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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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House of Lords

Friday, 29 January 2016.

10 am

Prayers—read by the Lord Bishop of Chelmsford.

Airports Act 1986 (Amendment) Bill [HL]

Order of Commitment Discharged

10.07 am

Moved by ***Lord Empey***

That the order of commitment be discharged

Lord Empey (UUP): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Therefore, unless any noble Lord objects, I beg to move that the Order of Commitment be discharged.

Motion agreed.

Public Advocate Bill [HL]

Second Reading

10.07 am

Moved by ***Lord Wills***

That the Bill be read a second time.

Lord Wills (Lab): My Lords, this Bill arises out of my experience as a Minister devising the Hillsborough Independent Panel that was set up by the Government of Gordon Brown towards the end of his premiership. This was a more complicated and difficult process than perhaps the current public record suggests. The problems I encountered during that process made me reflect on the wider implications for public policy in the case of large public disasters such as Hillsborough, and this Bill is the result.

I want to place on record my gratitude to Ministers in the Ministry of Justice, the Justice Secretary, the Parliamentary Under-Secretary in the other place, Caroline Dinenage, and the Minister of State here, the noble Lord, Lord Faulks, for the courtesy and consideration they have given to my representations to them about the Bill. I am also grateful to their officials, who have been generous with their time in discussing details of the Bill with me. Above all, I want to pay tribute again to the families bereaved in the Hillsborough disaster in 1989, who campaigned for so long with such dignity and persistence in the midst of their grief until, at last, they have begun to see the results of their campaign for justice. Without their efforts, the panel would never have been established, and without their efforts, it would never have achieved what it has.

In 2009, I met representatives of those families on several occasions to discuss with them what outcomes might satisfy them. One message that came through over and over again was that they wanted to find a way to prevent other similarly bereaved families suffering and having to endure in the way they had suffered and endured for 20 years. This Bill is designed to do just that.

This is not the time to rehearse the history of those years between the disaster and the setting up of the panel, but that history illustrates the extent to which bereaved families and injured survivors can feel alienated from the official process for responding to such public disasters and how lack of transparency is one of the key reasons for that. It revealed the extent to which the experience and responses of bereaved families and injured survivors can illuminate what happens in such disasters, and why, and reveal flaws in the official response to them. That all this is now in the public domain is a tribute to the outstanding work done by the members of the Hillsborough Independent Panel, so ably and compassionately chaired by the then Bishop of Liverpool, who many noble Lords will remember from his time in your Lordships' House, with powerful support from Home Office officials. The bereaved families were all well served by their labours. I should also pay tribute to the current Prime Minister and the current Home Secretary who continued to support a panel set up by a previous Labour Government and followed through on its report.

The fact that finally the families bereaved at Hillsborough have been able to achieve much of what they campaigned for should not lead to any complacency about the systems currently in place to respond to such public disasters. When the full record of what happened after the Hillsborough disaster is eventually made public it will show, I believe, how the successful outcome of the Hillsborough Independent Panel was the result of a series of fortunate coincidences. There was nothing inevitable about it. This can be seen from, among other things, the fact that the intense difficulties experienced by those bereaved at Hillsborough have been experienced by those bereaved in other public disasters including, for example, the Lockerbie terrorist atrocity, the sinking of the "Marchioness" in the Thames and the wreck of the "Derbyshire" in the South China Sea. Those bereaved families have not all made the progress the Hillsborough families have eventually been able to make.

Sadly, we must assume that such tragedies involving large-scale loss of life will occur again; they always have, and they always will. So this Bill seeks to provide a better way of responding to them on behalf of the bereaved and the injured survivors. It does so on the basis that there is an identifiable pattern to the process that follows a public disaster such as those I have mentioned. The nature and extent of a public disaster very often demands a response from government. The questions raised are almost always the same: who is to blame and what can be done to stop it happening again? Finding the answers does not put the bereaved families anywhere near the centre of that process. The state naturally assumes for itself the dispensation of justice, and the needs and wishes of victims, including the bereaved, are not paramount. As the process unfolds, there is an inevitable tendency for those in official positions who fear that they might be blamed in some way for what happened to close ranks and skew the

[LORD WILLS]
results of any investigation, as they are so often in a position to do. The report of the Hillsborough Independent Panel graphically illustrated this in the way that it has exposed the behaviour of the police.

Yet the interests of justice and good government would not necessarily be best delivered by removing the state altogether from the process of responding to public disasters. The challenge, therefore, is to strike a better balance between the impartial discharge of justice and good government and protecting the interests and feelings of the bereaved and injured survivors. The Hillsborough Independent Panel pointed the way towards how that might be done, and the Bill seeks to learn those lessons. The first, in my view, was the benefit of the panel review system, which was able to circumvent the constraints of data protection legislation and so was able to reveal new facts. Then there was the importance of the trust placed in that panel by the bereaved and the confidence that they felt the panel was working in their interests. Next was the importance of the bereaved being able to articulate their views collectively. Importantly, the process revealed the problems caused by the absence of any consistent advocate for the bereaved at the heart of government to overcome any interests working against them. Lastly, I have little doubt that it was the extraordinary persistence and dignity and solidarity of the Hillsborough families' campaign that generated the momentum that led to the panel and its achievements. This will not necessarily be replicable in similar situations in future.

I draw three conclusions from that. The first is the importance of transparency. Without this, the bereaved will never achieve anything approaching closure, and without it it is difficult, and often impossible, for the public policy lessons to be learnt and necessary reforms made. The second is the creation of an institutionalised, independent and adequately resourced advocate for the bereaved. Those who are bereaved in future public disasters should not have to rely on ad hoc remedies extracted over such a long period, such as those that in the end delivered some progress for those bereaved at Hillsborough. The last is the need, as I said, to organise some collective expression of the views of the bereaved.

Those conclusions underpin the Bill, but in my view they do not suggest replacing the existing system of responding to public disasters, such as the coronial system and public inquiries. They clearly still have a critical role to play, to ensure that any overarching public interest is protected. Rather, the Hillsborough experience suggests augmenting the system to protect better the interests of the bereaved. The Bill proposes the establishment of an independent and adequately resourced advocate for those bereaved in public disasters and injured survivors. The constitutional position for such a public advocate is based on what I believe to be the successful model of the Independent Reviewer of Terrorism Legislation, and would have a similar relationship to central government. The unpredictable and ephemeral nature of the demands on such an advocate would, I think, preclude any permanent establishment. However, to ensure that such an advocate was adequately resourced to deal with whatever demands were placed on them, they would be located within a government department—the Ministry of Justice would appear to be an obvious candidate—with the ability to call on the resources of that department as required.

The Bill stipulates, crucially, that two conditions would need to be satisfied before the advocate was required to act. The first would be that in the advocate's opinion an event had occurred that had led to a large-scale loss of life and involved serious health and safety issues, a failure of regulation or other events of serious concern. In other words, the advocate would not be required to act in all circumstances where there was a large-scale loss of life. Secondly, to act, the advocate must have been asked to do so by 50% plus one or more of the total of representatives of those deceased due to the event and any injured survivors of it. In effect, the bereaved and any injured survivors would have a veto on the advocate's role coming into effect.

When those two conditions had been satisfied, the public advocate would be required to act as a representative for the interests of the bereaved and survivors, and act as adviser and guide for them and any other representatives that they might have during any police investigation into the disaster and during the inquest. Following any such police investigation and the inquest, on request by a majority of the legitimate representatives of the victims and in consultation with them, the advocate would set up a panel, consulting the bereaved on its composition, to be in the position of data controller, so replicating the position of the Hillsborough Independent Panel. The panel would review all relevant documentation, which would be made available to them on request from all responsible agencies, and report on it—again, replicating the position of the Hillsborough Independent Panel. In effect, the Bill intends to give the bereaved a veto on the establishment of such a panel and its composition.

The Bill then sets out the conditions that would govern the disclosure of information to an advocate's panel, and these are based on the safeguards in the Freedom of Information Act. I have incorporated them into the Bill because I believe that the Act is generally regarded as successful legislation, notwithstanding the Government's current commission looking into reforms to it. Even that commission, which is widely regarded as hostile to the Act, seems, if media reports are to believed, to be considering only relatively minor amendments to it, and therefore it seems sensible to rely on its tried and tested provisions.

Lastly, the Bill contains provisions for the advocate to send to the Lord Chancellor a report on an annual basis summarising its work and the conclusion of support relating to a particular event, and at any other time when it identifies a need so to do, and the Lord Chancellor would lay before Parliament a copy of any reports received from the advocate within 15 days of their receipt. That provision is designed to ensure that Parliament retained oversight of the work of the advocate, and represents a further safeguard of the interests of the bereaved and injured survivors.

Since the Hillsborough disaster there have been significant improvements in the coronial system, set in train 12 years ago by my noble friend Lord Blunkett,

and I am very pleased that he is speaking today. He remarked then on the importance of,

"providing a high quality service to the public at large and particularly to the bereaved, recognising their special needs and the input they can make to the death investigation process".

Moreover, there is now the precedent established by the Hillsborough panel report and the subsequent inquest, which I hope will mean that in future bereaved families will not have to campaign as the Hillsborough families had to do for so long. However, the Bill is still necessary, because it gives the bereaved and injured survivors greater control over the process than they currently have, for all the welcome reforms to the coronial system and all the precedents established by the Hillsborough Independent Panel. Rather than relying on ad hoc responses by government, victims, the bereaved and injured survivors would have a right to support and transparency.

My drafting of the Bill could well be improved, and it certainly makes a number of subjective judgments which may well have to be revisited—for example, the trigger mechanism which enables the public advocate to act, as I recognise that many bereaved and injured survivors might well not want to take part in a continuing process and their feelings must be respected. Another example is the definition of who should qualify as bereaved or a representative of the deceased, which may well also need to be revisited.

However, these are details which the Government, with all the expert resources at their disposal, can easily address and improve. Therefore I hope that today the Minister will feel able at least to express support for the principle that the Bill seeks to establish, of approving support for those bereaved by public disasters and injured survivors and giving greater powers to them. I hope that he can also suggest today a way to make progress on entrenching those principles in public policy. I beg to move.

10.21 am

Lord McNally (LD): My Lords, as I rise to speak I suspect that going through the mind of the noble Lord, Lord Faulks, is a conversation we had when he took over from me as Minister of State at the Ministry of Justice, when I said, "Don't worry—I'm not going to be one of these ex-Ministers who haunts you when you're doing the job". I am in fact speaking twice today but that is still my resolution. It is a great pleasure to follow the noble Lord, Lord Wills, and to speak before the noble Lord, Lord Blunkett, on this matter. Both bring incredible experience as well as local and national expertise to the Bill before us. As we all know, the noble Lord, Lord Wills, is an ideas man and has a terrier-like determination once he has something in his sights.

I am very pleased to be able to support a Second Reading for the Bill. The debate is bound to be dominated to a great extent by the Hillsborough disaster. My parents were both born in Liverpool and I have a large number of cousins and second cousins and the rest dotted around Merseyside, so I know the trauma and hurt that Hillsborough caused. However, it is also important, as the noble Lord, Lord Wills, indicated, that this should not just be the final piece in the Hillsborough puzzle but should look forward to the disasters that will inevitably happen in the future.

Hillsborough, as the noble Lord, Lord Wills, indicated, was all too familiar, as regards how major disasters happen. Families and the bereaved feel excluded from the process; those with responsibilities become defensive and uncommunicative; and ranks are closed to protect reputations, avoid culpability, and protect commercial or operational confidentiality. The wheels grind slow and the lay person feels excluded, as professionals seem to take over what is for individuals not simply today's headline but a deeply personal tragedy.

Hillsborough only now comes to closure over a quarter of a century after it happened. Lessons have to be learned by the football authorities. I remember where I was when I heard on the radio that there had been a disaster, and my first reaction was, "Not again". Ibrox, Bradford—any of us who were regular football attenders knew that health and safety at football grounds was a joke. Now I think again, there have been massive improvements over the last 20 years in ground safety and the quality of the offer to the football fan. However, the lessons of Hillsborough still need to be learned. They need to be learned by the police, certainly as regards crowd control, which was unbelievably amateurish at Hillsborough, as we now know, and as regards their own internal behaviour, discipline and inquiries. They are hard lessons to learn, but learn they must.

The noble Lord, Lord Wills, paid tribute to the changes in the coronial system and the guidelines on speed and information now under way. It is worth while noting that the inquest into the 7/7 bombings, conducted by Lady Justice Hallett, received almost universal commendation for the skill with which she conducted it. The noble Lord, Lord Wills, is right to say that neither the Bill nor its supporters have any intention of getting away from the inquest system properly conducted. Government and politicians also sometimes failed to listen or act. Sometimes that is because of the reaction when these things happen, when our compensation culture kicks in and there is a defensiveness against that. However, that does not go against the key hurt which the Bill intends to address.

I agree with the noble Lord, Lord Wills, that there is no room for complacency. There is much more room for transparency; if any lesson runs through this like through a stick of Blackpool rock, it is about the need for transparency and openness in dealing with these issues. Therefore I join the noble Lord in urging the Government in dealing with the Freedom of Information Act to treat it as the precious asset it is. I end as the noble Lord did; the headline in yesterday's *Independent* said:

"Hillsborough trauma 'could be avoided' under new plans to help families of disaster victims".

That sums it up. On that ground alone, the Bill is justified in being given a Second Reading.

10.27 am

Lord Blunkett (Lab): My Lords, I will speak briefly to commend my noble friend Lord Wills for his work on the Bill and for bringing it forward to us. He and the noble Lord, Lord McNally, have concisely and clearly laid out why this legislation is necessary and that while there may be tweaks to the content and to the way it finally emerges, the need to get this right for the future is unarguable.

[Lord Blunkett]

We make progress slowly. As my noble friend Lord Wills generously suggested, as Home Secretary I oversaw modest improvements to the coroner's court system and greater transparency, with the considerable help of the late Paul Goggins, who as a Minister and Member of Parliament was an exemplar of how to get things done and to do so with care and thought for others—which is at the root of my noble friend Lord Wills's proposition. At the very moment when people are hurt the most—in one sense disabled the most from being able to be advocates on their own behalf and for those loved ones they have lost—we need to assist them to be able to articulate that hurt and to seek redress. More important than redress itself is to be able to investigate and put right those aspects which can be identified as having gone very badly wrong so that others do not have to suffer in that way. Therefore an advocate is needed most at the moment of greatest hurt.

I suggest that it would be remiss of us to allow this proposition to fall, particularly during its process, on the grounds of cost. I know—and am learning as I go along—that we do not deal with finance in this House, but there are costs involved in picking up issues much later in the day, a number of which have been listed by the noble Lord, Lord Wills. When an inquiry is held, a process is set in train to bring comfort and redress, and to provide knowledge about what happened and what needs to be put right. The cost of that is much greater down the line than if that process is brought into play quickly and easily. The terrible hurt and trauma involved for the individuals who have fought with tenacity for what they see as justice, as well as setting the scene for others for the future, following the Hillsborough disaster—a fight that has been ongoing for 27 years—as well as other instances that have been listed, can be avoided.

It has been said to me that people are losing loved ones in tragic circumstances on a daily basis, and we should be cognisant of the fact—I am very mindful of this—that numbers are not always a reflection of that. Therefore, it will be important to get the terms right regarding when an advocate should be brought in to represent those who are bereaved, to speak on behalf of those who can no longer speak for themselves, and to unlock the systems which those of us who have been in government are all too familiar with. There is a tendency—I plead as guilty to it as anyone else—not to want to close things down but to hear what suits the moment best.

Until last May, I represented the area around the Hillsborough stadium in the city of Sheffield. I am deeply mindful that in the aftermath of the disaster, even with the Taylor inquiries, people did not know the truth and therefore were subject to listening to what others were saying, sometimes making unjustifiable judgments. We have to avoid that. The quicker an advocate can come on to the scene—the noble Lord, Lord McNally, mentioned Lady Justice Hallett—the more likely it is that we will get to the truth quickly and avoid myth and countermyth and the terrible hurt that goes with that.

It is really important that we pick up what is an excellent idea and hone it into a mechanism that will work for the future. I hope we will ensure that we do not put people through years and years of distress, and very often anger, because systems do not work and because those in power and those with influence—who, understandably, are getting on with their job—are felt not to be listening and learning. If we can avoid that, we will do a great deal for individuals who are in that situation but we will also ensure that our democracy works better.

10.33 am

Lord Wood of Anfield (Lab): My Lords, I want to be brief. I applaud my noble friend Lord Wills for this excellent proposal and I urge people on all sides of the House to support it.

The proposal draws its inspiration from one of the few positive developments to have emerged from the shameful saga of the events following the Hillsborough disaster—the Hillsborough Independent Panel. As my noble friend Lord Wills made clear, it is not a proposal to replace the existing mechanisms that we use to respond to public disasters, but to augment that process with an independent, adequately resourced advocate for bereaved families.

The grief suffered by the families, friends and loved ones of the 96 who lost their lives at Hillsborough is unimaginable for the vast majority of us. But what is extraordinary, and shameful, is that over a quarter of a century later the families of the 96 are still waiting for final justice and for the final truth to emerge. For much of that time, those in positions of power—through a combination of negligence, obfuscation, intransigence and professional self-interest—have combined to prevent the full facts of what happened coming to light.

However, if there are any silver linings in this grim, appalling episode in our national life, it is that eventually the Hillsborough Independent Panel system emerged as an ally of and advocate for the bereaved. It was able to circumvent the constraints of freedom of information and data protection legislation, and became trusted by the families both to listen to their experiences and to be an advocate in their search for the truth inside government and other public authorities.

I do not think we can understate how intimidating it is for families thrust by tragedy into the public limelight to deal with public authorities, government and the state, or how huge the information gap is when you are outside the system, unable to access it, and, to paraphrase Donald Rumsfeld, when you don't know what you don't know, as well as when you don't have the first clue how to access what you know that you don't know, or how the myriad laws, rules, provisions and jurisdictional boundaries make navigating the system impossible for those who are not experts on process, government lawyers or senior professionals.

And all that is assuming that the various agencies of the state—from central to local government, the police, officials staffing inquiries, civil servants and employees of other public bodies—show co-operation, judgment, sensitivity and objectivity towards the families concerned. But sadly, as we know from the Hillsborough tragedy, that cannot always be assumed, so families may face not just the might of the state but parts of the state that have interests of their own to protect—those, which, I am afraid, cannot be assumed to be honest brokers and which can come across as adversaries, with resources far greater than those of the families.

The value of a state-provided advocate in the event of future public disasters is clear: to act on behalf of the bereaved as an adviser during the investigation and inquest; to get access to documentation that the families would not be able to access and to report on the contents; and to require resources, commission advice and issue reports. These are functions that cannot simply be provided by collective legal representation. As my noble friend Lord Wills set out, there is a precedent here, although as my noble friend Lord Blunkett made clear, work will obviously need to be done on clarifying when this would and would not apply.

What makes this proposal so necessary is not just the experience of the Hillsborough families but the experience of families who have suffered so much in previous public disasters. We know that the barriers to establishing the truth about the circumstances of disasters have been experienced by other families in other tragedies. I shall take just one example: the Aberfan tragedy in Wales in 1966, when a coal slip killed 116 children and 28 adults. This was a tragedy caused in part by the negligence of public authorities, yet the families faced a stunning combination of insensitivity and professional self-protection in the inquiry process that resulted from it. At one point, the Charity Commission, in 1967, gave advice to the Aberfan Disaster Fund on financial compensation for the families who had lost children. It said that before any payment was made, each case should be reviewed to ascertain whether the parents had been close to their children and were likely to be suffering mentally. One bereaved mother wrote to the chairman of the National Coal Board, Lord Robens, about the way that she felt the inquest had treated her and other families. She wrote that the response of the NCB and other authorities,

"adds to the feeling that our children, whatever they meant to us and whatever value they may have been as citizens, are now dead, and being so, value little to this country, and also value little to those who caused them to die. They are now it seems and within the letter of the law to be written off, as cheaply as possible and the matter closed ... Is there no room for social conscience?".

There is little we can do about the unnecessary suffering caused by the impenetrability of government and public authorities for those who have suffered in disasters such as the Aberfan tragedy, but there is something we can do for those among us all who may lose someone they love in future tragedies. As my title betrays, I am a lifelong Liverpool football fan. I myself tried to get a ticket for the Hillsborough game when I was 21, and I have a son who, I think, has a lifetime ahead of him of attending Liverpool games. Imagine losing someone you love in those circumstances and feeling helpless in the face of searching for the real reasons, because of the way our government and our public bodies work. Why would we wish that on anyone?

This is a sensible, practical proposal. It needs more work but is definitely in the right territory. It builds on something that has worked in the case of Hillsborough and may help in future to prevent the type of suffering that has been inflicted on Hillsborough victims' families for over 26 years—practically my entire adult life. I congratulate my noble friend Lord Wills on this proposal and urge all Members of your Lordships' House to support it.

10.40 am

Lord Bach (Lab): My Lords, on behalf of Her Majesty's Opposition, we welcome the Bill and congratulate my noble friend Lord Wills on introducing it. I have some personal reasons for welcoming it: I was a ministerial colleague of my noble friend and my honourable friend Maria Eagle MP at the Ministry of Justice at the crucial time when, after a shamefully long period, the Hillsborough tragedy began to be properly investigated. Great credit is due to both my noble friend and Maria Eagle for the work they did when jointly Ministers of State at the Ministry of Justice.

All this, of course, is in no small measure due to the work of many, many people. However, I want to mention, as my noble friend Lord Wills did, the previous Bishop of Liverpool, our erstwhile colleague in this House, and, if I may, the now shadow Home Secretary, the right honourable Andy Burnham MP, who played an enormous part in what has happened. However, as my noble friend said, it is the bereaved who deserve more credit than anyone.

This Bill is timely, in the sense that the inquest is moving now towards a conclusion, but 27 years after a national tragedy such as Hillsborough is, as other speakers have said, far too long to wait for a definitive judgment on what happened and why. I am very conscious, as I know the House is, that the inquest is not yet finished, so I will avoid, as will others I am sure, any comment on any conclusions it may or may not reach. What is clear is that this sort of delay must never be allowed to happen again. In our judgment, this Bill is a serious attempt at ensuring that it never does. In a civilised country, the agony of relatives of those who die in a tragedy such as this should never be added to by their having to wait an appalling length of time to find out the truth.

I can be brief today. There are strong rumours that the Government are sympathetic to this Bill and the idea behind it, and I hope that those are true. I am sure my noble friend will agree that there are probably some drafting changes that need to be made at a later stage. However, it is important that the Government, in as much as it is within their power, allow time for this Bill to progress in this House and, most importantly, reach the other place with a real chance of going through its various stages and becoming law—unless, of course, they have some other intention in relation to the Bill. We look forward to hearing what the Minister has to say on that point.

Today, at Second Reading, we are debating the principles behind the Bill. However, I hope my noble friend will forgive me if I raise two possible issues for the future. The first is whether the independence of the public advocate—a very important concept and a crucial principle—should not perhaps be set out in the Bill itself, perhaps as part of Clause 1(1). Secondly, is there an argument for saying that the public advocate should always be the chair of an advocates' panel rather than just a member? Might this enhance the confidence of the bereaved and ensure more transparency? I pose these questions for further consideration. In short, today, I hope the House will celebrate the introduction and Second Reading of this Bill. It is an important step forward and we on this side of the House are delighted to support its Second Reading.

10.44 am

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I thank the noble Lord, Lord Wills, for introducing this Bill and giving the House the opportunity to debate this important matter today. He was kind enough to pay credit to officials and Ministers in the Ministry of Justice who have engaged with him, and he has been helpful and constructive in explaining what lies behind this Bill. Let me make it clear at the outset that the Government share his desire to ensure that bereaved families and injured people are properly involved and supported throughout the investigation, inquest or inquiry process following a major incident.

There was unanimity in the contributions that your Lordships have heard, which echoes what lies behind this Bill. The noble Lord, Lord McNally, spoke of the sad history of disasters in football grounds and the sometimes inadequate inquiries that have followed those. He was right, however, to reflect on the improvements that have taken place, and he gave as a shining example the inquiry into the 7/7 disaster, conducted by Lady Justice Hallett.

The noble Lord, Lord Blunkett, who has particular experience of these issues, was absolutely right to praise Paul Goggins, who did so much in his modest way—I came across it briefly in committees—to help promote the interests of those so often neglected in such situations. The noble Lord made the important point that although cost must not be excluded from government consideration, we must think about costs further down the line.

The noble Lord, Lord Wood, and other noble Lords, made the point that these proposals augment rather than replace the existing mechanisms. Indeed, as I understand it, the noble Lord, Lord Wills, very much accepts that. The noble Lord, Lord Wood, also referred to the fact that, in the wake of these disasters, what confronts those who are sadly affected by them can be intimidating, and they are placed in a quasi-Rumsfeldian dilemma. He was right, too, to remind us of the Aberfan disaster and the dreadful noises made by the establishment in its wake.

A number of noble Lords, including the noble Lord, Lord Bach, referred to possible drafting imperfections. I know that the noble Lord, Lord Wills, is perfectly aware of the fact that there could be improvements, and the noble Lord made specific reference to them.

Notwithstanding those potential improvements, I reiterate that the Government are fully committed to making sure that victims have a voice and do not feel alienated from official processes. Indeed, I am pleased to say that much of what is proposed for the role of a public advocate already takes place, and it is fair to say that there has been much progress.

The noble Lord's Bill is driven by the concern that following a major incident involving the loss of life in the past, such as the "Derbyshire" sinking in 1980, the Hillsborough disaster in 1989—which has been a significant focus of the debate—and the "Marchioness" tragedy in the same year, bereaved families have undoubtedly felt ignored and swept up in official processes. They have felt that once the state starts to look into the matter, their needs and wishes are not paramount, or even important, and that the process can be confusing and lacks the transparency that the noble Lord, Lord McNally, stressed as being important. In order to address this, the Bill would create the role of a public advocate to represent bereaved families and injured survivors to ensure they understand all the processes and are supported through them, and to review and make sure they have access to the documents used in the investigation.

I know that this is a matter in which the noble Lord has, as he modestly told us, a long-standing interest, as well as considerable expertise and experience. He has been closely involved with the families who were bereaved in the Hillsborough tragedy and who are now involved in the final stages of the inquest into the death of their loved ones. Indeed, it is right to say that Sir John Goldring is currently in the course of summing up to the jury in that inquest. We do not expect a decision for a few weeks yet, and quite what form that decision will take we do not know; it may be a narrative verdict or it may be something more narrow.

I had a meeting with the noble Lord, Lord Watts, who is unable to be here today, and he asked me to say that, given his personal experience, he very much supports what lies behind the Bill, without necessarily committing himself to the actual words.

The Government acknowledge that there were significant issues in the way in which the Hillsborough families were treated in the various processes which followed and we agree that it is vital that lessons are learned and that their experiences should not be that of others in the future. It is because we agree that the needs of the family are so important that we have already taken a number of steps forward.

Reference was made to the Coroners and Justice Act 2009 and the suite of rules and regulations underpinning it. They reformed the way in which coroners' investigations and inquests are now conducted following a major disaster. These reforms have been in place since July 2013 and have the central aim of putting bereaved people at the heart of the process. The aim is that they receive the support they need and that the process is transparent and understandable from the time of a death being reported to the coroner until the end of the inquest hearing.

Under the reforms we have taken forward, bereaved people have the right to request most documents involved in a coroner investigation and inquest and they can expect the coroner's office to update them at regular intervals. They can also expect the coroner's office to explain each stage of the process so that they understand what is happening and why. They can expect compassion and respect for their needs to be central to the investigation and inquest.

They will also have the resource of the *Guide to Coroner Services*, which my department published in February 2014. This explains clearly and simply what they can expect from the coroner and his or her staff and what to do if that does not happen. Under the 2009 Act, a key role of the coroner and his or her office in an investigation is to make sure that "interested persons", including bereaved people, understand the process of investigation and are informed of their rights and responsibilities. They are entitled to receive

documents and other relevant information, such as hearing dates, so that they can fully participate in the process. Many coroners now also have a support service which provides emotional and other practical support to those attending inquests on the day.

Under the Inquiries Act 2005, the inquiry chair is under a statutory obligation to have regard to fairness. Core participants, which will clearly include all those with whom we are concerned, are entitled to disclosure. The inquiry chair will act as data controller, devising and implementing mechanisms for obtaining, handling and securely storing documents provided to and generated by the inquiry. There is guidance for those running inquiries, including inquiry chairs, teams and sponsoring departments, which sets this out.

Therefore, much of what is in the Bill setting out what a public advocate would do is already happening in the existing processes. We are today in a very different climate from that at the time of the Hillsborough tragedy and in the intervening years. The needs of bereaved people are rightly much more central. I hope noble Lords agree that the current landscape brought about by these reforms and the hard work and contributions of so many makes it less likely that what happened to the Hillsborough families will occur again.

We are not, of course, complacent about this but I believe that, at the moment, there is no need for the public advocate role that the Bill envisages. However, the Government agree that the needs of bereaved families, in particular, must be paramount and that the principles that lie behind the Bill are right. Bereaved families should feel that their voice is heard and confident that processes are fair and transparent. They should feel that they fully understand what is happening and able to participate effectively.

We are, therefore, willing to consider whether the existing processes can be improved and whether any of the principles in the Bill can be incorporated into the existing system. We could, for example, place more firmly in the guidance which is already available to inquiry chairs and teams how important the needs of the families are. We can look at whether the positive things coming from the Hillsborough inquest, not yet concluded, such as the family forums set up to keep the families informed of the investigative processes and to give them a safe space in which to discuss issues, can be replicated in other major inquests and inquiries.

As to specific next steps, I commit to meeting the noble Lord, Lord Wills—not immediately but as things progress—so that our feet can be held to the fire to see whether steps can be taken to reflect what lies behind this and further to improve the significant steps forward we have made.

On behalf of the Government I thank the noble Lord, Lord Wills, for raising the profile of this important issue and for his valuable input, which is welcomed. I hope he will accept my assurance that the Government will continue to ensure that bereaved families and injured persons are central to the inquest and inquiry processes and that their voices will not be ignored.

Lord Woolf (CB): My Lords, does the Minister feel that the role of the advocate to the inquiry could be closely used to adopt many of the points required by those who support this Bill?

Lord Faulks: The concerns which would be represented by a public advocate—were there hypothetically to be one—should be properly reflected in the way that an inquest or inquiry is carried out. We are not at the moment persuaded that a public advocate as set out in the Bill is necessary. However, we do not rule out possible improvements to ensure that those factors which would be reflected in what a public advocate did find better representation in the existing arrangements.

10.56 am

Lord Wills: My Lords, I am extremely grateful to all noble Lords who have taken part in this debate. It has been relatively short, but it could make a profound difference to all those who in the future, out of a clear blue sky, find their lives transformed by a terrible public tragedy.

The noble Lord, Lord McNally—who I regard as my noble friend whatever the technical position is—made a powerful statement from his own experience about why the Bill is needed. I am grateful to him for his words of support, as I am to my noble friend Lord Blunkett, who brings to this a wealth of experience from the heart of Government, as well as personal experience as the MP for many years representing the constituency containing the Hillsborough stadium.

My noble friend Lord Wood, who was working at the heart of the Gordon Brown Government when the Hillsborough Independent Panel was set up, drew attention again to the need for this Bill and gave the telling example of Aberfan, which I remember as a young boy. I am also grateful to my noble friend Lord Bach, who expressed support from the Front Bench. His idea of putting the independence of the advocate in the Bill is excellent and I should like to adopt it going forward. We will obviously discuss the other issue he raised in due course. So I am grateful for all the support I have received from all noble Lords, who spoke with all their authority and years of experience, and I am glad that the Government have listened to what they had to say.

I also express my gratitude to the Minister for his characteristically thoughtful, sympathetic and thorough approach to all the issues raised by the Bill. Of course, I did not expect him to commit the Government to wholeheartedly adopt the Bill today, but his cautious words pointing towards a possible way forward are perhaps the most that I could have expected. I am grateful for them and I certainly will—with what the noble Lord, Lord McNally, referred to as my terrier-like capacity—pursue him for the meeting that he kindly offered. In due course, I hasten to add.

Of course, I recognise all the improvements that the Minister described. As he said, the situation is significantly different from what it was 20 to 25 years ago. However, there is an issue that I would like to explore with him further, perhaps in Committee, because there is a fundamental distinction between what he has described as the improvements that are taking place and what I think are the improvements the Bill would bring about. It is to do with the independence of the advocate. The changes that he has described are still in the gift of the Government and the institutions of the state. I think it is important because all the experience of disasters

[LORD WILLS]
that other noble Lords have described more powerfully than I shows how easy it is for the bereaved and the families of injured survivors to feel excluded by the process, no matter how well meaning it is or what is set out in all the guidance, and no matter what the experience and how diligent, thoughtful and empathetic those agents of the state are. Nevertheless, for all the reasons that have been set out today, it is sometimes very easy for families to feel excluded. Having someone who is independently advocating their cause and, crucially, doing so independently of the state and seeking to bring about the transparency that is so important in these cases, is the difference between the position that the noble Lord has set out and the position in the Bill.

I am sure that we will have opportunities to explore this further and I am grateful for the offer of a meeting, which as I say I will take up, so perhaps the issues can be considered further in Committee. In the mean time, while again expressing my gratitude to all noble Lords who have taken part today and to the Minister, I now ask your Lordships' House to give the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

Road Traffic Act 1988 (Alcohol Limits) (Amendment) Bill [HL]

Second Reading

11.01 am

Moved by ***Lord Brooke of Alverthorpe***

That the Bill be read a second time.

Lord Brooke of Alverthorpe (Lab): My Lords, I am grateful for the privilege, the opportunity, and not least the luck in the ballot to get the chance to bring forward this Private Member's Bill. I am also grateful to all those who have kindly assisted me, including our clerks and the many outside organisations and campaigners who support this aim, and of course to the noble Lords who are going to speak today. I offer apologies from my noble friend Lord Rea, who was down to speak but has had to scratch.

This is a simple Bill whose objective is to better protect innocent citizens from accidental death, injury and harm from vehicle drivers who consume alcohol and then drive impaired. It also seeks to protect the drivers themselves. Specifically, it amends the Road Traffic Act 1988 to lower the maximum alcohol limits permissible when driving in the UK from the present blood alcohol concentration of 80 milligrams of alcohol per 100 millilitres of blood down to 50 milligrams of alcohol per 100 millilitres of blood. There would be corresponding changes to breath and urine limits, but in this debate I will refer solely to the limit change using the acronym BAC.

The Act would apply to the whole of the UK, although, as most noble Lords know, Scotland has already enacted this. What they may not know is that the Welsh Assembly has proposed the adoption of a BAC limit of 50 for the Principality, and across the Irish Sea the North Ireland road traffic amendment order not only proposes a lower 50 BAC limit, but an even lower limit of 20 BAC for novice and some commercial drivers.

This amending Bill is precisely in accord with what was piloted from 2014 through the Scottish Parliament. As a consequence, I regret that Clause 2 contains a provision to reduce the limit below which a person could elect to have a specimen of breath replaced with a specimen of blood or urine. This statutory option was removed from the Road Traffic Act 1988 by Part 1 of Schedule 11 to the Deregulation Act 2015 which came into force in April 2015. 1 will therefore need to withdraw Clause 2 later, and I hope that this will make life easier for the Minister.

The European Union does not have a directive on a drink-drive limit, but as long ago as 1988 it first proposed harmonisation throughout Europe at a 50 BAC limit, which it recommended should be adopted. Over the years it has been adopted by all European Union countries except two: Malta and the UK. So I ask: who offers better protection to their citizens, and are the interests in favour of sticking with the present limit being better protected than innocent lives and limbs? To get the answers we need to look at a bit of history and then come up to current developments. These have been recently summarised by Professor Richard Allsop in his 2015 paper for the RAC Foundation entitled *Saving Lives by Lowering the Legal Drink-Drive Limit*.

It is now well recognised that drinking and driving impairs performance and is a leading cause of road traffic accidents. But, as some noble Lords may recall, that was not always the case. Even in the mid-1960s there was still debate as to whether moderate drinking increased or decreased the risk of collision. But others had recognised the danger much earlier. As long ago as 1954, the World Health Organisation reported that,

"the inference cannot be avoided that at a blood alcohol concentration of 50 milligrams per 100 millilitres of blood, a statistical significant impairment of performance was observed",

in more than half the cases it examined in the experiments it had undertaken. As a result, the WHO recommended a BAC limit many years ago.

The UK set up its own study in 1953 using what it called laboratory "tasking", resembling driving vehicles on the road, which reported in 1959. It did not agree with the WHO's recommendation but, while it acknowledged that substantial impairment of performance still occurred at levels below 80 BAC, it was suggested that those below that limit should not be criminalised. That was the reason given for not embracing the lower limit. In 1962-63 there was a large-scale study at Grand Rapids in the USA. This study quantified the relationship between BAC level and the risk of collision, and provided convincing evidence of greatly increased risk dependent on a driver's alcohol level.

So why was the 80 BAC limit chosen? The choice of 80 BAC made by Barbara Castle, the then Minister of Transport, should be understood in the context of the evidence available at the time, and in 1967 it was probably influenced by several other salient factors too. The Grand Rapids evidence indicated that the average risk of involvement in a collision was roughly doubled at 80 milligrams. Further, 80 milligrams was

within the range of levels then being considered or implemented by other countries. It was plausible that public and parliamentary acceptance could be gained, partly on the basis of advice that most people could have three small drinks without exceeding the 80 limit. However, the Royal Society for the Prevention of Accidents has long contended that 80 was not decided solely on the basis of empirical accident risk assessments, but was influenced upwards by the need to make acceptable to the public the introduction for the first time ever of legislation limiting the amount of alcohol that drivers could consume.

Eighty milligrams was the level at which the Grand Rapids evidence in the form in which it was published enabled the increased risk to be established with the conventional statistical 95% level of confidence against a background of genuine difference of opinion as to whether the risk was increased or decreased. The last of these points is more statistically technical than the others, but it carried weight among those preparing advice for Ministers, as no doubt former Transport Minister the noble Earl, Lord Attlee, may pray in aid when he comes to make his points. But I will argue that that precise basis is relevant to the case for lowering the limit.

What has happened since 1967, as well as the widespread harmonisation of a 50 BAC limit in so many other countries, including Scotland? Importantly, there have been further large-scale studies, including those conducted in the late 1990s at Fort Lauderdale and Long Beach in the USA. They were similar to the Grand Rapids study, but were helped by advances in statistical techniques which had been developed since the 1960s. Further studies were done in nine states in the USA between 2006 and 2008, and all were read across to the UK in a similar way to the original Grand Rapids evidence. They indicated that the increase in the risk of a driver's involvement in a collision if they have a BAC of 80 milligrams to be nearly three times as much for collisions leading to injury and about six times for collisions leading to death as compared to the mere doubling which had informed the setting of the limit at 80 BAC in 1967. Even at the lower BAC level of 50, which this Bill proposes, the increases in risk are respectively about 1.5 and 2.5 times more—that is, double the Grand Rapids figures back in 1967.

There is now a broad consensus that risk of involvement in a collision is increased rather than decreased by moderate drinking. Acceptance of this changes the appropriate statistical process for assessing the level of confidence in analysing the Grand Rapids and similar data from a two-tailed to a one-tailed test. The meaning of this for the Grand Rapids data in the form in which it was published is that increased risk is established with a statistical 95% level of competence from 60 BAC upwards instead of the then 80 upwards as applied. There is a stark difference, and there was also a stark difference of opinion on this in 1967.

The foregoing may seem a bit dry, but the science proves that the 1967 BAC of 80 is now not only outdated but can mislead to risk life and limb. At the end of the day, of course it is the motorist's right to decide whether or not to drive after drinking, but they have a right to know the facts about the risks and impairment that drinking has on their driving. It is the Government's duty and responsibility to provide those facts, especially when quite innocent citizens are involved or affected through drink-driving motoring accidents. Even though I am moving this, I ask the Minister, first, do the Government accept that the 1967 BAC of 80 carries far more risk than was originally believed? If so, what do they intend to do about correcting that? If, however, they maintain that 80 is still appropriate, I would like them to revalidate the figure and produce the science from a more scientific perspective than we have done previously.

Of course, it can be argued that limits do not really matter, and it is the deterrent of being caught and punished with heavy penalties that really counts. To a degree, that is, no doubt, true. In the 1970s, 1980s and 1990s, the UK achieved major reductions in road deaths, injuries and accidents with 80 BAC. This was because the Government more vigorously enforced the limit than did many other countries, even though some had lower limits than we had.

This House produced two EU Select Committee reports on the Commission's call for a 50 BAC limit in 1998 and 2002. Both supported the Commission's recommendations. In response to the first, the Government, using their words, "was minded" to move to 50. The transport department supported it also. It was delayed, however, on the basis that it intended to deal with the matter in the context of a possible EU directive. That never came but, instead, in January 2001, the Commission issued a non-binding recommendation that member states should set a 50 BAC limit. It was scrutinised here and, again, adoption of the 50 BAC limit was recommended. The department supported the reduction but, to many people's surprise, including my own as I chaired the sub-committee, the Government did an about turn at the 11th hour. Instead, they said that they wanted to review the issue in their proposed longer term motoring strategy that they were about to undertake.

During the ensuing decade, deaths and injuries continued to remain high but were reducing slowly, although the 2007-08 recession saw the biggest fall for quite some time. Opinion polls, however, particularly those conducted by the motoring associations, began to reveal growing public concern about drink-driving and support for the lower limit. This culminated in December 2009 in an independent review of drink and drug law by Sir Peter North QC. Most judged his report in 2010 as an excellent piece of work. On drink-driving, North was convinced by the evidence that the risk of involvement in a collision is increased by even moderate drinking. In particular, the review found that lowering the limit from 80 milligrams to 50 milligrams could save over 100 lives a year, based on evidence from NICE, as well as preventing many more serious accidents.

As a consequence, he recommended that the 80 BAC should be reduced to 50 for five years, after which there should be a further review with the aim of establishing a 20 BAC. The newly elected House of Commons Transport Select Committee in 2010 was not so convinced. It believed that the North report sent mixed messages. It in turn sent few messages or recommendations from its report. It did not dispute that drivers were impaired further at 50 BAC and saw an effectively zero limit,

[Lord Brooke of Alverthorpe]
although too great a step at that time to take, as probably the best option in the longer term. Instead, its key recommendation was that,

"any reduction in the legal drink drive limit should only occur after an extensive Government education campaign, run in conjunction with the pub, restaurant and hospitality industries, about drink strengths and their effect on the body".

The committee's report evidence shows that heavyweight lobbying was on it from the drinks industry. In that decade, 5,330 people were killed and 170,000 casualties were also witnessed in the UK.

Since the North review in 2010, there has been a levelling off in the previous declining figures for drink-related road deaths and casualties. Further models, including that proposed by the RAC Foundation's report authored by Professor Richard Allsop, also associate significant, if not as dramatic, reductions in death and injury which a drop to 50 BAC would produce. Allsop's "cautious" estimate is that there would be 25 fewer deaths and 95 fewer serious injuries per year.

Even more recent news and perhaps the most compelling for change comes from Scotland where a 50 BAC limit is now in force. The BAC change has been accompanied by a wide-ranging publicity campaign which has stimulated a nationwide debate on drink-driving on a scale not witnessed previously. An RAC survey shows 79% of Scottish motorists believe that moving the limit to 50 is a positive move while a Scottish Government survey found that 82% of people agreed that it is unacceptable to drink any alcohol before driving, and only 12% of people disagreed with that, which was quite a surprise and a very big change in public attitudes.

I anticipate the Minister will express interest and welcome the Scottish developments. But I suspect that the Government will then want more time and data to assess what is happening north of the border—perhaps even two or three years before they get the figures that they would want to analyse. Meanwhile, the Government state that drink-driving "remains a priority". But they have made only very small changes to the law over the past five years, nor have they indicated anything really radical ahead. In fact, their policy has probably stalled since 2010, which is why there has been a plateauing in the number of deaths and injuries. In addition, since 2010, police numbers have been cut by 23%, which has had an effect right across the whole of motoring, including drink-driving. I was not surprised, therefore, that 10 of the Government's police and crime commissioners were in touch with me yesterday pledging support for this Bill. Furthermore, they were pointing out that from a financial perspective, the Local Government Association's estimate that lowering the current drink-drive limit to 50 BAC would save almost £300 million annually by reducing the number of call-outs to accidents and the associated public sector costs of police, ambulances and hospital admissions. It argued that this funding could be ploughed back into making communities safer. It went on to say that it has overwhelming public support for this legal change. Research released only this morning from the RAC's Brake, the road safety charity, and the Alcohol Health Alliance of an opinion poll of 5,000 respondents shows that 77% of people in the country favour a 50 BAC limit bringing England and Wales in line with Scotland and virtually the rest of the EU, apart from Malta.

Therefore, the Government have no problem in carrying the country with them on this Bill, apart perhaps the drinks industry. The public know increasingly on this topic what is right and what will help best to protect them. The cost of the change to this highly questionable and now unsafe law made back in 1967 will be minimal. It will be far outweighed by other cost savings, but even more importantly by the saving of more life and limbs. If, however, the Government delay—and it would be a delay because I believe, deep down, that they must know that this will have to come, as we cannot have differing levels between the UK countries, with trains and cars crossing borders every day as we have at the moment—I forecast that they can expect to see at least 600 people killed and around 25,000 casualties over the next three years as a result of maintaining the present level. The Minister and his colleagues can avoid or minimise these figures. They simply have to join the public view and do what is right now. I beg to move.

11.20 am

Earl Attlee (Con): My Lords, I am grateful to the noble Lord, Lord Brooke, for so expertly moving the Second Reading of his Bill, although I have some difficulties with it. When the noble Lord, Lord Adonis, commissioned the North report, I assumed that he had identified the next step of our road safety programme, which would be to lower the blood alcohol level, or BAC, for drivers. I thought that the report was to provide the necessary evidence for the changes. In the UK, we have a very good road safety record because successive transport Ministers of all parties—one of them, the noble Lord, Lord Whitty, is in his place—have followed the evidence, expertly analysed by officials, rather than taking a populist course of action, which is what the noble Lord, Lord Brooke, has suggested the Minister should do.

At the time, I thought that, if a BAC of 80 milligrams would damage the hospitality industry, so be it. However, I must tell the House that I cannot recall ever seeing an impact assessment on the effect on that industry. My understanding is that the Scottish Government had not done one before lowering their BAC limit. To this day, I have never received any briefing from that industry on this issue.

When my party got into government, I found that the advice from officials regarding North was rather more complex than I thought it would be. Will my noble friend the Minister confirm that the Government have implemented all the significant recommendations in the North report, apart from lowering the BAC?

My first point is that any alcohol intake at all will cause a deterioration in driving capability and skills. The Grand Rapids report referred to by the noble Lord, Lord Brooke, shows that the chances of having an accident increase alarmingly after 80 milligrams. However, there is no safe limit and the best advice is not to drink and drive at all. I hope my noble friend the Minister can confirm that this is his position.

Secondly, we have some data available from the STATS19 system and the coroner's records. For those accidents where at least one driver was killed, a staggering 19% were over the limit of 80 milligrams. However, for these accidents, only 1.7% had at least one dead driver who was between the proposed new limit of 50 milligrams and the current limit of 80 milligrams. That is a very small slice. There are lies, dammed lies and statistics, but this rather suggests that the problem lies not with those who drive with an unwise and imprudent BAC level of between 50 and 80 milligrams, but rather with those drivers who are totally non-compliant. I refer to them as unregulated drinkers.

That is not to say that the noble Lord, Lord Brooke, is wrong. It is obvious that the Bill would reduce the BAC level of compliant drivers—a bit—which could produce a commensurate reduction in accidents. My fear is that the reduction will not be as great as hoped, since compliant drivers will already normally be driving with a BAC of less than 50 milligrams. If I am right, I do not think that it will take compliant drivers very long to find out that they do not need to reduce their intake much, if at all.

Thirdly, we have a problem with what I have termed unregulated drinkers. These people are often clinically dependent upon alcohol. They do not know how much they have drunk and they have no regard for the law, so the noble Lord's proposal will have precisely no effect on them at all. They are also very hard to catch. I suspect that this is because they drive on minor roads for relatively short distances: my guess is three or four miles in a rural area and one to two in an urban area, but with a very high risk of having an accident. Noble Lords will realise that the window of opportunity for the police to detect such drinkers is very short, apart from in the event of an accident. If we have a formal Committee stage, I am tempted to run an amendment about permitting the police to instigate random breath tests, if that is what they want to do to solve their problems.

Fourthly, this change would have some resource implications. First, I am told that all the evidential breath test equipment would have to be recertified and recalibrated. I do not find this a convincing reason for not making the change. But secondly, and rather more persuasively, a considerable amount of police time could be tied up processing drivers who get caught by the new limit. Of course, this might not be the case if, in fact, even today few drivers drive with a BAC of between 50 and 80 milligrams.

My fifth point is looking around the corner. We are very careful not to let drivers know how much they can actually drink while remaining compliant. One good reason for this is that we know that there is no safe limit. Another is that, if drivers knew what their intake limit was, they might be tempted to go closer to it. This could mean that, on average, drivers would consume a bit more and therefore, on average, have more accidents. It is possible that law-abiding motorists might use their own breathalysers to ensure compliance with the new and lower limit. This could result in an increase in average intake and, therefore, the accident rate. I hope that I am wrong.

The noble Lord, Lord Brooke, pointed to lower limits in other EU countries, but, with the exception of Sweden, they do not have as good a road safety record as we do and in any case, as the noble Lord well knows, they have different penalty regimes. However, Scotland will provide us with an almost-perfect laboratory. There will be the same enforcement regime as in England because they cannot change the penalties, but a lower BAC. After three or four years we will get the stats and data from Scotland, which will tell us which way to go.

The Library Note suggests that compliance has improved by 12.5 %. I am bound to say that that is a rather disappointing figure, but unfortunately consistent with my analysis. It will take time for properly analysed statistics to be available, but if they show a significant improvement then we should consider following the Scots. In the mean time, my counsel to the Minister is to leave the BAC alone and concentrate on eliminating unregulated drinkers.

11.28 am

Baroness Hayter of Kentish Town (Lab): My Lords, I congratulate and thank my noble friend Lord Brooke of Alverthorpe for bringing forward the Bill. He has been a marvellous campaigner on this subject for a long time. It is a shame that the Government have not taken action, especially given what my noble friend said about their knowledge of the extra risks of people driving with a BAC between 50 and 80 milligrams.

We increasingly stand alone internationally by retaining the 80 milligram rather than adopting the 50 milligram figure. It is now just Northern Ireland, England, Wales and Malta in Europe that stick at 80 milligrams. In fact, four EU countries have a limit of zero. Indeed, proud Welsh girl that I am, I have to take my hat off to the Scots, who have done the deed—and the sky did not fall in. In fact, as the noble Earl, Lord Attlee, said, there has been a 12% drop in offences, while eight in 10 Scots believe that drinking any alcohol before driving is unacceptable.

This is always a difficult subject for me to discuss, as, a day short of my 10th birthday, I lost my mother because of a drunk driver. Who knows, she might have been saved and lived had she been wearing a seat belt. In those days, of course, they were not even fitted, much less compulsory. However, as a result of endless campaigning, and finally an Act of Parliament—in both of which my noble friend Lord Robertson of Port Ellen played a key role—the law was changed with regard to seat belts. Now, we would not think of driving without wearing one. That is what I want to see happening with regard to drinking and driving—I want it to be unthinkable. A step towards that is to reduce the limit because we know that that will reduce the number of accidents. I think we have done with campaigning—just as we did in relation to seat belts before we brought in the relevant law. It is time to make the change.

I pay tribute to those who have campaigned on this issue, not just my noble friend but organisations such as the Campaign Against Drinking and Driving—CADD—set up to help the families of those bereaved through drink-driving, the Livia Trust and others who campaign for safety on the roads. We owe it to them, to those who have lost loved ones, but also to those who have been injured through someone driving after drinking, such as the Paralympian, Simon Richardson, to make this change.

[Baroness Hayter of Kentish Town]

For myself, I could, being a moderate person, live with this measure being introduced gradually, perhaps initially for drivers under the age of 21—as we know, they are overrepresented among the fatalities—or, perhaps drivers in their first two years after passing their test, or while holding a provisional licence; but start we must. Fifteen per cent of deaths in accidents involve at least one driver over the limit. Those are tragic but avoidable figures. In 2013 there were 250 deaths and 8,000 injuries, 1,000 of which are very serious, due to somebody driving after drinking. Would we accept so many deaths due to any other cause and do nothing about it?

Clearly, as has been said, lowering the limit is not all that is needed. We also need enforcement and publicity for real change to be made. However, a reduction to 50 milligrams would make a difference. As my noble friend said, that reduction is supported by more than three-quarters of the population. We know that at 80 milligrams, drivers are six times as likely to die in an accident as those who have not drunk at all. This is partly because, even if they do not cause the incident, they are less likely to be able to avoid a dangerous incident after they have been drinking. We are well aware that there is a direct relationship between the amount that is drunk and the ability to function behind the wheel. Even between 20 and 50 milligrams, drivers increase their chance of an accident threefold. Up to 80 milligrams, the risk increases sixfold, and up to 100 milligrams, they are 11 times as likely to have an accident. Therefore, reducing the legal limit would lower the number of accidents and improve road safety for all of us.

We, of course, are not the first to call for this, nor are we the only people who support this change. My noble friend Lord Brooke reminded us of the North report of 2010, which estimated that a reduction to 50 milligrams would save 100 lives a year. That is two a week. Those are real lives: they matter. The noble Earl, Lord Attlee, said that of the people who died, only one was between the 50 and 80 milligrams level.

Earl Attlee: My Lords, only 1% were between 50 and 80 milligrams, compared with the others.

Baroness Hayter of Kentish Town: It is even more than that in terms of people and human lives, and when you think of the families affected. Surely that makes the case for us to make this change. As has been said, the Local Government Association has said that about £300 million a year could be saved in police, hospital and ambulance costs. That is without taking account of the costs to families. However, it is not just a question of victims. When I started to campaign on this issue for obvious reasons a long time ago, I was worried about the organisations representing drivers. In fact, the AA, the RAC, the Chief Fire Officers Association, the Police Federation and the Road Haulage Association all support this change. Let us listen today to the victims and to my noble friend Lord Brooke and, for once, not take the advice of the noble Earl, Lord Attlee, and give this Bill not just a Second Reading but our wholehearted support.

11.36 am

Baroness Randerson (LD): My Lords, I thank the noble Lord, Lord Brooke, for bringing this Bill forward because I believe it is certainly time we looked again at the alcohol limits for driving.

One of the great social changes of our lifetime is being discussed here today. It is undoubtedly no longer socially acceptable to drink and drive. However, it was once so. I am a keen reader. If you read a book written earlier than, say, the 1960s, but within the 20th century and the driving era, you will see that this subject was talked about publicly and flippantly. That has changed. I well remember the controversy and public discussion when this limit was introduced.

There have been other similar social changes in our lifetime regarding smoking, attitudes to women and equal marriage. They have all been a journey, backed up, or led by, legislation. However, on drinking and driving we seem to be stuck in a bit of a time warp. There has been no legislative journey on this to any great extent. The world has changed since this limit was introduced in legislation. Drinking habits and patterns have changed and we undoubtedly drink more on average. Some people drink a great deal on a regular basis. Back in the 1980s, I was part of an interesting demonstration involving the breathalyser and the 80 milligram limit. I was a trainee magistrate taking part in a residential training course. Over dinner in the evening we were given a plentiful amount of wine, after which the police breathalysed us. Noble Lords will be relieved to hear that none of us was going anywhere other than to bed. However, what struck me was that some of the people who were breathalysed had drunk a disturbingly large amount but were still not over that limit. That is very worrying indeed.

Testing systems have become more precise, as have scientific and technical knowledge. They have all moved on since this limit was introduced, and social attitudes have changed. To accommodate the legislation, we now have the phenomenon of the designated driver. In my experience, the younger generation has, on the whole, an exemplary attitude to drinking and driving, and a group of young people normally has a designated driver.

As noble Lords have said, the alcohol limit in England and Wales is now one of the highest in the world. That is pretty risky, given that this is a crowded island with severe traffic congestion. Most other European countries have lower limits. As we have already heard, Scotland and Australia have recorded far fewer fatal accidents since the introduction of lower limits. My noble friend Lord Beith, who was in his place earlier in this debate, said to me that, in his part of the world, it was important to remember which side of the border with Scotland you were on if you were going to have a drink and drive. My noble friend does not drink. Simplicity is important for drivers and the public; confusion should not be allowed.

I welcome the Bill. I do not know if 50 is the right limit, but it is undoubtedly time to look again at this issue. I hope the Government will take the opportunity to announce an independent review, led by experts. We need this for public confidence, because 50 is, to a

certain extent, a number plucked out of a range. It is a moderate number but many people would say it should be lower, or zero. We need a thorough look at this, so I urge the Minister that the Government should set aside pressure from the drinks industry and ensure that the issue is investigated fully.

11.42 am

Lord Rosser (Lab): My Lords, I also congratulate my noble friend Lord Brooke of Alverthorpe on his Bill, which addresses an issue on which he and many others feel strongly and have actively campaigned for a considerable time.

As my noble friend said in his powerful and persuasive speech, the Bill lowers the maximum alcohol limits permissible when driving in the UK, from 35 to 22 micrograms of alcohol in 100 millilitres of breath and from 80 to 50 milligrams of alcohol in 100 millilitres of blood. It also provides for a similar reduction in relation to urine. As has already been said, the effect of these changes is to bring the drink-driving limits in the rest of the UK in line with those applicable since December 2014 in Scotland. The lower limit was introduced in Scotland following a consultation in which 74% of respondents backed a reduction in the drink-driving limit.

The Bill is driven by concerns over the devastating impact of alcohol on the ability to drive safely. Department for Transport figures indicate that, in 2013, some 15% of all deaths in reported road traffic accidents involved at least one driver over the limit, and that around 250 people died in accidents involving drink-driving. In addition to these figures, there are those who are injured, seriously and otherwise, in drink-drive accidents for whom, as I understand it, the figure was some 8,300 in 2013. The 2013 casualty figures relating to drink-drive accidents do show a fall from the previous year, but they are still far too high.

I was a sitting lay magistrate for many years, and dealing with drink-driving cases was an all too regular occurrence. The frequency with which defendants who were well over the limit claimed they had had little more than "half a lager" never ceased to amaze me. In the majority of cases I sat on, the defendant had not been involved in an accident but had been stopped for other reasons, including odd or irregular driving, and been found to be over the limit. The number of people driving on our roads whose driving ability is impaired by the amount of alcohol they have drunk is, of course, far, far higher than the stark death and injury statistics indicate, but each and every person who drives having recently drunk alcohol is a potential killer if their ability to drive—and speed of response to what is happening around them on the road—is impaired.

The official drink-drive accident statistics only cover incidents where there was a failed roadside breath test based on the current limit of 35 micrograms of alcohol per 100 millilitres of breath, or where there was a refusal to give a breath test specimen. As I understand it, the official figures do not cover accidents where the level of alcohol was below the current limit, but in excess of the limit in Scotland and, indeed, in virtually all other European countries. If I am correct, to that extent, the official figures almost certainly do not reflect the number of accidents and casualties which are related to the consumption of alcohol by one or more of the drivers involved in the accident. According to the European Transport Safety Council, the United Kingdom—outside Scotland—has the joint highest drink-driving rate in Europe, and the most common limit applied across the EU is the same as that proposed in the Bill. Four countries in the EU apply a zero alcohol limit. From this month, Department of Health recommended limits on weekly alcohol intake for men are either the lowest or about the lowest in Europe. However, when it comes to drink-driving, we have just about the highest alcohol figure in Europe allowable under the law.

It has been reported that, since the lower limit was introduced in Scotland, police figures show that the number of drink-driving offences there have fallen compared with the same nine-month period the previous year, even though, presumably, the number of potential offenders—and thus offences—has increased with the lower limit. However, not everyone in Scotland supports the lower limit. The Scottish Licensed Trade Association has apparently described the law change as a "catastrophe" for the sector, with a 5% decline in sales across outlets since the previous year. If this is the case, it perhaps also gives a feel for the extent to which alcohol was being purchased—and is probably still being purchased, albeit at a lower level—by people intending to drive. People's jobs, of course, matter: so too, though, do people's lives.

The Government have been saying since March 2013 that they will publish a Green Paper on improving the safety of newly qualified drivers. To the best of my knowledge, that Green Paper has yet to appear. In October 2013, a Transport Research Laboratory study, commissioned by the Government, proposed the introduction of graduated driver licensing, the aim of which is to enable young and novice drivers to build up ability and experience through a structured and phased approach. Apparently, this study was only made public through a Freedom of Information request from the insurance industry. Graduated driver licensing exists in various forms in a number of countries. The exact components differ, but one of the more common elements is a lower alcohol limit. The Transport Research Laboratory study said that the proposed introduction of graduated driver licensing should include a lower alcohol limit but, as I understand it, went on to state that this should preferably be extended to apply to all drivers. I do not wish to argue the case for graduated driver licensing, but it would also be helpful to know from the Minister what weight—or otherwise—the Government attach to the Transport Research Laboratory study's view on lowering the alcohol limit for all drivers.

The Government have stated that tackling drink-driving is a priority, which is hardly a surprising stance and one that we of course share. But they have also said, in a Written Answer last October, that they would be interested in seeing,

"a robust and comprehensive evaluation of the change to the Scottish drink drive limit",

rather than that they want to introduce similar limits here. I therefore assume that the question of an evaluation is one that the Minister will develop in his response.

[Lord Rosser]
Given that tackling drink-driving is rightly a priority, I take it that the Government are actively, rather than passively, pursuing the question of when such an evaluation is likely to be undertaken and completed, and by whom. Perhaps the Minister will confirm that. Finally, perhaps he will also say what issues or considerations the Government think such an evaluation should address in order for it to be comprehensive—the word they have used in relation to it.

11.51 am

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I thank all noble Lords who have contributed to this debate. In particular, I thank the noble Lord, Lord Brooke, for bringing forward the Bill. I listened carefully to all the contributions and I thank him for his comprehensive, thoughtful and compelling contribution. He asked for my views on the BAC in 1967. I declare a personal interest: I was not even a twinkle in my parents' eyes at that time—maybe I was. The Government consider it very important to monitor all the elements that contribute to the number of deaths on our roads.

My noble friend Lord Attlee talked about the lower number of deaths that occur in the United Kingdom. The noble Baroness, Lady Hayter, made a very personal contribution about her experience. I remember as a young child the experience of drink-driving was not on a personal level—I suppose I should declare an interest as someone who, on faith and on principle, does not touch a drop, which will perhaps give an inkling of my views in this respect. It is important to underline as a general point that it is not a case of doubt: if you are drinking, you should not drive. That is a message that successive Governments have sought to give and it is right on a point of principle that that is where the doubt first arises.

Although I do not drink, I have been to wine bars and pubs and I am sure there are notices to that effect but they do not go into detail about 50 milligrams or 80 milligrams. They have a simple, concise message, understood by people of all ages: if you are drinking you should not drive. In my student days, I did not drink but had to drive others who had drunk. It was not a pleasant experience, I can assure your Lordships—not least if we were pulled over to the side with a whole bunch of people who were perhaps more merry than I was. To say I was not merry would be an understatement.

Turning to the matters before us today, the noble Baroness, Lady Hayter, in a very poignant contribution, talked about how drink-driving leaves families shattered, hurt and bereaved. I remember giving evidence in court after someone smashed into the back of our car, quite late on a Saturday evening, clearly drunk, but he got away with it because he drove off. Thankfully, it was late at night and there were no passengers in the car but it formulates the challenge that we have to face. The Government have taken this issue very seriously and I will come on to those points in a moment.

On 21 December last year the Government set out their plans for road safety in *Working Together to Build a Safer Road System*. Our priorities and plans are quite clear. We will consult on ways to tackle dangerous in-car mobile phone use, reported by the RAC as being one of motorists' top concerns, with a view to increasing penalties for drivers using handheld mobile phones. I start on that point because it is important to set out what the Government are doing to reduce the number of all forms of road casualties. In addition, we have set up a £750,000 grant for police forces in England and Wales to build on drug-driving enforcement capability. We are consulting on legislative changes to improve cycle safety by ensuring that sideguards and rear under-run devices are not removed from HGVs, and consulting on proposals to support safety for motorcyclists, who account for 19% of all road deaths. We are consulting on ways to incentivise and reward the uptake of more pre-test practice and a broader range of real-world driving experiences for those who are starting to learn to drive, and undertaking a £2 million research programme to identify the best possible interventions for learner and novice drivers. We believe that these are all important steps that will help to reduce casualties further. As the Minister at the DfT responsible for our agencies, including the DVLA and DVSA, these are areas that I have already looked upon as priority issues to take forward.

But let me come back specifically to drink-driving. As we have already heard, it is estimated that 240 people were killed in collisions involving illegal levels of alcohol in 2013. Drink-drive deaths in 2013 were among the lowest since detailed recording began in 1979, when 1,640 people were killed, and accounted for around 14% of all road deaths. However, these are 240 too many. While police continue to robustly enforce against this reckless behaviour, the numbers of those testing positive or refusing a breath test—and, alongside this, prosecutions and convictions—have been falling continuously. This is good news.

However, drink-driving is still responsible for too many deaths and injuries. In order to prevent this, the Government will continue to take tough action against the small number of drivers who ignore the drink-drive limit. Many drivers killed in drink-drive collisions, or prosecuted for drinking and driving, are significantly over the current drink-drive limit. We have prioritised enforcement efforts to identify and deal with these dangerous individuals. We have a robust approach to deal with these high-risk offenders. As I am sure noble Lords will be aware, last year we made it a requirement for them to undertake medical tests to ensure that they are not still dependent on alcohol before they are allowed to drive again.

The same legislation, the Deregulation Act 2015, also made an important change to drink-driving laws by removing the so-called statutory option that allowed those drivers who provided a breath test that was slightly in excess of the prescribed limit to demand a blood or urine test. By removing this provision, individuals have been denied the chance to sober up and so drop below the prescribed limit while waiting for a blood or urine sample to be taken. There is also no longer a requirement for the police to do a preliminary test by the roadside if they use a mobile evidential breath-testing device. This has paved the way for the introduction next year of mobile evidential breath-testing instruments, which will enable taking evidential samples at the

roadside quickly and efficiently and before a suspect has the chance to sober up and fall below the limit. This has the potential to make the enforcement process more efficient, giving officers more time being visible on the road while they deal with drink-driving offenders. This will in turn help bring the message home to other motorists that if they drink and drive they risk getting caught—with serious consequences.

My noble friend Lord Attlee spoke about the North review. I assure him that we have implemented most of the recommendations, including, as I have already said, that relating to the statutory option for drink-drivers. We have also implemented the drug-driving recommendations. We do not tolerate any form of impaired driving. That is why we introduced the new drug-driving offence in March 2015, setting specified limits for 17 drugs. The police are being successful in taking these dangerous drivers off our roads: more than 4,500 drug drivers have been convicted since the new offence came into force, compared to fewer than 900 in 2014. Moreover, 20% of drug-drivers have a previous drink-driving conviction. By clamping down on drug-driving we are therefore removing a significant number of dangerous drivers from our roads.

With regard to the lower drink-drive limit, I accept that apart from Malta, all other European countries have a lower alcohol limit than England and Wales but, as my noble friend Lord Attlee pointed out, they do not have a better record on reducing drink-drive casualties. In England and Wales, the penalties for drink-driving are more severe than in other countries, including those with lower limits. I am sure all noble Lords will therefore agree that lowering the limit in itself is not going to change people's behaviour. Neither would it be the best use of our resources in improving safety on our roads at this time. That said, with regards to Scotland, which the noble Lord, Lord Brooke, and others referred to, we will of course be very interested to see the full impact across casualties and the rates of drink-drive offences.

The noble Lord, Lord Brooke, and others mentioned waiting for the evidence base. One thing that I will take back from this debate is, certainly, to take up directly with the appropriate Scottish Minister when we are likely to see that substantial evidence base, with a view to holding a meeting. It is important to base our decisions on evidence and the Scottish experience will be crucial to that.

We have had strong successes in tackling drink-driving through rigorous enforcement, tough penalties and changing the social acceptability of drink-driving, including through our award-winning campaigns. This is how we will continue to tackle those people reckless enough to consider getting in their car after drinking. As noble Lords will know, our award-winning THINK! road safety campaigns remain an important tool to educate people about changes in our motoring laws and safer behaviour choices.

The noble Lord, Lord Rosser, talked about education—in part, about looking at the DVSA and graduate driving. For the first time since 2007, we are running a drink-driving campaign on television, ensuring a very wide reach. It tackles those drivers who we know drink before getting in a car. A staggering one in five men between 18 and 34 declare that they would consider having two or more drinks before driving, so our campaign aims to persuade them to change their behaviour in a way that we believe will work. We will of course evaluate this campaign, as we always do. The noble Baroness, Lady Randerson, pointed out the importance of having independent reviews and analysis. I will certainly take that back to the department and look at what work has been done in that respect.

In thanking all noble Lords for their contributions, let me reiterate that the Government regard this issue as a priority. I have highlighted some of the initiatives that we are taking in this respect. Clearly, more can and needs to be done but in changing any limits we must consider the evidence base, as I am sure the noble Lord, Lord Brooke, and others would acknowledge. However, I give my personal assurance that I will take back to the department the details and learning from what has been a very well-informed and, at times, personal debate. I would very much welcome a meeting with the noble Lord, Lord Brooke, to see how we can progress this matter because I believe, as do all noble Lords, that any life lost because of the reckless act of a particular individual wrecks lives and homes. We need to take action to ensure that we can eradicate this from our society.

12.03 pm

Lord Brooke of Alverthorpe: My Lords, I am grateful to all who have spoken in this quite short debate. I thought that the noble Earl, Lord Attlee, would probably want to maintain the status quo for the time being but if he is contemplating tabling an amendment to go for random breath testing, which would help, I would be very pleased indeed to speak to him about it and would consider accepting an amendment from him in Committee. It will not be just one silver bullet that solves all the problems; neither would the Bill. There have to be a range of factors brought to bear. My complaint at the moment, as the House will have heard, is that the Government are stalling. Yes, the Minister has referred to a number of changes but, quite frankly, they are very small indeed.

The heart of this is that the Government have a policy of saying, "Don't drink and drive" but in practice they do not try to put forward that policy. In truth, if there was such a policy, the limit would be 20 mg. The noble Earl, Lord Attlee, said that I had got the North report wrong. I have not; I have read the North report well and the Select Committee report. I have also read the Government's response to the North report and the Select Committee. True, there has been no precise impact assessment made of how the industry would be affected but the industry made vehement and significant contributions to the work of the committee in 2010.

In particular, when the Government responded in Cm 8050, they said in paragraph 2.26 in regard to whether it would affect people that:

> "The majority would not need to lower consumption to stay legal with a lower limit, but their response to the present limit suggests that they will not want to take any chance with the risk of offending. These responsible people have the choice to drink even less—and especially to drink less when they are out. If that happened, it would have a substantial impact on the businesses they patronise".

[Lord Brooke of Alverthorpe]
That was the department's view and I believe that it is what the Government support. That is why when they talk about a policy of "Don't drink and drive", they do not actually follow it through—because there is pressure from other quarters to continue to allow people to drink at low levels. What I have argued today is that those lower levels are dangerous. I have argued not solely about deaths but about those many thousands of people who are injured and still alive. There are such people around in wheelchairs, and so on.

Repeat offenders—those who go well over the limit—are an extraordinarily difficult group to deal with. I would not for a moment deny that and would be very happy to meet with the Minister and talk about that right across the board. But it is odd that in the evidence which has come out these people, when they are tackled, say that the one thing that would influence them would be to be told that there was no drink and driving whatever. Then they would not drink. That has never been tested and there is no science on it but that is the idea which they put forward. If we went to a 20 mg level in due course, maybe that would be the point at which it would be tested.

Scotland has already had a strong outcry from the drinks industry about the way that the changes affect it. To pick up the point of the noble Baroness, Lady Randerson, it is making a cultural change in Scotland. As she rightly argued, we have seen many other cultural changes but in this area we have been slow. It is now time to move on.

I thank my noble friend Lady Hayter so much for her support. I pay tribute to the work that she has done over many years. Many of your Lordships may not know that she was the original founder of Alcohol Concern, which deals not just with this issue but with a wide range of alcohol concerns. It has done tremendous work in campaigning over many years.

We need other changes, too. If restaurants and pubs have a problem, what I cannot understand is why the root of what takes their business away is not tackled: the cheap booze sold to the public in supermarkets. If we were to go to a minimum unit price then the pubs, restaurants and so on would be on an equal competitive basis and would find more people going to them than has been the case. They need not drink, as we would hope to be running a campaign saying that if you go to a restaurant and have a drink, you should have a non-drinking driver with a car among you. That is a very good campaign indeed and I would be happy to support efforts along those lines. A package of measures is needed. A minimum unit price, even though it is not being pushed here, is a significant part of it and would answer some of the criticisms that have been levelled.

There are a whole range of issues here that need to come together. I will be coming back in Committee. The British Transport Police has suggested that the present limit needs to be equalised with that in Scotland, where there is a disparity. I think that that arises under different legislation and I am not quite sure how it needs addressing. I will speak to the Minister about it and see whether it is appropriate to table an amendment to the Bill.

In the mean time, I thank all noble Lords for their contributions, in particular my noble friend Lord Rosser on the Front Bench. I know that he had a little difficulty in determining from our friends in the party at the other end just what line to take on the Bill. He pointed to some very interesting and useful statistics and facts. I rather suspected from the way he was speaking that he has been convinced that while he may not have had a strong lead on policy from the other end, he will now go back and give them a very strong lead on what the Labour Party's policy should be. It remains for me just to thank everyone who has contributed. We will be coming back in Committee, as I have at least one amendment that I will be moving. I conclude by asking the House to give the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

Criminal Legal Aid Services

Statement

12.10 pm

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I wish to repeat a Statement given as an Answer to an Urgent Question in another place by my honourable friend Shailesh Vara. The Statement is as follows.

"As the Secretary of State announced yesterday, the Ministry of Justice has had to play its part in reducing the budget deficit. Economies have had to be made in every area of expenditure. In the last Parliament, spending on legal aid was reduced from £2.4 billion to £1.6 billion. Further changes to the legal aid system were due to be implemented in this Parliament, with a second reduction to litigation fees in July 2015.

At the time the fee reduction was proposed, the market was made up of around 1,600 legal aid firms. After careful negotiation, the then Justice Secretary decided to adopt a system of 'dual contracting' to drive greater efficiency and consolidation within the market. But over time, opposition to this model has increased. Solicitors' firms feared that it would lead to a less competitive market; barristers that choice and quality would diminish. In addition, a process of natural consolidation was already taking place in the market.

Although we recognised these arguments, we also needed to deliver reductions in expenditure. Since July 2015, however, two significant developments have occurred. HM Treasury has given us a settlement which allows greater flexibility in the allocation of funds for legal aid, and it has become clear that there are real problems in pressing ahead. We currently face 99 legal challenges and a judicial review of the entire process. Litigation will be time-consuming and costly for all.

We have therefore decided not to go ahead with the introduction of the dual contracting. We have also decided to suspend the second fee cut for a period of 12 months. The Legal Aid Agency will extend current contracts to ensure continuing service until replacement contracts come into force. We will review progress on joint work with the profession to improve efficiency and quality, before returning to any decisions on the second fee reduction and market consolidation".

12.13 pm

Lord Bach (Lab): My Lords, I start by thanking the Minister for repeating the Answer given in another place. I hope the Minister will acknowledge that, although the announcement made by the Lord Chancellor yesterday is of course welcome to criminal law practitioners and others, it represents something of a disaster for his department. It was not only Her Majesty's Opposition who opposed the two-tier contracting scheme when it was first mooted, way back in 2013 by the coalition Government, but practitioners, experts and many others. We all pointed out that it could not work, that it would mean the closure of too many solicitors' firms and that it would result, seriously, in legal deserts where those facing criminal charges would not always be able to find advice and representation. That is why we welcome the U-turn.

However, now the scheme has been abandoned, it leaves behind it enormous costs for the Government, for many solicitors' firms—whether successful or unsuccessful in their tenders—and, of course, for those involved in the litigation. Just think of all those wasted hours worked by civil servants, solicitors' firms and others—and all for what? What do Her Majesty's Government intend should happen next? Sometimes in government it is right to say sorry. Does the Minister agree that this is one of those times?

Lord Faulks: A Government should always say sorry when they make a mistake. This is a response to a difficult situation which confronted the Government. As I indicated, contractions were taking place within the market. There has also, fortunately, been a drop in the crime rate generally, and the need for consolidation was overtly acknowledged by the Law Society. So these changes were not, as was suggested by the noble Lord, going wholly against the grain, true though it was that many objected to those changes.

It is easy to say that this was a disaster for the department, but the noble Lord is not himself unfamiliar with changes in policy. In 2009, as he may well remember, the Labour Government altered their approach to criminal legal aid. Governments of all colours will, from time to time, in reviewing these difficult situations and in trying to balance the need for access to justice and the need to control public expenditure, adjust their plans.

What we have done has been welcomed by the profession. We have considerable regard and respect for the profession, particularly those criminal legal aid solicitors who go to the police station at highly inconvenient hours and provide valuable assistance to their clients. The profession has welcomed the abandonment of dual contracting, the suspension of the second fee cut and the Government's intention to work with the professions, as we have indicated, to try to ensure that changes that will have to be made in due course are made with maximum co-operation from both solicitors and barristers.

Although we have not yet calculated the overall cost, this will certainly have been expensive, which is of course a matter of regret. However, if it results in stabilisation of the legal profession and continued maintenance of high standards, then that is not a matter of regret. We will of course have to accept the characterisation of this as a U-turn. I am not sure that U-turns are always quite the disasters they are depicted as in the newspapers. If a responsible government department thinks again, that may be characterised as a U-turn or it may be considered an appropriate response to changed circumstances.

Lord Beith (LD): My Lords, whether we regard this as a U-turn, a breath of fresh air from a new Secretary of State or simply a dose of realism in the department, it is welcome. But does the Minister recognise that a number of factors were reducing the number of solicitors doing criminal work in most towns and many rural areas, and that he will still have to address the danger that no one will be available, particularly if there is more than one defendant? While he is looking at that, will he also look at the fact that, since the scope changes, the number of claims on the exceptional cases fund has been surprisingly small, perhaps because people have never consulted a solicitor in the first place? Does that not need looking at as well?

Lord Faulks: The noble Lord is right that whatever the change in policy, it is important that we are satisfied that there are firms of solicitors that can represent people in whatever part of the country they are needed. When the replacement contracts come to be considered, that is clearly one of the factors that will be taken into account. The noble Lord also asked about the scope of legal aid generally and the exceptional funding provisions. They have been the subject of litigation and further clarification. One of the difficulties was that the forms that had to be filled in were perhaps not as clear as they might be. There has been considerable improvement in that regard, and the percentage of cases where exceptional funding has been obtained as a result of an application has increased considerably.

As a Back-Bencher looking at the LASPO Bill as it went through, I found the provisions on exceptional funding somewhat opaque, referring, as they did, to the Human Rights Act and Article 6. It was not always easy to know quite what the coalition Government were driving at. I think there is increased clarification of that. There has been a decision, although it is subject to appeal, but the noble Lord is right to draw our attention to exceptional funding.

Lord Cormack (Con): Does my noble friend accept that it is extremely refreshing and encouraging when a Secretary of State listens, not least to the voice of this House, and makes an adjustment and a change of policy? None of us should be churlish in welcoming this very real change. Not the least of its advantages is that it has produced a situation where we have a legal profession that is in tune with the Secretary of State and a Secretary of State who is in tune with the legal profession.

Lord Faulks: I am grateful to my noble friend for that intervention. He is right that this House has always held the Ministry of Justice, in particular, to account with the galaxy of legal talent that is available around the Benches. I am certainly aware that any policy change is subject to great and close examination by all those here, not least this particular policy, which I have been asked about a number times in specific

[LORD FAULKS]
debates and in the course of Question and Answers. I reassure my noble friend and the House that the Secretary of State listens to what is said in this House and will continue to do so.

Lord Clinton-Davis (Lab): The amount of complacency about changes in legal aid is absolutely bewildering. I speak as somebody who, in earlier life, was much involved with criminal legal aid. At the moment, there will be immense difficulties in recruiting young solicitors to do this work. I hold the view that it is desperately unsatisfactory. I hope the Minister will not again get up and say that economies have to made in legal aid. The economies that have already been made are devastating.

Lord Faulks: There is no complacency on the part of this Government. This Government value the contribution that solicitors make to the system as a whole, particularly those who work in criminal legal aid. The noble Lord is quite right: rates are not what they were and, as a profession, it has considerably fewer attractions than it once had. It is important that we continue to encourage able practitioners to go into areas where legal aid is the main source of funding. However, we have to bear in mind the interests of the taxpayer. We have constraints put on us by the Treasury. I particularly pay tribute to those who, despite the difficulties that are encountered, nevertheless pursue careers in this less profitable area of the profession. Our profession is often characterised as being full of ambulance chasers and fat-cat lawyers. These lawyers are very much not in that category.

Age of Criminal Responsibility Bill [HL]

Second Reading

12.23 pm

Moved by ***Lord Dholakia***

That the Bill be read a second time.

Lord Dholakia (LD): My Lords, my Bill is designed to raise this country's unusually low age of criminal responsibility from 10 to 12. At present in England and Wales, children are deemed to be criminally response from the age of 10. This means that children who are too young to attend secondary school can be prosecuted and receive a criminal record. A 10 year-old who commits a grave crime—which includes serious violent and sexual crimes but can also include burglary—will be tried in the adult Crown Court. A child of 10 or 11 who is accused with an adult will also be tried in the Crown Court.

At 10 years old, the age of criminal responsibility in England, Wales and Northern Ireland is the lowest in Europe. In Ireland in 2006, the age was raised to 12, with exceptions for homicide, rape or aggravated sexual assault. The Minister will be aware from his experience that in Scotland in 2010 legislation provided that children cannot be prosecuted below the age of 12. Outside the British Isles, the age of criminal responsibility is invariably higher. In France, Greece and Poland it is 13. In Germany, Spain, Italy, Austria, Belgium, Hungary, Bulgaria and Romania it is 14. In the rest of Europe, it ranges between 14 and 18.

The United Nations Committee on the Rights of the Child has repeatedly stated that our minimum age of criminal responsibility is not compatible with our obligations under international standards on juvenile justice and the UN Convention on the Rights of the Child. In a statement in 1997, the committee said:

> "States parties are encouraged to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level".

Taking 10 and 11 year-olds out of the criminal justice system would not mean doing nothing with children who offend. It would mean doing what other countries do with 10 and 11 year-old offenders. It would mean doing what we do with delinquent nine year-olds—in other words, it would mean dealing with the causes of these children's offending through intervention by children's services teams. In the minority of cases where court proceedings are necessary, it would mean bringing children before family proceedings courts, which can impose compulsory measures of supervision and care. In the most serious cases, it could mean long-term detention in secure accommodation, but this would be arranged as part of care proceedings rather than as a custodial punishment imposed in criminal proceedings.

Those who oppose increasing the age of criminal responsibility often argue that children of 10 and 11 are capable of telling right from wrong, as though it automatically follows that they should therefore be dealt with in criminal courts. That does not logically follow at all. Most six year-olds have a sense of right and wrong but no one suggests that they should be subject to criminal prosecution. The point was made very well in 2012 in a report from the Centre for Social Justice, which was set up by the Secretary of State for Work and Pensions, Iain Duncan Smith. In 2012 the centre produced a report on the youth justice system entitled *Rules of Engagement: Changing the Heart of Youth Justice*. It said:

> "There is now a significant body of research evidence indicating that early adolescence (under 13-14 years of age) is a period of marked neurodevelopmental immaturity, during which children's capacity is not equivalent to that of an older adolescent or adult. Such findings cast doubt on the culpability and competency of early adolescents to participate in the criminal process and this raises the question of whether the current",

minimum age of criminal responsibility,

"at 10 is appropriate".

The evidence from international research is overwhelming, showing that children of 10 and 11 have less ability to think through the consequences of their actions, empathise with other people's feelings and control impulsive behaviour. This does not mean that children aged 10 or 11 are not responsible for their actions, but that on any reasonable interpretation of the evidence they must be regarded as less responsible than an older adolescent or an adult. It cannot be right to deal with such young children in a criminal process based on ideas of culpability that assume a capacity for mature, adult-like decision-making.

In all other areas of law, whether it is the age for buying a pet, the age for paid employment, the age of consent to sexual activity or the age of smoking and drinking, children are not regarded as fully competent

to take informed decisions until later in adolescence. The age of criminal responsibility is an anomalous exception. Ironically, a 30 year-old who had a mental age of a 10 year-old child would probably be regarded as unfit to plead and yet, by a strange twist of logic, a child of 10 is seen as capable of participating in the criminal justice process. I simply cannot accept that.

It is sometimes argued that there is no need to raise the age of criminal responsibility because the number of 10 and 11 year-olds who receive a youth justice disposal is small. "Small" is not necessarily the right argument. We are talking about normally fewer than 300 a year who are prosecuted and sentenced in court. Even though this represents a small proportion of those going through the criminal justice system, what happens to up to 300 vulnerable children can hardly be regarded as a matter of little importance. The fact that the numbers involved are relatively small is a strong argument for the Bill; it means that it would not be a huge burden in terms of resources to make alternative provision through welfare interventions and, where necessary, family court proceedings for the children who would otherwise have been charged and prosecuted.

Nor can it be argued that dealing with these children through non-criminal processes would put the public at risk. On the contrary, dealing with 10 and 11 year-old children through non-criminal procedures would be more effective than using the criminal justice process. The evidence shows that children who are dealt with through the criminal justice process are more likely to reoffend than those who are diverted from the criminal justice system and dealt with in other ways. Children who are officially labelled as offenders often react by trying to live up to the label and acting in increasingly delinquent ways to achieve status in front of their friends. Again I quote the Centre for Social Justice report, which says that,

"raising the minimum age of criminal responsibility would achieve important changes. Young children would not be tarred with the stigmatising 'offender' label which the evidence shows can exacerbate delinquency and would more likely have their victim status and welfare needs addressed, which the evidence suggests are currently often neglected".

This is a particularly important point, as children who go through the criminal justice process at a young age are often young people from chaotic, dysfunctional and traumatic backgrounds involving a combination of poor parenting, physical or sexual abuse, conflict within families, substance abuse or mental health problems. The prospects for diverting the child from offending will be far better if these problems are tackled through welfare interventions than by imposing punishments in a criminal court. A welfare approach would avoid unnecessarily giving children a criminal record, which can make it harder for them to gain employment when they reach working age. As unemployment increases the chances of reoffending, this is another way in which criminalising children can increase rather than reduce the likelihood of future crime.

Of the 10 and 11 year-olds who are charged and prosecuted each year, very few receive a custodial sentence, and in some years none do. However, although the number of serious child offenders is small, the public will of course want to be assured that raising the age of criminal responsibility will not increase the risk from these young people.

Some people who generally support raising the age of criminal responsibility argue that an exception should be made for the most extreme cases, such as homicide or serious sexual offences. I am willing to consider this point in Committee but my inclination at this stage is to resist making exceptions. The most serious child offenders invariably have the most complex welfare needs. Their backgrounds include experiences of serious physical abuse, sexual abuse, emotional abuse and neglect, parental mental illness, rejection and abandonment by adults, traumatic loss, conduct disorder and serious emotional disturbance. They need a welfare-based approach, in secure care if necessary, to help them to face their unresolved trauma, to develop and mature emotionally, to reach an appropriate sense of guilt and to learn to control their emotional and aggressive impulses.

Noble Lords will recall the trial of the boys who killed James Bulger, who were aged 10 at the time of the killing and 11 when they were tried. Most foreign commentators were amazed that children of that age should be dealt with by a trial in an adult Crown Court. They questioned whether such young children could really understand the complexities of a lengthy criminal prosecution and trial, whether they should have appeared in the full glare of media coverage, whether they understood all the issues and language of the trial, whether they could give sensible instructions to their lawyers and whether their decision not to give evidence was simply because they were frightened of speaking in such a setting.

Exposing such young children to a criminal trial is no way to achieve justice. Moreover, the case took nine months to come to trial, during which time the defendants received no treatment or therapeutic help in case it prejudiced their pleas. That is a completely unacceptable way to deal with young defendants and one which would be unthinkable anywhere else in Europe. It should be equally unthinkable here. The two boys should have been dealt with in family proceedings and detained in secure accommodation, without all the ill effects which resulted from a public Crown Court trial.

I commend the Bill to the House. The simple proposition that it contains, if enacted, would be an important step towards dealing with vulnerable, difficult and disturbed children in a way that befitted our civilised society. I beg to move.

12.36 pm

The Earl of Listowel (CB): My Lords, I support the noble Lord in his call for a Second Reading of this important Bill and I wholly endorse and support every word that he has said. I hope particularly that what he said about the pitiable experience of 10, 11 and 12 year-old children going through a criminal court process—he mentioned a court process of nine months—will speak particularly to the Minister's experience.

As vice-chair of the all-party group on children and young people in care and leaving care, I know only too well the background of many of these young people. Of course, 45% of children—55% of girls—in the criminal justice system have had an experience of foster care or children's homes, so in my experience the noble Lord's assessment is absolutely right.

[The Earl of Listowel]

I thank the Government for the efforts they have made to reduce the numbers of children in the criminal justice system over recent years. The Government have reduced it to one-third of what it last stood at, so from 3,000 to about 1,000. That is helpful in this area because it has reduced down to 300 the number of children we are talking about today.

That need not necessarily continue. Listening to the scientific evidence, many of us might assume that in the course of time, this will come about—we will have the same age of criminal responsibility as civilised countries have. However, this cannot be taken for granted and we need to act urgently on this matter. It takes only one ambitious unscrupulous politician to come along and say, "Look, we must be tough on crime and on the causes of crime". We saw that in the past—I certainly saw in this House what happened then. We saw the numbers of children being criminalised shoot up and more and more children incarcerated because of a policy which is wholly counterproductive and which all the evidence speaks against. However, there is always that risk that an unscrupulous politician will choose to make political capital out of these young people.

I am very pleased to see the noble Baroness, Lady Massey of Darwen, in her place and to see that she will speak later. Of course she has for many years chaired the All-Party Group on Children and chaired our children and the police inquiry. I have no doubt that she will refer to our finding and recommendation that the age of criminal responsibility should be raised to at least 12 years of age.

Many of us will be sending a cheque to the taxman today or this week. I am very happy to pay for state services—I know how important they are. However, I rue sending a single penny that is not spent effectively. To incarcerate 10, 11 and 12 year-olds is an ineffective, wasteful use of public money. I think that the Government will particularly understand that. At a time when we are seeking to pay down the deficit and the Government are making very tough decisions, we cannot afford to indulge in policy which is counterproductive and wasteful for the public purse. No hard-working taxpayer wants to pay money to sustain legislation which is clearly counterproductive, and all the professional evidence points to that.

I recently had the opportunity to speak to parents who lost their children as victims of violence. Last year, I communicated with a number of parents whose children had, very sadly, taken their own lives, having been incarcerated in police cells. I spoke to one mother whose very troubled daughter had ended up in a police cell over the weekend. She had been very distressed and took her life shortly afterwards. Thanks to the work of those parents, the work of Just for Kids Law, which represented them, and the hard work of the Minister, we managed to change the PACE Act, and now it is not permitted for such children to be incarcerated.

My sense from talking to those parents was that they were not out to punish the state for what had happened—they were not pursuing it for criminal negligence—but they wanted to see that no other mother experienced the loss of a child as a result of incarceration. Generally crimes committed by children are physical crimes against other children. In that situation, many parents would want to be assured that the state was doing all it could to prevent such things happening again. That would be a primary consideration for them. We know that if we bring children into the criminal justice system, a third of them will reoffend within a year, and they receive, as it were, a schooling in crime by going through various institutions. As adults, they may well have a criminal record and it will then become harder for them to get a job. They are labelled as criminals and they may be confirmed in a career of crime. They may well go on to have children, who may follow in their footsteps.

If one says to a parent whose child has been harmed by another child or who has lost a child through violence from another child, "We are going to try our best to stop this happening to another child", then the right, and effective, approach is a welfare one, with all the protections and the secure accommodation that the noble Lord referred to, rather than the wasteful, ineffective approach that we currently take.

I hope that institutions such as Mumsnet and the Mothers' Union will look at this debate and seek to take up with the Government concerns about the welfare of these children and about protecting children from each other. Often, we are talking about very troubled children and we need to do something about them, but simply maintaining the status quo fails to protect our children in the most effective way. It is time to act. It would be the right thing to do to pass the noble Lord's Bill. It would be the right thing for our children and for our hard-working taxpayers. None of us wants our tax to be wasted in the way that it currently is.

There is always the risk that we will go backwards. Towards the end of his career in the House, Lord Onslow learnt how many children we were incarcerating in this country, and I remember how passionately he advocated reducing the numbers. We could go back to increasing the number of children in that situation. Therefore, I ask the Minister—he may prefer to write to me—how much the youth justice system costs and how much would be saved if we raised the age of criminal responsibility to 14. That age is much more the norm in civilised countries, and I hope that this Bill will be a step towards that. If he could do some modelling, looking at the longer-term impact of a reduction in the number of children having a career of crime and coming back into the criminal justice system again and again, that, too, would be helpful.

Finally, I commend the noble Lord for his perseverance and for bringing this issue back again and again. It is, ultimately, a question of children's rights. Here we are, in this country, punishing the very children who often we as a nation most let down. The noble Lord is absolutely right to keep persevering, and I am very glad that he has brought this to the House.

12.45 pm

Lord McNally (LD): My Lords, it is always an enormous pleasure to listen to and follow the noble Earl, Lord Listowel, on any subject linked to the welfare of the child, not simply because he keeps a close interest in these matters but because, when he speaks to the House, he speaks from direct experience

of talking to children and those who work with children, who give us a message of the reality at the sharp end of this. We are always in his debt for these contributions. Likewise, as I have put on record before, I am grateful to my mentor, my noble friend Lord Dholakia—I was going to say "old mentor", but he gets sensitive about the term "old"—who, over 20 years or so, has been a constant prod to me on reforming the criminal justice system.

As is on the register, I am the chairman of the Youth Justice Board, but I am not speaking today in that capacity.

Another thanks must go to the noble Earl, Lord Listowel, because what he said feeds into what I want to say, on his proposal to move the age of criminal responsibility into a wider context. If we are going to have a rational debate about that, we have got to put it in a wider context.

It is interesting that when we had the debate earlier today about drink-driving, the Minister was urged to look at Scotland as an example. Next month, the Scottish Government will receive the report of an advisory panel on raising the age of criminal responsibility in Scotland. That is something that Ministers, and all in this House who are interested in the matter, will be very keen to read. The Scots have gone for a slightly hybrid model so far; they have kept the age of criminal responsibility at eight, but no child can be brought before a court until the age of 12. The advisory panel has been looking at that and the suspicion is that it will advise a common age for both, but we will have to wait and see.

As my noble friend Lord Dholakia indicated, the long shadow of James Bulger's murder on 12 February 1993 lies across any debate about the age of criminal responsibility. When I was appointed chair of the Youth Justice Board 18 months ago, I was interviewed by the magazine *Children & Young People Now* about how I saw the job, and I was asked what I thought about the age of criminal responsibility. I said that I was aware that the Scots were looking into the matter and thinking of raising it to 12 and that we could do likewise. The next day, a national newspaper rang James Bulger's mother to ask her what she thought about changing the law so that James's killers would have "got away with it". It was a monstrous crime, but I think it intimidates proper debate about the age of criminal responsibility. The two boys who killed James would not have got away with it. However, the full trial, which began in Preston Crown Court on 1 November 1993, would not have been conducted as an adult trial, as it was, with the accused in the dock away from their parents and the judge and court officials in legal regalia.

I am well aware that since that time changes have been made to make trials involving young persons more child friendly. However, I spoke to a senior judge who visited Preston Crown Court recently and he told me that it had not changed in appearance since 1993. It remains virtually unchanged and, as he said, it is almost unbelievable that two 10 year-olds should face trial in such a place and in such a way. I know that it is Mrs Bulger who has received the life sentence, and I do not sympathise with the perpetrators at her expense, but much has happened in the past 20 years which has increased our understanding of crimes committed by children and our responses to it, as the noble Earl, Lord Listowel, so eloquently explained.

The Youth Justice Board was set up in 2000 following the Crime and Disorder Act 1998, which in itself followed the ground-breaking report of 1996, *Misspent Youth*, to address the specific challenges of offending by under-18s—children in the eyes of our law. The clear statutory aim of the YJB was to prevent offending by young people. For that reason, the continuing fall in the number of children entering into the justice system—statistics yesterday show another 9% fall last year—and the secure estate, which, as the noble Earl, Lord Listowel, said, is now down to about 1,000, only 50 of them girls, all points to the right direction of travel under successive Governments.

These outcomes are not the result of the work of the Youth Justice Board alone but the work of many hands. It is still work in progress, and the noble Earl, Lord Listowel, referred to the very high reoffending rate of those who have been in the secure estate. Progress certainly owes much to the work of the holistic, locally-based, cross-disciplinary approach of the youth offending teams, which the Youth Justice Board established. It also owes much to the police "buy in" at national and local level of programmes and protocols aimed at diverting young people from crime and the criminal justice system. The liaison and diversion services championed by the noble Lord, Lord Bradley, in his ground-breaking report mean that mental health needs are detected and dealt with sooner.

The Magistrates' Association has shown vigour in looking at how best youth courts can adapt, and Mr Gove has recently expressed his interest in problem-solving courts. The Government's Troubled Families initiative moves action upstream to tackle the multifaceted dysfunctionalities which are often the precursor of criminal behaviour, again as the noble Earl, Lord Listowel, explained.

Work by the Disabilities Trust Foundation at the Keppel unit at YOI Wetherby has shown the benefit of identifying and treating brain injury among young offenders. Research by University College London, among others, has shown that the brain evolves and matures over a long period after the age of 10. That is why, as we have heard, most European countries have ages of criminal responsibility higher than ours. Most continental jurisdictions espouse a welfare approach to offences by the young. Over the past 20 years, a lot of the undercurrent of the approach to youth justice in England and Wales has been, as I have illustrated, to use welfare rather than criminal sanctions in dealing with young offenders. I was pleased that during my time in government the Transforming Youth Custody initiative was taken forward to double to 30 the number of hours of education. It is significant that Mr Gove has asked an educationalist, Mr Charlie Taylor, to conduct an inquiry for him into youth justice services. I put on record my appreciation for the thorough and comprehensive way in which Mr Taylor has carried out his inquiry. I have already discovered that youth justice is a field well populated with strong opinions,

[LORD MCNALLY]
but I do not think anyone will be able to say that they have not been able to bend his ear by the time his report is published.

On the eve of this debate, I came across a report by Dr Di Hart, working through a Churchill Fellowship award and supported by the Prison Reform Trust, entitled *Correction or Care? The Use of Custody for Children in Trouble*. I intend to invite Dr Hart to the House to present her report more fully. I shall briefly run through her recommendations, because they tie into the wider debate on welfare or punishment in our criminal justice system, which I think Mr Gove is ideally positioned to undertake because of the confidence that he has won in all areas. The recommendations in the report include:

"Reconsider the separation of justice, welfare (and psychiatric?) placement models … Develop a shared understanding of the best model for meeting children's needs … Regional commissioning … Pilot a new model of residential care"—

something that I think has a certain urgency to it—

"Develop a shared data set to measure experiences and outcomes … Establish an expert panel to advise on good practice … Maintain the involvement of sentencers in tracking children's progress",

which is something that I know the Magistrates' Association is interested in taking forward.

This debate is taking place in that wider context. I think that we are moving towards a system of looking after young people and children, in particular the very young, from the age of 10 upwards, in a more welfare-based way, precisely because of the point made by the noble Earl, Lord Listowel. The present system does not work; reoffending is far too high, and it is expensive. Even the most hardened "lock 'em up and throw away the key" people have to concede that we are wasting public money. A new, broader look at the context of this may achieve a national consensus, but we need to do it in a rational manner in the light of research, of experiences in other countries, of advances in medical and other scientific understanding, and of other changes recommended when the Taylor report is produced. This Bill is before us at an opportune moment, and I commend it to the House.

12.57 pm

Lord Cormack (Con): My Lords, I am glad to add my support and congratulations to the noble Lord, Lord Dholakia, on his persistence and for the calm and moderate way in which he has introduced the Bill, and for recognising in his speech that amendments might have to be made. My own inclinations march with his; nevertheless, these issues will have to be examined in detail in Committee. But the broad thrust of his argument is one with which I can closely identify myself.

We had a debate in your Lordships' House last Thursday, introduced by my noble friend Lord Fowler, on the subject of prison reform. It was a good debate and a number of us who are here today took part in it. I think there was universal admiration for the way my noble friend introduced it and for the proposals he made. Another theme ran through the debate, which I would categorise as a collective sigh of relief at the change of direction of the Ministry of Justice since the present Secretary of State took over. He has already shown himself to be a sensible and sensitive man, and indeed we have had further evidence of that this very day in the Statement made by my noble friend on the Front Bench just before this debate started. So I hope that we are to some degree pushing at an open door. Although I do not expect, because I am fairly case hardened, my noble friend on the Front Bench to get up and metaphorically embrace the noble Lord, Lord Dholakia, I hope he will be able to give us some indication that the powerful points made in the noble Lord's speech will be reflected upon.

I do not think anyone is saying that young children who commit wicked acts—and some do—should not be adequately dealt with, which of course involves a degree of punishment. The punishment is separating those young people from the environment which has perhaps inculcated, or certainly increased, that wickedness. No one is suggesting that it would be sensible to have sent the killers of James Bulger immediately back into the community. That would be utterly absurd. But was the paraphernalia of a full trial wise? I think not. What is important is that young people who do wicked things should be adequately dealt with. I agree with the advance to the age of 12. It is important to note that, if they are under the age of 12, putting them into the criminal justice system is not very sensible or even cost-effective.

One of the points that came up time and again in last week's debate was reoffending. I have personal experience because I had a young offenders' institution, Brinsford in South Staffordshire, in my constituency. If we had suffered from the same sort of background and lack of upbringing that many of the young men in that institution had had, we might have gone the same way. When once they become institutionalised, those young people tend to reoffend again and again. The noble Lord, Lord McNally, is nodding. How glad I am that he has his present role, because he understands these things. If young people under the age of 12 commit crimes, the whole thrust and emphasis of their treatment —I used that word advisedly—should be to try to ensure that they do not offend again.

Several times in last week's debate, the famous remarks of Churchill when he was Home Secretary were quoted. He said that within every person there is some spark of goodness. You judge a civilised society by the way in which it treats offenders. The punishment is being sent to prison. The whole purpose of prison is to rehabilitate. Children should be sent somewhere where they can be nurtured as well as rehabilitated. Many who commit these dreadful crimes have no home to speak of. It is not being soft to say that one supports the proposition of the noble Lord, Lord Dholakia. One is being realistic. One is recognising that the age of criminal responsibility, which is determined by the state, must be determined with real regard for what children under the age of 12 can properly be able to answer for.

In a sense, I am thinking aloud in making these points. As one who has children and grandchildren, spent 10 years as a schoolmaster and 40 years as a Member of the other place, and over 30 years with prisons in my constituency, I really believe that Churchill was right when he said that in almost everybody there is a spark of goodness. If a child goes astray, the whole

emphasis must be on trying to ensure that that child does not grow up into a hardened criminal. As I see it, that is at the root of the Bill of the noble Lord, Lord Dholakia, and his crusade—it has become that, as he has come back to this issue again and again.

I hope that when my noble friend—he is a man of real sensitivity and understanding—answers the debate, he will say that he will discuss the matter with the Justice Secretary. I hope he will indicate that he understands what exercises those of us who believe that the age has been set far too low. I slightly dissent from the noble Earl, Lord Listowel, for whom I have great admiration. In a throwaway line, he referred to other countries as being civilised without suggesting this one is. We are a civilised country and we are all proud to live in it, but every civilised country can make itself better and more civilised. This would be a small step in that direction.

1.05 pm

Lord Parekh (Lab): My Lords, I express my deepest gratitude to the noble Lord, Lord Dholakia, for introducing the Bill, and, more generally, for his persistent advocacy of the cause that informs it. I am also delighted to be following four noble Lords who have done splendid work in this area, and whose contributions I recognise.

Naturally, in a debate that has gone on for some years, many of the arguments made today have been made before. Therefore, it is difficult to find entirely new arguments. Naturally, I will repeat some of the arguments that have already been made, but also perhaps add one or two that I think are new and go to answer the point that the Government have made over the years as to why they will not accept the idea of raising the age of criminal responsibility.

The current age of 10 is unacceptable for at least four important reasons. First, it is far below the international norm. The United Nations Convention on the Rights of the Child recommends the age of 12. If one looks at other countries in a similar position to us, the situation is quite striking. The age of criminal responsibility is 12 in Canada and the Netherlands; 13 in France; 14 in Germany, Austria, Italy and Russia; 15 in Scandinavian countries; and 16 in Belgium, Luxembourg and Portugal. A striking exception, which makes the point, is the United States, where the age of criminal responsibility is six—but then the United States has never been a good model for criminal justice. I do not think that that is the country we would wish to emulate, in this respect at least.

The other important point is that those countries whose cases I have cited have been perfectly happy. Many of them settled on an age of criminal responsibility several years ago and have seen no reason to alter it or to bring it down. If they can live with the age that they have decided, there is no reason why we cannot.

The second reason for increasing the age of criminal responsibility has to do with the larger, cultural question. The age of responsibility reflects society's attitude to its young people. Those taking a dim view of young people—almost a Calvinist view in which children are supposed to be little devils who must be tamed by force, which dominated the Victorian period—generally tend to go for a younger age of criminal responsibility. Sadly, this is true of our own country. We imprison four times more people than Portugal, 25 times more people than France and 100 times more people than Finland. Raising the age of criminal responsibility raises society's respect for its young people and is a profoundly significant cultural factor. Rather than rush to lock up a child, society's gaze is now fixed—should be fixed—on what can be done to prevent a child behaving in this way. That is an important, constructive point to consider rather than simply punishing a child who has behaved in a certain way.

The third reason that I wish strongly to increase the age of criminal responsibility is in response to the Government's continual argument over the years that children of 10, or even younger, are able to differentiate between bad behaviour and serious wrongdoing, and, therefore, that if they are able to do that, they should be held responsible. I am afraid that I do not see the logic of that argument because responsibility does not have much to do with whether one is able to make a distinction or not; it has to do with a sense of agency and whether one is able to act on that distinction. One may be able to think of a child who is able to make a distinction between bad behaviour and serious wrongdoing. But the question is whether the child has been brought up in a certain way, is able to control his temperament and exercise self-restraint, is able to think through the enormity of what he is about to do and empathise with the person upon whom he is about to inflict punishment. If a child cannot do those things, he will be unable to act on the distinction that we talked about earlier. The child knows what serious wrongdoing is but cannot avoid it for the reasons that I have just mentioned. In that kind of situation, the response should be to intervene with children's services teams and, where necessary, by family court proceedings. Criminalising such a child would mean a permanent stigma; it would mark him out for ever and offer little hope of reform or reintegration.

My fourth and final argument has to do with the point made by the noble Earl, Lord Listowel, which was repeated by the noble Lord, Lord Cormack, and others: namely, the sheer cost of this. Although the number is small—about 100 10 year-olds and about 400 11 year-olds have been criminalised—the question is: how much does it cost to keep people in prison, especially when one considers the question of reoffending? At that point one needs to ask: how much will this cost and what are the results of doing this? I therefore strongly suggest that common sense and economic cost analysis, as well as basic moral principles—plus, of course, our standing in the community of civilised nations—require that we increase the age of criminal responsibility from 10 to whatever we consider proper, but certainly no less than 12.

1.12 pm

Lord Maclennan of Rogart (LD): My Lords, the country should be very grateful to my noble friend Lord Dholakia for pursuing this question of the minimum age of criminal responsibility. I agree with the noble Lord, Lord Cormack, that this is a civilised country, but we are exceptional in our treatment of young people in respect of their criminal propensities. The circumstances

[Lord Maclennan of Rogart]
in other European countries that have raised the minimum age of criminal responsibility are not necessarily different from ours. Belgium, Luxembourg, Lithuania and other countries have decided that the minimum age should be much higher than it is in this country.

We are also offending against the recommendation in the UN Convention on the Rights of the Child in making it clear that we are not prepared to accept raising the minimum age to 12, which has been supported by most countries.

The debate so far has been extremely effective. My noble friend Lord McNally, who is in charge of youth justice, made a very powerful speech. He spoke for himself and I hope he will be listened to by the Government. The noble Lord, Lord Faulks, who is answering the debate, has had his ear bent by the noble Lord, Lord Cormack, who suggested that he should be talking with our new and rather enlightened Secretary of State, who has made some significant changes in the nature of the laws we advocate in this country. I was a great admirer of Lord Bingham—Tom Bingham—who was a year ahead of me at college. His book, *The Rule of Law*, is one of the most heavyweight arguments about what we ought to be thinking about in this country. On equality, he said:

"Most British people today would, I think, rightly regard equality before the law as a cornerstone of our society … But we would also accept that some categories of people should be treated differently because their position is in some important respect different. Children are the most obvious example. Children are, by definition, less mature than a normal adult, and should not therefore be treated as a normal adult would expect to be treated. Thus they are not liable to be prosecuted for crime below a certain age (in Britain it is conclusively presumed that no child under the age of ten can be guilty of any offence, a younger age than in most comparable European countries); if convicted of crime, they should not be punished as a normal adult would be punished".

That is a very wise statement.

The noble Earl, Lord Listowel, expressed in powerful terms how young people should be treated; how, if they are guilty of offences, they should not necessarily be dragged before a court and how doing so might make them reoffenders. That is too common in this country and we need to root it out. The whole purpose of our response to offences should be to root out the propensity to reoffend and to inspire people to live lives in concordance with the law.

My noble friend Lord Dholakia is introducing this measure at a very suitable time and I hope it will be recognised that the movement to raise the minimum age of criminal responsibility should not necessarily stop at 12 but should go beyond. As the UN has stated that 12 is internationally acceptable, that would be a very good move in the right direction but let us not end the argument there.

1.20 pm

The Lord Bishop of Chelmsford: My Lords, in rising to support the noble Lord, Lord Dholakia—and, indeed, pledging the support of the church to this campaign—I need to declare an interest: I was a child once and got into some scrapes. Now I am a parent and in the work I do hardly a week goes by when I am not in schools. Indeed, last year I had the sad but very moving honour of opening a garden of remembrance in the diocese where I serve in east London for young people who were the victims of, indeed had been killed by, knife crime. So I do not underestimate the seriousness of the crimes that we are talking about, nor the fact that children and young people do commit them.

It is often said nowadays that children grow up too quickly. I wonder if we have rather short memories. Although there are invidious and unspeakable pressures on children today, it was only a century or so ago that many of our children—who are now safely tucked up in our primary schools—were going out to work in pretty difficult and challenging conditions. Until 1875, a 12 year-old could have sex legally in this country. It was changed that year to 13. Since then, over the past 150 years, a succession of laws and protocols have recognised that with regard to all sorts of things, from smoking cigarettes to going to the cinema to watching certain sorts of films to sexual intercourse itself, we grow and develop gradually.

The decision about when someone is an adult is best made looking back from a point where there can be certainty or at least widespread agreement that at this age—it varies for different activities; it is often 16, sometimes 18—this person really has developed and is able to take responsibility for who they are and what they do. So why, in the case of criminal responsibility, do we make the decision speculatively, hoping that it might be the case that because there is some general growing sense of what is right and wrong, that person so knows what they are doing that they can be held culpable for their actions as if an adult and in a court of law?

But a child of 10 is just that—a child—not yet at that point where there could be such widespread agreement about their ability to know the consequences of their actions, nor developed morally or socially, so that we could be sure that they know what is right. That is why the law does not let them buy cigarettes or watch certain films or go to bed with each other. Therefore, when crimes are committed—for they are still crimes even if the child is no longer labelled a criminal—to deal with them in a court of law not only contradicts every other measure we have made, not only offends against common sense, not to mention the day-to-day experience most of us have as parents and grandparents, but it makes—and perhaps this is the biggest reason for supporting the noble Lord, Lord Dholakia—any possibility of rehabilitation or amendment of life that much harder. Of course, we agree with the noble Lord, Lord Cormack, that this is a civilised society, but this legislation diminishes us. As has already been referred to more than once, the United Nations Committee on the Rights of the Child has called on the United Kingdom to raise the age of criminal consent. Quite simply, we should heed that call.

My right reverend friend the Bishop of Derby made this point well in a previous debate on this matter: there are interconnected social and familial roots which combine to make us who we are. Here, the consistent teaching of the church is at odds with a society that by defining everyone as individual misses the deeper, interdependent influences and relationships that form our personhood. As my right reverend friend said:

"Human beings are formed through relationships".

Crime tends to happen, he said,

"when relationships go wrong or are handled destructively".

Do not therefore curse the fruit if the soil in which the tree is planted is poisoned and unkempt. To jump to calling a 10 year-old a criminal may play well to the gallery of a certain sort of public opinion that too quickly craves a scapegoat and an easy answer, but misses what my right reverend friend then called,

"the science of social formation".—[*Official Report*, 8/11/13; col. 483.]

That science is about where someone is made a person, particularly in the family but also in schools, churches and other faith groups and community groups.

Where this breaks down, criminal behaviour is of course not inevitable; but where crime occurs in those so young, these influences—or the lack of them—must be taken into account. Furthermore, as has been mentioned, neurological and other scientific advances illustrate that maturity in young people, especially boys, is slower than we may have thought. The male brain carries on developing until the age of about 25. Many of us wish that it would carry on for a bit longer still. To brand a 10 year-old as a criminal therefore fails to understand who that person is and who they are becoming, and our collective responsibility for that. It also risks excluding the possibilities of finding better ways to work with them to ensure that such crimes are never committed again, not just by that person but in the whole of our society. So to my mind even a move to 12, which I wholeheartedly support, is just a step in the right direction. As in France, where the age is 13, Italy, where it is 14, Denmark, where it is 15, and Spain, where it is 16, there are other steps which I believe we should take.

Jesus famously said of those who nailed him to the cross:

"Father forgive them, they don't know what they're doing".

He was speaking to adults. How much more should those words apply to children? We can still abhor the crime. We can still, where necessary, impose compulsory measures of supervision and care, and in rare and extreme cases—like that of Jamie Bulger's killers, which has been mentioned—we could still impose long-term detention in secure accommodation. But that would be part of a care and welfare proceeding, rather than a custodial punishment imposed in a criminal court. In other words, our starting point and our hope would be that as this child develops, because they are children and are still developing, they would come to a point where they would truly know what they had done and truly be enabled to live a different life.

Forgiveness is never just wiping the slate clean, as if a human being were simply a vessel to be emptied or, for that matter, something to be discarded or excluded—nor does forgiveness fail to take crime seriously. Instead, by holding and nurturing someone within a new set of relationships, it means believing that the future can be different. It is for that different future for children who offend that I support the Bill and hope that it is taken forward.

1.30 pm

Baroness Massey of Darwen (Lab): My Lords, I very much admire the noble Lord, Lord Dholakia, for his persistence with this Bill, which I support strongly. It has been very refreshing to hear, from all sides of the House, support for the Bill and sympathy for the approach of looking at children as children who need welfare, common sense and reason rather than just punishment. I welcome the very powerful speeches.

When distinguished organisations such as the Youth Justice Board, the Children's Rights Alliance for England, the Prison Reform Trust, the Centre for Social Justice, the Howard League and others say that it is time for reform in this direction, we ought to listen. Children are not naturally psychopaths or criminals—they are children first. The noble Lord, Lord Cormack, pointed out very movingly that much happens in children's lives which needs to be counteracted. Let us not blame the children and rush to prosecution, but remember that the welfare of the child is paramount, as the Convention on the Rights of the Child states. The noble Earl, Lord Listowel, mentioned the All-Party Parliamentary Group for Children, which I chaired, and I remember that we had discussions on the age of criminal responsibility as part of two of our inquiries. Those principles have not changed.

Let us look at the level of youth custody in England and Wales. We lock up more children than any other country in Europe. The earlier a child is drawn into the system, the greater the chance that they will reoffend. A low age of criminal responsibility indicates a society that views young people as criminals, and this has become self-reinforcing. The issue of problematic behaviour is a welfare and educational issue, not a criminal justice issue. Other countries look for alternatives to prosecution. In France there is educational intervention, and proceedings do not take place if it succeeds. In Italy, pre-trial supervision is used and, where it is successful, prosecution does not ensue.

When a young person is involved in criminal activities, we should be asking how and why the young person has fallen through the net—not criminalising them. I believe that our duty as a society is to safeguard and promote children in need, with a clear focus on the best interests of the child. The criminal justice system is not the starting point for this.

The noble Lord, Lord Ahmad, for whom I have enormous respect, stated in the 2013-14 Session, in responding to the noble Lord, Lord Dholakia, on an identical Bill, that the Government had no plans to raise the age of criminal responsibility. He supported this by saying that the Government believe that children aged 10 were,

"able to differentiate between bad behaviour and serious wrongdoing and should therefore be held accountable for their actions".—[*Official Report*, 8/11/13; col. 487.]

I do hope we have moved on from that stance.

We have heard the phrase "tough on crime". That slogan should be tempered by common sense. Locking up young people is tough not only on young people but on the police, on the court system and on parents. Money is being spent on dealing with young children in ways that are not only counterproductive but expensive.

[Baroness Massey of Darwen]

A 10 year-old, under our current system, could be tried in a Crown Court and may be given a custodial sentence equivalent to that available in the case of an adult. Similarly, a child of that age who is co-accused with an adult will be subject to trial in an adult venue. As other noble Lords have said, these arrangements have been criticised by the United Nations Committee on the Rights of the Child, which says that our rules are not compatible with our obligations under international standards of juvenile justice.

The situation is described by the Youth Justice Board as "illogical" and "damaging". I really cannot accept the argument that children of 10 can necessarily distinguish between bad behaviour and serious wrongdoing. Criminalising a young person will not automatically ensure that they think about their behaviour. In fact, criminalisation may lead to worse behaviour, rather than an improvement, as others have said.

A later age of responsibility can improve the lives of thousands of children and also prevent thousands of children ending up in the youth justice system. It should be noted that one-third of all children who enter the youth justice system reoffend within 12 months. What is the cost of all this not only in human lives but in money? I do not know. Maybe the Minister does.

The Children's Rights Alliance for England argues for an approach to youth justice in which under-18s in conflict with the law are dealt with under a system that is completely separate and distinct from that for adults: an approach which is child-centred, complies with children's rights standards and focuses on rehabilitation, education and proportionality. I agree.

As the noble Lord, Lord Dholakia, said, the UN Convention on the Rights of the Child requires that states should establish an age below which children are presumed,

"not to have the capacity to infringe the penal law".

Does the Minister have any evidence that a low age of criminal responsibility reduces crime? I very much doubt it. What the low age may do is criminalise children for minor offences which they will probably never commit again. Most children grow out of things, and bad behaviour is quite normal, as the right reverend Prelate indicated. The human brain is not fully developed in its capacity for cognitive and emotional functioning and abstract thought until young adulthood.

Our Government have to respond to the UN Committee on the Rights of the Child this year. The UN committee may well again recommend that the UK Government raise the age of criminal responsibility for children. I have not heard of any movement on the part of the Government to do so. Will the Minister say if their response is being considered and what the response will say? Perhaps he will write to me and other noble Lords to set out the Government's approach. I hope that we will get some reassurance today on this important issue.

1.38 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I join other noble Lords in congratulating the noble Lord, Lord Dholakia, on his persistence in advancing this worthy cause, to which I add my support.

First, I shall give a very brisk canter through the history of this question. Before 1933, the age of criminal responsibility was in fact seven. You were deemed to be what was called doli incapax—incapable of evil—until the age of seven; for the next seven years of your life—seven to 14—you were presumed to be doli incapax. The Children and Young Persons Act 1933 increased the age from seven to eight, therefore leaving a presumption from eight to 14. Thirty years then passed until 1963 when eight was increased to 10 and 10 to 14 became the age of presumed doli incapax. Thirty-five years then passed until the Crime and Disorder Act 1998 which abolished the presumption of not being criminally responsible and left it to the prosecution to prove criminal responsibility for that 10 to 14 group. The prosecution would seek to prove it by showing that the defendant knew his conduct was seriously wrong and therefore criminal as opposed to merely naughty.

That position, however, remained unclear for about a decade from the 1998 Act because it was thought by some that instead of the presumption having been abolished in respect of the 10 to 14 year-olds, it had merely been reversed. In this Chamber in 2009, in a case to which I was party, R v JTB—we sat in the February recess in 2009 at this end of the Chamber, at the Bar of the House—we decided, not as a matter of policy but as a matter of statutory construction of the 1998 Act, that indeed it had been abolished. Therefore, as we all now know, today if you are under 10 you cannot be convicted of a crime, but once you have reached the age of 10 then your particular age, whether you are 10, 11, 12, 13 or whatever, as a matter of strict law becomes entirely irrelevant except in so far as it would bear on the court's assessment of how reasonably you had behaved if, for example, you were running a defence of self-defence, or if some question of subjective recklessness, foresight or intention—something of that sort—were involved. But the earlier all-important question between the ages of 10 and 14 of whether you knew what you were doing was seriously wrong was no longer being asked.

Enough of the history. As the noble Lord, Lord Dholakia, has explained, internationally, even indeed within the UK, 10 is among the very youngest ages of criminal responsibility. Surely the critical question must be how as a society we deal with these youngsters to address their misconduct and wrongdoing. The word "criminality" would of course beg the very question. As I understand the position, the substantive disposal of these cases of wrongdoing—of a child in, say, the age group 10 to 12, which is that which we are focusing on today—really is substantially the same whether they are above or below the age of criminal responsibility. I repeat "the substantive disposal" because that is of course a very different question from whether one reaches that by way of the criminal justice system and through the criminal courts or by what is essentially a corrective welfare process. Obviously, whichever side of the line they are, these children will if strictly necessary be detained securely, but generally of course they will be subject to the sorts of welfare programmes that have been outlined by others today.

I shall make a very brief digression in parenthesis if I may. The GOV.UK website states that children under 10 who break the law but of course cannot be charged

with a criminal offence can be given either a local child curfew or a child safety order. Actually, as the Library helpfully pointed out to me yesterday, having done a little research on it, local child curfews, introduced in 1998, were in fact repealed by the Policing and Crime Act 2009. One notes that the website perhaps needs correction.

Today, though, that is essentially by the way. Altogether more important are child safety orders and, if necessary, care proceedings and orders under the Children Act. Surely our central focus should therefore be on refining and extending the presently available welfare programmes and corrective steps, rather than on criminalising youngsters. The real and compelling reason to raise the age of criminal responsibility, as so many others have tellingly observed today, is to delay for that much longer actually criminalising these very young people. They are still developing as individuals, developing their identities and self-esteem, and if society—represented here, of course, by the criminal justice system it operates—characterises and brands them as criminals, unfortunately, that is how they will come to identify themselves. Alas, that makes it all the more likely—statistics bear this out—that they will thereafter indeed develop into criminals, perhaps career criminals. Surely we must strive to avoid that, above all. In short, we should keep these youngsters out of the criminal courts, protecting against the early acquisition of a criminal record which then will remain with them for ever.

Is the future of this issue to be regarded as settled for all time by that tragic, ghastly and appalling case of Jamie Bulger, which of course we all still remember so vividly? For my part, I fervently hope not and I wish the Bill well.

1.45 pm

Baroness McIntosh of Hudnall (Lab): My Lords, I am very grateful for the opportunity to speak briefly in the gap, and I will be brief, pausing only to say in passing that I have listened carefully to the debate, having had no thought of speaking in it, and am entirely supportive of the Bill that the noble Lord, Lord Dholakia, has brought before the House.

I will pick up on one thing that came out of the speech made by the noble Lord, Lord McNally. He referred to his experience of having made what seemed to me, as he reported it, an entirely reasonable proposition in respect of the age of criminal responsibility, then subsequently found that the parents—or at any rate he referred to the mother—of Jamie Bulger had been contacted and asked whether she agreed that the age should be lowered such that his killers would, as I think the noble Lord reported it, "get away with it". That anecdote—I do not mean to trivialise it by calling it an anecdote but it is an anecdote in the sense that it is the noble Lord's recollection—rather points at something that I fear may be behind the kind of reaction we have had so far from government to the proposal, which has been supported all around the House and by everybody who has spoken so far in this debate, that the age of criminal responsibility should be raised. Politicians inevitably have that fear—that if they do something which appears to be liberal, they will be hounded for it and held to account in an entirely unhelpful and irresponsible way.

I do not underestimate the fear that politicians have of being held to account by, as it were, the *Daily Mail*. However, is not the job of politics not just to follow public opinion as represented by the press but to lead it? When an issue of this kind is so unanimously held up as requiring reform as it has been today, and clearly is so viewed in wider society, it is important that politicians grow a backbone. I therefore address my remarks both to the Minister when he comes to reply and to my noble friend on the Opposition Front Bench, to ask them to consider that it is their responsibility to listen to the evidence and to make decisions that are clearly in the interests of the children whose lives we wish to protect, and not to be too frightened to make decisions, which may indeed result in the kind of press coverage that people do not like to get, but are none the less the right decisions.

1.49 pm

Lord Bach (Lab): My Lords, I congratulate the noble Lord, Lord Dholakia, on bringing his Bill back before the House and on his persistence in a cause that he believes in passionately. I value my personal friendship with the noble Lord and admire him for his great knowledge and expertise in this vital area.

We very much support the Bill having a Second Reading today and that this debate—and it is a debate—should continue in a proper manner. Today, I cannot give my party's full support to the noble Lord's proposal, but I hope that he bears my words very carefully in mind. We are obviously considering policy on a whole range of issues—that happens after a general election defeat—and it applies here as it applies elsewhere. Although I cannot promise him full support on principle, I want him to watch this space closely.

A very strong and powerful case for reform has been made around the House. Sometimes in debates of this kind in the House I have been on the side of all those who have supported a particular project. It is a very comforting and enjoyable position to be in. I have also been in the position that the Minister might be in today—I am looking forward to hearing what he has to say—of being the only person to resist what seems a very powerful argument made in different ways around the House. I am not as enthusiastic or sure about my own position as practically all those who have spoken. I do not think it is cowardice for people who make laws to bear in mind that issues of this kind raise very powerful and genuine emotions and feelings, often from victims and their relatives. Frankly, it is not the duty of Parliament to ignore those feelings, saying that they can just be dismissed and that we know better. I wanted to get that off my chest. I had to say that in government and I say it in opposition, too. There is a real need for a continuous public debate on this far-from-straightforward issue.

Many who took part in the last debate will remember the contribution of the noble Lord, Lord Ramsbotham, who referred to the Bulger case. What he had to say was as powerful then as it is today. All I can say is that my party will play its full part in the discussion that follows. For me, an equally, if not more, important issue than the age of criminal responsibility is how the system deals with these children, whether they are prosecuted or not.

[LORD BACH]

I was fortunate enough to be asked by the noble Lord, Lord Carlile of Berriew, to sit on an all-party unofficial committee of both Houses which produced, I believe, a very valuable and serious report on youth offending. It asked what society should do with those who commit offences at a young age, whether or not you call them criminals. The elephant in the room during those discussions and the argument that we did not take on was the age of criminal responsibility. We said, "No, that's not relevant to what we're looking at. We're looking at what happens to those who have clearly committed wrong—and criminal wrong—in those circumstances". It seemed to us from the powerful evidence that we had that the whole mood had altered from the situation when, for example, I was a very young lawyer doing criminal cases to looking at solutions that were welfare-based rather than punishment-based. That is true whether or not someone is taken to the youth court. Just because criminal responsibility exists for 10 year-olds, that does not mean that a welfare conclusion is not reached, and today it seems that it invariably is. Whether there is then a mismatch as far as the age of responsibility is concerned, I know not. However, I see the power of the arguments that have been made today from around the House suggesting that there may not be enough logic in taking someone to a youth court at a very young age and then coming up with a welfare conclusion.

What we do to prevent children committing offences and making victims' lives hell—let us not forget that the effect on a victim of an offence committed by an 11 year-old can be every bit as painful for that victim as an offence committed by an adult—is a hugely important part of public policy. It is that issue that the noble Lord, Lord Dholakia, quite rightly keeps raising with us. It is, I think, coming to a time when a conclusion must finally be made.

The point made about international comparisons is very powerful and has to be accepted by the Government, the Opposition and Parliament as a whole.

We do not deny the important principle behind the noble Lord's Bill. We are delighted to support its Second Reading and hope that it encourages the national debate that we need on such an important and difficult subject. I do not think this is an easy subject, but it is one that the Government and the Opposition are now going to have to grasp.

1.56 pm

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I join other noble Lords in congratulating the noble Lord, Lord Dholakia, on introducing this Bill and bringing this important debate to the House. I am grateful to all noble Lords for their contributions today. The debate reflects a long-standing commitment on the part of the noble Lord, and indeed there are many noble Lords who have considerable interest and experience in these matters.

In order to avoid any unnecessary suspense, I should say that the Government have no plans to raise the age of criminal responsibility from 10 to 12. I know this will disappoint the noble Lord, Lord Dholakia—but I hope he will at least be consoled by the fact that he will not have to embrace me, as was suggested by my noble friend Lord Cormack.

Although at the moment we are not able to accept that there should be a change, we none the less share the concern of the noble Lord, as indeed do all noble Lords who spoke, about the proper way to deal with young offenders. The Government believe that children aged 10 and above are, for the most part, able to differentiate between bad behaviour and serious wrongdoing and should therefore be held accountable for their actions. Where a young person commits an offence, it is important they understand that it is a serious matter. The public must also have confidence in the youth justice system and know that offending will be dealt with effectively.

The Jamie Bulger case casts a shadow over all our considerations in this area. That case was, I am glad to say, very unusual. The noble and learned Lord, Lord Brown, referred to the principle of doli incapax. There was a rebuttable presumption in 1993, at the time of the hearing, which was then removed in 1998. The court in that case specifically considered doli incapax and decided that both boys clearly knew that what they had done was wrong, and so the presumption was rebutted.

A number of points were made during the debate about whether or not the full panoply of a trial at the Old Bailey was really appropriate for boys of this age. I entirely understand that point. We have to bear in mind that this was an issue of national concern and, of course, an absolute tragedy for those connected to Jamie Bulger. It is difficult for a country somehow to balance the fact that we are dealing with very young people with, at the same time, acknowledging the seriousness of something of that sort.

Unusually, I agree with the noble Lord, Lord Bach—in two years, it is very rare that we have agreed on anything, at least across the Dispatch Box—that the Government do have a duty to respond to what the public want. With very great respect to the noble Baroness, Lady McIntosh—who is now on the Woolsack: a somewhat different position from when she made the point—they are not simply responding to the *Daily Mail*, although the *Daily Mail* clearly has a capacity to influence policy in a number of respects.

The noble Lord, Lord Parekh, made the point that European countries do not share our view about the age of responsibility. Of course, other countries and different states in the United States vary. It is a matter for each country to make its own judgment. It is not simply a question of our following what others say.

It is important to note that serious crimes committed by children are mercifully rare and we do not want to see 10 and 11 year-olds prosecuted for minor offences. Indeed, most such offending will be diverted away from the formal criminal justice system. We have recently invested a significant amount, £3 million over two years, in restorative justice conference facilitator training for youth offending team staff—I know my noble friend Lord Cormack is an enthusiast for restorative justice—and referral order lay panel members to encourage support for and promote greater use of

restorative justice conferencing. However, it is important that, where appropriate, serious offences can be prosecuted and the public protected.

The noble Earl, Lord Listowel, who has great knowledge of and concern for the welfare of young people, particularly those who make up much of the prison population—possibly as a result of the care system or the origin of their lives, which cause them to be in the care system—made a point about the expense this caused and asked me to give the costs of the full criminal process compared to more informal disposals. That is a factor but the real costs lie in where someone is sent for punishment. The average price per year in a secure children's home is £204,000; in a secure training centre it is £163,000; and in an under-18 young offender institution it is £75,000. These are very large sums of money. Fortunately, we do not send nearly as many young people to any of those disposals as we used to. It is very much a punishment of last resort.

Returning to the question of 10 and 11 year-olds, between 2004 and 2014, the number of 10 and 11 year-olds who received a custodial sentence was 12. Maintaining the minimum age of criminal responsibility at 10 does not, however, lead to the prosecution of a large number of 10 and 11 year-olds. In 2014, only 136 10 and 11 year-olds were proceeded against at court compared to 6,860 12 to 14 year-olds, and 65 of those 10 and 11 year-olds were given community sentences. The others were found not guilty, fined or given a conditional or unconditional discharge. Many crimes committed by those aged 10 or over will not result in a prosecution at all.

We are keen to ensure that, whenever possible, children are not prosecuted as research shows that this can be counterproductive, as many noble Lords have said. The principal aim of the youth justice system is to prevent young people offending. We need to keep our focus on that.

Legislation specifically requires courts to have regard to the welfare of under 18s. Section 44 of the Children and Young Persons Act 1933 provides that every court, in dealing with a child or young person who is brought before it, shall have regard to their welfare. This is reinforced by detailed guidance contained in the sentencing guideline *Overarching Principles—Sentencing Youths*.

Having the age of criminal responsibility set at 10 years allows flexibility to deal with young offenders. If particular needs are identified in a youth offending team's assessment of a child or young person, the multiagency youth offending team, which includes representatives from health, housing, children's services and education, can refer the child on to other statutory services, such as children's services departments and child and adolescent mental health services, for further investigation and support. That support can include addressing attendance and attitude to school, referral to speech and language therapy and, where appropriate, referring parents to parenting courses. A youth caution can also be given for any offence where the young offender admits an offence and there is sufficient evidence for a realistic prospect of conviction, but it is not in the public interest to prosecute.

Youth cautions usefully aim at a proportionate and effective resolution to offending and support the principal statutory aim of the youth justice system of preventing offending by children and young people. Youth conditional cautions require young people to take responsibility for their actions, including by agreeing to conditions that require them to put things right or seek help for their behaviour. The conditions that can be attached must include one or more of the objectives of rehabilitation, reparation and punishment. The rehabilitative conditions may include attending one or more of a range of interventions available to the youth offending team for addressing offending behaviour. Reparation can include apologising, repairing or otherwise making good any damage caused, provided that this is acceptable to the victim. Punitive conditions may include attendance at a specified place to undertake an agreed activity. I should however emphasise that in any case where the police or the CPS are considering offering a youth conditional caution or a second or subsequent youth caution, the case must be referred to the local YOT to provide a check on the appropriateness of the disposal and the interventions that should go alongside. This will all be well known to the noble Lord, Lord McNally, as chair of the Youth Justice Board.

When a young person aged 10 to 17 pleads guilty to an imprisonable offence, is convicted for the first time and does not warrant an absolute discharge, conditional discharge, hospital order or a custodial sentence, the court must give a referral order. A referral order is based on restorative justice principles and may be between three and 12 months in length. The offender is referred to a youth offender panel made up of trained community volunteers and a member of the youth offending team.

There is a great deal more I could tell the House about, but it is important to stress that in these and other interventions, custody of any sort is always very much the last resort. As the noble and learned Lord, Lord Brown, emphasised, very often the destination, as it were, is one that is reached in the interests of the child whether it comes by welfare provision or via the criminal justice system. Custody is available, admittedly at great expense, for 10 and 11 year-olds only if they commit a grave or serious crime, normally one where an adult would be liable to a maximum penalty of 14 years' imprisonment or more. A child would only be placed in a secure children's home with a strong focus on addressing their and their family's needs as well as the offending behaviour.

Reference was made to the report being produced by Charlie Taylor, who I know is doing an extremely thorough job, as was confirmed by the noble Lord, Lord McNally. He is a former head teacher and an expert in child behaviour. His interim report is due to be published shortly and the final report will follow in the summer. We believe that, partly as a result of the legislation which has been introduced and other steps, this has all contributed to a significant fall in the number of under-18s being dealt with in the criminal justice system. The noble Baroness, Lady Massey, asked about the numbers. The legislative changes are not the only factor, and one clear contributory factor was doing away with the police target introduced under the last Labour Government for offences brought to justice, but which was very sensibly dropped by that Government in 2008. Since youth offending peaked in 2007, proven offences have fallen by 78% and there are

[LORD FAULKS]
64% fewer young people in custody. At the end of November only 991 under-18s were being held in the youth secure estate. However, we are not complacent. We recognise that there is scope to make the youth justice system better and to improve the experience of young people who the courts consider need to be detained. We will be better informed after Charlie Taylor reports.

In conclusion, the Government believe strongly that the current age of criminal responsibility is appropriate to hold young people to account for their actions if they commit an offence and reflects what is required of our system. We are of course most anxious to ensure public confidence in the youth justice system, and that communities know that young people's offending will be addressed to counter the negative effects on victims and the community. We must, above all, however, ensure that young people are rehabilitated and educated if we want them to cease their criminal activities.

By bringing back his Bill, the noble Lord, Lord Dholakia, focuses our attention on what we do about young offenders. He reminds us of the causes that often precede their arrival in the criminal court system. He and other noble Lords have emphasised that we must look at the problems that young offenders pose for society, as the right reverend Prelate did, in terms of our responsibility as a society, and we must react to that appropriately. In doing so, he does us and the House a great service. While we do not support the Bill, we very much support many of the expressions of concern for youths and the justice system that we have heard today. This has been a valuable debate and I congratulate the noble Lord and others on bringing these matters to our attention.

2.11 pm

Lord Dholakia: My Lords, I am grateful to the Minister for his contribution to the debate and for the observations that he has made. I am of course disappointed that the Government are not prepared to support this very simple measure. I do not wish to take any longer than necessary; many noble Lords have given up considerable time to be present here on a Friday afternoon, so I shall be very brief. I just want to make one or two points.

The noble Lord, Lord Cormack, was absolutely right when he said that we are a civilised society, but we must also accept that in any civilised society, from time to time, there will be heinous and serious crimes and it is how we deal with such crimes that determines how civilised we are. In this respect, if there is one message I would like the Minister to take to the Secretary of State, it is that this time I have the church on my side: God is speaking on my behalf as well, so I hope there will be change at some stage.

My second point was made by the noble Baroness, Lady McIntosh. I appreciate what my friend and colleague the noble Lord, Lord Bach, said: the Labour Party is reviewing this policy and it remains for its membership to influence it and say that there is substance in the arguments that have been put forward.

Let me give the Minister an example. Under the coalition Government, I persisted in bringing forward my Bill on the rehabilitation of offenders. My purpose was very simple. Welfare and rehabilitation go hand in hand on this sort of issue. I was able, with the support of the House of Lords, to discuss it on a number of occasions, but I did not get any support from either the Labour Party or, later, from the coalition. However, I was able to convince my noble friend Lord McNally to fix a meeting with the Secretary of State at that time, Ken Clarke. Together, we sat down and we were able to take forward, under the LAPSO Bill, a number of suggestions that came from my Bill. According to private research that has been carried out, the simple measure to amend the Rehabilitation of Offenders Act that I proposed now benefits more than 750,000 young people in this country. That is a tremendous strength that has come from legislation of this nature. We are not saying that people should not be dealt with or that people's perception that youngsters will get away is wrong. All we are saying is that there are better ways of dealing with them and I hope we can pursue them.

At this late hour, I thank all noble Lords for their contributions. Sometimes the Government should remember that they assume wrongly that the public are as punitive as they tend to make out. They are not. It is better not to follow newspaper headlines but to see what is right and appropriate as far as the criminal justice system is concerned.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 2.14 pm.

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