept the recommendations of the noble Lord, Lord Strathclyde. Will the noble Baroness tell us what guarantees we have that the House of Commons is seriously going to change its ways in dealing with statutory instruments?

I want also to ask her about the details of the noble Lord's report, in particular his option 3. There have been a number of detailed questions and criticisms of some aspects of that recommendation. My noble friend Lady Hollis raised the importance of a set period of delay. Without such a set period, what on earth would make a Government take notice of anything the Lords said on such an instrument? There are other questions: how will the Executive engage with noble Peers on statutory instruments? How will the view of the Lords be conveyed effectively to the House of Commons? Will the resolution be preceded by debate on the Floor of the House of Commons? How much time would be allowed for it? Would it be more than the five minutes a day on average that currently occurs? Will the matter be subject to deferred Division in the Commons, as is the case with many statutory instruments now? Will statutory instruments continue to be started from both Houses, because it certainly has an impact on whether the House can ask the Commons to think again if the Commons has not thought about something in the first case? Will amendments be allowed? This is a very important question about amendments in relation to statutory instruments. The noble Baroness, Lady Fookes, made an excellent contribution and put forward many excellent ideas in relation to how we might take the scrutiny of statutory instruments forward.

In listening to the debate I sense that most noble Lords on all sides of the House are not opposed to a careful examination of how we might improve the way we scrutinise secondary legislation and of how the relationship between the two Houses might be more carefully effected in the future, alongside a review of what most appropriately constitutes primary legislation as opposed to secondary legislation. However, the House does not wish to give a blank cheque to the Executive or to proceed without fully understanding the long-term implications. It is here that we look to the Leader of the House. She is, of course, a government Minister and is Leader of the Conservative group of Peers in your Lordships' House. However, as Leader, she has a wider responsibility to guard the House's interest and to ensure that its role is cherished and enhanced.

Many noble Lords have quoted the Hansard Society paper that we received this morning, and a very good paper it is, too. However, it concluded:

> "The complexity of the delegated legislation process, the lack of understanding amongst parliamentarians … all point to a system that is no longer fit for purpose".

As noble Lords have said, the Hansard Society argues for an "independent expert inquiry" and certainly adds weight to the case for a constitutional convention. My noble friend Lord Darling made a persuasive case for that in describing the problems arising from a piecemeal approach to constitutional change.

We are not elected. We are the second Chamber. We accept without question the primacy of the other place. However, we are the only part of Parliament that takes secondary legislation scrutiny seriously. Therefore, in the light of our debate, I hope that the noble Baroness the Leader will tell us what she is now going to do. However rarely it is used, we currently have an unfettered right to veto secondary legislation. I believe that is a safeguard for both Parliament and the public. Does the Leader want to be the person to remove that right and hand yet more power to the Executive? I hope not. I certainly hope that she will listen very carefully to what noble Lords have said before she takes any such precipitous action.

Many noble Lords have suggested that we appoint a Joint Select Committee of both Houses to look at this issue in the round. The work of my noble friend Lord Cunningham is an excellent example of how that might be done. It would also enable us to embrace the very interesting point made by the noble Lord, Lord Crickhowell, about the need to reflect and understand the views of Members of Parliament.

I say to the noble Baroness that this has been a rather remarkable debate. Different views have been expressed, but I think that there is an urge in the House to try to find sensible consensus on the way forward. She would find huge support on all sides of the House if she said tonight that she would agree to the appointment of such a Joint Select Committee of both Houses. Having heard this debate, I am convinced that is the right way forward.

10.19 pm

Baroness Stowell of Beeston: My Lords, I offer sincere thanks to all noble Lords who have taken part in this debate. It is an important part of the process of the Government considering my noble friend's report. I scheduled this debate today because I wanted to hear from noble Lords. I know that it is a big investment of time to contribute to a debate that starts mid-afternoon and goes on until now, so I am very grateful to everybody who has contributed. I must congratulate the two maiden speakers: the noble Baroness, Lady Bowles of Berkhamsted—I welcome her to your Lordships' House—and the noble Lord, Lord Darling. I hope he will not misunderstand if I say that I will just call him "Darling" as I do not think that I can pronounce the place in his title where he is from, but he is warmly welcomed. We are very pleased to have both the noble Baroness and the noble Lord among our number.

I am grateful for all the contributions today. They have been interesting, constructive and helpful to me in my consideration of my noble friend Lord Strathclyde's report. I want to thank my noble friend for doing his review, outlining a clear set of options and, today, setting out very clearly, when he introduced the debate, the route to how we got to where we are and why it is that the Government asked him to carry out that review.

There have, understandably, been a range of views expressed, but one thing that I found pleasing was that we are all united in our desire to uphold this House's

very important role as a revising Chamber. What has also been acknowledged in the debate today is that our relationship with the other place is at the heart of how we fulfil that important role. Also, as has been mentioned already, we have acknowledged an understanding that we are here to complement and not compete with the elected House of Commons. The noble Lord, Lord Empey, was right to highlight the risks when we do not properly respect and understand that relationship.

For us to work together effectively with the House of Commons, it is important that there is clarity on how we work together. When it comes to primary legislation, we are clear on how that relationship works; there is a dialogue between the two Houses and a mechanism, through ping-pong, for us to ask the House of Commons to think again, but there is also a way for the will of the elected House to prevail, with the ultimate back-stop of the Parliament Acts when all else fails.

With secondary legislation, the relationship between the two Houses is not structured as clearly. We cannot enter into a dialogue; we may only give or withhold our approval to a statutory instrument. If we choose to withhold approval, there is no mechanism to allow the will of the other place to prevail. That is what gives us this absolute power of veto. Given how significant that power is, it is essential that we have a shared understanding within your Lordships' House about how it should be used. Yet, right now, we do not. That is a very important point to stress, because several noble Lords have said today that, in October, we asked the House of Commons to think again. We did not do that, because we cannot do that. We do not have that facility. What we did was to overrule the House of Commons, because it had already decided.

Noble Lords: Oh!

Baroness Stowell of Beeston: It had already decided what its view was on the statutory instrument and we do not have that mechanism for a dialogue.

The role of this House and its powers on SIs is not a new issue; this is something that we have heard from many noble Lords speaking today. My noble friend Lord Wakeham, through his royal commission, and other noble Lords have grappled with this issue in the past. Over the past few months, and indeed through today's debate, what has crystallised, for me, is the fact that there is no clear agreement among us about how we exercise our powers. We are still debating and still disagreeing today about whether the Motions that were tabled in October were fatal or non-fatal. I feel that, for us to be effective, we cannot sustain that lack of agreement between us about how we use our powers.

The noble Lord, Lord Grocott, was the first person that I noted down who said, "It's not broke so let's not fix it", but he was not the only one who made that point; in fact, the noble Lord, Lord Hunt of Kings Heath, said the same. But, as my noble friend Lord Strathclyde and others argued, conventions work only when both sides agree on what they mean in practice. The noble Lord, Lord Grocott, looked back on the submissions made by my noble friend when we were in opposition. I also looked at the submissions made to the Joint Committee on Conventions by the noble Lord's Government when they were in power. Back then, the then Labour Government said in their submission:

> "A contested convention is not a convention at all".

I agree. That is the problem we have at the moment—we are contesting.

For us to fulfil our role effectively, we need clarity, simplicity and certainty—what my noble friend outlined as principles in his report—and we need to ensure that the other place has the decisive say on secondary legislation, just as is the case when we consider Bills. My noble friend's report gives us the opportunity to consider how we could do things differently and tackle the long-standing questions raised.

Before I talk about some of the options that my noble friend outlined and the responses to some of those that he put forward, I should be clear that the Government are still listening. Tonight I will not offer any government response to what he put forward in his report—the options and the recommendation. In terms of considering the way forward, the Government will take account of this debate, which is why it has been such a valuable exercise. The noble Lord, Lord Foulkes, asked earlier that we should consider, and I am considering what has been argued—I am taking it on board. I have listened carefully to the debate tonight.

Lord Foulkes of Cumnock: I respect what the noble Baroness says, but in her remarks so far she gives no evidence whatever of having taken account of any of the comments made right around the House. Could she make it clear how all the points made—the very good suggestions from every quarter of the House—will be brought together, considered by the Government and dealt with? Will they look at setting up a Joint Committee?

Baroness Stowell of Beeston: I am conscious of time; everybody is tired. I am going to come on to that; I have just said that that is what I am going to come on to, and I will.

Some noble Lords thought that it would be best to proceed without legislation and instead to codify the convention; certainly there is an argument to be made in respect of that, but that approach would require us to restore a shared understanding about the convention underpinning our power of veto. Most noble Lords focused their comments on the third option put forward by my noble friend, the one that he recommends—as he described it, the ping without a pong. He suggests that that would replace this House's power of veto with a new power to ask the other place to think again, with the House of Commons having the final say.

What he is recommending there is what noble Lords are arguing for. However, some thought that it would be necessary to retain the veto available to us now. I stress again that all these things are under consideration, but it is important for me to point out that we do not have an absolute veto when it comes to primary legislation. The new power that my noble friend suggests would be more in keeping with the role of this House, and the desire it has to ask the other House to think again.

The noble Baronesses, Lady Taylor and Lady Smith, and the noble Lord, Lord Hunt, and others asked me from the Labour side of the House to consider what was possible that would have some longevity and was not about just advancement for any particular party in government. Again, I found it very helpful to revisit what the Labour Party said to the Joint Committee on Conventions about the veto when they were in power. Forgive me for singling out the noble Lord, Lord Grocott, again but it was he who made this point to the Joint Committee. He said that,

"the House of Lords can veto secondary legislation … the very legitimate question arises … whether it would be sensible to consider the proposition that the Lords in respect of secondary legislation should do what it does with primary legislation, and see its function as being a delaying, revising chamber but not a vetoing chamber. That is really the question that is being put".

Lord Grocott: My Lords, the noble Baroness will acknowledge that a lot of evidence went to the Joint Committee, which was set up by the Labour Government precisely to look at all these issues. That all-party Joint Committee, although a committee with a Labour majority on it, looked at it and the conclusions that it reached were agreed unanimously and adopted by both Houses. That is the way the process worked and it is the way any new process should work.

Baroness Stowell of Beeston: I say to the noble Lord that the Joint Committee on Conventions of 2006 was clearly highly respected. It was a very significant committee, and its findings and work have really stood the test of time. The problem we have is that the convention that was set out there and reinforced by the Joint Committee—I am afraid that this is the problem, because we disagree and this is what we are having to address—is no longer operating in the way that it was agreed it should operate.

Lord Cunningham of Felling: I am grateful to the noble Baroness, and I apologise again for the state of my voice, but what she says is not correct. The committee was absolutely unanimous in endorsing the conventions. Both she and her noble friend Lord Strathclyde have introduced into the argument just today that somehow one of these conventions is contested. That is just not true. The conventions have been upheld and adhered to, and on 26 October no convention was broken.

Baroness Stowell of Beeston: I am going to move on, to make some progress. I do not disagree with what the noble Lord says about his committee of 2006. I do not want to dwell so much on October—I want us to look forward—but I am saying this about the events of October. It is all very well for the noble Baroness opposite to groan but, by agreeing to those Motions last October, this House said that it would decline to consider something until a set of demands had been met by the Government. That is what it voted for, and that had never happened before. That is why I assert that that kind of arrangement means that the convention as it exists, for this part of the agreement, is now difficult. That is the problem. Let me move on.

Baroness Hayman: I really do not understand the noble Baroness's logic. Is she saying that if the House had accepted the amendment of the noble Baroness, Lady Manzoor, it would not have broken the convention but that because it found a way of doing something lesser, which did not destroy the SI, we did breach the convention? That seems to be the logic of her argument.

Baroness Stowell of Beeston: My precise point, which my noble friend made when he introduced today's debate, is that, in practice, this House voted for something that had a fatal effect, and it is therefore no longer possible for us to say that our understanding of how that convention works continues. I shall give way one further time to the noble Lord and then I really would like to move on.

Lord Cunningham of Felling: I am grateful to the noble Baroness for giving way again, but she just again said something that is simply not correct. She said, in respect of the Division on 26 October, that something like that had not happened before. That is simply not correct. Between 1968 and 2005, there were five such Motions, three against a Labour Government, which were carried in this House, so it has happened before.

Baroness Stowell of Beeston: Okay, I am just going to make one simple point and then I really will move on. We are disagreeing because what happened previously were fatal Motions that we all understood to be fatal. On the Motions tabled in October, one side of this House is arguing that they were not fatal, the other side is arguing that they were. I am afraid that that disagreement is what has led us to have to ask my noble friend Lord Strathclyde to look at this issue and come forward with his report. He is trying to bring forward something which addresses the need of this House that has been outlined since 2000, when my noble friend Lord Wakeham first looked at this matter.

This House is influential when we act in a constructive and nonpartisan way. We do not need vetoes. The impact and effect that we have on legislation is very powerful, and we continue to have a very important role in our effect on the decisions that the Government make in legislation.

Many noble Lords said that this House should give up a veto only if there was some kind of trade-off for the Government to review how they use secondary legislation. This is a very important point. The speeches from the noble and learned Lord, Lord Judge, and my noble friend Lady Fookes were very powerful and they make a really important point. I said the same to the noble Lord, Lord Richard, when I delivered the Statement before Christmas. I am grateful to the noble and learned Lord and the noble Lord, Lord Hunt, for acknowledging that any criticism that Parliament may have of Governments for the use of secondary legislation is not new.

I also say to the House that I do not think that things are quite as bad as the House suggests in terms of our approach to secondary legislation—I do not just mean the Government, I mean the House as a

whole. There is always room for improvement, but the number of SIs over the past 20 years has been pretty steady.

The committees of this House are very powerful and respected. The committee chaired by my noble friend Lady Fookes does a very good job of scrutinising delegated powers in primary legislation. Very often, the Government respond constructively to its recommendations. In the work that this House does on primary legislation, a lot of the changes that it makes are around the powers. My noble friend Lady Fookes has put forward some good arguments and ideas about how we can improve within government, and I will certainly take those away.

We should not forget that when SIs come into Parliament they are scrutinised by a Joint Committee of both Houses, as well as by the Secondary Legislation Scrutiny Committee chaired by my noble friend Lord Trefgarne. The tax credit SIs went through that JCSI, which is chaired by a Labour Member of the other place. In its report, the JCSI did not raise any questions or concerns about that tax credit SI.

Some have argued for a period of delay. Some have argued that it would be essential for us to ensure that we would introduce debates for the House of Commons when it considers secondary legislation. What is important, interesting and helpful to me is that, although there are different views being expressed today about how to operate without a veto, there are many noble Lords at least discussing the idea of not having a veto but having a new power instead of the veto. I am grateful to noble Lords for that response.

As I draw to a close, noble Lords have raised questions about a Joint Committee. I have already said that the work of the Joint Committee in 2006 was incredibly powerful, but I do not believe that right now we need another Joint Committee. We need to look at the options that have been put forward by my noble friend, but I know that my noble friend Lord Trefgarne and his committee have committed to looking at what has been proposed, and I am grateful to him.

As for the Commons looking at this, it is clearly for the other place to decide how it should scrutinise secondary legislation. However, as my noble friend Lord Crickhowell has identified, the Public Administration and Constitutional Affairs Select Committee in the other place has committed to look at what has been put forward by my noble friend Lord Strathclyde. It has a hearing next week at which he is giving evidence, so the Commons is also getting on with its consideration of this arrangement.

Lord Tyler: If the Leader of the House is dismissing out of hand the idea of a Joint Committee, how can she guarantee that the two Houses will think about this problem together? Members on all sides of the House have said how essential this is. How will she ensure that that happens?

Baroness Stowell of Beeston: The point is to make sure that the House of Commons has the final say on secondary legislation. It has set out how it wishes to consider what has been put forward by my noble friend. He has put forward his options after extensive consultation with Members of the other place, as well as with Members of your Lordships' House.

There is clearly much for me to reflect on from this debate. I will do so with my colleagues in government. I am sincere when I say that the contributions have been very valuable. We have not come to any conclusions in government.

Lord Foulkes of Cumnock: The noble Baroness has said that she has not come to any conclusion, yet she has said that she is not going forward with a Joint Committee. How are the Government going forward? A lot of good suggestions have been made in this House. If we are not to waste the whole day that we have spent on this, she must indicate to the House how the Government will take this forward.

Baroness Stowell of Beeston: I have said what we are doing. We will reflect on the very important points that have been made today. My noble friend Lord Trefgarne and his committee will be looking at what has been put forward. There may be other committees of your Lordships' House that wish to do so as well. We will be considering this in the period ahead; at an appropriate point we will consider which is the best way forward, and I will return to your Lordships' House.

My noble friend has done a comprehensive piece of work. As my noble friend Lord Wakeham said, what is in my noble friend's report is very similar to what was in the report of his commission 16 years ago. Many noble Lords have pointed to that as a way forward. I am not reaching any conclusion tonight on the right way forward, but my noble friend Lord Wakeham's point is very important and it is worth us all dwelling on it.

10.45 pm

Lord Strathclyde: My Lords, what is so refreshing about the debate we have had today is that we have been discussing what we are here to do, what we are for and what the House of Lords is for. What a contrast that is with the years we spent discussing how to get here. At last we are discussing what we have to do in practice.

I shall make two short points. First, for me the most significant and interesting contribution was from the noble and learned Lord, Lord Judge, which showed what a good thing it is to have properly qualified senior former members of the judiciary here—with due deference also to the noble and learned Lord, Lord Hope of Craighead—and how wrong we were to throw out the Law Lords all those years ago.

Secondly, and perhaps more substantively, there has been an enormously wide range of views expressed in the debate. I wish the Government the best of luck in trying to bring all this together and come out with a coherent response. It will be difficult.

My noble friend Lord Young of Cookham heard something that I also heard. Although there were numerous disagreements, if we are going to change the way we debate this, the key area of disagreement is

whether it should be by legislation or by agreement. I urge all those who are in favour of doing it by agreement to work within the House and with the Opposition and the Government to see if that agreement would work.

The noble Lord, Lord Cunningham, misunderstood what I wrote in my report—it is my fault because it was not clear. In my foreword, I talked about conventions, but conventions cannot be imposed by me, by the Government or by the Opposition. They can be reached only by agreement, by good will, by compromise and by joint objective. If that is the result we end up with, I will be the first to cheer.

Motion agreed.

House adjourned at 10.47 pm.

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