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

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House of Lords

Thursday, 11 February 2016.

11 am

Prayers—read by the Lord Bishop of Chester.

Retirement of a Member: Baroness Williams of Crosby

Announcement

11.06 am

The Lord Speaker (Baroness D'Souza): My Lords, I should like to notify the House of the retirement with effect from today of the noble Baroness, Lady Williams of Crosby, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Baroness for her much-valued service to the House.

Libraries: Local Government Finance Settlement

Question

11.06 am

Asked by ***Lord Greaves***

To ask Her Majesty's Government what assessment they have made of the impact of the Local Government Finance Settlement on the provision of libraries.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): The Government fully recognise the importance and significance of public libraries. It is a service delivered according to local priorities, but local authorities have a duty to provide a comprehensive and efficient service. It is too soon to determine the impact of the finance settlement, which was of course finalised only this week.

Lord Greaves (LD): My Lords, is the Minister aware that in Lancashire, which is where I live, the budget recommended to the county council this very afternoon involves a reduction in the number of libraries across that large county from 74 to 34—in other words, 40 libraries are to be closed? Is this acceptable, as far as the Government are concerned?

Baroness Neville-Rolfe: My Lords, decisions on library services are of course a local authority matter, and Lancashire Council has completed a consultation seeking residents' views on service design, need and use—libraries are changing all across the UK. We understand that a further period of more detailed consultation will be undertaken between May and July. I encourage residents to make the council aware of their specific library needs and ideas for the future.

Lord Cormack (Con): My Lords, does my noble friend accept that not just libraries but museums and galleries are under great pressure? Does she remember that in the financial statement in November, which was a very favourable one for those of us interested in heritage and the arts, the Chancellor talked about cutting heritage—galleries and museums—being a false economy? Can we do something to ensure that what is good for the nation is good in local government?

Baroness Neville-Rolfe: I entirely agree with my noble friend about the importance of funding for these areas. As he said, the settlement was very reasonable. Indeed, on the local government settlement, the proposal that has been adopted this week was made by Labour authorities, including Lancashire. The point is that libraries are changing—we have talked a lot about digital change, and volunteers are coming in. Lancashire is doing the right thing by consulting on change. I am sure that the final proposal will be different from what was first put forward.

Lord McFall of Alcluith (Lab): My Lords, the Prime Minister's mother has done what the Minister asked and sat down and wrote a serious letter to a local authority complaining about local authority cuts. Does not that indicate that we have reached a very serious situation indeed, and the Prime Minister and his Government need to do something about it if they are to maintain the social fabric of local communities?

Baroness Neville-Rolfe: My Lords, the settlement means that every council will have for the financial year ahead at least the resources allocated by the provisional settlement. In addition, those councils with the sharpest fall in grant money will now receive transitional funding as they move from dependence on central government grants to greater financial autonomy.

The Lord Bishop of St Albans: My Lords, the Minister has twice mentioned the changing nature of libraries. Of course, they are not just about books. Nowadays, they are a major and vital source for internet access, especially in poorer areas, where people need them to apply for jobs and where fewer households have broadband. Especially in rural areas where broadband coverage is much lower, they are a vital part of rural sustainability. The Government are rolling out broadband very quickly, and that is encouraging, but it does need time. What support are they giving to those vital online centres, many of which are closely related to libraries or in libraries, both for the sake of heritage but also for the sake of our economy?

Baroness Neville-Rolfe: The internet is absolutely vital, and obviously vital to these hubs which are bringing libraries and other services together. By May, 99% of libraries will have wi-fi for the customers to use, and 1,000 of the wi-fi connections have been provided through grants from the DCMS, for exactly the sort of reason that the right reverend Prelate articulated.

Baroness McIntosh of Pickering (Con): Will my noble friend thank all the volunteers in counties such as North Yorkshire and across rural England who are keeping local libraries open in exactly the way that the right reverend Prelate has suggested? What more can the Government do to encourage more local councils to train volunteers in this way?

Baroness Neville-Rolfe: My noble friend makes a brilliant point. There was a 20% increase in volunteers working in libraries last year. Some local authorities are embedding this into their statutory service, as in Buckinghamshire. The Government are encouraging this joint provision because it will help to take our brilliant libraries—there are 3,000 across the UK—into the future.

Lord Tope (LD): My Lords, the Minister is right that it is local government's responsibility to make the decisions on how to implement the Government's severe budget cuts to local government, but does she accept that it is central government's responsibility under the 1964 Act to ensure that there is a comprehensive and efficient library service, to which she referred, and which is the responsibility under the 1964 Act? If so, when and how are the Government going to implement that responsibility?

Baroness Neville-Rolfe: My Lords, the duty is of course on local authorities, but the noble Lord is right: the Secretary of State has a statutory power to intervene when an authority fails to provide the required service. Complaints that a local authority may be failing are considered very carefully by my department, case by case. The closure of a library branch, or branches, is not necessarily a breach of the 1964 Act—but of course we keep this under very careful scrutiny, as he knows, and publish a report on libraries every year, which is very important.

Lord Collins of Highbury (Lab): The fact is that that statutory duty requires the Minister to intervene. In fact, Ed Vaizey said that central government can and will intervene if a council is "planning dramatic cuts". Of course, many councils are finding themselves in incredibly difficult situations. How many councils have the Government actually intervened on, and to what effect? How many have they actually called in to see whether they are meeting the statutory responsibility? This is an issue that this Government cannot duck.

Baroness Neville-Rolfe: My Lords, we take our responsibilities seriously. The department is engaged with a number of libraries. I have an annexe, which I am very happy to share with the noble Lord, setting out some of the different actions we have taken in respect of particular areas, including Lancashire. Of course, we want councils to do the right thing because this is rightly a matter for local people.

Schools: Food Nutrition Standards

Question

11.15 am

Asked by ***Lord Storey***

To ask Her Majesty's Government whether they plan to legislate to ensure that food and drink provided in all types of schools follow Food Standards Agency food and nutritional guidelines.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, last year the Government introduced new statutory school food standards as a result of the school food plan. They were based on food groups to make it easier for cooks to prepare healthy, tasty dishes without needing a computer program to determine the necessary level of nutrients and are easier for parents to understand. They severely restrict foods high in fat, salt and sugar and have resulted, for instance, in children eating more vegetables.

Lord Storey (LD): No doubt the Minister will be pleased and delighted with the success of free school meals at key stage 1. Will the Government consider extending that to key stage 2, perhaps paid for by a sugar tax—which, incidentally, would help the 84% of young people in the north-west who suffer from dental decay and would save the National Health Service £30 million a year on teeth operations?

Lord Nash: I entirely agree with the noble Lord's comment about the success of universal infant free school meals, which is resulting in 1.3 million more children getting a healthy meal every day. We have funded that considerably, including for new kitchens. In secondary schools healthy food is generally available and we are doing all we can to make sure that, where it is not, it is made available.

Lord Rooker (Lab): Which guidelines are schools following? They cannot be following the Food Standards Agency nutritional guidelines because one of the first acts of the coalition in 2010 was to remove from the Food Standards Agency any and all work related to nutrition. Who is doing the guidelines? Is it now done behind closed doors in the Department of Health, where policy is not done openly as it is in the FSA?

Lord Nash: The guidance is now provided by Public Health England.

Baroness Walmsley (LD): The Government are undermining free school meals for up to key stage 1, which was a Liberal Democrat achievement in the coalition Government, by starving the programme of cash. Why are the Government going to remove the grants to small primary schools that enable them to deliver these hot meals to children? How will that help nutrition for those children for whom this is the only decent, nutritional meal they get in the whole day?

Lord Nash: My Lords, the noble Baroness is quite right that we have paid an extra £33 million to small schools to enable them to engage in this programme. It was always intended as transitional funding to help schools put their service on a sustainable footing and we believe that that has been done.

Lord Lexden (Con): My Lords, in view of the widespread desire to help our milk producers and of the nutritional benefits, has the time come to consider reintroducing compulsory milk in our schools, which helped to make so many of us healthy?

Lord Nash: My noble friend reminds me that I must have drunk at least three or four pints of milk a day in those days. I will certainly take this back for consideration.

Baroness Masham of Ilton (CB): My Lords, is the Minister aware that many children come to school without having had breakfast? What is the provision of school milk? Some children are even getting rickets.

Lord Nash: The noble Baroness raises an extremely good point. It is deeply concerning that many children seem to come to school not having eaten properly, which cannot help their concentration in school. We have funded a Magic Breakfast programme which has resulted in nearly 200 new schools in disadvantaged areas offering breakfast clubs. It is focused on areas where free school meals are 35% or more in the schools. The programme has been very successful and we are looking at it further.

Lord Watson of Invergowrie (Lab): My Lords, academies established prior to 2010 and those established from June 2014 have clauses in their funding agreements stating that their schools must comply with national food standards, but those academies established in the years in between do not have such clauses. Can the Minister explain that anomaly and inform noble Lords what he intends to do to end it?

Lord Nash: The noble Lord is absolutely right: academies opened between September 2010 and July 2014, of which there were 3,900, do not technically have to follow the school food standards. But those standards were introduced only a year ago. Over the last year, 1,400 of the schools have voluntarily signed up to them, and we are encouraging many more to do so. We believe that most academies follow a healthy eating strategy. Indeed, the School Food Plan authors said that some of the best food they found was in academies. We do not think it is necessary to legislate further.

The Lord Bishop of Chester: My Lords, if free milk is to be made available again in schools, with the Minister confirm that it would not be compulsory? For some of us it contains memories of a cruel and unusual punishment.

Lord Nash: I think I can agree that were it to be introduced, it would not be mandatory.

Lord Mawhinney (Con): My Lords, in his first response my noble friend talked about new guidelines coming in last year that reduced the amounts of fat, salt and sugar in school diets. Could he tell the House what percentage reductions occurred in each of those three categories?

Lord Nash: I cannot. I am happy to write to the noble Lord, but I believe that the amount of sugar cannot be more than 5%. I will write with details.

The Earl of Listowel (CB): My Lords, will the Minister join me in paying tribute to dinner ladies, who provide a very important relationship to children, and who, perhaps through that relationship, can encourage children to eat well and healthily?

Lord Nash: I entirely agree with the noble Earl. Dinner ladies, along with everyone who works in school kitchens and dining rooms, deserve praise. I feel very strongly that food in schools is important for the concentration level of our pupils.

Police: Body-worn Cameras

Question

11.21 am

Asked by ***Lord Paddick***

To ask Her Majesty's Government what is the current guidance provided to police forces regarding the use of body-worn cameras by police officers.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the College of Policing published interim operational guidance for the use of body-worn video in July 2014. The college is preparing evidence-based authorised professional practice, which we anticipate will be published later this year.

Lord Paddick (LD): My Lords, Jermaine Baker was shot dead by the police in Tottenham last December. The fact that the firearms officer was not wearing a body-worn camera was viewed with suspicion by some and with regret by the IPCC. Does the Minister not agree that the Home Office needs to publish as soon as possible a statement on the current position on body-worn cameras and national guidelines, in order to avoid unreasonable suspicion falling on the police?

Lord Bates: The noble Lord asks an interesting question. The incident to which he refers involved a mobile armed surveillance support team. A lot of the guidance relates to the overt use of cameras by operational police. The covert is also covered by the Regulation of Investigatory Powers Act. This is something that we need to look very carefully at, and I understand that we will be receiving reports from the IPCC in considering what further action needs to be taken, perhaps in the Policing and Crime Bill.

Lord Dholakia (LD): My Lords, is the Minister aware of the latest research, published in today's newspapers, explaining that 15% of stop and search is carried out unreasonably? This is an area of serious adversarial relationships between the police and the BME community. Is it not time that such evidence was available to individuals so that rights and liberties would not be affected?

Lord Bates: The Home Secretary has announced a reform of stop and search powers. Since those reforms were introduced, there has been a fall in stop and search; there were 540,000 instances last year, a fall of 40% in one year. At the same time, knife crime fell in the capital. We think that the use of body-worn video will only help to ensure that stop-and-search procedures are used in a fair and proportionate way.

Baroness Warsi (Con): Does my noble friend pay tribute with me to the enormous amount of work that has been done by the Home Secretary in the reform of stop and search, which I agree is disproportionately used against ethnic minorities? Does he congratulate

[Baroness Warsi]
her on suspending 13 police forces which failed to use stop and search appropriately and were seen to be using it unlawfully, and can he outline to the House what further steps the Home Secretary intends to take to ensure that this power is not abused?

Lord Bates: We are doing a number of things in this area. We have issued the new reforms, and of course, Her Majesty's Inspectorate of Constabulary keeps this under very tight review. We have also said that data must be collected on this, and transparency of data collection is a very important part of reassuring the public that these important powers are used proportionately and appropriately, irrespective of people's ethnic backgrounds.

Lord Harris of Haringey (Lab): My Lords, I refer to my interests in the register on policing. Can the Minister enlighten us? Is it not the case that where there have been trials of body-worn videos, the number of complaints against police have fallen, and that they have been much more easily resolved? If all officers who carry out stop and search had body-worn videos, would that not reduce many of the tensions? It might have a good effect on the officers concerned as regards the manner in which they carry out those stop and searches as well as on the behaviour of those whom they stop. If so, should the Government not move much more rapidly to ensure that all officers on the street, whether covert or overt, are equipped with body-worn videos?

Lord Bates: Indeed; that particular study the noble Lord refers to was on a trial carried out by the Metropolitan Police and the College of Policing, and it found exactly that: it had a regulating behaviour both on those who were videoed and those who carried the body-worn camera. Public approval was in excess of 90% across a whole range of indicators that this was a positive innovation. That is why the Met has announced that it will roll it out across all front-line services—Hampshire and others have already done so. However, at that level it is a matter for the chief constable.

Lord Rosser (Lab): I endorse the comments that have been made by my noble friend Lord Harris of Haringey. Who will have to approve the new guidelines to which the Minister referred, and will there be any parliamentary scrutiny or debate on them?

Lord Bates: They will have the standing of authorised professional practice, which comes under the College of Policing. That is published and it is open to review. However, we have changed the procedure from the Home Office guidance on body-worn cameras issued in 2007 to give the National College of Policing and chief constables greater power and authority to make those decisions, although that is public and will be open to scrutiny.

Lord Foulkes of Cumnock (Lab): My Lords, I thank the Minister for answering the questions that are posed to him, unlike some of his colleagues, who ignore the questions and read from a ministerial brief. Will he consider having a word with them?

Lord Bates: I have no idea how to answer that. All I can say is that in my experience my colleagues on the Front Bench do everything in their power to make sure that the Members of this House get the answers to questions which they deserve.

Noble Lords: Oh!

Lord Bates: I should finish it there.

Zimbabwe: Food Security

Question

11.28 am

Asked by ***Lord Oates***

To ask Her Majesty's Government what assessment they have made of the food security situation in Zimbabwe in the light of the declaration of a state of disaster by the government of Zimbabwe on 2 February.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, the UK led the international community when we began our response in September 2015. Our current £10 million humanitarian programme supports 336,000 people through cash transfers in the worst-affected areas. We are looking at options to extend the programme. We also support programmes valued at £48.8 million to build the resilience of smallholder farmers.

Lord Oates (LD): I thank the Minister for that Answer. Is she aware of growing evidence that the Zimbabwean authorities are using food aid as a political tool by denying it to opposition supporters? Can she tell the House what measures the Government are taking to ensure that UK aid, whether provided bilaterally or through multilateral agencies, is not abused in this despicable manner, and will she assure the people of Zimbabwe that whatever the misrule of their Government, Britain stands in solidarity with them?

Baroness Verma: My Lords, I am aware of the reports that the noble Lord refers to but I assure him that all the assistance given by the UK Government goes through local partners on the ground—we do not do anything through the Government—and we use cash transfers targeted at the households that are in most need. I take the noble Lord's point but we also need to look the progress being made. Like him, we stand by the Zimbabwean people.

Lord Howell of Guildford (Con): My Lords, when Zimbabwe gets a better Government, will Her Majesty's Government encourage the Commonwealth to re-embrace Zimbabwe and bring it back to the prosperity that it deserves, not leaving it all to the Chinese?

Baroness Verma: My noble friend raises an important point about what the Commonwealth can deliver. It is right and proper that when we see progress, we encourage even greater progress, and that we make sure that

countries are able to remain, or return to being part of, the Commonwealth family.

Lord Anderson of Swansea (Lab): My Lords, part of the problem is man-made; part of it is simply the dislocation caused by reorganisation in Zimbabwe. Part of the tragedy is that historically Zimbabwe has been the bread-basket of the region, so this is, to some extent, a regional problem. Given the corruption in the Zimbabwe Government and more widely, as well as the inefficiencies in administration, is the Minister wholly confident that any food aid is getting through to the people who desperately need it?

Baroness Verma: My Lords, this disaster has been added to by the El Niño effect and we need to make sure that we address that, as well as ensuring, as the noble Lord rightly points out, that the people who most need assistance receive it. I am really proud that the Government step up, show leadership and encourage their partners to work as stringently as we do, ensuring that there is real monitoring of the delivery of cash transfers and food aid on the ground. Ultimately, the focus must be on the Zimbabwean people who most need assistance.

Baroness Northover (LD): My Lords, does the Minister recognise the possible significance of climate change in what is happening in Zimbabwe at the moment? What is DfID doing to make sure that across government, particularly in the Treasury and DECC, there is a return to the high priority that the previous Government gave to combating climate change?

Baroness Verma: My Lords, the Government have continued to support a reduction in the impact of climate change, and the Chancellor, through the Treasury, has added resources to the work being done. I do not think that this Government have been backward in dealing with climate change issues. In fact, in many areas we are leading the way, and I know that the noble Baroness will be reassured by that.

Lord Hughes of Woodside (Lab): My Lords, does the noble Baroness agree that one of the problems in Zimbabwe at the moment is the very severe drought? If not unprecedented, it is certainly very severe. Is she aware that it is affecting not just Zimbabwe but surrounding countries, including South Africa, which are also suffering severely from the drought and a shortage of maize? Are the Government giving due attention to countries other than Zimbabwe?

Baroness Verma: The noble Lord is absolutely right. The drought is affecting not just Zimbabwe but its neighbours. The impact on Ethiopia is currently far greater than it is on Zimbabwe and other countries, so our focus is predominantly on those countries with the greatest need. However, it is a regional issue and we therefore need to ensure that we deal with it on a regional basis.

Lord Collins of Highbury (Lab): My Lords, I congratulate the Government on their efforts to ensure that aid gets to the people who need it and that corruption is not a barrier to that. However, the fact is that, as the noble Lord, Lord Oates, said, the Government of Zimbabwe are using food aid as a political weapon. This is a case for joined-up government. Can the noble Baroness tell us what representations the Government as a whole, through the FCO, are making to the African Union and to neighbouring countries, particularly South Africa, to ensure that such practices are halted?

Baroness Verma: My Lords, we, along with our partners, continue to press the Zimbabwe Government to ensure that any food aid is distributed according to need. It is absolutely right that we continue to press them, and our FCO colleagues do the same; we are a joined-up Government and we work collectively. However, in responding to this Question today, I want to assure noble Lords that the focus of my department is to ensure that those who need food the most get it as urgently as possible.

Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016

State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016

Motions to Approve

11.35 am

Moved by ***Baroness Altmann***

That the draft Order and Regulations laid before the House on 30 November 2015 be approved.

Relevant documents: 12th Report from the Joint Committee on Statutory Instruments. Considered in Grand Committee on Monday 8 February

Motions agreed.

Immigration and Nationality (Fees) Order 2016

Modern Slavery Act 2015 (Consequential Amendments) (No. 2) Regulations 2015

Motions to Approve

11.35 am

Moved by ***Lord Bates***

That the draft Order and Regulations laid before the House on 18 November 2015 and 11 January be approved.

Relevant documents: 11th and 15th Report from the Joint Committee on Statutory Instruments. Considered in Grand Committee on Wednesday 10 February

Motions agreed.

Armed Forces Bill

Second Reading

11.35 am

Moved by ***Earl Howe***

That the Bill be read a second time.

Relevant document: 21st Report from the Delegated Powers Committee

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I beg to move that this Bill be now read a second time. It is a pleasure to be speaking to the Armed Forces Bill. Such an opportunity normally occurs only every five years and, as always, it is a significant occasion. Its significance can be traced back to the Bill of Rights in 1688, which declared:

"That the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of Parliament, is against law".

Since then, the legislation making the provision necessary for the Army to exist as a disciplined force and, more recently, the legislation for the Royal Navy and the Royal Air Force, has required annual renewal.

Since the 1950s, an Armed Forces Act has been required every five years to continue in force the legislation enabling the Armed Forces to be recruited and maintained as disciplined bodies. Those Acts have provided that, in each of the years between five-yearly Acts, an Order in Council is required to continue in force that legislation. That legislation is currently the Armed Forces Act 2006, which provides a system of command, discipline and justice for the Armed Forces. It covers matters such as the powers of commanding officers to punish disciplinary or criminal misconduct, the powers of the court martial, and the powers of the service police. The 2006 Act confers powers and sets out procedures to enforce the duty of members of the Armed Forces to obey lawful commands. Without this Armed Forces Bill, the Armed Forces Act 2006 could not continue in force beyond the end of this year. This Bill is a constitutional requirement. Each Government, in turn, have an Armed Forces Bill, not because their manifesto says so but because control over the system under which the Armed Forces are maintained resides not with the Executive but with Parliament.

When speaking about the need to renew the legislation for the Armed Forces, it is sometimes asked what would happen if that legislation was not renewed. The 2006 Act contains almost all the provisions for the existence of a system for the Armed Forces of command, discipline and justice—these I mentioned earlier. It also provides for other important things, such as provision for their enlistment, pay and their system for the redress of complaints. The central effect of expiry of the Armed Forces Act 2006 would be to end the powers and provisions to maintain the Armed Forces as disciplined bodies. Perhaps the most important example of this effect is that the duty of members of the Armed Forces to obey lawful commands, which is under Section 12 of the 2006 Act, and the powers and procedures under which this duty is enforced, would no longer have effect. Commanding officers and the court martial would have no powers of punishment for disciplinary or criminal misconduct. The obligation of members of the Armed Forces is, essentially, a duty to obey lawful orders; they have no contracts of employment and so no duty as employees.

I mentioned earlier the assertion in the Bill of Rights 1688 that the Army—and by extension now the Royal Air Force and the Royal Navy—may not be maintained within the kingdom without the consent of Parliament. The requirement for renewal of the 2006 Act is based on that assertion. Failure to renew would call into question Parliament's consent to the maintenance of our Armed Forces. This is why renewal of the Armed Forces Act 2006 is so important—and renewal is the primary purpose of this Bill.

This is a smaller Bill than the one five years ago which became the Armed Forces Act 2011 and considerably smaller than the Armed Forces Act 2006, which made significant changes, including establishing a single system of service law for all three services. The 2006 Act continues to work well and I pay tribute to the work of the then Government for this achievement.

The 2011 Act renewed the 2006 Act and, like most five-yearly Armed Forces Acts, it made a few other changes to the service justice system and defence more broadly. Its eye-catcher, of course, was the requirement to report on the Armed Forces covenant, which has made a huge difference to the lives of serving and ex-service personnel.

This is a modest Bill. The 2006 Act, as amended by the 2011 Act and the Armed Forces (Service Complaints and Financial Assistance) Act 2015, which provides for the Service Complaints Ombudsman, needs only a few small changes. This Bill tidies a few things up and keeps our legislation current so that it remains fit for purpose.

So what does the Bill do? I have mentioned renewal of the 2006 Act. That is covered by the first clause of the Bill. It provides for continuation of the 2006 Act for a year from the date on which this Bill receives Royal Assent. It also provides for renewal thereafter by Order in Council for up to a year at a time until the end of 2021.

Currently a commanding officer may require a member of the Armed Forces, or a civilian subject to service discipline, to co-operate with a preliminary test for alcohol or drugs only on suspicion of an offence. Clause 2 extends the circumstances in which a commanding officer may require co-operation with such a test. It provides for post-accident preliminary testing without the need for suspicion that the person tested may have committed an offence. The new powers to require co-operation with tests apply only after accidents involving aircraft or ships or after other serious accidents. The results of such tests can be used in support of any type of investigation arising from the accident. The powers are derived from, but not identical to, those in the Railways and Transport Safety Act 2003 under which civilians may be required to co-operate with tests for alcohol and drugs.

Clauses 3 to 5 relate to the investigation and charging of service offences under the Armed Forces Act 2006. The clauses make a number of changes to the provisions in Part 5 of the 2006 Act which deal with the process of deciding whether a person is to be charged with a service offence under that Act. The changes simplify

the process. The commanding officer rightly deals with 90% of cases in the service justice system and these provisions will not change that. Clause 3 is about simplifying the process for charging in some of the remaining 10% of cases which the commanding officer does not have power to hear, including offences such as perverting the course of justice and sexual assault. Currently, some cases which cannot be dealt with by the commanding officer must none the less be referred by the investigating service police to the commanding officer, and then from the commanding officer to the Director of Service Prosecutions for a decision on the charge and prosecution. Clause 3 provides instead for the service police to refer straight to the DSP any case where there is sufficient evidence to charge an offence with which the commanding officer cannot deal. It also deals with charging in linked cases—for example, separate offences that occurred during the same incident.

Clause 4 makes a minor, technical clarification to the procedure for the referral of linked cases from the commanding officer to the DSP. Clause 5 provides for the Director of Service Prosecutions to bring charges himself. Currently, where the director decides that a charge should be brought in a case, he cannot bring the charge directly but must direct the suspect's commanding officer to bring the charge, who must then do so.

Clause 6 increases the range of sentencing options available to the court martial. Both civilian courts and the court martial can currently suspend sentences of imprisonment for up to 24 months. However, the service courts can suspend sentences of service detention for only 12 months. This clause gives the court martial the ability to suspend sentences of service detention for up to 24 months. Sentences of service detention are served at the Military Corrective Training Centre in Colchester. This would provide the court martial with another option when sentencing. In appropriate circumstances, suspended sentences can allow continued service alongside rehabilitation activities.

Clauses 7 to 12 deal with offenders assisting investigations. Clauses 7 and 8 allow the Director of Service Prosecutions, in return for assistance provided by a person to an investigation or prosecution, to enter into an agreement with the person, giving them immunity from prosecution or an undertaking that information will not be used against them in proceedings. Clauses 9 to 12 make provision with respect to reduced sentences for those who provide such assistance.

In the civilian criminal justice system, prosecutors such as the Director of Public Prosecutions have statutory powers to offer immunity from prosecution and restrictions on the use of evidence in return for assistance relating to offences. The Director of Service Prosecutions has no such power, yet in some cases the evidence of a witness or defendant could be crucial to a case, but fears about self-incrimination prevent that person coming forward. Clauses 7 to 12 would change that. The provisions closely follow those in the Serious Organised Crime and Police Act 2005 that apply to civilian prosecutors and courts.

Clause 13 and the Schedule to the Bill provide for the Armed Forces Act 2006 as it currently has effect in the UK to come into force in the Isle of Man and the British Overseas Territories, except Gibraltar. We are consulting the Government of Gibraltar about extending the 2006 Act to that territory. I should make it clear that, as a matter of UK law, the 2006 Act applies to UK service personnel wherever in the world they serve. It will continue to do so. The Isle of Man and the British Overseas Territories other than Gibraltar are content for the 2006 Act to form part of the law of those jurisdictions. Discussions are ongoing with Gibraltar about whether it would be content for the 2006 Act to form part of its law. If it considers that that would be best, we propose to introduce an amendment as soon as possible to that effect.

Clause 14 reflects the Government's commitment to the fair and equal treatment of LGBT Armed Forces personnel. It repeals two provisions regarding homosexuality in the Armed Forces, the existence of which is inconsistent with the department's current policies and the Government's equality and discrimination policies more generally. The clause amends Sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994. Currently, these sections contain wording that provides that those sections do not prevent a homosexual act from being a ground for discharging a member of the Armed Forces. The clause removes that wording. When Sections 146 and 147 were enacted, it was government policy that homosexuality was incompatible with service in the Armed Forces. Accordingly, members of the Armed Forces who engaged in homosexual activity were administratively discharged from the Armed Forces. That policy was abandoned in January 2000. Since then, these provisions have had no practical effect. They are, therefore, redundant.

The Secretary of State may make regulations under Section 25 of the Social Security Act 1989 to give war pensions committees functions relating to war pensions and war pensioners, such as considering complaints made by pension recipients. The committees' existing functions relate primarily to the war pensions scheme, which provides compensation for injury or death caused by service in the Armed Forces before 6 April 2005. Clause 15 amends Section 25, allowing committees to also be given functions relating to the scheme which provides compensation for injury or death caused by service in the Armed Forces on or after 6 April 2005. These days the war pensions committees are commonly known as veterans advisory and pensions committees.

Clauses 16 and 17 give Ministry of Defence firefighters statutory powers to act in an emergency to protect life or property. These are the same powers as those given to employees of local fire and rescue authorities under Section 44 of the Fire and Rescue Services Act 2004 and equivalent legislation in Scotland and Northern Ireland. Those powers include powers to enter premises by force if necessary, to close roads and to regulate traffic. Clause 16 also makes it an offence to obstruct an MoD firefighter who is acting in an emergency. Clause 17 gives MoD firefighters the same exemptions from provisions in certain Acts, such as rules on drivers' hours, as employees of fire and rescue authorities.

The Defence Fire Risk Management organisation provides fire and rescue operational services and support across defence at airfields, specified domestic establishments and deployed locations in the UK and overseas, but it falls outside the ambit of the primary

[Earl Howe]
legislation that governs local fire and rescue authorities in the UK. Clauses 16 and 17 make simple, sensible changes to give MoD firefighters the same protections in law as their civilian counterparts. The Defence Fire Risk Management Organisation has more than 2,000 personnel operating more than 70 fire stations. Its firefighters fall into one of three categories: defence fire and rescue service civilian firefighters employed by the MoD; RAF and Royal Navy service personnel; and firefighters employed by a defence contractor. These firefighters currently have no specific statutory powers to act in an emergency to prevent or deal with fires, to protect life or to preserve property. The changes made by Clauses 16 and 17 will enable defence firefighters to carry out their duties in the same way as firefighters employed by civilian fire and rescue authorities.

That is what the Bill is about. As I said earlier, it is modest but none the less important. The number of expert speakers we look forward to hearing from during this debate is a reflection of that, as is the prospect of no fewer than three maiden speeches, from my noble friends Lady Pidding and Lord Shinkwin and the noble Lord, Lord Murphy of Torfaen. I pay tribute to our Armed Forces. We ask a lot of our men and women, whether serving in far-flung places or supporting UK flood relief operations. We are immensely proud of their work, their courage and their dedication and we take pride in the first-class reputation of our Armed Forces. Their success is underpinned by a fair and modern service justice system. I believe that we share a common purpose to keep it that way.

I have mentioned that we may bring forward a government amendment in relation to Gibraltar. If we do—if Gibraltar considers it best that we provide for the 2006 Act and the Bill to extend there—I will ensure that noble Lords are given this in good time. I look forward to the detailed scrutiny we shall undoubtedly give the Bill in Committee, and commend it to the House.

11.54 am

Lord West of Spithead (Lab): My Lords, military justice has come a very long way since the days—as happened to me many years ago at my captain's table, waiting to dispense justice—when I heard my regulating petty officer order, "Wheel the guilty bastard in".

In general, the Bill is uncontentious. Indeed, I think it resolves a number of anomalies. I know that my noble friend Lord Touhig has a number of areas which he might like to see expanded or tightened up and he will talk to those later. There are, however, two issues which I wish to raise and I have given the noble Earl prior notice of my concerns. I thank him for the briefing he gave to all of us on the Bill beforehand.

The first regards the issue of mesothelioma. After considerable pressure from the noble Lord, Lord Alton, and my Labour colleagues, the Government have taken action and announced that veterans exposed to asbestos during their military service and diagnosed with mesothelioma on or after 16 December 2015 will receive compensation. That includes veterans exposed before 1987, ensuring equality with that compensation available to all civilians. The Government are to be congratulated on that. One has to remember that none of us knew that it was dangerous. I can remember having snowball fights with asbestos in the boiler room of HMS "Albion" because we did not know that it was so dangerous.

But the announcement ignores a small number of sufferers who do not meet the qualifying dates. I know that the noble Earl—the Minister—is unhappy with what seems to go against the spirit of the Armed Forces covenant. Action needs to be taken quickly because people are dying as we speak. An article in this morning's *Independent* puts it very succinctly: mesothelioma patients survive typically for one year following their diagnosis, so about 25% of those diagnosed will die every three months.

The Government need to act with alacrity and contact the afflicted veterans and their widows and families. Compensation should be available following the precedent of the mineworkers' scheme for chest diseases. More than three months ago, the Prime Minister at PMQs undertook to look at this matter. I ask the Minister: can we now resolve this issue once and for all? I believe that it is the right thing to do.

My next concern stems from the Supreme Court's decision of 2013 in the case of Smith and others v the Ministry of Defence, in which, by a majority of four to three, the court concluded that a claim should go to trial so that a judge could decide on the evidence whether it was covered by the doctrine of combat immunity or could give rise to a claim based on the Human Rights Act. The judgment has, not surprisingly, raised considerable concern in the military and the noble and gallant Lord, Lord Craig of Radley, asked in a Question on 25 June 2013 for reassurance about the relationship between human rights legislation and military law in war. The noble Lord, Lord Astor of Hever—the government Minister at the time—did not give the cast-iron reassurance that one would have expected.

The noble Lord, Lord Faulks, in the Armed Forces legal challenge Motion of 7 November 2013, said that he was driven to agree with the noble and learned Lord, Lord Mance, who gave a minority judgment in Smith. The noble and learned Lord, Lord Mance, said that the approach taken by the majority,

"will in my view make extensive litigation almost inevitable after, as well as quite possibly during and even before, any active service operations undertaken by the British Army. It is likely to lead to the judicialisation of war, in sharp contrast with Stark J's dictum in Shaw Savill (1940) that 'war cannot be controlled or conducted by judicial tribunals'".

The noble and learned Lord, Lord Mance, added:

"To offer as a panacea ... that courts should be very cautious about accepting such claims is to acknowledge the problem, but to offer no real solution".

The noble Lord, Lord Faulks, stated:

"I have real difficulty in understanding what Article 2, the 'Right to Life', really means in the context of armed conflict. There is something strangely poignant when the mother of a soldier says to the press, after the decision in Smith, 'Now all those soldiers have the right to life'. Perhaps that is the effect on the public's mind of the decision".—[*Official Report*, 7/11/13; cols. 393-94.]

I have to say that I share the views of both the noble and learned Lord and the noble Lord.

Thirty-four years ago this May, my ship was bombed and sunk during the amphibious landings in the Falkland Islands. I knew that my anti-aircraft armament was insufficient to counter air attacks so close against land. But it is the duty of military men to fight the war they are in with the equipment they have. The Smith judgment could see me taken to court for taking the correct military decision. This cannot be right.

It is total nonsense that one can use human rights legislation to drag military leaders through the courts for decisions made in war. In combat, men kill and are killed on a regular basis fighting for their country. Civilian norms cannot possibly apply. Yet there is a growing tendency, particularly in the European courts, to make judgments as if events on the battlefield were taking place in the halcyon days of peace.

It is not just the pernicious effect on the individual. In 2013, the Policy Exchange think tank produced a study entitled *The Fog of Law*, which showed clearly that such legal mission creep could paralyse the effectiveness of the military. In simple terms, our military will cease being able to win wars for us.

If health and safety at work were always to prevail, our military would be unable to fight. In combat, a sailor, soldier or airman might be ordered to take action that could result in virtually certain death. On the battlefield the right to life is not certain. I remain concerned about a possible wave of litigation and the impact it could have on our people and our military effectiveness. Parliament should intervene, and I ask the Minister: what can be done to stop the pernicious effect of this judgment and the pressures from the European Court of Human Rights?

Perhaps something can be done in this Bill. The noble and learned Lord, Lord Mackay of Clashfern, intends to put down an amendment. He asked me to mention this. He will propose a clause that says something along the lines of, "The Human Rights Act 1998 will apply to a conflict operation in time of war only to the extent that is consistent with the provisions of the Geneva Convention". The amendment is with the Public Bills Office at the moment. I would support it. If it is not in the Bill, I ask the Minister where such legislation can be enacted. How do the Government intend to get us out of this mess?

12.02 pm

Lord Thomas of Gresford (LD): My Lords, I thank the Minister for his introduction to the Bill. I do not propose to follow the contribution of the noble Lord, Lord West of Spithead, very interesting though it was. I am sure we will have an opportunity to debate those issues at a later stage.

I wish to argue that the court-martial system, which is integral to service discipline, does not enjoy public confidence. There have been many reforms and in my view, speaking as a practitioner and as chairman of the Association of Military Court Advocates, this lack of confidence is unmerited and unjustified. But it exists and there are cases coming down the track which will test the system in the extreme.

Back in 1994, I was engaged in the defence of a lance-corporal, serving in Germany, on a murder charge. He was acquitted and returned to his regiment. George Galloway, then a Labour Member of Parliament for Glasgow, Hillhead, used parliamentary privilege to assert that a murderer had walked free and was still at large, serving in Her Majesty's Forces. He said:

> "The military police, who were soldiers with armbands, and the military prosecutor, who was a soldier in a wig, bungled the case".—[*Official Report*, Commons, 28/3/95; col. 812]

When I appeared in a later court martial in Germany for a 17 year-old civilian son of a soldier, in another murder case, the staff sergeant who was the father of the victim in the previous case picketed the hearing with placards against the court-martial system. I have never heard of a Member of Parliament, nor even the press or public, attack a verdict of acquittal by a jury in a Crown Court in such terms. This did not even happen, for example, in the case I prosecuted in Cardiff during the miners' strike, when two miners were convicted of the murder of a taxi driver using a concrete block.

The conviction of the 17 year-old went to the House of Lords Judicial Committee, where it was upheld. The noble and learned Lord, Lord Hope, held that the procedure whereby a boy of 17 whose father had left the Army and who was brought from England to stand trial in Germany by court martial could not be considered an abuse of process because that was the process that Parliament had ordered. In 2007, some 10 years after that trial, the European Court of Human Rights had severe doubts on that score, but in any event, following the case of Findlay v United Kingdom, held that the 17 year-old's conviction had been in violation of Article 6—the right to a fair trial—by reason of the way that the court martial was constituted.

Parliament had already responded to the preliminary decision in Findlay in the Armed Forces Act 1996. The role of the convening officer was abolished and decisions to prosecute were removed from the chain of command and given to the independent service prosecuting authorities. This was in recognition of the need to remove the impression, however mistaken, that the chain of command could have undue influence over court-martial proceedings. The Armed Forces Discipline Act 2000, passed after the Human Rights Act had come into force, made further changes, taking away the CO's power to determine pre-trial custody and granting appeals against summary convictions.

My own contribution to reform at this stage—and this will appeal to the noble Lord, Lord West—was to table a Parliamentary Question as to why a defendant in a naval court martial was still being marched in at the point of a cutlass. The practice was abolished between my laying of the Question and the delivery of the Answer by the noble Lord, Lord Bach. In the time I have been involved in courts martial, the swords have gone, the stripping of the defendant of his belt and cap has gone, and the marching and the saluting have all disappeared. Importantly, the panel sits separately from the judge advocate. But public disquiet continued.

Noble Lords of an earlier generation will recall how Lord Campbell of Alloway campaigned on behalf of Trooper Williams, where the CO had dismissed charges of murder. But the Army Prosecuting Authority disagreed and passed the papers to the Attorney-General, who referred it to the CPS. The proceedings that followed at the Old Bailey were ultimately discontinued.

[Lord Thomas of Gresford]

In 2005, charges of murder against seven members of the Paras were dismissed by the Judge Advocate-General, Judge Blackett, at a court martial at Colchester. There was disquiet that they had been charged at all. My own personal recollection was that I made a very unusual application in that case for an adjournment in order to get married in the Crypt of Parliament—something that Judge Blackett always brings up with me.

However, major reforms happened in 2006. Courts martial ceased to be convened ad hoc and became a permanent standing court, with court centres at Colchester, Bulford and Catterick. Other reforms included the merger of the separate service prosecution authorities and the creation of the office of the Director of Service Prosecutions. The service was fortunate in both its first director, Bruce Houlder QC, an Old Bailey civilian practitioner, and its second and current director, Andrew Cayley CMG QC, who used to be a prosecutor at the International Criminal Court.

In 2006, Judge Blackett gave evidence to the Select Committee in the Commons, advising it that the court-martial system should be brought into line with the Crown Court. Consequently, during the passage of that Armed Forces Bill, I moved amendments in this House to make provision in the court-martial rules that the court-martial panel should be drawn from all ranks and every branch of the armed services. They were to be selected by ballot from a pool constituted of people who were eligible to sit. The qualification was simply to be that the individual chosen was a serving member of the Armed Forces, subject to service law. It was not an outrageous suggestion, because that was the system adopted in the United States in 1952.

I also moved amendments that a person should not be charged with an offence against this section committed in the United Kingdom if the corresponding offence under the law of England and Wales was treason, murder, manslaughter or rape. Further, I proposed that the verdict of guilty should not be entered by a simple majority but by a majority of five out of seven, if seven were sitting, or four out of five, if five were sitting. None of these amendments was accepted and the consequence was that the opportunity was lost to approximate trials by court martial to the Crown Court system.

The Act did not come into effect until 2009 and, meanwhile, in September 2006, the court martial took place of seven members of the Queen's Lancashire Regiment at Bulford before a High Court judge, Mr Justice McKinnon. The charges against them failed. Four of the other ranks and the colonel were discharged by the judge because,

"there is no evidence against them as a result of a more or less obvious closing of ranks".

He said that there was a conspiracy of silence. Two other officers, one of whom I represented, were acquitted of negligently performing a duty by the panel after a full trial. However, this verdict was not accepted and your Lordships will recall that the Baha Mousa trial, or inquiry, was set up, which lasted three years and cost £13 million.

More recently, we have the concerns expressed over Deepcut. There was some evidence yesterday on the second inquest—which your Lordships will recall and which is published in today's papers—that the Deepcut barracks were,

"heavily sexualised, misogynistic and toxic".

Then there is the Anne-Marie Ellement case—two people have been charged so I will say no more about that. However, in the case of Sergeant Blackman, there has been great outside criticism and comment. The sentence was described as "ludicrous", by a prince of the blood royal, no doubt defeating a convention that has lasted since the days of Charles I. In this House, my noble friend Lord Burnett, who will no doubt speak more about it, described it on 15 September as,

"a terrible miscarriage of justice".—[*Official Report*, 15/9/15; col. GC 228]

Have your Lordships, if you think about it, ever heard of the verdict of a British jury in the ordinary Crown Court being described in such terms in this House? There is trouble brewing.

In January 2014 and September 2015, Public Interest Lawyers, headed by Phil Shiner, lodged complaints with the International Criminal Court. The extent of them, as described by the International Criminal Court, was that,

"UK Services personnel systematically abused hundreds of detainees in different UK-controlled facilities across the territory of Iraq over the whole period of their deployment from 2003 through 2008".

It includes 200 cases of unlawful killing. The prosecutor of the ICC set up a preliminary examination and reported last November that,

"The Office is currently engaged in processing and analysing the vast amount of material provided".

Your Lordships should appreciate that it would be a terrible insult and slight upon our system if the International Criminal Court were to declare that this country is incapable of dealing with war crimes within our own system.

However, the Iraq Historic Allegations Team, set up by the Ministry of Defence but independent of it, has itself investigated nearly 1,400 complaints of ill-treatment, including torture and murder. I am reliably informed that more than 30 of those allegations have already gone to the Director of Service Prosecutions and that a large number of cases will, at the moment, be tried by court martial. If they are dealt with by court martial, we can expect—and await—unrestrained comment and criticism of the system in the press and the media, leading to public alarm and further undermining of the system.

I am concerned about the welfare of those who serve this country in the Armed Forces and whom we put in the line of fire, and about the reputation of the British Armed Forces. Consequently, I propose to return during consideration of the Bill to the amendments that I put forward in 2006 and, if they are not acceptable, to propose that serious offences of murder, manslaughter and rape, and serious sexual offences, should be tried in our ordinary Crown Courts and no longer by court martial—the system that is under attack. I repeat that, as a practitioner, I have confidence in that system and in the judges and advocates who appear in it, but I fear that unless something drastic is done, its reputation will be destroyed.

12.16 pm

Lord Craig of Radley (CB): My Lords, the main purpose of the Bill has been fully outlined by the Minister. It is well understood that the Bill is an essential prerequisite for maintaining Armed Forces at the disposal of the Government of the day. However, this Bill follows the practice of the 2011 renewal of the new-look 2006 Act, and indeed of the quinquennial renewals of the single service Acts of the 1950s, before their displacement by the tri-service 2006 Act.

The Bill is, in effect, a Marshalled List of amendments to the 2006 Act and, on occasion, amendments to the amendments introduced by the 2011 Act. I complained five years ago, as we dealt with the 2011 Bill, that this did not make it that easy to understand and follow what the House was being invited to enact. Whether this endless approach of "marshalled amendments" to the 2006 Act is to proceed unchanged every five years into the distant future needs to be considered. For those steeped in legislative minutiae—the Bill team and the parliamentary counsel—it no doubt seems tidy and straightforward. But for the rest of us, whether versed in the ways of the military or not, I do not consider it to be that satisfactory.

As the noble Earl, Lord Howe, stressed, the Bill is of profound constitutional importance. It has to be right. When considering defence requirements we think of new equipment coming into service five, 10 and 15 years hence, and of the size and shape of the Armed Forces being varied over decades, but none of that is viable or in any way realistic without the timely passage of the Bill before us. If it were not to be passed, the Government would not have disciplined Armed Forces at their disposal to man all that equipment or to fight their wars. I hope that the Lib Dem Benches, with their recent predilection for unmandated and vainglorious challenges to the convention norms of your Lordships' House, will not be tempted to try to hold the Government to account by refusing to pass the Bill after scrutiny.

I, for one, would prefer the Government to have tabled a Bill that incorporates their amendments to the earlier legislation—in other words, to produce the Bill in a format that can be read without repeated cross-referencing. Would it be that much more difficult for the Minister to guide the House through this rewrite of the 2006 Act, drawing attention to the changes and improvements to the earlier Acts that it incorporates? Is the approach merely a matter of convention? Perhaps the Minister can advise the House.

I have no particular points to raise on the list of marshalled amendments contained in the Bill, but there is for me a glaring omission in what lies before the House, to which the noble Lord, Lord West, has just drawn its attention. It totally lacks any approach to the difficulties that have arisen from the application of human rights legislation to activities during or close to combat, or to the increasingly vexatious problem of prolonged and historic litigation affecting or potentially affecting the operations of the Armed Forces and the lives of veterans long discharged.

Noble Lords will recall the growing media coverage of the latter issue in recent weeks. Defence Ministers have been reported as expressing anger and outrage. Indeed the Prime Minister himself has expressed his concerns, and presumably told the MoD to get a grip. In June and November 2013, when debating issues arising from the Supreme Court judgment on two particular cases which the noble Lord, Lord West, has just mentioned, I urged the Government then to be more proactive, although I accepted that precise steps would need to follow resolution of the particular cases before the courts.

Indeed, in a debate that November led by the noble Lord, Lord Faulks, I encouraged the Government to consider legislation to rule out from legal challenge under human rights legislation the behaviour of service personnel in the heat of battle or on dangerous patrols and similar operational activities. The European Convention on Human Rights was surely a safeguard for peacetime behaviour. I said that there was every likelihood that the situation would deteriorate further and that it would be a failure of moral courage and leadership not to tackle it. I also said that I hoped that the Armed Forces Bill due in 2016 could be a vehicle for legislating to ease these problems.

Nearly three years after the Supreme Court finding, and a protracted period for active consideration and staffing, there is nothing about this in the Bill—no sign of a proactive response. I remind the Minister what his party's manifesto said, which he repeated in the Queen's Speech debate only last May:

> "We will ensure our Armed Forces overseas are not subject to persistent human rights claims that undermine their ability to do their job".

The possibility of using a new Bill of Rights has been floated, but that Bill has yet to see the light of day. The Government should be ashamed of their lack of real progress.

What do I propose? There are two issues to consider. The first is the application of human rights law in conflict situations. I hope that the Minister will be able to report that, even at this late stage, the Government are preparing to consider adding to the Bill before us and honouring his party's manifesto commitment. Surely that is a reasonable request.

The second issue, which would seem to cry out for a proactive government response, is the industrial-scale growth in cases alleging maltreatment, or worse, of enemy combatants by our own forces. Numerous recent cases going back not just years but decades are costing large sums and causing great stress and anxiety for those involved. Yet after prolonged and tendentious investigations, few or no plausible cases for full trial, let alone conviction, have yet been found. Surely the opportunity presented by having an Armed Forces Bill before Parliament must be used to introduce legal safeguards. The first step should be to introduce a statutory time limit for new cases against personnel on live operations.

It seems objectionable and unrealistic to attempt to bring something to trial, let alone have a hearing, when it depends on recall by witnesses and the accused of traumatic events of many years or even decades ago. I speak from personal experience. In 1991, the IRA launched a missile from a van parked in the road outside Banqueting House. The War Cabinet, of which I was a member, was in session in Downing Street.

[Lord Craig of Radley]
Fortunately, the missile blew up in the garden outside, severely rattling the windows and, to varying degrees, those of us sitting around the Cabinet table. But vivid as such an event was at the time, 25 years later I doubt whether the recollections of those of us who were there would produce a common, accurate description of what occurred in that room on that day.

Is it not time to introduce a statute of limitation specific to military activity before these no-win no-fee charlatan lawyers start roaming the streets of Buenos Aires in search of some so-called victims of abuse by the Armed Forces on the Falkland Islands in 1982, or in Iraq and Kuwait in 1991? I recognise this to be a big ask, since there is no general statutory limit in the UK for criminal cases. Nevertheless, the Armed Forces can be and are treated differently in law. I hope that one or more of my noble and learned colleagues might assist me in drafting a probing amendment or two to allow the Government to set out their thinking on these vexed topics.

12.26 pm

The Lord Bishop of Portsmouth: My Lords, by happy coincidence, this debate takes place almost exactly on the anniversary of the signing of the Armed Forces corporate covenant by the right reverend Primates the Archbishops of Canterbury and York. There has been excellent work with the Minister in developing the impact of that covenant, and it is a pleasure to mark that anniversary today and anticipate the maiden speeches this afternoon.

This Bill properly clarifies the obligations and responsibilities of those serving in the Armed Forces and strengthens provision for maintaining good order and handling any instances of indiscipline with proper regard for justice. These provisions and the contributions that we have heard already remind us, although they are often technical, that individuals in our Armed Forces serve, and occasionally offend, in situations of stress and danger. The House will not be surprised therefore if I briefly draw attention to the importance—and I hope the Minister in summing up can confirm this—that we should all give to the areas of pastoral and family support for those who volunteer to serve us and the nation in this way in the Armed Forces, even when their behaviour falls below highest standards.

My concern relates to the ministry of chaplains in the Army, Air Force and Navy. Many of you will be aware of the pressures on these pastoral and support ministries, which are valued by service men and women because they are offered, and offered to all, regardless of faith or none, outside the chain of command, including and when under charge. This is a high-value/low-cost provision, and it is not always clear, to me at least, that the Treasury as well as the Ministry of Defence understands that. Rumours about a likely fall in chaplaincy numbers, about a new pay scale, which I imagine means a lower pay scale, and the potential de-enriching of the senior post holders, are worrying for the range and effectiveness of the ministry offered to all service men and women, a ministry that is so highly valued. What is rumoured and feared has implications; reduced numbers mean thinner provision; reduced pay risks problems of recruitment and retention; and reduced seniority suggests lower importance for chaplaincy.

Discipline is better enhanced and implemented when there is high morale and access to excellent pastoral support. I trust that in supporting this Bill we can be clear that the wider circumstances, the morale and the support of those who serve us is important alongside the proper legal process.

12.30 pm

Lord Lyell (Con): My Lords, I thank the Minister for his very clear exposition of the Bill. I have spent a mere 43 years as a member of your Lordships' defence group, so I have had the good luck to have fairly close contact with many members of the Armed Forces in many areas and have been able to see many of the problems that have arisen and are dealt with in the Bill.

I am delighted that my noble friend Lord Attlee is right in front of me because a number of years ago we were the only members of your Lordships' defence group who went to Kosovo. We were introduced to the commander of the entire Finnish detachment. Colonel Lahdenperä saluted me and said, "My Lords, we are but conscripts". He was lucky. I retaliated with an instant volley: "You're speaking to one". That stopped him a bit. Fifty-eight years ago, I was a young officer. Part of my training for the first month of my career was to attend commanding officer's orders with the father of my noble friend Lord Cathcart—indeed, the late Lord Cathcart was my commanding officer—to see exactly what took place. I seem to recall that the offences were always charged under the Army Act 1955. Things have moved on considerably.

We have had a clear exposition—and we will have more from your Lordships and the Minister—from the noble Lord, Lord Thomas of Gresford, who set out exactly the kind of work he does. We are very grateful to him, and I suspect many members of the Armed Forces are also very pleased that he can carry out that kind of duty.

I took a look at the Bill and at the speakers list. There are a number—a handful or more—of what I call noble and gallant Lords, really senior officers with enormous experience. I had a mere 19 months of experience as a young soldier. It should have been 24 months, but I broke my leg, so my time was shortened by five months. As a simple trained accountant, I looked at the Bill. Clause 2 deals with the commanding officer's power to require alcohol and drugs tests. From my military career and everything that I have seen, I can understand that alcohol is present. I am sure the British Army and all the services are more than able to cope with any minor problems in discipline or other behaviour that might arise from alcohol. Drugs are referred to in the Bill, and that can mean all kinds of substances. The effects of those substances might carry on and delay. Even so, I feel entirely confident—indeed, the Minister will be confident—that these problems can and will be resolved in the Bill and elsewhere.

I had a look at what I call the geography. In the Bill, your Lordships will find many references to the Isle of Man and the British Overseas Territories. I am a

curious soul, and I wondered what the requirement is for this Bill to have a particular application in the Isle of Man. The Minister gave a good description of the overseas territories, but what really touched my curiosity was the considerable amount of space and detail that has been allocated to Gibraltar. I received notes on what took place in another place. The Minister there said that if an amendment was required dealing with Gibraltar, it would be dealt with in another place—which is here. Your Lordships will have heard my noble friend say that some amendment might be required. Could he possibly write to me, without boring your Lordships today, on the particular problems associated with discipline in Gibraltar? He spelled out fairly clearly that the Bill will apply to British servicemen wherever they serve anywhere on the globe, but I am curious why Gibraltar and other overseas territories, let alone the Isle of Man, are singled out for detail in the Bill.

The other aspect of the Bill that tickled my curiosity was the two clauses dealing with Ministry of Defence firefighters in an emergency. I love to point out that I am a mere country dweller in the glens of Angus in Scotland. At least three times in the past 10 years we have had serious accidents, twice with aircraft crashing, once, alas, with fatal results although another time, luckily, it was not too serious, and there have been other cases in my neck of the woods. If a plane happened to crash on one of the glen roads in Angus or in the hills behind my house, what would happen? I presume that the first people on the scene would be civil firefighters. The police would also be there so that members of the public would find someone in a chequered cap and know that he or she would be able to direct events. There might even be civil fireman from the Tayside fire brigade; I would not know.

However, if Ministry of Defence firefighters attended, it mildly worries me how a member of the public such as myself would know who they were or what powers they had. If they had precisely the same powers that any other police officer or firefighter would have, then I am totally content. Still, I am perhaps curious rather than worried, and maybe my noble friend will be able to reassure me in writing just what are the additional powers referred to in these two clauses, above what is already in law in Scotland or elsewhere in the United Kingdom. If he can assure me of that, I shall be more than content to support the Bill and, above all, to listen to the wise and excellent words of the noble and gallant Lords who follow me, let alone the three maiden speakers taking part today. I salute all of them.

12.37 pm

Baroness Taylor of Bolton (Lab): My Lords, I support the Bill and will ask the Minister to consider one issue that he has not touched upon today. Before that, I will say how much I look forward to the three maiden speeches that we are to hear, particularly that of my noble friend Lord Murphy of Torfaen, whom I know well from our work in another place. He has a distinguished career. He was chair of the Intelligence and Security Committee, as I was, but he also served as Secretary of State for Northern Ireland. I think that we are all aware of his thoughtful and measured comments on most issues, and I am sure that we will hear them today. He has another side that I should perhaps mention. Anybody who has ever been abroad with him will know that he is an absolute shopaholic, and maybe we will see that side come out on some occasions as well.

As I say, I welcome the Bill, as I know will my noble friend on the Front Bench. I am sure that he will continue his style of yesterday and support the Government when they get things right as well as nudging them along in other places. Like my noble friend, I was a Minister in the MoD. Unlike him, I did not have responsibility for veteran affairs or indeed service personnel, although I was always aware of the work that he and fellow Ministers did, and the significant progress that they made, in terms of the care and welfare of our armed service men and women. Significant progress was made in terms of pay, in investing heavily in accommodation, which had been very much neglected for many years, and in helping injured veterans. Improved awareness of these issues during that time laid the foundation for the Armed Forces covenant.

Progress was also made in the 2006 Act, which the Minister referred to, in terms of trying to get clarification on a whole number of issues. I take the point that my noble friend Lord West and indeed the noble and gallant Lord, Lord Craig, made, that there may still be some difficult areas, particularly for personnel who serve on active duty. We need to consider exactly how we can make progress and get the right balance in that area.

As the Minister said, many provisions in the Bill are not controversial, although obviously they will have to be looked at in further detail in Committee, because that is its purpose, and we have to make sure that the detail matches the overall objectives of the Bill.

I will raise one issue that was raised briefly in another place, and on which the Government could make progress without too much difficulty. Obviously, many changes in recent years have affected service personnel. We have seen a reduction in numbers and an increased reliance on reservists and the extra roles that they are supposed to undertake on the front line. But we have also seen some welcome progress, such as the fact that women may now occupy many roles on active service, which is very important and useful and which has been of benefit to our armed services and to the country as a whole. There is still some way to go but progress has been made.

I want to raise with the Minister the report that was carried out by the MoD last year about sexual harassment in the armed services. Obviously, sexual harassment is not just about women, but the report showed that it is a particular problem for women in the armed services, and it came up with some rather worrying statistics. The report recorded that 39% of servicewomen in the Army who had been asked about the issue said that they had received unwelcome comments and attempts to talk about sexual matters, 12% of women in the Armed Forces said that they had experienced unwanted attempts to touch and 10% had experienced attempts to have a sexual relationship. That is clearly not a good situation. There were statistics for men as well, which were also worrying, even though the problem did not seem to be so significant. It was a great breakthrough for the MoD to carry out such a survey and I congratulate those who were involved in doing that.

[Baroness Taylor of Bolton]

I recognise that legislation alone and any amendment to the Bill will not simply solve the problem. Increased awareness that behaviour of this kind is not to be tolerated will help. But if there were a requirement to publish statistics on sexual assault and rape, this kind of measuring and monitoring of the problem would help to get us nearer to the zero-tolerance situation that should be the case. I therefore hope that the Minister will consider changing his approach to the Bill. We have to change the culture but if we could have a requirement to monitor the situation, it would help very significantly. I therefore hope that when we come to Committee, the Minister will look favourably on attempts to raise this problem and get it into perspective, and to consider ways we might try to use that report and information to make the situation better in future.

I will say something about one more issue, which is the point raised by my noble friend Lord West on mesothelioma. He was absolutely right to stress the urgency of this issue. I was able to assist our late colleague Lord Lofthouse when he campaigned for miners suffering from pneumoconiosis and the compensation scheme got into difficulties because of the impact of lawyers who tried to jump on the bandwagon of those making claims. That took place over a long period because it was a much slower illness. Mesothelioma is a very rapid illness and is absolutely devastating. Many people have waited a very long time for compensation, which really should be paid on an equitable basis compared with compensation for civilians. I hope that the Minister will look at that issue as well.

12.45 pm

Baroness Pidding (Con) (Maiden Speech): My Lords, it is an honour to follow the noble Baroness, Lady Taylor of Bolton. It was only a few weeks ago that I was standing in front of an amazingly talented group of schoolchildren in Gerrards Cross in my home county of Buckinghamshire. I was giving my critique of their public speaking ability as a judge in a Rotary Youth Speaks competition. Now the time has come for me to stand in front of your Lordships and deliver my maiden speech, and I hope that noble Lords will be as kind and encouraging to me as I sought to be to those schoolchildren.

It is a tremendous honour to stand here today in your Lordships' House. For me, this is a steep learning curve, but the severity of that curve is eased by the tremendous support that I have received. Much is said about the warmth and helpfulness of the staff here, and I would like to add my personal thanks to all of them: the doorkeepers, the clerks and those who are hidden from view—all those who make the working of this House a little less formidable to a newcomer like me—and of course the wonderful restaurant and bar staff, who ensure that we do not go hungry or become dehydrated.

I am grateful, too, for the generosity of spirit of noble Lords on all sides of the House in making me feel so welcome and always being there with gentle encouragement and guidance, ensuring that I do not make a huge faux pas or, if I do, that I am swiftly but kindly corrected so that I do not do it again.

My heartfelt thanks go to my noble friends Lady Shephard of Northwold and Lord Bates for helping to navigate me through my day of introduction. Both have provided me with wise counsel and I know that they will continue to do so.

I have spent 30 years working as a volunteer for the Conservative Party, from the Young Conservatives through to holding the most senior roles for a volunteer—the elected office of chairman of the National Conservative Convention and deputy chairman of the Conservative Party Board. I pay tribute to our volunteers, who work tirelessly for all political parties. It often seems like a thankless task: out there whatever the weather, knocking on door after door, stuffing envelopes, delivering endless bundles of leaflets and sitting in draughty village halls for meeting after meeting, desperate to secure that elusive vote. And to what end? The reward: to be invited to attend more meetings or buy some more raffle tickets? No. The reason we do it is that we care passionately about our country and about making it a better place. We might not agree on the vision of this better place but I am certain that we all agree that the democratic process that we have in this country is something that we all are very proud of.

In the year leading up to the general election, I travelled to all parts of the United Kingdom, campaigning in more than 70 constituencies. I have never sought to be a parliamentarian. My role was always that of a volunteer, doing what I could to get others elected. So it is with a huge sense of pride that I now look down the corridor to the other place and see so many friends and colleagues elected. But here I am now, a parliamentarian myself. It is a huge honour and with it comes great responsibility.

It is a particular privilege to be able to make my maiden speech in support of the Bill before the House today. The Government have made meeting the needs of the Armed Forces one of their highest priorities. This is only right: when men and women risk their lives in our defence, they should expect nothing less. The military covenant is our side of that bargain, and I am proud of the Government's record when it comes to the interests of service personnel and their families. We are helping them to buy their own homes, improving facilities for injured veterans and greatly broadening mental health provision across the Armed Forces, an area that was too often neglected in the past.

We have taken steps to make sure that British soldiers are no longer sent into danger without proper equipment. Over the next 10 years, the Government will spend £178 billion on defence equipment and support, and we have brought in private sector expertise in order to reduce both waste and delay in the procurement process. Not only are we making sure that our troops have up-to-date kit, but their organisation too is being adapted to the needs of modern warfare. The Government's proposal to establish two new 5,000-strong strike forces, ready to deploy at a moment's notice, recognises the changing nature of the threats facing our country today.

The United Kingdom remains committed to maintaining NATO's target of spending 2% of GDP on defence, and to updating our continuous at-sea nuclear deterrent. We have been the cornerstone of

this alliance since its foundation, and these investments signal our determination to pursue an active, global role for Great Britain in the 21st century.

Under this Conservative Government, we have two clear objectives: to maintain an up-to-date fighting force with the equipment and support necessary to defend our country's interests all over the world; and to guarantee that the men and women who serve so bravely receive the rewards and respect that they deserve. Our Government will continue not only to respect and honour the dedication and bravery of our Armed Forces but also to value them. I will lend all the support that I can to that.

12.52 pm

Lord Boyce (CB): My Lords, it is a great pleasure to follow on from the maiden speech of the noble Baroness, Lady Pidding. With over 30 years of voluntary political service behind her, I am quite sure that she is a welcome addition to the House with such experience. I am sure we all agree that her maiden speech was delivered with a nice touch, and I am quite certain she can return to judging elocution and speech competitions with great and totally deserved confidence. Also, her apposite and most supportive comments about our Armed Forces were very welcome and, given my background, I was very pleased to hear them. In all, it was a speech that offered a nice and pleasant foretaste of interventions to come.

Like the noble Baroness, I pay tribute to the men and women of our Armed Forces and their families who support them. Without the families, our servicemen and servicewomen could not do so well the job that they do.

I had the pleasure, if that is the right word, to be involved in a small way in the 2006 and 2011 Armed Forces Bills when they processed through this House. As was referred to by the Minister, it is good to see that this Bill is of significantly less complexity than the other two, especially the 2006 bumper Bill. Indeed, the fact that there are relatively few matters to address on this occasion, and most of them largely uncontentious and of a tidying-up nature, speaks well of the work that was done five and 10 years ago. I am particularly pleased that there is nothing before us which obviously threatens the service ethos or the command chain and the crucial role that they both have in fighting effectiveness—a point that is all too often forgotten by some. I trust that it will stay that way through Committee stage.

Having said that, I do have some comments. I want to follow up on and empathise with the comments of the noble Lord, Lord West, about mesothelioma. I note that the ongoing work on compensation for veterans suffering from this awful sickness was mentioned in the other place with respect to this Bill. Although it is pleasing to note that progress has been made on this, with a recent settlement announced by the Armed Forces Minister, the relatively small group of veterans who remain excluded because they fall the wrong side of the date lines set last year is regrettable. It seems manifestly unfair and runs counter to the tenets of the Armed Forces covenant. Perhaps the Minister will comment on why this should not find space in the Bill.

Secondly, I, too, wish to raise the subject of "lawfare", as it sometimes known, and I make no apology for repeating what my noble and gallant friend Lord Craig of Radley said in his excellent speech. Absent from this Bill is any mention of lawfare or the increasing legal encirclement of our Armed Forces. For example, the Minister will be aware of the growing concern within the Armed Forces regarding Crown immunity, or lack of it, in warfare situations—a concern fuelled by the large number of cases being investigated of alleged inappropriate behaviour in the field in Iraq or Afghanistan, or accusations of the use of allegedly inappropriate equipment which overlook the precept in war that you have to fight with what you have got. There can be no better warning of where we have got to on this than the fact that some insurance companies are now touting insurance to commanding officers against the possibility of their being involved in litigation at some stage.

I realise that the Minister will say that commanding officers or people in command will be looked after by the MoD, but the point is that there is a perception in the public that military leaders down to junior level could be in the dock arising from actions and decisions within the Geneva Convention that have been taken in the heat of battle. All this is in danger of leading to a worrying risk averseness that will imperil operational effectiveness. Therefore I ask the Minister to say why the subject should not be addressed in this Bill. If it is not going to be addressed in this Bill, how are the Government going to reassure our service men and women on this point?

Finally, I understand that there are some other improvements to the service justice system which have not been included in the Bill—such as, for example, a provision to enable civilian courts to transfer suitable cases involving service personnel to courts martial; and, on courts martial, to address a concern about the ability of a board to find a person guilty in a serious case by a simple majority, by changing that to a qualified majority or one dissenting vote to come more in line with civilian practice.

I suspect that I am not going to agree with everything that the noble Lord, Lord Thomas of Gresford, will say in Committee, but on those particular subjects I think we probably are in agreement. So I ask the Minister to explain why such improvements have been omitted from the Bill and to assure the House that they will not be left out until the next quinquennial review.

12.57 pm

Lord Campbell of Pittenweem (LD): My Lords, I congratulate the noble Earl on the lucid way in which he introduced this legislation. It is perhaps rather more complex than it appears at first sight and we look forward to his explanations when we reach both the Committee and Report stages.

I associate myself with the remarks made by the noble Lord, Lord West of Spithead. I yield to no one in my support of the Human Rights Act, nor indeed of the importance of human rights as the underpinning of a democratic state such as ours. However, I have grave reservations about the decision that was taken by the Supreme Court on a very narrow majority.

[Lord Campbell of Pittenweem]
I have heard it suggested informally, and possibly mischievously, that if a similar case were to go before the same court today a different result might well be achieved. None the less, the fact is that there now exists, as a result of that decision and of the way in which it has been commented upon since, a considerable doubt about the protection available to our Armed services when engaged in conflict. That doubt ought to be resolved. That is why when the noble Lord says that he will support an amendment—which, we understand, may be proposed by the noble and learned Lord, Lord Mackay of Clashfern—I will certainly support both the noble Lord and the noble and learned Lord when an amendment to that effect is put forward. It is a duty and responsibility of Parliament to resolve an issue that is clearly causing such uncertainty in the minds of those whom we expect to be responsible for our safety to the extent that they are willing to give their lives, if necessary.

I am unaware of any other country that engaged either in the second Gulf War, or, indeed, in Afghanistan, that has conducted such a lengthy and detailed post-mortem of the actions of those whom we sent to fight there. That of itself would not be an obstacle to us doing what is right, but it is certainly worth reminding ourselves that we may be imposing a standard on our Armed Forces far in excess of that being imposed by our allies on theirs.

As one who has recently run the gauntlet of a maiden speech, I hope that the noble Baroness, Lady Pidding, will not think it presumptuous of me to say that she spoke with such confidence and distinction that she can be guaranteed to be heard with great interest and attention when she speaks again in your Lordships' House. She struck more than a chord with me about the vital importance in the political process of the raffle at the end of the coffee morning, or the wine and cheese party, which was once defined to me as the kind of party in which you hope that the wine is a little older than the cheese.

I speak with some diffidence on these topics, having listened to the noble and gallant Lords, Lord Craig and Lord Boyce, because they come to this with a depth of experience and understanding that no one who has not been engaged as they have can really expect to achieve. My observations are based on what I have seen from outside. My diffidence is also to a large extent compounded by the excellent contribution of my noble friend Lord Thomas of Gresford. My professional experience of courts martial is both dated and minimal, but he has raised a number of issues that will require careful consideration during the progress of the Bill in your Lordships' House.

I will talk about two issues, one of which has not been mentioned, perhaps because it was not controversial in the House of Commons, nor does it appear to be controversial here: the repeal of the provisions of Sections 146(4) and 147(3) of the Criminal Justice and Public Order Act. I speak to some extent from my experience as a Member of Parliament with a large military airbase in my constituency, based on the number of occasions on which I was consulted by servicemen and servicewomen about the possible consequences for them were there to be any question of homosexual behaviour on their part. It is right to remind ourselves that it was not long ago that even suspicion of such behaviour, irrespective of rank, achievement or service, could have brought an untimely end to a career, with consequences that were sometimes brutal and inevitably long-lasting.

Nor do I believe that the services benefited, because good men and women were lost and others cowed and frightened. Indeed, the military police assumed the character of a committee for the suppression of vice in a fundamentalist country. Telephones were tapped, friendships obsessively scrutinised and personal behaviour subjected to intense scrutiny. This repeal is probably the last legislative change necessary to reflect the change first in domestic attitudes and now in the military. We should accept and be glad that it has now come to pass because it reflects a proper balance between domestic law and law relating to the military, and the values of society as a whole.

The second issue is one on which I am slightly inhibited, but I believe that it is right to draw attention to the fresh inquest now opened into the death of Private Cheryl James. I am rightly constrained in what I may say because these proceedings are actively sub judice, but I feel able to raise a number of points of general interest. The Bill is substantially about discipline, but by implication it is about morale as well. I always believed that these were two sides of the same coin: poor discipline damages morale and poor morale most certainly damages discipline. That is particularly the case when the services deal with young and inexperienced members. Services take in young men and women of varying levels of maturity. The objective is to turn them into mature adults with a specific and, in some ways, unique set of skills. With that objective goes an obligation to recognise that, in many cases, so far as may be necessary, the services will act in loco parentis. I hope that the inquest will pursue some of these issues.

I finish by saying this, and I put it in abstract. If any serviceman or servicewoman, of any rank in any circumstance, were to be cajoled, intimidated, pressurised or otherwise to have sexual relations with another member of the Armed Forces of whatever rank, that would be a gross breach of the moral obligation owed to those who offer themselves to protect us with their lives as necessary. It is one which I hope would engage universal condemnation.

1.06 pm

Baroness Hodgson of Abinger (Con): My Lords, I begin by congratulating my noble friend Lady Pidding on her excellent maiden speech. I look forward to hearing the other maiden speeches from the noble Lord, Lord Murphy, and my noble friend Lord Shinkwin shortly.

Not having a military background, it is with a sense of humility that I contribute to the debate. I welcome the Bill, which recognises the integral role that our Armed Forces play in British life and the extraordinary service that they give to this country. The first duty of any Government is the defence of the realm. At a time of unpredictable threats and dangerous levels of instability the Bill needs to ensure that we maintain our world-class Armed Forces for the long-term security of our country.

It is impossible for those of us who have never served our country to fully understand the sacrifice that those in the military make. It is therefore imperative that the Bill also seeks to ensure the well-being of these brave men and women.

As we have already heard, warfare has changed drastically in recent years. It is no longer fought on battlefields but in communities, with terrorism and cyberwarfare now posing significant threats. Asymmetric warfare and counterinsurgency require new and different approaches. Intelligence and cyber play an ever more important part. Highly trained rapid reaction forces that can deploy at very short notice are essential, with Special Forces performing a critical role.

The 2010 strategic defence and security review imposed a programme of significant cuts. This led to feelings of insecurity in parts of our forces, and, I understand, some haemorrhaging of high-quality people. Good leadership is paramount to the military, and attracting and retaining the best is of extreme importance. Are we managing to retain those high-quality warrant officers, captains and brigadiers, the middle-ranking officers who will become tomorrow's senior leadership? New types of warfare need people with new and different skills to ensure that operations are not impacted. Do we have enough critical specialists? Are some areas suffering diminution of numbers, or having challenges recruiting sufficient specialists? If so, how is this being addressed?

Our Armed Forces covenant is an important national contract to address duty of care to our Armed Forces and their families, with a duty to report on the covenant being a centrepiece of the Armed Forces Act 2011. However, I have heard that there is a perception by some on the ground that the covenant is somewhat tokenistic.

As I have previously asked with concern in your Lordships' House, while the covenant contains very noble principles, does the lack of penalties for failure to fulfil it make it somewhat toothless? In particular, I know there are concerns about how effectively local authorities are delivering on their responsibilities through community covenant partnerships. This includes affording members of the Armed Forces priority with housing needs and helping them integrate back into local life post-discharge. Has there been any audit of the delivery of the covenant by local authorities?

Of significant concern is that last year's Armed Forces continuous attitude survey, known as AFCAS, found that almost half of service personnel actually know nothing about the covenant. Surely, a fundamental element of the covenant should be that personnel feel it is impacting upon their lives. If this is clearly failing, should we not seek to amend it or its delivery?

Being in the military is a vocation often lasting many years; therefore we also have a duty of care to the families, considering the toll on their lives while their fathers, mothers, husbands and wives are serving. Have we, as a nation, done enough to ensure that our duty of care is being delivered? It is concerning that 59% of respondents to last year's AFCAS felt that their family life was disadvantaged through their service. This is by far the largest area of perceived disadvantage and goes hand in hand with the finding that the impact of service on personal and family life is by far the biggest factor influencing decisions to leave the Forces. So it is important that families are considered and listened to and that housing is of good quality and properly maintained. Living in housing that is damp, with peeling paint and malfunctioning plumbing, is unacceptable in this day and age.

The standards of healthcare we commit to our service personnel is one of the key pillars of the Armed Forces covenant. There has been much concern in recent years, as we have heard, about mental health. The proportion of service personnel who suffer mental health problems is broadly similar to that of the general population, slightly higher amongst those in combat roles. The concepts of being a soldier at war and seeking support for psychological distress are somewhat at odds with each other. In some cases, this prevents those who need help the most from seeking it, leaving them to suffer in silence. The fact is that they endure unique conditions and excessive levels of risk that the rest of us cannot understand. Of particular concern are reservists who return to normal life after deployment and may feel very isolated and unsupported.

It is every bit as important that personnel continue to receive support when they cease serving and become veterans. The onset of post-traumatic stress disorder is often delayed for many years. The charity Combat Stress still reports an average of 13 years between service discharge and veterans seeking help. While it is reassuring that a key goal of the military covenant is that veterans,

"should be able to access mental health professionals who have an understanding of Armed Forces culture",

how does this happen? NHS doctors may be unable to relate to the effects of combat roles.

Combat Stress receives around 2,500 new referrals every year, resulting in approximately 6,000 veterans being treated by the charity at any one time. Last year the number of veterans seeking its help increased by 28%. I was recently told by Combat Stress that the majority of veterans under its care self-refer; thus it would appear that many veterans are put off from using NHS services to address their problems, instead turning to the voluntary sector.

It is encouraging that the stigma surrounding military mental health has decreased substantially in recent years, meaning that those younger veterans who served in Iraq and Afghanistan are coming forward for treatment much sooner. I appreciate that the Government have already recognised this issue. By embedding the Armed Forces covenant into the new NHS constitution in England last year, members of the Armed Forces community will, in principle, receive the same standard of, and access to, healthcare as all other British citizens. However, more needs to be done, particularly for older veterans and reservists.

Our military personnel make great sacrifices to serve their country and put themselves in the way of danger. Above all, it is paramount that they feel valued. Do we really do this? Do we thank them enough and acknowledge what they have given when they leave? We have outstanding men and women serving. We need to ensure that they are recognised for all that they do. These are the people who will keep this country safe and we owe them a huge debt.

1.15 pm

Lord Murphy of Torfaen (Lab) (Maiden Speech): My Lords, for the last two and a half months I have had the privilege of chairing the Joint Committee on the Investigatory Powers Bill. It reported four and a half hours ago and it has meant, as my noble friend Lord Hart will tell us, a great deal of work. This has meant that I have been unable to make a maiden speech. I am delighted to do so this afternoon and I thank my noble friend Lady Taylor for her very kind words an hour or so ago. Like the noble Baroness, Lady Pidding, in her very fine speech, I make reference to the courtesy and helpfulness that I have received from Members on all sides of the House over the last couple of months and from the officers and staff of the House of Lords. It is a very different place from the House of Commons, but it is certainly a friendly place—more friendly, in fact, than parts of the other House.

I also thank my two supporters on introduction. My noble friend Lord Touhig, who coincidentally is winding up for my party in today's debate, has been a noble friend of mine—although not always noble—for 66 years. I thank him for what he has done for me over all those decades. My other supporter, my noble friend Lord McFall, is a great and long-standing friend who served in the House of Commons with me for nearly a quarter of a century.

I made my other maiden speech 29 and a half years ago. I spoke then, as is inevitably the case, about my own constituency of Torfaen in the eastern valley of Gwent in south Wales, which is a very diverse constituency. It includes the industrial heritage town of Blaenavon, the great valley town of Pontypool and the new town of Cwmbran, but it also includes my home town, and that of my noble friend Lord Touhig, the small village of Abersychan. That small village has produced seven Members of Parliament since the Second World War, including my very fine successor, Nicklaus Thomas-Symonds, the great and fine biographer of the grandfather of the noble Earl, Lord Attlee, and of Aneurin Bevan. Of those seven Members of Parliament, four became Members of your Lordships' House: myself and my noble friend Lord Touhig as well as Lord Jenkins of Hillhead and Lord Granville-West, who was one of the very first life Peers. In addition, of course, Lord Chalfont, of Llantarnam, came from the eastern valley of Gwent as well.

I am very happy to support the Bill. I do not have the expertise or experience of many of those who have spoken already and, indeed, will speak after me. A long time ago, in the late 1990s, I was the shadow Defence Minister responsible for personnel matters in the Armed Forces and it is so interesting to hear from the Minister and others how the world has changed in those 20 years. The Bill is worthy of support because it recognises that important change. I also served as the Secretary of State for Wales and, of course, for Northern Ireland. When I held that post the great value of our Armed Forces was so obvious to behold. I worked with them at all levels and the dangers that they faced and the work they did for our country was immeasurable.

I will also say that I have enormous admiration for the Armed Forces throughout our country. I am told that every parliamentary constituency has within it at least 20,000 people who, in some way or another, are linked to our Armed Forces. They are either members of the Armed Forces themselves or relatives; they may work in the defence industry or whatever. That is almost a third of the average electorate, certainly of a Welsh constituency, and any political party which decides to ignore that reality does so at its peril. Any political party which does not have a credible defence policy does so at its peril. I will not digress any further, other than to say than I am old enough to remember the general election of 1983, when my party suffered an enormous defeat partly because it did not have a credible defence policy.

I return in my maiden speech—I beg the indulgence of your Lordships—to the substance of the debate: the Armed Forces Bill itself. I will refer briefly to Clause 15 on the veterans and pensions committee, which will have an enhanced statutory remit, and to which the Minister has already referred. I think all of us would agree that veterans—by whom we mean young and old veterans—play a wonderful role in our national life and our communities. Certainly, in my former constituency, the Royal British Legion—I know that we will hear more on that later—the Cwmbran and District Ex-Servicemen's Association and the Royal Regiment of Wales Association, of which I am president and declare an interest, all play a pivotal role in the life of my valley. That shows how important veterans are to our national life and to our local life as well.

Every January, in my home village of Llantarnam—which is also the home village of my noble friend Lord Touhig—a military parade is held, and a service in the graveyard of the parish church. Buried there is Private John Williams, who won the Victoria Cross at the great battle of Rorke's Drift in the Zulu wars in 1879. That was a long time ago, noble Lords may think. But it was not; my father knew a survivor of that great battle. My family proudly became members of the South Wales Borderers, who fought at Rorke's Drift in 1879. That small personal story with which I have regaled your Lordships is replicated throughout the whole of our country—and rightly so. This debate has given me the opportunity to pay tribute to all those who serve, and have served, in our Armed Forces. It gives the opportunity to your Lordships' House to do exactly the same.

1.22 pm

Lord Empey (UUP): My Lords, it is a great pleasure for me to follow the very eloquent maiden speech of the noble Lord, Lord Murphy of Torfaen. His status as a former Cabinet Minister is demonstrated by the fact that he has two very distinguished Members of your Lordships' House as his senior supporters on either side of him. One could assume that they are there to support the noble Lord. However, there is perhaps another interpretation—that they are there to control him.

I was privileged to work with the noble Lord, Lord Murphy, during the Northern Ireland peace process for many years in his different roles. He started off as Minister of State at the Northern Ireland Office during the negotiations. At half-past three in the morning, when we were in the midst of very difficult and complicated discussions, he still retained that pleasant

approach to people in very difficult circumstances. He did not lose his temper or become aggressive and was always able to calm the troubled waters. He moved on to greater distinction and became Secretary of State, having, I think, served as Secretary of State for Wales before and after that appointment, a distinction which he shares with his noble friend Lord Hain. This House greatly appreciates the presence of this great parliamentarian who has served the people of Wales with distinction for many decades. I have no doubt that we will all be enriched by his presence in your Lordships' House in the coming years. He is extremely welcome. I also take this opportunity to congratulate the noble Baroness, Lady Pidding, on a very finely delivered address. That indicates that we now have two additional Members of our House who will serve Parliament very well.

A number of noble Lords have referred to the military covenant. During the passage of the previous Armed Forces Bill, amendments were passed to require regional Administrations to report annually to the Secretary of State for Defence on what they had done to implement the covenant. This was important because defence is a national issue; it will never become a devolved issue. It was important that the same level of service should be delivered in every part of the United Kingdom and that service personnel in any part of the United Kingdom should receive a level of service that was roughly equivalent. As many of the services are delivered by devolved functions, it was essential that that report be produced.

It is an absolute disgrace that when the first report was delivered to Parliament, the contribution from the Northern Ireland Executive consisted of no comment—no report—yet a very large number of people are dependent on services being delivered in that area. During the passage of the Bill, we warned that that sort of thing would happen. Although the military covenant continues to be delivered, that is largely because the relevant departments happen to be populated by Ministers who are sympathetic to it. However, that is not a permanent state of affairs and will change with time. I fear that this House will have to come back to this issue and it will be much more difficult to deal with at that time than it was during the passage of the previous Armed Forces Bill.

I turn to mesothelioma. No Member of this House has done more on that issue than the noble Lord, Lord Alton, who I am pleased to see in his place. Noble Lords will note that my colleagues in the other place tabled an amendment on Report which they subsequently withdrew after debate and assurances from the Minister. We have heard a number of noble Lords and noble and gallant Lords say today that a small number of people will still be excluded from the relevant provision. Let us not go through this again. Some people have been excluded for years and years. We know what the issue is. We know what the outcome of that is. Why do we not fix it once and for all and make sure that no one is excluded? We are not talking about a huge number of people, but a matter of natural justice is involved. I sincerely hope that in Committee the Minister will reassure us that all the personnel who are potential victims will be dealt with.

My next point concerns a matter to which many noble Lords have referred in this debate—namely, the ludicrous position in which we find ourselves as a nation whereby we are torturing ourselves and our Armed Forces through the litigation circus that is going on. Can one imagine what the legal consequences today would be of the bombardment of the Normandy beaches? We would be accused of blowing up French civilian property and injuring civilians. The captain who ordered the shelling would be charged with all sorts of things. The situation has run completely out of control. Ministers of the Crown have stood up in the other place and made speeches berating the fact that lawyers are chasing around looking for cases and pursuing members of the armed services. However, Parliament has voted money which means that they are being paid to do that. Opportunities for them to do that have been provided by Parliament. At the same time, many of the legal costs are far greater than the compensation received by many of the victims. Ministers know that and openly say so, but what solutions are coming forward? I say that no solutions are coming forward for the simple reason that this Parliament does not quite get what it means to sign a treaty. We are bound by all these treaties and we have signed far too many. They have led us to war and after war and we still face difficulties. I do not wish to see the United Kingdom armed services out of legal control; that would be totally wrong. Standards must be high and we must set examples, but that goes back to training. It also goes back, as many noble Lords have mentioned, to the legal framework within which the armed services operate.

We have taken this a stage too far. Take an example from Northern Ireland, where we have cases that are four decades old. We have a situation where there are still 30 detectives doing nothing but looking at the Saville case. What message are we sending to service personnel? They have saved hundreds and thousands of lives and come back from the battlefield broken in mind, body and spirit. Indeed, the person who now occupies the seat I held in the Northern Ireland Assembly lost both his legs in Afghanistan and suffered severe damage to his sight. What are we saying to those people when they are being chased after for years? I believe in the European Convention on Human Rights but courts there have interpreted it in ways that were never envisaged. It is not possible for such interpretations to sit right with a battlefield situation.

Nothing has come forward to fix this, because we are signed up to treaties—I do not think the Government know how to fix it. I hope the Minister will prove me and other noble Lords wrong. I do not know what the precise legal solution is but I know we need one. It will not be feasible to ask young people to go to war without one. Why do we send them to war if we are not prepared to carry through the logical consequences of doing so? We cannot authorise people to risk their lives and do what damage they can to the enemy and not follow that through. When they tell us that what they did is not their responsibility because this or that sergeant or captain ordered certain actions on the battlefield we cannot withdraw, wring our hands, and say that is terrible. The Armed Forces should not be left in this limbo: clarification is needed. We do not

[LORD EMPEY]
know when we might push them into battle once again. The world has never been more uncertain: dictators are acquiring huge amounts of weaponry; we have threats to the east and in the Far East; the Middle East is a mess. Any of these theatres could lead to conflict at any time and we have still not fixed this problem. With amendments, this legislation could be a vehicle for doing so.

Will the Minister address the question of mesothelioma and ensure that no one is left behind? The noble Lord, Lord West, talked about making snowballs with the asbestos in his vessel. That was a pastime in Harland and Wolff shipyard for years. Workers used to come home with white around their shoulders because they were covered in it. When I was Minister for Enterprise I set aside £180 million up until 2050 for cases we believed had yet to come forward. That is how long we are talking about. It is not simply the individuals who were there at the time who are at risk. They brought the material into their homes—their families may have done their washing and their children played around it. A new generation has this condition and, as the noble Lord, Lord Alton, knows, little or no research into treatment is going on anywhere in the world. I sincerely hope this is one thing this legislation will fix once and for all.

1.34 pm

Lord Shinkwin (Con) (Maiden Speech): My Lords, I feel privileged to give my maiden speech, in this Second Reading debate on the Armed Forces Bill, on an issue dear to my heart. I know, both from what we have already heard today and from my experience of campaigning with many of your Lordships, that it is an issue of real importance to your Lordships as well that we honour the Armed Forces covenant. This Bill gives each of us an opportunity to renew our personal commitment to honouring that covenant—the sacred bond of trust between the people of this United Kingdom and those who put their lives on the line to defend the democratic freedoms we all too often take for granted.

I mention privilege for several reasons. Some people dismiss your Lordships' House as a place of privilege, outdated and irrelevant. All I can say is that that is not my experience. When I think of privilege, I reflect on having witnessed your Lordships' House in action long before I became a Member of it, and seeing a body which I respect precisely because it is relevant, engaged with the issues of the day and making a material difference to people's lives.

When I was head of public affairs at the organisation which the noble Lord, Lord Murphy of Torfaen, was so kind to mention, I recall that I always stressed to the members of the team that I was honoured to manage that we should measure our performance in tangible outcomes of direct benefit to the Armed Forces family. The work of this House passes that test. At the legion, it was my privilege to work on several covenant issues with many of your Lordships, including the noble Lord, Lord Ramsbotham, the noble and gallant Lord, Lord Craig, the noble Baroness, Lady Fookes, and the noble Baroness, Lady Finlay, whom I was honoured to have introduce me to your Lordships' House, together with my old university tutor, the noble Lord, Lord Norton of Louth. This work ensured not only that the principles of the Armed Forces covenant were enshrined in law but also the survival of the position of chief coroner, in the face of an understandable and continued drive to reduce the deficit.

I met with the chief coroner shortly before my introduction. We discussed his work, and we looked at the results. It is obvious to me that he is making a considerable, positive impact, especially for bereaved Armed Forces families, for whom experiencing the pain and grief that go with a military inquest is such a regular experience. It is also obvious to me that he is only able to make that difference because of your Lordships' House.

In concert with Members of the other place—including Andrew Percy, Philip Hollobone, Rob Flello, the right honourable Jim Murphy and Greg Mulholland, to name but a few—it was your Lordships' House which persuaded the coalition Government, to their credit, to take the position of chief coroner out of the Public Bodies Bill and thereby protect it from abolition. That would never have happened without the concerted efforts of your Lordships' House—surely an example of the tangible and enduring difference this House is making to people's lives.

Each of us has made our own journey to this House; mine has been less spectacular than most but perhaps more extraordinary than some. Twenty years ago almost to the day, I began a rather less enjoyable part of my journey here when I was taken down to an operating theatre for life-saving neurosurgery. The 12-hour operation was so dangerous and complex that my remarkable surgeon, Miss Anne Moore, could not give me odds on my survival. So if sometimes I appear dazed to any of your Lordships or the doorkeepers, clerks and other staff, who have all been so kind to me, there is a good reason: it is because I am. I doubt I will ever get over the shock of going from near death to learning to speak again over a period of several years and now to speaking in your Lordships' House, and being able to thank your Lordships directly for the help you have given me and, through the work of charities such as the Royal British Legion and INQUEST, in which I was privileged to play a part, the whole Armed Forces family.

My journey here may have involved a rather unpredictable route, but the ultimate destination is all the more wonderful for that. In fact, a hugely traumatic and painful experience has been transformed into an immense honour and blessing. For that, I thank my family, my friends, the God who never left me, no matter how bad things got, and I also thank the most influential woman ever created, His Holy Mother, whose feast day as Our Lady of Lourdes is celebrated today.

In conclusion, there can be no responsibility greater than providing for the defence of the realm, no duty or indeed privilege more significant than honouring the covenant we make with those in the Armed Forces who sacrifice everything for us. I look forward to working in your Lordships' House to ensure that this and future Armed Forces legislation builds on the important steps that the Government and Parliament together have already taken to honour that covenant.

1.43 pm

Lord Ramsbotham (CB): My Lords, it is a great pleasure and privilege to be the first to thank the noble Lord, Lord Shinkwin, and to congratulate him on his outstanding maiden speech. It is very appropriate that he should have made it during the processing of the Armed Forces Bill because of the many years of outstanding service that he gave to the Royal British Legion. As he mentioned, I have particular reason to be grateful to him for his tireless and comprehensive briefing of those of us who were fighting for the retention of the post of chief coroner because, as he said, that retention has been responsible for an improvement in the conduct of military inquests. As the noble Lord has proved today, he has a deep understanding of veteran affairs, from which I am sure the whole House will benefit in future, as will the veterans whom he has served so well.

As the Minister said in his introduction, this is a very modest Bill and I propose to concentrate on three subjects that I hoped it would contain and on which I would be grateful for the Minister's comments. The first concerns the Armed Forces covenant, which was made statutory in the 2011 Act. History suggests that now that our Armed Forces are no longer on active service in Iraq and Afghanistan, they will fade from the public eye, which will result in the plight of veterans, particularly gravely injured veterans, becoming less and less a matter of immediate public concern.

When the covenant was first proposed, I wrote twice to the Prime Minister, as well as repeating the plea that I made to him during the processing of the Act; namely, that the Minister for Veteran Affairs be removed from the Ministry of Defence and placed in the Cabinet Office. My reasoning for that was that no junior Minister operating from the MoD silo, responsible for the day-to-day affairs of those currently serving in the Armed Forces, cuts any clout in ministries such as the Department of Health, the Department for Work and Pensions, the Department for Communities and Local Government, the Home Office and the Ministry of Justice, which have day-to-day responsibility for matters affecting veterans. However, if the Minister operated from the Cabinet Office, where the Armed Forces Covenant Committee is based, he or she could speak to them with the authority of that office, and oversee the focus on veteran affairs.

I appealed also that the statutory annual statement on the covenant required of the Secretary of State for Defence should include statements from all ministries involved in veteran affairs, listing what they had done for veterans during that year. I wrote to the noble Lord, Lord Astor of Hever, when he was the MoD Minister in this House, hoping that this annual statement would be made verbally in both Houses so that Members could have an annual opportunity to check on progress by asking specific questions. My motive for that was and remains my fear that unless there is a regular opportunity to ensure that momentum is being maintained, undertakings, however well intentioned when made, risk being dropped and forgotten. I have two areas of particular concern.

First, there is no doubt that in future years an increasing number of veterans will suffer from mental health problems, including PTSD. For example, it is most important that anyone involved in an IED incident should have that fact recorded on their medical documents because history proves that they may well suffer flashbacks, which doctors can deal with appropriately if they know what a person has been through. Like the noble Baroness, Lady Hodgson of Abinger, I am not convinced that all that could be done to ensure that veterans' mental health problems are being looked after in the same way as physical health problems is being done, and would like an annual opportunity to keep pressure on the authorities responsible for provision and improvement.

Secondly, too many veterans come into the hands of the criminal justice system, unfortunately. Times without number since I first became aware of the problem in 1996, I have appealed, first to the Home Office and then to the Ministry of Justice, for someone to be made responsible and accountable for veteran affairs in prisons. But that plea includes both police and probation, and there have been calls for the establishment of special veteran courts, as exist in America.

There have been numerous studies and reports on veterans in the criminal justice system by bodies such as the Centre for Mental Health, the Howard League for Penal Reform and, most recently, a commission sponsored by Lord Ashcroft, of which I was a commissioner. But despite the report of our commission receiving an official response from the previous Secretary of State for Justice, nothing has happened. We called for everyone entering the criminal justice system, initially via the police but later prison or probation, to be asked whether they had served in the Armed Forces so that appropriate action could be taken to help them both while serving their sentence and, most particularly, on release. Admittedly a number make bogus claims to have served, but the validity of such claims can soon be checked, as was proved by the police in Kent. What I am concerned about is the treatment of the depressingly large number of genuine veterans who are sentenced to either imprisonment or supervision in the community, with whose rehabilitation service charities and other ex-service organisations could be involved, if only they were alerted. This is, again, something that Parliament could and should chase up, which is why I appeal to the Minister that the annual statement on the Armed Forces covenant should be made verbally, by statute.

My second concern may seem like a small matter, but I think that it has a wider significance. At present, Her Majesty's Chief Inspector of Prisons for England and Wales formally inspects—as he does every other prison—the Military Corrective Training Centre in Colchester every five years, but by invitation only. At a recent seminar, attended by the Secretary of State for Justice, the recently retired chief inspector said publicly that the MCTC was the best prison in the country, and a living example of how prisons should be run. This is partly due to the experience of its staff, no one being allowed to join the Military Provost Staff Corps until they have proved themselves to be capable soldiers. The remit of the Chief Inspector of Prisons includes both police and court cells but, now that the MPSC is to be responsible for running regional detention centres, which will replace the old regimental guard rooms, I

[LORD RAMSBOTHAM]
believe that they too should be added to his list. Therefore I appeal to the Minister that this requirement should be made statutory in this Bill.

It is not as easy to be so specific about my third concern. Many other noble and noble and gallant Lords have already referred to the clash between human rights legislation and those involved in armed conflict. I personally despise the actions of British lawyers who have gone out to Iraq and Afghanistan touting for business that seeks to undermine the credibility and reputation of their Armed Forces. I agree with all those who have called for this to be urgently looked at, and I shall inform the Minister of one experience when I was Adjutant-General. The Second Permanent Under-Secretary came to the three officers who were responsible for personnel in their services and told them that they had to work out how industrial tribunals would be included in service discipline chains. When we asked whether such industrial tribunals came before or after the Queen, we were told that that was totally irrelevant because the Bill including this requirement had already had its First Reading in the House. We had not seen the Bill and when we sent for it we found that there were such ridiculous things in it as, if a person were ordered by his employer into a place of danger, he could seek an industrial tribunal. I wondered whether the OC B Company could take his commanding officer to an industrial tribunal if he were told to capture a hill. We discovered that this followed an instruction from Brussels—at least that was what was alleged. When we asked what our NATO allies—the Germans, French and Italians—had done about it, they said that their Governments had sought dispensation from this ruling. Our Government had not.

To what has already been said to the Minister, I add my hope that the assault on the clash between human rights legislation and those involved in armed conflict will not be conducted in isolation just in this country but will include our NATO allies, all of which have armed forces involved in the same dilemma. I hope very much that, rather than the modest Bill that the Minister has announced, the opportunity can be taken to include in it the very real action that is needed to solve what my noble and gallant friend Lord Boyce described as the lawfare question, which is one that I know worries the minds of every serving member of the Armed Forces at present.

1.54 pm

Baroness Scott of Bybrook (Con): My Lords, I welcome and support this Bill and I also warmly congratulate my noble friends Lady Pidding and Lord Shinkwin and the noble Lord, Lord Murphy, on their excellent, very different and very personal maiden speeches. I enjoyed all three, and I thank them.

If you look after the families, you look after the soldiers—these are not my words but those of the noble Lord, Lord Richards, who knows much more about the military than I do. Although this Bill focuses on disciplinary and other matters, I urge the Minister to continue to look at the wider context of the military and their families as a whole. Earlier this week I was pleased to attend the launch of the Homes for Heroes foundation, which is looking to break down the barriers faced by forces personnel and their families in owning secure, accessible homes, if that is what they aspire to do. It is also looking at and challenging the rented sector, when our soldiers leave the military. There are still a number of local authorities inadvertently not following the covenant in determining their housing allocation policies. I urge the Government to ensure that the covenant is adhered to, across all government departments and across local government. These are early days for the foundation; I wish it well and look forward to seeing the results of its work.

I have now had time to see the strategy for forces families, as mentioned in the strategic defence and security review. While I am a little disappointed that the strategy did not consult more widely with forces families, or with public services as part of the delivery network, the important matter now is the creation of a strong action plan and the delivery of the aims of that review.

Alongside secure housing, good education and health provision for the military and their families is soldiers' transition into civilian employment. It is extremely important for the stability of forces families that they receive the necessary training and support as they leave the Army to ensure that they can get into secure employment.

In Wiltshire, we have 15,000 troops—the number will rise by another 4,000 by 2020—and the employment of these soldiers as they leave the Army is of high importance to our county. It is also important to the economy of the county. The Swindon and Wiltshire city deal and the Higher Futures programme, will broker higher education training courses, created with a number of local businesses, to convert the military training already received by our forces to qualifications required by the private sector, thus enabling our military leavers to reach their full potential in civilian life. The enterprise network provides sensitive, supportive advice to forces spouses or military leavers who wish to start their own businesses, and our university technical college in Salisbury utilises great support from the local 1st Artillery Brigade and Headquarters South West to help our young people to develop their leadership skills. We run transition fairs annually with the Army, bringing together the businesses, the soldiers, and our support services.

I know that this does not fit entirely with the Bill, but I wish to reiterate: if you look after the families, you look after the soldiers. I believe that our Army is a better Army when our soldiers know that their families are secure and that they have a secure future.

1.59 pm

Lord Judd (Lab): My Lords, I am genuinely glad to follow the noble Baroness, Lady Scott, as much of what she said I could not have said better myself. I feel this strongly because no matter how sophisticated the technology at your disposal or how advanced your strategic thinking, in the end that is no better than the people putting it into practice. Those people need to be confident that their families are secure and well-cared for, and that they will have a future place in society when they have left the forces. I might take issue with her on only one small point: I do not know why she referred to preparing them, when their service is completed,

for their contribution to the private sector. I think that their contribution is equally needed in the public sector. I have often reflected on how much the public sector could benefit from some of the best elements—their experience and values—in the people who have served.

I, too, warmly thank the Minister for having introduced the Bill so thoroughly and well. I am sure that the whole House appreciated that. There is much in the Bill for which he will find support in all parts of the House. Anything that I will say is just about some things which I hoped that the Bill could perhaps have touched on, and not unrelated to what the noble Baroness, Lady Scott, has just been saying.

My first job in government, way back in the mid-1970s, was to be Minister for the Navy. In those days, we had Service Ministers. I am not sure that I am altogether relaxed that that tradition has gone because it was important to have Ministers who, in the deliberations of government, identified themselves with a particular service fulfilling its part in what was needed. I certainly learned a great deal in that job. I always looked forward just as much to my discussions with the various admirals with leading responsibility as to my discussions below decks with senior ratings and others. This again relates to the point which the noble Baroness, Lady Scott, was just making. It was often when among the senior ratings that I thought, "Are we doing enough, not just to ensure that these senior ratings, who are absolutely crucial to the successful operation of the fleet, are getting the certainty of a valid career when they complete their service but to enable society to understand what a terrific contribution people who have carried that sort of front-line management responsibility have to make to society?". I was disturbed to find how often people who had carried tremendous responsibility to good effect were ending up as car-park attendants and all the rest. These considerations seem essential to the morale and effectiveness of our armed services. I would be surprised if the noble Earl, Lord Howe, did not 100% agree.

Having referred incidentally to how I looked forward to my discussions with admirals every week, I always had particular and keen anticipation for my weekly seminar with the Chief of Naval Staff. When I hear my noble friend Lord West in action, I always think that it would have been jolly good if he had been there discussing the things on which he speaks so strongly and with so much conviction. We might have had some quite lively discussions from time to time but they would have been greatly enjoyed.

We have heard remarkable maiden speeches today, which speak well for the future of the House, but I want to pick out two or three key points. First, we need to recognise the immense demands made on our service personnel in their work. To be effective servicemen they have, above all, to be effective fighters but nowadays they have incredible other responsibilities. I heard it put very well by somebody who had served in the Balkans. He said that they would suddenly find themselves having to be diplomats, negotiating their way through a situation. They may be under order in a convoy to get humanitarian relief supplies to a community when they come up against women lying down in front of them in the road, trying to impede their progress. They cannot run over those women, so they find themselves having to negotiate with them to get through that block and be able to proceed with their task.

Our personnel may also find themselves confronted with appalling floods—and my goodness, up in Cumbria I have seen the evidence of servicemen making a profound contribution. With the floods six years ago, let alone more recently, the contribution made by the RAF in the appalling situation in Cockermouth was extraordinary. We got through that awful episode with only one death, which was sad and felt by the whole community, when a brave policeman tried to divert traffic from a bridge, which he saw was about to collapse, and ended up drowned. The fact that the community itself got through without the loss of life owed a tremendous amount to the RAF, as it did to all the others who intervened, so there is a great range.

There is also a great demand on our personnel psychologically. Think of the servicemen operating drones: do not believe that there is no psychological strain in that situation. I saw it years ago when I was in the operations room of a new frigate. After my visit, I remember talking to a petty officer. He said, "Minister, did you see those ratings on those instruments?". I said yes. He said, "Did you realise that the safety and survival of this ship, let alone its fighting effectiveness, depends on each one of those ratings and the instrument on which they are working?" They had to be able to interpret, and rapidly communicate, the significance of what they saw on their screens for the safety and fighting efficiency of the ship. That is terrific but it demands a great deal of certainty about the training and educational values of the men doing the work. It is no good relying on rules. I remember a Brigadier saying to me when I was the Navy Minister, "I can walk around with a copy of the Queen's Regulations under my arm and it is useless. I would be lost". It is leadership, the ethos and the whole value system of the service that ensures good performance. It should not be, "What is this rule telling me to do in this situation?", but, "What is the right thing to do?".

This relates to the searching discussion that there has been in the debate today about human rights and operations in the field. I care desperately about human rights. If we are not standing up for human rights, what the hell are we doing as a country? But of course there are tensions and what really matters are the ethos, spirit and leadership which run through the three services in this respect. It is really about instinctive decency and humanity, from which the rest follows. We need to be clear that these are fully felt and understood, which brings us back of course to education. It is not just a matter of going through some educational classes; it is about getting to the point at which you understand why these things matter, so that you do not have to think about them specifically in an individual situation just like that but have it deep in your psyche that that is what you are working for and what matters. This becomes terribly important in the age in which we are living, because one of the biggest battles we are involved in is the battle for hearts and minds, and ensuring that what we do and how we do it can be seen as an example all the time of a better society and of one worth living in. That makes tremendous demands on the services, and we must remember that all the time, including as we examine the Bill.

[LORD JUDD]

I have been in some very helpful correspondence with the noble Earl already on one point. I thank him for that and wonder whether it would be possible to put it in the Library, because it is quite important that the things that the noble Earl has said in correspondence with me are available more widely. The point concerns the minimum recruitment age. There is quite a lot of concern among responsible people in society that 16 is too young in the context of the things I have been talking about. I have an open mind on this issue, but it is one we ought to be looking at very carefully, because the minimum requirements at 16 are pretty modest, to say the least. Sometimes it is hard to establish that even they are being as well applied as they might be. We need to have people of real educational attainment coming into our services to have effective services, and there is an issue to be examined here. There is also evidence of a good deal of public concern about this: one of the Joseph Rowntree trusts commissioned a very responsible public opinion poll on the issue, which found that 78% of the public thought that the minimum recruitment age should be 18. From that standpoint, these are issues that we ought to be looking at.

I am also worried about the future for these youngsters who come in at 16 with minimal qualifications. They miss out on all the educational provision that is being put in place, not least by the present Government. When they come out of the services, they are going to be at a disadvantage because they did not have that, unless we are making very specific arrangements to ensure that they get support and help in acquiring the kind of education or training that would be available in civilian life. All I am asking for at this juncture is an undertaking from the noble Earl that these matters are fully recognised within the Ministry of Defence and are being taken as seriously as they should be. I am quite certain that he personally will share my concerns, but it seems to me that we need to look at this issue and make sure that there are measures in the Bill which would help in this respect.

I thank the noble Earl for having introduced the Bill so well and conclude by simply saying that I do not think this House can put on record strongly enough our appreciation and respect for service men and women and all they do on our behalf, as well as for the risks they take, the pressures on their families and the rest. It is incredible. They are so often overstretched and do not have all the equipment they need, which raises the bigger issues lying behind this legislation, which are of course our measurement of the threat, our destination in defence policy and the best way of meeting that threat, which is the fundamental question. The issues that arise in the context of this Bill then become crucial in making sure that the personnel aspects are fully covered.

2.15 pm

Lord Burnett (LD): My Lords, it is a great pleasure to follow the noble Lord, Lord Judd, who was a distinguished Navy Minister, and I join with him in paying tribute to the members of our Armed Forces and their families. They always exceed the high expectations we have of them. In addition, it is a pleasure to say that we have had three outstanding maiden speeches today. No one could fail to be moved by the speech of the noble Lord, Lord Shinkwin.

In a debate on 15 September last year, to which my noble friend Lord Thomas of Gresford has referred, I said some words about the existing courts martial regime and some of its failings. This Second Reading debate on the Armed Forces Bill is an opportunity to elaborate on the criticisms I made in the earlier debate and to make one or two other points.

The Armed Forces Bill provides the system of command, discipline and justice for the Armed Forces. It covers the renewal of the powers of courts martial and, where there are failings in the courts martial system, now is the time to highlight those failings and to endeavour to remedy them. My first point is that there has been considerable criticism of the fact that, in a court martial, a simple majority can convict a defendant. My noble friend Lord Thomas of Gresford, who has considerable experience in these matters, has been a long-standing critic of this iniquitous rule. The Judge Advocate-General himself has been critical.

In the case to which I referred on 15 September, involving Sergeant Al Blackman of 42 Commando Royal Marines, five panel members found the defendant guilty, while two found him not guilty. That ratio would not have been sufficient to convict in a civilian criminal court. It is outrageous that members of our Armed Forces serving in the most dangerous and demanding conditions—serving our country—should be treated less favourably than their civilian counterparts. One of the principal aims of the military covenant was to ensure that this did not happen and that members of our Armed Forces were not disadvantaged. A simple majority goes against the rules of natural justice, and amendments should be brought forward in Committee by the Government to bring the conviction ratio in line at the very least with the standard in civilian criminal cases.

My second point concerns the choice of individuals to serve on the panel. In civilian cases, the defendant can challenge members of the jury who, for one reason or another, are likely to be prejudicial. The ethos of a court martial is that you are supposed to be tried by your peers. In the case to which I have referred involving Sergeant Blackman, all of the panel, not just some of them, should have been drawn from individuals who had served through the horrors of the front line in Afghanistan or in similar combat conditions, who would have understood the effects that constant mortal danger, exhaustion and stress can have even on the strongest and best-trained individual—especially if that person had, over recent years, done six six-month tours on combat operations and witnessed the level of barbarism and brutality inflicted on his comrades by our enemies. As in civilian criminal cases, the court martial rules should be amended to allow a defendant the right to challenge individual panel members to ensure that he is truly tried by his peers.

Finally, like many others in this debate today, I should like to highlight the impact that human rights legislation is having on our Armed Forces. There are currently well over 1,000 public law claims filed against the Ministry of Defence in connection with British military action in Iraq. In addition, there are thousands

of private law claims. These claims often relate to operations in which British Armed Forces were engaged decades ago. Our troops must at all times comply with the Geneva conventions, but we must ensure that we do not paralyse our Armed Forces with legal red tape and doubt. This leads to death and defeat.

In an excellent article in the *Times* on 30 March last year, Mr Tom Tugendhat, who has recently left the Armed Forces and who has considerable recent operational experience—I should add that he is now a Member of the other place representing Tonbridge and Malling—wrote:

"By applying human rights laws designed for the stable conditions of peaceful, postwar Europe to our forces operating in extremely violent and fast-moving combat situations, judges are damaging the fighting capability of the most accomplished military force in Europe. Victories abroad are being undermined by defeat after defeat before the benches of London and Strasbourg. … The Geneva Conventions allowed our troops to detain combatants or civilians if necessary — but our judges, and Strasbourg, couldn't see the difference between Helmand and Henley".

Those who drafted the European Convention on Human Rights did not intend the convention to apply outside the signatory states, and the Geneva conventions should take precedence in law.

There is power to derogate from the convention. I believe that the French Government contracted out of the convention in respect of their Armed Forces. I hope that the noble Earl will explain what steps the Government are taking to do the same.

2.22 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I want to touch today on two matters: first, briefly, Clause 14, a provision which I particularly applaud, while adding, "High time". I recognise that in practical terms it changes nothing; it merely tidies up the position with regard to homosexuals as it has stood for the past 16 years. It finally crystallises in legislation the change of policy which was forced on the Government by the decision of the European Court of Human Rights in 1999 in Smith and Grady v the United Kingdom: that no longer are members of the Armed Forces engaged in homosexual activity to be administratively discharged from the Armed Forces.

For me, this has involved something of a nostalgic wander down memory lane. In 1995, I presided, at first instance, in the Divisional Court in the case of Smith, widely known as the "gays in the military" case. Of course, that was before the Human Rights Act and before, therefore, the United Kingdom was entitled to have regard to our convention obligations. Reluctantly, therefore, I was bound to reject the complainant's case, compellingly though it had been argued by Mr David Pannick, Queen's Counsel, as he then was. So, too, on appeal, presided over by the late and much missed Lord Bingham of Cornhill, the Court of Appeal similarly had to dismiss the claim.

I hope that it is not unforgivably vain to note in passing the opening line of my judgment:

"Lawrence of Arabia would not be welcome in today's Armed Forces",

and to record my statement in the judgment that:

"I for my part strongly suspect that so far as this country's international obligations are concerned, the days of this policy are numbered"—

and so it proved to be. Strasbourg's judgment, correcting what had plainly been the United Kingdom's stupidly mistaken earlier approach, should not be forgotten by those who seek any wholesale rejection of the convention.

The other matter that I want to touch on today arises not from what appears in the Bill but rather, as many others have noted, what is strikingly absent: anything directed towards solving the real problems resulting from the application of the convention to the operations of our armed services abroad. In this part of my speech—not, I hope, inconsistently—I shall perhaps be a little less respectful towards some of Strasbourg's jurisprudence.

There are a number of aspects of the problems arising from the convention as applied to our forces abroad, and I cannot pretend that, to some extent at least, they have not been compounded by what many think to be the unfortunate decision of the majority of the Supreme Court in 2013, in another case called Smith, in which, as has already been made plain, by a majority of four to three, the court refused to strike out claims by our service personnel in Iraq under both Article 2 of the convention and in common law negligence. The noble Lord, Lord West, and the noble and gallant Lords, Lord Craig and Lord Boyce, have already touched on that. The actual legal effect of the majority decision in that case has perhaps been a little misunderstood and exaggerated, but certainly the minority would have struck out those claims as unsustainable and objectionable in principle whatever their detailed facts. I have said before that, personally, I rather incline to that view myself.

I accept, too, that that decision and two other particular decisions of the Grand Chamber in Strasbourg, those in Al-Skeini and Al-Jeddah, in each of which the European Court reached a diametrically opposite conclusion from that earlier reached by us in the Appeal Committee of this House—I should perhaps declare that I was party to each of those—have all tended rather to undermine our military capability and to lead to our Armed Forces becoming hypercautious and risk-averse. The particular consequence of the Al-Jeddah decision in Strasbourg is that they have become unable to detain suspect foreign fighters whom we capture, however dangerous we judge them to be if left at large.

Those are the problems, and there is, alas, no single solution available to solve all of them. As for claims by foreign combatants and civilians, both personal injury claims and death claims, as well as—there are very many of these, too—claims for wrongful detention, the best solution now seems to me to be that in any future conflicts such as those in the past in Iraq and Afghanistan we should exercise our Article 15 power of derogation from the convention, leaving those operations abroad to be judged in accordance with international humanitarian law—that is, the Geneva Conventions—rather than the inappropriately restrictive constraints of the human rights convention which, as others have said, is designed essentially for peacetime conditions. Derogation makes it sound awfully simple. In fact, it is not—but now is not the time to explore all the difficulties.

As for claims against the Crown for death or injury suffered by our own Armed Forces, which is the particular

[Lord Brown of Eaton-under-Heywood]
problem confronting the Supreme Court in the Smith case, the solution has to be very different. Derogation simply does not have any application. In so far as such claims are brought in negligence in tort, I think that the only sensible way ahead is for a ministerial order now to be made under Section 2(2) of Crown Proceedings (Armed Forces) Act 1987—in effect reviving, in the case of,

"warlike operations … outside the United Kingdom",

the effect of Section 10 of the Crown Proceedings Act 1947, which had prevented claims for injury or death on military service, notwithstanding that the 1947 Act generally opened the way to tort actions against the Crown. Section 10 was repealed in 1987 really because personal injury damages by then had risen way beyond the level of benefits payable to those injured or killed in service. Although under the current Armed Forces pension scheme, which was revised in 2011 following the review by the noble and gallant Lord, Lord Boyce, the benefits now payable are improved, they still fall well short of tort compensation.

The noble Lord, Lord West, has already mentioned the excellent Policy Exchange publication, *The Fog of Law*—and Tom Tugendhat, just mentioned by the noble Lord, Lord Burnett, is one of the three authors of that publication. Later there was an equally powerful publication called *Clearing the Fog of Law*, which recognises—in my view, rightly—that as a matter of political reality, not to say fairness, it would be necessary as a condition of ending the right to sue for combat injuries, to award instead, in all such cases, without the need to prove fault, compensation representing the difference between the AFPS benefits and what would be awarded by way of tort damages. Obviously, this would result in more and larger payments than at present, but it would avoid all the problems of legal proceedings in the way of stress, delay and expense. Of course, it would also at a stroke eliminate the problem, presented by Smith—namely, that the risk of litigation itself causes a dangerously defensive approach to soldiering.

As to the other aspect of Smith, the possibility of claims under Article 2 of the convention, to reverse this it would be necessary to legislate, unless perhaps, as the noble Lord, Lord Campbell, tentatively suggested, a differently constituted Supreme Court could now be persuaded to depart from the majority view in Smith, which I believe could be done without any offence to our convention obligations. But if legislation is necessary, for want of any further such decision of the courts, it would have to prevent such claims for death or injury on active service. However, I repeat that I personally believe that such limited legislation would be consistent with our convention obligations and, indeed, even if challenged in Strasbourg, would be so found by the Strasbourg court.

As for the concerns expressed by the noble and gallant Lord, Lord Craig, about the ongoing inquiries into historic allegations of criminality on the part of our forces overseas, these are concerns that I share—and I would be entirely happy to engage with him or others in discussing the possibility of introducing some provision on time limitations or some other possible way of addressing those concerns.

Whether all the various problems raised around the House today should be addressed in this Bill or in another, I leave to others. Assuredly, however, they should not be left unaddressed for much longer.

2.35 pm

Lord Freeman (Con): My Lords, I add my congratulations to the three maiden speakers today. They were exemplary. I have some past experience; in the other place one of my tasks for the Conservative Government was to brief those who were making maiden speeches—to a slightly larger House, perhaps, and perhaps suffering greater nerves than those who made the three very professional speeches today. I address my two Conservative colleagues, who are most welcome, and I congratulate them on their most excellent speeches.

I want to make two brief observations and then ask a question of the Minister. My first observation is that the way in which your Lordships consider the legitimacy of Armed Forces operations is rather rigid, in the sense that we are now looking at provisions that were effectively put in place in 2006. After five years there was a review, but it was relatively perfunctory, and we are now looking forward to 2021. That seems to be slightly inflexible. There may be opportunities: for example, Orders in Council could be in due course tabled in your Lordships' House as a Motion, so there could be some discussion. Compared with the operations in the private sector and the business sector—issues affecting business are debated regularly in your Lordships' House—it seems to be a rather inflexible procedure. That is simply an observation.

My second observation concerns the liability of reserve forces for prosecution by Armed Forces authorities. I speak as the past president of the Reserve Forces Association. I thank the Minister for his briefing on the subject. A number of your Lordships met the Minister for a briefing on this Bill. The answers that the Minister very kindly gave at that briefing were, to my mind, very satisfactory, but there is some doubt, and I shall continue to monitor it. When Reserve Forces are off duty—they may be travelling to their depot, for example—there may be a period of time when they are not actually serving as Reserve Forces and their liability under military law is sometimes in doubt. But I thank the Minister for the briefing and do not intend to press him.

My question refers to the protection of our Armed Forces abroad, under the judicial proceedings that might occur in the country in which they have been operating. There has been some progress, and the Minister kindly brought your Lordships up to date on the subject. But I wonder whether he could bring us finally up to date as to the legitimate protection afforded to British forces who find themselves persecuted or possibly charged by overseas legal authorities for actions committed in the course of conflict. I am clear that the proceedings should be under UK or British auspices and back in this country.

2.38 pm

Lord Young of Norwood Green (Lab): My Lords, I thank the Minister for his comprehensive introduction and declare an interest as an ex-member of the Armed

Forces' Pay Review Body between 2004 and 2008. It gave me an interesting set of life experiences, including a trip to Iraq and Afghanistan and right out to the front line, including a bit of light shelling at Basra air base, which is not to be forgotten. So I am well aware of the threats, risks and dangers that our Armed Forces face. The scenarios that they operate in vary, as the challenges vary; more recently, the Ebola experience was another example of them rising to the occasion.

I take this opportunity to congratulate the maiden speakers. Unfortunately I heard only the noble Baroness, Lady Pidding. I did not hear my noble friend. I apologise for that. I had other business that I was trying to deal with at the same time. But I am sure that they will make an important contribution to the House.

I have a couple of questions for the Minister. One has been comprehensively covered. Finer legal minds than mine have been at work on the issue. The legal actions that are taking place against past and present members of the Armed Forces are—I hesitate to use the word—obscene. The entry of the no-win no-fee brigade has created an unfortunate climate. This is not the first area where we have seen this happen. It has happened in a range of other areas, including PPI and whiplash claims. It will not be an easy problem to solve, as we have heard during today's debate, but the Bill gives us an opportunity to examine the legal challenges that face our Armed Forces and to ensure that there is fairness and that we can deal with situations where things manifestly go wrong.

I was interested in my noble friend Lady Taylor's contribution about the role of women and instances of sexual harassment. That is an important area. More evidence has recently emerged about the unfortunate incidents at Deepcut. My noble friend mentioned culture. Changing the culture of an organisation is the hardest challenge of all. It manifestly is changing, but whether it has changed enough is the question. What can we do to ensure that the current ethos in the Armed Forces reflects current standards of behaviour? Embedding that in the way that officers and troops behave and ensuring that the training reflects them is important.

I also welcome the clause dealing with homosexuality. It made me think about one other area on which I would welcome a comment from the Minister. Are the Armed Forces equipped to deal with the complexity of transgender situations, which are emerging more and more? It is not an easy issue, but it is one that will have to be addressed.

My noble friend Lord Judd made an interesting point about the recruitment of young people at the age of 16. One of the benefits of being on the Armed Forces' Pay Review Board is that you are taken around to meet the troops and are able to speak to them without officers present. Young people going into the Armed Forces at that age often find that it brings a structure and purpose into their lives that they have never experienced before. It makes a profound improvement. If that were all that it did, it would not be enough. Of course they have to be properly trained. The Armed Forces have excellent apprenticeship schemes. They need to ensure that they are part of that so that when they leave, instead of it being a negative, it would be a positive; we would be sending young people back into society much improved. The only other safeguard is that young people making a decision at that age need to have the right to change their mind. I feel it is necessary to make that contribution because I have met so many young people whose lives have been improved, and I wanted to end on a positive note. This has been a really interesting and fascinating debate with some profoundly important contributions. I look forward with interest to the Minister's reply.

2.45 pm

Lord Bilimoria (CB): My Lords, the Minister started this debate by saying that the Armed Forces Bill would renew the Armed Forces Act 2006, which provides the legal basis for the existence of the Armed Forces as disciplined bodies. I have just returned from addressing the 71st course at the Defence Services Staff College in Wellington in the Nilgiri hills in south India. I have known the institution since my childhood. When I was a little boy, my father was a major attending the course. When I was at boarding school in neighbouring Ooty, my uncle, Lieutenant-General Sethna, was commandant. Later, in the 1980s when I was at Cambridge, my father, Lieutenant-General Faridoon Bilimoria, was commandant. I returned there eight years ago to address the 63rd course in 2008. When I was there this week, I was taken by the immaculate condition of the staff college. It was the best I have ever seen it, under the leadership of its current commandant, the Guards officer Lieutenant-General SK Gadeock. He reminded me of the motto of the staff college—"To war with wisdom"—and the mascot of the staff college, its emblem, the owl. Of course, the owl stands for wisdom.

Are we being wise as a country when it comes to the law and the Armed Forces? The noble and learned Lord, Lord Brown, spoke of the fog of war, and we have been speaking about *The Fog of Law*. Penny Mordaunt, the Armed Forces Minister, has spoken openly about the spurious cases being brought by parasitical lawyers whose behaviour is the,

"enemy of justice and humanity".—[*Official Report*, Commons, 27/1/16; col. 203WH.]

We have heard of "lawfare". Legal firms have brought more than 1,500 allegations of abuse and killings against British troops in Iraq. Ms Mordaunt said that that they are bringing morally unjustifiable cases on an industrial scale. For instance, Public Interest Lawyers, founded by Phil Shiner, has brought a case against British troops even though it was accepted 11 years earlier that Danish troops were responsible and Danish forces had already accepted responsibility and paid compensation in 2003. Ms Mordaunt said that we will take action against any legal firms we find to have abused the system and made spurious and fabricated claims. Will the Minister say why this issue is not being addressed in the Bill? IHAT has a huge backlog. It spent £57 million to find evidence of wrongdoing in only one case. A team of more than 145 detectives and staff will not complete its work until 2019. We hear that further allegations may be brought against troops who have served in Afghanistan. According to Johnny Mercer, the situation is out of hand. No other country has legislation put to the Armed Forces in the way we are experiencing here.

[LORD BILIMORIA]
The Prime Minister wants to stamp out spurious legal claims against British troops returning from war and this awful no-win no-fee culture. The Defence Secretary has spoken of ambulance-chasing British law firms and said that there is a case for suspending European human rights laws when sending forces into action. Does the Minister agree? The Prime Minister has said that the National Security Council has been ordered to produce a comprehensive plan to stamp out this industry. Will the Minister update us on this? This is stopping the Armed Forces doing their job. How long will it take to finalise the proposed new British Bill of Rights which it is hoped will replace the Human Rights Act and make Britain's Supreme Court more powerful than the European court? In the mean time, as the noble Lord, Lord Burnett, said, does the Minister agree that we can derogate from the ECHR, as we did after 9/11, to protect ourselves from being sued if we are going to a theatre of operations where we think compensation could be applied? After all, France has opted out of certain elements of the ECHR in order to protect its military from the threat of litigation. Portugal, the Czech Republic and Spain have all derogated in the way that France has. Why can we not? Why should we not?

The noble and gallant Lord, Lord Boyce, spoke about fighting effectiveness and about lawfare. Surely the ECHR was designed for civilian situations to protect the public from the misuse of state powers. Instead it is being used to bring legal claims against the military during times of war. The Geneva protocols should apply in conflicts of war. Does the Minister not agree?

The Policy Exchange, talking about its report *The Fog of Law*, says that,

"human rights laws mean British troops operating in the heat of battle are now being held to the same standard as police officers patrolling the streets",

of London on a Saturday evening. This is completely out of proportion. In fact, Article 15 of the ECHR allows countries to derogate in times of war or other public emergency threatening the life of the nation.

My father commanded his battalion of the 2/5th Gurkhas in the liberation of Bangladesh in 1971. When they were about to take over a town, the brigade commander phoned my father and said, "I want that town taken by breakfast tomorrow morning". My father said, "No, sir, I will not obey your order. I will give you that town by lunch. If I take it by breakfast I will lose too many of my men". He did indeed take the town by lunch. Sadly, he still lost lots of his men. However, he made that decision in war.

I come to the question of adequate equipment. Since we are talking about the Gurkhas, whose 200th anniversary we celebrated last year, I say that my father's battalion won three Victoria Crosses in the Second World War. I am on, and for six years was proud to chair, the committee for the Memorial Gates on Constitution Hill. In the ceiling of the pavilion there are the names of the Gurkha Victoria Cross winners. How many of them had adequate equipment? Their adequate equipment entailed a kukri with which they would single-handedly combat troops with a cry of "Ayo Gorkhali"—"Here come the Gurkhas". Field-Marshal Manekshaw, another former commandant of the Defence Services Staff College in Wellington, famously associated with the Gurkhas, said that if a man says he is not afraid of dying, either he is lying or he is a Gurkha. This sort of bravery has no place for human rights lawyers.

Under the Geneva convention, lethal force is allowed as a matter of first resort against the enemy. Under the ECHR, lethal force should be used only as a last resort and only in exceptional circumstances. That is wholly inappropriate. The Minister said that the Bill is modest, and I am afraid I have to agree with him. It does not address a major issue. Last year was the 200th anniversary of the Battle of Waterloo. What was the motto of the Duke of Wellington, one of the most famous heroes in this country? "Fortune favours the brave."

In my talk to the Defence Services Staff College, which trains officers for armies, navies and air forces from all over the world, I spoke about the article *10 Things Entrepreneurs and Military Pilots Have in Common*, written by Ron Yekutiel. Two of those 10 things were "Be bold" and "Just get the job done". How can you just get the job done when you have the ECHR breathing down your neck and human rights lawyers ambulance-chasing you? This year at Harvard Business School, which I have attended for 14 years, we talked about the difference between playing to lose and playing to win. I believe that the British Army is famous for playing to win.

The SDSR 2015 was very positive, after the very negative one in 2010. Defence spending will rise by 5% by 2020-21. We will restore our lost capability after a decade of no carriers and no maritime patrols. We have one of the five highest levels of defence expenditure in the world. We are one of less than a handful of countries that now adhere to our 2% of GDP spending NATO commitment.

We are not a superpower; there is only one superpower on this planet and that is the United States of America. However, we are not a regional power or local power. We are at the top table of the world in every sense—the UN Security Council, the G7, the G8, the G20, NATO and the European Union. We are a global power.

The House of Commons Defence Committee produced a report, *Flexible Response? An SDSR Checklist of Potential Threats and Vulnerabilities*. It identified the following threats:

"Cyber-attack and espionage … Growing instability in the Middle East and North Africa … Increases in extremism, radicalisation and other enablers of terrorist activity … Non-state actors and hybrid warfare undermining the international rules-based order … Potential for conflict in the South and East China Seas … Potential for Russian aggression in Europe and the High North and possible dilution of the commitment to Article 5 … Economic dependence on unreliable partners … Inability to react to sub-conventional threats … Inadequate training opportunities for UK Armed Forces … Lack of numbers in UK Armed Forces and gaps in capabilities".

On that note, when I was in India this time with the Indian Army it reminded me of when my father commanded the largest corps in the Indian Army. That corps has a strength of 100,000. The army that he commanded was 350,000 strong. Our troops now number 80,000. Lastly, the committee identifies:

"Lack of expertise in Whitehall".

The report concludes:

"The SDSR must demonstrate adequate awareness of them all, and configure the Armed Forces to provide the flexibility, versatility and ability to expand which are essential for the defence and security of the United Kingdom".

This is about the services. The motto of Sandhurst, where my grandfather was commissioned, is, "Serve to lead". The motto of the Indian military academy where my father was commissioned, if I may paraphrase it, is, "The honour, safety and welfare of your country come first, always and every time. The safety and welfare of the troops that you command come second, always and every time. Your own safety and welfare come last, always and every time".

We have had three varied and excellent maiden speeches today. The noble Lord, Lord Shinkwin, spoke movingly of the Armed Forces covenant. We now have an annual report prepared on the covenant. Let us remind ourselves of what this is all about. The Armed Forces covenant is an enduring covenant between the people of the United Kingdom, Her Majesty's Government and all those who have served the Armed Forces of the Crown and their families.

The first duty of government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and sometimes suffering serious injury or death as a result of their duty. In return, the whole nation has a moral obligation to the members of the naval service, the Army and the Royal Air Force. Together with their families, they deserve our respect, support and fair treatment. Recognising those who perform military duties unites the country and demonstrates the value of their contribution. This has no greater expression than in upholding this covenant. The covenant is at the heart of everything. We have to address the major lack in the Bill. I hope that we do.

2.58 pm

Earl Attlee (Con): My Lords, I am grateful to my noble friend the Minister for his explanation of the Bill and to our most excellent maiden speakers.

I believe that the constitutional arrangements whereby we expend the service discipline Act annually by order and five-yearly by Act of Parliament is the right arrangement. I remind the House that I have an interest as I am technically still a commissioned officer in the Reserves, but not for long, since I will have to hang my boots up on my 60th birthday. I have exercised summary jurisdiction under the Army Act 1955 and in my very early days I was on the receiving end of it, although in retrospect I realise that it was probably much more to do with accounting for a lost camp-bed than for anything I might have done wrong. In answer to my noble friend Lord Lyell, I was using the Army Act 1955 in 1998 and it was still being used until the 2006 Act came into force.

I do not have any problems with the provisions of the Bill, but I regard it as an opportunity to raise a number of G1, or rather J1, issues, and not just service discipline arrangements. The difficulty with defence legislation is that the needs of the majority in the Armed Forces have to be balanced with the rights of the individual. I agree with all that the noble Lord, Lord West, and other noble Lords have said about the Human Rights Act.

The noble Lord, Lord Judd, raised the issue of the age of recruitment. Perhaps the Minister could not just put the correspondence in the Library but share it with all of us who have taken part in the debate, as that would be very helpful.

The noble Baroness, Lady Taylor of Bolton, talked about the statistics regarding "inappropriate behaviour", if I may put it that way. I would be interested to see how those same questions and statistics compare with the experience in industry. It may be better or worse, but it would be useful to know what the difference is.

I will touch on "pay as you dine". A few years ago, junior service people were charged for their food, whether they took it or not. This caused some resentment, and prior to the 1997 Parliament new arrangements were studied and were later put into place. In Committee, I will table some purely probing amendments to explore how the system is currently working.

I was very surprised that no noble Lords raised the issue of women in the front line. We already have women serving courageously in the front line and in harm's way. They will engage the enemy as vigorously as their male colleagues. The issue is whether they should take on a role which is primarily to close with the enemy and kill him. Women are currently precluded from serving in the infantry or the Royal Armoured Corps operating armoured fighting vehicles. It is possible that, in respect of armoured fighting vehicles, women have advantages that outweigh the disadvantages. However, as regards the infantry, "closing with the enemy and killing him" is a brutal, bloody business. Physical strength is all-important. Since the average male is far stronger than almost all females, it follows that allowing women to serve in the infantry will reduce the combat effectiveness of the British Army and therefore I would strongly oppose it. There is of course an acid test for this issue. In the event of general war and conscription, would noble Lords be prepared to conscript women to serve in the front line? I very much doubt it.

We have talked a lot about the Government's policy for the reserves, and while I have my misgivings I have a helpful suggestion; I will read very carefully what my noble friend Lord Freeman said. I believe that we should blur the distinction between regular and reserve service. This may be particularly relevant to cyber-reservists. Perhaps we should think of reserve service much more as being in Her Majesty's Armed Forces but on a zero-hours contract. Rather than have me blunder around in the dark, it would be helpful if the Minister could arrange for me to be properly briefed on the current legal situation as soon as possible.

We have heard much about the military covenant, one of the principles of which is that no one who serves should be disadvantaged by that service. Over the last year or so, we have seen a retired officer of stratospheric seniority, who will have held the highest security classification, and who is also a Member of your Lordships' House, having his public reputation traduced by a police investigation called Operation Midland. The public were told that the evidence was

[Earl Attlee]
"credible and true". As we know, parts of the operation were carried out in the full glare of publicity and not discreetly and sensitively. Of course, no one—but no one—is above the law and we need to give the police operational independence. However, I know that many noble Lords are deeply unhappy about this matter, which is fast moving, with developments even today. My main effort will have to wait for the next police and crime Bill, but I will table several amendments to address some of these concerns where they are relevant to the Armed Forces Bill. These might not necessarily be probing amendments, especially on Report.

I turn to the Blackman case. Several years ago, I told the House that service personnel deploying on operations have a secret dread fear, which is misconduct on operations. It is a sad fact that, if we are engaged in operations, sooner or later something will go wrong such as in this case. The House will recognise that the reason why we have a system of military discipline is so that our members of our Armed Forces, who are lawful combatants, will engage the enemy when required and, most importantly, they will adhere to the law of armed conflict and treat captured and injured enemies as they would want to be treated themselves. The fact that the enemy might not reciprocate is immaterial. We will not descend to the enemy's level.

For years and years, during my annual training on the law of armed conflict I watched a video which covered some of the crucial points. I expect that the noble Lord, Lord Burnett, has watched the very same video. Among the points were the duty to protect vulnerable non-combatants and cultural items and, most importantly, that wounded enemy get medical treatment according to clinical priorities and not according to whose side they are on. The video also made it clear that you cannot kill the enemy once he is wounded and no longer able to fight. There was absolutely no doubt on these points and the current training is even more detailed and carefully delivered.

The noble Lord, Lord Burnett, knows very well that I hold both him and the Royal Marines in the very highest regard. However, I have to part company with him on this issue. I am very sorry for Blackman and his family. When he comes out of prison I would support him in seeking good employment.

Lord Burnett: I am grateful to the noble Earl for giving way. The thrust of Sergeant Blackman's case is that he shot a man he thought was dead; we should all be careful about what we say about the case, because the papers are now with the Criminal Cases Review Commission, and we await what its judgment will be on the facts.

Earl Attlee: I am grateful for that. I was going to say that he is a good man but he has fouled up, and has been convicted in the courts of a serious military offence and has to be disciplined, however unpleasant that is for everyone.

The noble Lord called into question the court martial system and in particular the experience of the officers on the board. Those comments were rather adventurous. I have served on two or three court martials but only for much less serious matters, and certainly not involving the noble Lord, Lord Thomas of Gresford. I can assure the House that, in my experience, the mindset of the board is to acquit if at all possible. Your Lordships will recall that the court martial acquitted Marines B and C, and I am bound to say that I would have been surprised if a civilian court had done so.

The noble Lord implied that the officers on the board would have difficulty in understanding the operational conditions at the time of the incident. That is not a fair criticism but, in any case, how much more difficult would it be for a jury in the Old Bailey? The reality is that of course Crown Court juries are forever deciding cases where they have no experience of the relevant environments, such as drug dealing, gang culture and organised crime.

In the past, I have intervened in support of service personnel who have been prosecuted when I believed that something had gone wrong. The Trooper Williams case comes to mind. I am very sorry, but nothing has gone wrong with the system and my counsel to the Minister is to do nothing. I am sorry to disappoint the noble Lord, Lord Burnett, who, as I have said, I have high regard for. Fortunately, there is much common ground between us. I look forward to Committee.

3.09 pm

Lord Walker of Gestingthorpe (CB): My Lords, I ask the House's indulgence to say a few words in the gap. As one who has spent all my working life in the law except for two years' military service in Germany with the Royal Artillery, I share the concern and disgust expressed in many corners of the House at the sort of ambulance-chasing activities which have been referred to—the "lawfare" trouble that affects us all. But as one of the four in the majority in the Supreme Court in the Smith case, which has been mentioned a number of times, I feel bound to say a word or two. It would be quite wrong for me to attempt to debate the whole case at length and at this point in the debate, but I ask the House to bear in mind three quite simple points about the majority decision of the Supreme Court.

First, it was not a claim that sought to establish either criminal or civil liability against any individual, officer or soldier, or group of officers or soldiers; it was, as I shall explain, basically a case about a failure of procurement of equipment. Secondly, the Supreme Court did nothing to say that the claim was likely to succeed or to encourage it; it simply refused to strike out the case as completely hopeless. Thirdly and most importantly, the reason that it was not a case that alleged a breach of a duty of care by any particular officer or soldier or collection of officers or soldiers was that it was basically about two particular failures of procurement of equipment.

One of the claims was based on an attack by a Challenger tank attached to an infantry unit at Basra against another Challenger tank some way away attached to a different infantry unit. The case was that the problem of a tank attacking a friendly tank could have been avoided by equipment which is referred to as, I think, friend or foe equipment and which, we were told, is fitted to American and French tanks but has never been fitted to tanks in the British Army. If it had been, it would have ensured that that incident did not happen.

The other claim was based on the failure over many years to produce a light armoured personnel carrier—it is the sort of thing that seems to happen all the time between the MoD and the suppliers; there is a constant wish to improve the specification and the design but it never gets done—which resulted in the use by the Army in Iraq of Land Rovers, which are very difficult to protect against various forms of attack.

That is what the case was about. The majority may have been right or may have been wrong. I agree that 4-3 is a very unsatisfactory way of deciding such an important case, and it may well be that the Supreme Court will revisit it. Who knows? But it is a very difficult area. The claim was basically that there had been a failure of a duty of care on the part of the MoD in London, not the Army in Iraq. It is a very much more complicated subject, as my noble and learned friend Lord Brown of Eaton-under-Heywood indicated. I very much doubt whether it is right to attempt to deal with it in this Bill rather than elsewhere, but certainly it is a very difficult subject which needs careful thought. If that case is to be examined minutely, I ask noble Lords to read the long and anxious judgments and not to accept a tendentious account from those sections of the popular press that are determined to do down the Human Rights Act.

3.14 pm

Baroness Jolly (LD): My Lords, this has indeed been a fascinating debate. The range of experience and expertise on all sides of the House is quite impressive. I rather suspect that more unites us than divides us with regard to this Bill. My noble friend Lady Smith of Newnham is not in her place this afternoon; she is at the funeral of Lord Roper, who certainly would have taken part in the debates on several of these Bills in times past.

I thank the Minister for arranging the briefing with officials. It was most useful and informative. Clearly, I must congratulate noble Lords on their really impressive maiden speeches. We look forward to them contributing fully to the business of the House in the future.

I wish to put on the record a tribute from these Benches to the men and women who serve in our Armed Forces. I have had the privilege of seeing the Royal Navy at work over the last six months or so as part of the Armed Forces Parliamentary Scheme. On Sunday I head off to Norway to join the Royal Marines in their annual Arctic exercise.

In many ways the Bill is as important as the SDSR to the men and women who serve in our Armed Forces. It affects their daily life, their work and, indeed, their retirement. I think that we could revisit on another occasion the debate that we have had today on the Geneva Convention and the European Convention on Human Rights. I was really delighted to hear the noble and learned Lord, Lord Walker of Gestingthorpe, with his expertise, suggesting that this Bill is not the right vehicle for settling these issues. That was my view but he has underlined it, and I am very pleased about that.

I state at the outset that I think that the measures in the Bill are sensible and timely, and we are happy to support them. My noble friend Lord Thomas of Gresford covered issues relating to Clauses 3 to 12, and I shall pick up areas of concern outwith the Bill but within its scope. The issues I shall raise are predominantly those that might fall under the umbrella of the Armed Forces covenant. I was delighted to hear, among others, the noble Lord, Lord Bilimoria, the noble Earl, Lord Attlee, the noble Baroness, Lady Hodgson, and, in his maiden speech, the noble Lord, Lord Shinkwin, talk about this really important document. Of course the Armed Forces Act 2011 incorporated the requirement for the Secretary of State to report annually on the covenant, and it is very necessary that we hold the Government to account on that.

Shortly after the operations in the first Gulf War ended, clusters of previously fit veterans reported developing unusual diseases, illnesses and symptoms. While all these symptoms can be present within the Armed Forces community and the general population more widely, what is unusual is that ill Gulf War veterans reported more of these symptoms than expected, and at a greater intensity.

As many as 33,000 UK Gulf War veterans could potentially be living with illnesses connected to their service in the Gulf, yet to date there has been little meaningful research regarding best practice to alleviate some of the associated symptoms. The veterans who have developed illnesses as a result of their service should be properly supported and there should be improved awareness of their specific health needs. I should mention that this is confined not just to our veterans but to those in the EU, the US and Canada. Will the Minister commit to the MoD investing in further research that will improve recovery outcomes for this particular group and set up formal communication channels to convey the results of US research developments for Gulf War veterans living here in the UK?

Military compensation is awarded partly as recompense for an ex-serviceperson's loss of earnings. The Armed Forces compensation scheme, guaranteed income payments and the supplementary allowances paid under the war pensions scheme specifically relate to employment. However, military compensation payments are currently uprated annually in line with price inflation rather than average earnings, meaning that the real-terms value of these payments is decreasing year on year.

Indexation to the CPI is the least generous option, meaning that injured service personnel are currently financially disadvantaged compared to civilians in employment and their peers who remain in military service. This paints the Government in an ungenerous light to war veterans. The Government should index-link those employment-related aspects of war disablement pensions and Armed Forces compensation scheme payments to the triple lock. This would protect the value of military compensation payments for years to come. I know the Minister has pushed back on this, but I am asking whether he would consider it again.

Service personnel and veterans who are injured in service are able to access compensation through the war pensions scheme for those with conditions sustained on or before 5 April 2005, or through the Armed Forces compensation scheme for those with conditions sustained on or after 6 April 2005. Only veterans

[Baroness Jolly]
injured after April 2005 are currently able to retain their military compensation awards in full when accessing support for their social care. In contrast, veterans who were injured before that date typically find that they can keep only the first £10 per week of their compensation. It is unfair that the date on which a veteran was injured should determine the level of support that they receive, and it is not in line with the spirit of the Armed Forces covenant. Would the Minister consider amending the statutory guidance for charging so that all military compensation payments are fully exempted from financial assessments for social care support, whether residential or non-residential?

Many noble Lords have supported the case for those people with mesothelioma, including the noble Lords, Lord West and Lord Empey, the noble and gallant Lord, Lord Boyce, and the noble Baroness, Lady Taylor of Bolton. In December 2015, the Veterans Minister announced that veterans diagnosed with mesothelioma on or after 16 December 2015 will be offered the choice between receiving a traditional war pension or £140,000 in lump sum compensation. Does the Minister think it fair that veterans diagnosed with mesothelioma before 16 December 2015, and who are already in receipt of a war pension, will not be eligible for the new scheme? Around 60 veterans have been denied access to the new lump sum award, and I would like to push the Minister on why the Government have not yet accommodated this small group but are "looking into it". To put not too fine a point on it, time is short. A rethink would be welcomed.

I move on to the investigation of serious crime, murder, sexual assault and rape. Here, I am referring to offences not in battle but in ordinary circumstances: in work, in the community living that the Armed Forces find themselves in, and in leisure. When allegations are made that a member of the Armed Forces has violated service law, a CO has broad discretion to decide whether to investigate or to refer to the relevant police force. The Armed Forces Act 2006 requires this to be mandatory for certain criminal offences, but explicitly excludes sexual assault, voyeurism and sexual activity in a public lavatory. So if notified of such a crime, a CO is not required to refer the matter to the police. Discretion creates room for confusion. Failure of the services to maintain a crime register means that there has been no way for HMIC to corroborate this. The Government stated that victims may bypass their commanding officer and go directly to the police, but we have heard the anxiety from noble and gallant Lords sitting opposite me that this would undermine the chain of command and the training that service personnel receive to work through the established framework.

Service police forces are institutionally unable to offer the necessary independence in cases involving allegations of serious sexual assault and rape, especially in cases where both the victim and alleged perpetrator are service personnel, as there is a risk they may know those involved. Service police may have been trained, but they do not have the expertise and experience to investigate the most serious offences. In its report, HMIC has raised a number of concerns on this matter. Should not allegations of sexual assault and rape involving members of the Armed Forces always be investigated by civilian, rather than service, police forces? Confusingly, the HIMC report sets out that, for the Army, there is now notification of all serious sexual offences to a civilian police force. However, the report does not state whether this process is a requirement or an option and where it fits in with other protocols or applicability across other services. Could the Minister clarify this point?

In the civilian sphere, the IPCC is charged with adding independence to the oversight and handling of complaints. No such body exists to deal with the service police forces, which undermines the rule of law. HMIC has recommended that an independent body provides oversight. Are the Government minded to accept such a recommendation?

I would like to take the House to an area covered in the Health and Social Care Act 2012. Great strides have been made in the last few years on health, such as the wonderful rehabilitation work at Headley Court and the excellence at the Ministry of Defence health units embedded in hospitals. The work done with veterans with mental health issues is a great stride forward, but the evidence suggests that those serving who have a mental health problem do not always seek help. There is still a stigma. Within the NHS, parity of esteem of physical and mental health is enshrined in law, and the messages are changing. The noble Lord, Lord Young of Norwood Green, spoke about a cultural change, but this cultural change has not yet found its way into the Armed Forces. Could the Minister give me an idea of the Government's thinking on this issue?

Finally, to revisit something that was raised by the noble Lord, Lord Judd, full-time education or training is now compulsory for those up to the age of 18. I have visited HMS "Raleigh" and seen the duty of care that is shown to the young men and women training there. I also understand that there are Ofsted inspections. However, could the Minister confirm when the MoD last looked at the issue of the age when a serviceman or woman can enlist?

I am happy to take answers from the Minister in the form of a letter, copied to all noble Lords, if time does not permit a full response.

3.28 pm

Lord Touhig (Lab): My Lords, the House will perhaps understand if I say I have a feeling I have been here before—a sense of déjà vu. I was on the government side as Defence Minister and in 2005 took the Armed Forces Bill through the other place. However, I never saw it through to becoming an Act. The Prime Minister, Tony Blair, phoned me and said he had to make room for younger members of his Government—and, in an instant, I was no longer a Minister. My successor, friend and colleague, and now deputy leader of my party, Tom Watson, took the Bill through to complete its passage in the other place. I have no complaints about losing office, having served for most of the time that my party was in government—although it did take some getting used to, to be told at 57 that I was too old to be the Veterans Minister.

That 2006 Act was the biggest piece of Armed Forces legislation for many years. It not only completed major reforms to the Armed Forces system of justice

but was amended to include a pardon for the 308 shot-at-dawns—our own men whom we executed in the First World War.

I think that all would agree we have had an excellent debate today, and I look forward to Committee when we will examine the Bill in much more detail. We have certainly had three excellent maiden speeches. Perhaps the House will indulge me if I pay tribute to the speech made by my noble friend Lord Murphy of Torfaen. We are each other's oldest friends; I think that in our first photograph together we are aged three, playing in the sand-pit at Brynteg nursery in Abersychan. His maiden speech was first class, and I expected nothing else.

His work as Northern Ireland Secretary and as Minister of State before then saw him make a major contribution to the peace process. He is highly regarded and respected on all sides and, although he has only just made his maiden speech today, almost on the day he came into the House the Home Secretary asked him if he would chair the Joint Committee on the draft Investigatory Powers Bill which has reported today. I am not alone in looking forward to his further contributions.

The House has also been fortunate to hear maiden speeches from the noble Baroness, Lady Pidding, and the noble Lord, Lord Shinkwin. The noble Baroness, Lady Pidding, served on Chiltern District Council. I, too, served in local government. I do not know whether she shares my experience that when I ceased to be a councillor and became an MP I found that I had swapped power for mere influence. In her excellent speech she spoke about volunteers. All parties require volunteers and we know how much we rely on them. It reminded me of an occasion when someone came to me having just joined the Griffithstown and Sebastopol branch of the Labour Party, of which I was secretary. He had attended his third meeting, seemed rather fed up, and said, "I joined the Labour Party to change the world, not the minutes of the last meeting".

I have had the pleasure and honour of knowing the noble Lord, Lord Shinkwin, for a number of years and know well of his hard work with the Royal British Legion. His brother John worked with me for a year and did tremendous work. The noble Lord's speech was thoughtful, powerful and moving and was underpinned by his deep and real faith. The Feast of Our Lady of Lourdes is a wonderful day on which to make a maiden speech in your Lordships' House.

I thank the Minister for all his work and for the helpful briefings he has provided throughout as we have prepared for this Second Reading. I look forward to working with him on the Bill.

My party in government has a proud record on defence. At the end of the Second World War it was a Labour Government who committed us to an independent nuclear deterrent and who helped create NATO. I hope that that message is not lost on some members of my party today who might need some re-education. Between 1997 and 2010 it was a Labour Government who ended the ban on LGBT men and women serving in the Armed Forces and passed the Armed Forces Act 2006, which I have already mentioned. We invested in equipment to support our troops serving both at home and abroad, increased defence spending by 10% in real terms and invested in world-class health facilities for the Armed Forces such as the Queen Elizabeth hospital in Birmingham, which I have visited.

It is important to note that throughout this Bill's passage in the other place it received cross-party support, with colleagues from across the political spectrum recognising the constitutional importance of this legislation but also providing a level of scrutiny that will give our Armed Forces the best possible deal in the coming years. It is rare that a piece of legislation receives such strong cross-party support, which again underpins its importance. The way in which the Bill was changed in the Commons is a testament to the impact of cross-party working together. That, for me, is Parliament working at its best.

The Government made an amendment to the Bill to remove outdated legislation that saw homosexual acts constitute grounds for discharging a member from the Armed Forces, following an amendment tabled by my party and supported by other parties. On Report the Government agreed to a compensation package for veterans suffering from mesothelioma following the debate on a Labour amendment. We have had some important contributions today from the noble Lord, Lord Empey, the noble and gallant Lord, Lord Boyce, and the noble Lord, Lord West of Spithead, who have shown us that there is still a gap we need to fill in that respect. Now that the Bill has come here, we will continue to work with colleagues across the House to secure the best settlement for our Armed Forces.

As my honourable friend Maria Eagle, who was our shadow Defence Secretary at Second Reading, said in the other place, Labour welcomes the intention of this Bill. Its ambition to simplify the system when people are charged with offences is certainly a step in the right direction. When I served as a Member of Parliament, I often came across cases from constituents who found the bureaucratic challenges thrown up by the civil justice system a barrier to gaining the justice they were seeking. We certainly do not want that in the Armed Forces.

Having said this, we will continue to press the issue of how rape and sexual assault are reported and dealt with in the Armed Forces. I am sure that we on these Benches are not alone in believing that it is a serious issue that warrants further attention and scrutiny, not least to enshrine equality into our Armed Forces.

The Government announced before Christmas their intention to allow women to serve in all front-line roles. Clearly that will be contentious, as the noble Earl, Lord Attlee, said in his contribution. It demonstrates a wider commitment to equality in the Armed Forces but it must come with a greater responsibility to deal with issues such as rape and sexual assault. On this side, we want men and women to see joining Britain's Armed Forces as an opportunity to get a career, a skill, a life-changing experience and yes, for some, a career for life. This is why we feel strongly about the need to face up to the issues surrounding sexual misbehaviour—a point made by my noble friend Lady Taylor of Bolton. No man or woman thinking about joining our Armed Forces should be left in any doubt about our concerns on this matter. It is

[LORD TOUHIG]
surely at the heart of the equality agenda to which we all aspire and which we want to see enacted.

I have a number of questions for the Minister. He mentioned the question of the territorial extent of the Bill so far as it concerns Gibraltar and gave us a good update. One assumes that we will have something, certainly by Report or Third Reading, so that we know whether or not it will extend to Gibraltar.

Secondly, there is some interest in how reports of murder, sexual assault and rape are dealt with in the Armed Forces. Can the Minister confirm what policies are currently in place to deal with such reports, how they are investigated and how they are prosecuted, and will he place a copy of these policies in the Library of the House?

Thirdly, in 2013, during the passage of what is now the Defence Reform Act 2014, the then Defence Secretary, Philip Hammond, stated that if there was a case to be made to legislate to provide further employment protection for reservists, this could be done in the Armed Forces Bill. However, the Bill does not currently include any provisions to provide further employment protection for reservists. Can the Minister say why this has not been included in the Bill and whether any case was made to include it when the Bill was being prepared?

Fourthly, there is a gap in the Armed Forces compensation scheme as it impacts upon people with mental health problems. It can take years—perhaps five years or more—for mental health to be diagnosed. Once diagnosed there is no immediate financial assistance under the scheme Those with physical injuries can claim up to £60,000 if their injuries are level 8 or worse, but mental health is classified below this level. The solution may be a fast-track payment for mental health sufferers or even an interim compensation scheme. I appreciate the Minister may want to think about this matter and perhaps we can pursue it in Committee.

On this side we welcome the fact that the Government are finally recognising that homosexual acts no longer constitute grounds for discharging a member from the Armed Forces and that this is being enshrined in law.

I will raise the same question in relation to the Merchant Navy. I recognise that it is outwith the scope of this Bill but what steps have been taken to address this issue in the Merchant Navy? Specifically, can the Minister say whether he has had discussions with the Department for Transport, which has responsibility for the Merchant Navy, and whether we can expect further legislation to ensure that the Merchant Navy is on a level playing field with the Armed Forces on this matter? I accept that he might want to go back to the department before replying on this point, but perhaps we could have some information by Committee.

To conclude, I look forward to working with colleagues across the House on the Bill and I reiterate my party's support for it. During the time I was a Minister of Defence I had my own mission statement. It was simply this: we will value our service men and women and their families and do everything practical in our power to demonstrate that. I am sure that, by working together across the House on the Bill, we will show the British Armed Forces that we are on their side.

3.38 pm

Earl Howe: My Lords, I am sure that all noble Lords will agree that we have had a very good debate today with contributions of the highest quality. It has been a debate enriched and adorned by three excellent maiden speeches. It is a pleasure for me to say that I agreed and identified with every word of all three of them.

The difficulty of doing justice to all contributions is, I hope, obvious. I shall do my best to respond to as many as possible of the points that have been raised, but I hope that noble Lords will bear with me if I do not manage to answer each and every one today. I shall look carefully at *Hansard* and will write to any noble Lord where I have something to add.

Perhaps I may begin by responding to the many noble Lords—including the noble Lords, Lord West of Spithead and Lord Empey, the noble and gallant Lords, Lord Craig and Lord Boyce, the noble Lords, Lord Ramsbotham, Lord Bilimoria and Lord Burnett, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and others—who raised a series of concerns falling under the broad heading of the law relating to human rights.

I turn first to the concerns about combat immunity and the so-called Smith judgment, raised by the noble Lord, Lord West, and the noble and gallant Lord, Lord Boyce. Without any disrespect to the noble and learned Lord, Lord Walker of Gestingthorpe, whose remarks I found very helpful, the Government are very concerned about the judgment, because the court ruled that some issues relating to military operations may be justiciable. This was one of the reasons for our manifesto commitment to deal with the huge volume of litigation currently engulfing the Armed Forces. We are determined to honour that.

Our particular concern is that the Smith judgment has left the position on liability for events on the battlefield unclear. We continue to defend the doctrine of combat immunity vigorously and a number of high-profile test cases are ongoing. We are examining the option of legislating, but we would look to do so using the most appropriate means. Once our proposals are mature we will announce further details. Clearly, it is important that we get this right and that operational effectiveness is not harmed.

Many of the noble Lords I just mentioned raised particular concerns about the volume of claims being brought against the Ministry of Defence raising human rights issues. Let me make clear the Government's determination to address the risks arising from developments in international human rights law, which has the potential to impose ever-greater constraints on the Armed Forces and the MoD to operate effectively in defending the UK and its interests. The Government are committed to upholding the rule of law. Their view is that international humanitarian law, as embodied in the Geneva Conventions, should have primacy over human rights law for ensuring that military operations are conducted lawfully.

The Government are considering the options available to safeguard the ability of the Armed Forces to do their job, as I have said. Among our key objectives, we want to ensure that our service personnel are not

pressured to become unduly risk-averse by the prospect of unmeritorious legal harassment, and that commanders can take necessarily rapid and often high-risk decisions. We are currently looking into a number of areas, including examining different areas of legislation where changes could be made and what more we can do to support our Armed Forces personnel and their families. We have established a programme to look at the different ways we can reduce the cost and volume of litigation against the MoD to ensure that our Armed Forces continue to operate unimpeded. The Queen's Speech included a clear commitment to bring forward proposals for a Bill of Rights to replace the Human Rights Act. We are actively working with the Ministry of Justice on the shape of the Bill to ensure that our Armed Forces can operate effectively in armed conflicts without overzealous constraint.

In addition, the Government are concerned to ensure that the extent of the doctrine of combat immunity is clear. We continue to defend the doctrine vigorously. As I mentioned, a number of high-profile test cases are going on. I reassure noble Lords that the doctrine of combat immunity continues to apply to those taking decisions in the heat of battle.

Lord Bilimoria: I thank the Minister for the very positive response to the points we raised, but the covenant was enacted in a way that was never done before. It is now reported on every year. It is a very positive measure. Why is it not possible for this huge issue to be incorporated in this Bill to protect the immunity of our troops, to allow them to fight with confidence and not worry about lawyers chasing them?

Earl Howe: My Lords, as I said, and I hope the noble Lord will agree, it is very important that we get this right. I was reassured by the comments of the noble and learned Lord, Lord Walker of Gestingthorpe, who said he did not feel personally that this was the right Bill in which to enact any changes. I am as eager as the noble Lord, Lord Bilimoria, to see this matter sorted out and I have no doubt that we can return to it in Committee—in fact, I think it would be useful to do so—but I am not yet persuaded that we are in the right place to legislate in the time available to us for the Bill.

The vast majority of UK service personnel have conducted themselves highly professionally and have acted in accordance with policy and legal obligations. However, in the context of the work done by the Iraq Historic Allegations Team, or IHAT, which has been mentioned by a number of noble Lords, the law requires that allegations that crimes have been committed by members of the UK forces should be investigated. In our view, the IHAT is necessary, given the unprecedented number of allegations. Having this independent investigative body has enabled us to defeat the claimants' attempt to persuade the court to order a single public inquiry, which would have taken many years and costed an estimated £200 million. The IHAT investigations can be completed more quickly and cheaply, ending sooner the uncertainty faced by service personnel.

It is true that the IHAT's investigations have not yet resulted in any prosecutions. However, it has completed a number of investigations. The lack of prosecutions is because in some cases the evidence showed that no criminal offence was committed, while in others the evidence did not meet the domestic test for bringing a prosecution. It has taken a long time because it is far more difficult to carry out investigations into events in Iraq then events in England. Witnesses are often difficult to locate and to interview. The solicitors representing those claimants have also been extremely unco-operative, even though they called the investigations in the first place. I can assure the House that the IHAT is getting on with its job as promptly and professionally as it can. I urge the House not to interpret the absence of any measures on this in this Bill as an indication of our intent to do something. Work is in hand and we will set out proposals as soon as we are able.

Lord West of Spithead: Will the Minister say something about the firms, one of which, Leigh Day, has, I think, gone through the Solicitors Regulation Authority already, and PIL? Where do we stand in terms of what has been going on in Iraq with what is loosely termed "ambulance chasing"?

Earl Howe: These are matters currently under scrutiny. The firms that the noble Lord mentioned are, I understand, being quizzed by the regulatory authority for the solicitors' profession. I am not aware of the outcome of those proceedings, but the noble Lord is right to pinpoint the issue of the way in which those firms received their instructions in the first place. That is a matter that we are as keen to get to the bottom of as he is.

Lord Thomas of Gresford: Can the Minister update us on the International Criminal Court preliminary examination? Where are we with that?

Earl Howe: I fear that I cannot. I will need to write to the noble Lord about that and I will be happy to do so.

I extend thanks, briefly, to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, for his contribution. I will not attempt to answer all the points he made, but I reassure the House again that these issues are under active consideration with the MoD and very recently, as I am sure the noble Lord, Lord Bilimoria, will be pleased to know, by the National Security Council.

My noble friend Lord Freeman was concerned that service personnel overseas might be subject to the criminal law of the host nation. We take steps to ensure that, before members of the Armed Forces are deployed overseas, arrangements are made with the host nations to ensure that the conduct of those forces in the course of their duties will not be subject to criminal proceedings under the criminal justice system of the host nation. Allegations of criminal misconduct will be dealt with under UK law, under the system established by the Armed Forces Act 2006.

The noble Baroness, Lady Taylor of Bolton, spoke of the need to do more about publicising data on sexual offences. While we are not yet convinced that it is necessary or appropriate to set out requirements in legislation for the publication of this data, the department is determined to make the data that we publish robust, consistent and accessible. To that end, we are actively

[Earl Howe]
considering how best to publish the data as an official statistic. The Service Police Crime Bureau records, for all three services, allegations of rape and sexual assault made to the service police. This information is released regularly in response to Parliamentary Questions and FOI requests. In the case of the latter, the information is uploaded to the MoD's online publication scheme, where it can be freely accessed.

The Service Prosecuting Authority records, for each year, the number of cases referred to it, the number of cases in which charges are preferred and the number of cases where a conviction is secured. The Military Court Service regularly publishes, on the internet, details of every case heard at the court martial, including offences, outcomes and punishments. There is, therefore, a clear picture of the extent of this type of offending within the services, giving a strong indication of the proportion of case referred from the service police to the Service Prosecuting Authority which were prosecuted, and the conviction rate in such cases.

The noble Lord, Lord Touhig, also touched on the subject of sexual offences. It hardly requires me to emphasise—but I will—that sexual assault is unacceptable, in wider society or within the Armed Forces. At present, a whole range of allegations covering most sexual offences must be reported to the service police by the commanding officer. They can also be reported by the victim direct to the service police and, of course, the service police can investigate on their own initiative, but there are some, such as sexual assault, which are referred back, at least initially, to the CO. The Bill changes that. Where the service police have investigated any sexual offence and there is sufficient evidence to charge, the service police will be required to refer the case direct to the Service Prosecuting Authority. That is provided for in Clause 3. I will be happy to write to the noble Lord with further details around some of the questions he asked on this.

The noble Lord, Lord Thomas, took us to the whole system of courts martial and the service justice system. I should explain, in answer to the broad thrust of his question, that there is already a prosecutors protocol in place between the Director of Public Prosecutions, the Director of Service Prosecutions and the Defence Secretary which sets out the principles to be applied in determining where a case is best dealt with if the conduct occurred in circumstance such that both the civilian criminal justice system and the service justice system have jurisdiction to deal with the case. The protocol recognises that any offence can be dealt with by the service authorities.

The main principle in deciding whether it is the service authorities or the civilian authorities which acts is whether the offence has any civilian context, especially a civilian victim. If it does have a civilian context, it will almost certainly be the civilian police, prosecuting authority and courts which deal with the case. Under the protocol, many cases involving service personnel are dealt with by the civilian police. The service police are able to investigate, but if the circumstances are such that it is considered more appropriate for the civilian police to do so, then they will take the lead. We expect the prosecutors protocol to continue to apply even after the draw-down of forces from Germany, so that cases will continue to be dealt with in the appropriate jurisdiction from the outset.

Of course, we must not lose sight of the fact that the UK civilian police do not have jurisdiction overseas, and as long as the Armed Forces have an overseas role we will need to have a justice system which is capable of functioning extraterritorially and which supports the operational effectiveness of the services. The noble Lord also asked—

Lord Thomas of Gresford: The noble Earl will know that murder is under universal jurisdiction. Do I take it that murder cases arising out of the IHAT investigations, for example, will be referred to the civil court or to courts martial in this country?

Earl Howe: My Lords, as I said, there is a protocol which lays down pretty clear guidelines as to how individual cases are handled. I do not think I can give a blanket answer to the noble Lord; it will depend on the circumstances of the case.

He raised other points, including the composition of courts martial and majority verdicts—a theme also pursued by the noble Lord, Lord Burnett. The proposal to change the current rules under which findings of guilt or innocence may be by simple majority would involve profound changes to the court martial system. The court martial may sit in the United Kingdom or anywhere in the world in times of peace or in conflict. Court martial trials may be decided, as in a magistrates' court, by a small panel, usually of three officers and warrant officers, but a panel of five is required in more serious cases. A service defendant will ordinarily be tried by lay members wholly of his own service. The composition of the panel is determined by the court administration officer who is appointed by the defence counsel. The CAO will draw names at random from a pool of potential members and, having checked that they are eligible for membership of the particular board, will specify who the lay members should be. I would like to write further to both noble Lords to flesh out this whole issue but the great advantage of reaching a decision by majority is that it avoids a hung jury and there is no need for a retrial in the event of a lack of unanimity or qualified majority. As the noble Lords will know, this is a long-established process.

The noble Lords, Lord West and Lord Empey, the noble Baronesses, Lady Taylor, and Lady Jolly, and others raised the issue of mesothelioma. The background to this was the announcement by my honourable friend the Minister for Defence Personnel and Veterans in December that veterans diagnosed with mesothelioma from that date would have the option to receive a £140,000 lump sum, to be paid from 11 April this year. I simply say that the Government understand the concerns that have been voiced in this debate and I can tell the House that work is actively continuing on the matter of those diagnosed before 16 December last year. While I cannot discuss that issue any further today, we hope to be in a position to say something soon.

The right reverend Prelate the Bishop of Portsmouth, my noble friend—

Lord West of Spithead: I am sorry to intervene. That sounds very good news but I stress again that three to five people are dying each week. That is the only point I make.

Earl Howe: That is a very pertinent point to make and the Government are fully aware of the need to make speed as far as we can.

The right reverend Prelate the Bishop of Portsmouth, my noble friends Lady Hodgson and Lady Scott, and the noble Lords, Lord Ramsbotham and Lord Judd, all referred to the importance of service families. The families of our Armed Forces personnel play a vital role in enabling them to do the job that they do, for which the Government are extremely grateful. We have already taken a number of important steps to that end, but, following feedback, we have started to develop a new UK Armed Forces family strategy to review and improve the support we provide to families. That will be launched by the end of 2016. I could say a huge amount on the topics covered by my noble friend Lady Hodgson, especially on housing and veterans' mental health, but the key question she posed, which I will briefly address, is how well we think the covenant is working.

At the start of the year, we consulted all three single services to understand how they perceived they were disadvantaged. The result has been a comprehensive assessment of delivery in the five key areas of healthcare, local services, spouse employment, education and commercial support. We have also undertaken a challenging package of work to check that our processes and procedures are working. The results were clear: the covenant is working but we need to make it clearer and easier for members of the Armed Forces community to access the support that is available, and delivery is not uniform. We are also aware that we need a mechanism to identify and address localised problems. Better metrics will help and for the first time the Armed Forces covenant annual report includes assessments of our performance in a number of areas. But we also need to be able to measure how the covenant is working at a local level, so the Ministry of Defence will continue to work with other government departments and the devolved Administrations and relevant charities to identify and develop relevant data.

I hope the noble and learned Lord, Lord Brown, and the noble Baroness, Lady Jolly, will forgive me for not addressing the points they made about the Armed Forces Compensation Scheme. As time is short, I will write to them on that. I would, however, like to make two points in response to the noble Lord, Lord Ramsbotham, who indicated that the MoD has no clout with other departments and that the covenant is in danger of fading from the public eye. First, this year the Prime Minister will personally take the helm of the Home Affairs (Armed Forces Covenant) Sub-Committee and ensure that departments work together effectively. Secondly, the Government have committed to a £10 million annual fund in perpetuity to support delivery of the covenant. The existence of that fund will surely keep it in the public eye.

Lord Ramsbotham: I thank the Minister for that. My main point was that if the statement is made verbally then we will have a chance every year to maintain momentum and make certain that all these issues are pursued.

Earl Howe: I will reflect on that point in the customary way and write to the noble Lord about that suggestion.

Lord Empey: My Lords, I am in favour of annual reporting and we pushed that hard last time. I mentioned that the Northern Ireland Executive have failed to make a report. Therefore, that opportunity for Parliament to scrutinise what is happening with a reserved and excepted function, which will never be devolved, is no longer available. I raised this at the last occasion and would be most grateful if the Minister will ask his department to look at it. I fear that it is only a matter of time before something goes wrong.

Earl Howe: I will, of course, take that away as well. I simply say that delivery of the covenant extends to the whole of the UK and that there is money to underpin that in Northern Ireland. The annual report includes input from the Welsh and Scottish Governments and the Northern Ireland Executive. It is important that we continue to work together to ensure that there is universal support for the Armed Forces wherever they work and live, and that must extend to Northern Ireland. In 2013, the Select Committee on Northern Ireland Affairs assessed that over 93% of covenant measures applied in Northern Ireland. It is sensible that in 2016 we update our assessment of how the covenant is being delivered there and I assure the noble Lord that that will be a priority.

I hope that noble Lords will forgive me for not covering the other things I would have liked to cover. The noble Lords, Lord Campbell of Pittenweem and Lord Young of Norwood Green, and the noble and learned Lord, Lord Brown, referred to Clause 14 and I welcome their comments. My noble friend Lord Attlee referred to women in combat roles and the blurred distinction—as he put it—between the regular and the reserved services.

The noble Lord, Lord Judd, and the noble Baroness, Lady Jolly, referred to the recruitment of under-18s and in particular how they were missing out on education. The noble Baroness also spoke about Gulf War syndrome and a range of other subjects, including the commanding officer's discretion to investigate sexual assault, and the independent oversight of service police. I promise to include these and other matters in letters to noble Lords which I will copy to everybody. I also hope to follow up the important comments made by the right reverend Prelate the Bishop of Portsmouth on service chaplains. The same applies to my noble friend Lord Lyell in answer to his questions about Gibraltar and the British Overseas Territories.

This is a good Bill. It is small but it does what it needs to do. I am greatly encouraged by the welcome that noble Lords have given it today and I look forward to Committee and the exchanges that that will undoubtedly bring. I beg to move.

Bill read a second time and committed to a Grand Committee.

Recall of MPs Act 2015 (Recall Petition) Regulations 2016

Motion to Approve

4.04 pm

Moved by ***Lord Bridges of Headley***

That the draft regulations laid before the House on 15 December 2015 be approved.

Relevant documents: 14th Report from the Joint Committee on Statutory Instruments, 14th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): Your Lordships will recall the passage of the Recall of MPs Act 2015 in the last Parliament. The Act set out three conditions which would result in a recall petition being triggered, potentially resulting in an MP losing their seat and a by-election being held. It is perhaps worth reminding your Lordships that following passionate debates in this House, improvements were made to the recall procedure, including reducing the signing period from eight to six weeks and increasing the number of signing places that could be designated from a maximum of four to a maximum of 10.

These regulations prescribe how the petition should be conducted, the arrangements for signing, the mechanism for challenging the outcome, and the creation of offences in relation to the petition. The regulations also respond to amendments rejected when the Bill was before this House: for example, the suggestion of the noble Baroness, Lady Hayter, that the number of registered electors eligible to sign the petition should be made public, which will happen on the third working day after receipt of the Speaker's notice and again on the first day of the petition, and to include successful applications to register to vote made on or before the day of the Speaker's notice.

I was delighted to see the amicable passage of the regulations through the Delegated Legislation Committee in the other place two weeks ago. I was further heartened by the reaffirmed commitment from the Opposition in the other place to the implementation of the recall procedure and, by extension, these regulations.

No doubt your Lordships will have noted the period of time that elapsed between the Act receiving Royal Assent in March 2015 and when the regulations were initially laid in November. Obviously, this is a substantial set of regulations, as is proper for electoral law, and it has taken some time to draft. Furthermore, as was touched upon in the other place, the original regulations laid in November were re-laid in December after several anomalies were identified, particularly concerning the Welsh translation of some forms. Again, I can say only that once these errors were discovered we sought to rectify them immediately.

The regulations are comprehensive in setting out the petition process, as is the case for regulations prescribing other electoral events. Wherever possible, the processes are modelled on those for elections, with modifications to cater for differences, such as the petition being open for six weeks and the ability for the petition officer to designate up to a maximum of 10 signing places. The processes will therefore be familiar to voters and administrators and will adhere to the very high democratic standards that we demand of other electoral events.

The regulations also reflect views expressed during scrutiny of the Act and extensive consultation. As well as carrying out our statutory duty to consult the Electoral Commission, we have consulted with a number of stakeholders, including the Association of Electoral Administrators. Comprehensive user testing has also been undertaken on the key petition forms and their wording. We have opted for petition notice letters to be sent to electors as opposed to poll cards, so that those who regularly vote at elections are not inadvertently prompted to sign a petition, in a way similar to that in which a poll card prompts us to vote at an election.

Turning to the detail of the provisions, I assure your Lordships that I will not go through each of the 174 pages in great detail. Part 1 sets out how the regulations apply to the different parts of the UK. It also gives an interpretation of the common phrases used throughout the chapters. Part 2 is concerned with compiling the register of those eligible to sign the petition. It stipulates that the register must be constructed by street name where possible and include the names and elector numbers of those eligible to participate in the petition.

Part 3 forms a substantial part of the regulations. It concerns the conduct of the petition and is broken down into several chapters. Chapter 1 deals with general provisions such as the signing sheet. Chapter 2 sets out the steps that petition officers must take before the petition is available for signing. Chapter 3 sets out the manner in which the petition is to be administered at the signing place, including those who can enter a signing place, the delivery and receipt of signing sheets, and daily verification of the contents of the ballot box. Accredited observers will not be allowed at the signing location. Given that a petition can be signed only one way, knowing that someone has signed the petition is in essence the same as knowing what that person's preferred outcome is. As such, the risk of signers feeling intimidated by the presence of observers is substantial.

Chapter 4 deals with when and how the count should be conducted, including the requirement for a postal signing sheet to be accompanied by a valid postal petition statement—or a declaration of identity in Northern Ireland—and the process for determining the validity of signing sheets by the petition officer. Chapter 5 deals with the steps that the petition officer should take after the count has concluded in relation to the storage and future disposal of the documentation completed during the administration of the petition.

Part 5 of the regulations prescribes the issue and receipt of postal signing sheets, along with who can observe such proceedings. This is restricted to the petition officer, his staff and representatives of the Electoral Commission. We have ruled out accredited observers from attending these sessions, as there is a need to protect the details of those who have signed the petition and to prevent a tally of signatories being made. Therefore, given what I have said, accredited observers will be allowed to observe only the count stage

of a petition. However, the Electoral Commission will be able to observe all stages in order to ensure propriety.

Part 6 of the regulations creates a number of offences relating to the petition process. The offences created are in line with those already in existence for other electoral events. Finally, Part 7 contains miscellaneous provisions, the most significant of which is in relation to the questioning of the outcome of a petition.

Given the amendment in the name of the noble Baroness, Lady Hayter, I will expand a little upon the marked register. After a recall petition has concluded, a copy of the marked register will be available only to the Electoral Commission, police and security services. However, we recognise that some restricted access may be required to help substantiate suspicion of fraud or irregularities—hence we have provided for the register to be available to anyone for inspection under supervision if the petition officer is satisfied that fraud may have taken place.

This contrasts with an election where a copy of the marked register is available to various bodies, including political parties, which may use it for campaigning purposes. Additionally, following an election, the marked register may be inspected under supervision by anyone who makes a successful application to the electoral registration officer to inspect it, stating the reasons for making the request and demonstrating why the inspection of a copy of the full register or unmarked lists would not be sufficient to achieve that purpose. It is worth noting, therefore, that there is not unrestricted access to the marked register after an election. The Government therefore feel that this provision strikes the right balance between transparency and secrecy.

I should also point out that including this provision in the regulations rather than the primary legislation is not an exceptional arrangement. The legislation governing the marked register for elections is detailed in the Representation of the People (England and Wales) Regulations 2001 and the equivalent regulations for Scotland and Northern Ireland. Moreover, these provisions fit with the rest of the detailed conduct arrangements which are provided for in secondary legislation. The Recall of MPs Act under which these regulations have been brought forward is clear under Section 18 that further provision may be brought forward by regulation pertaining to the conduct of a recall petition. That includes access to the marked register.

In the last Parliament, both governing parties and the Opposition all had manifesto commitments to introduce a power of recall. The Government continue to believe that this is one of many vital steps to help restore the public's trust in politicians and in the functioning of the House of Commons. These regulations will deliver on that commitment. They provide a comprehensive set of provisions that will allow petitions to be administered fairly and effectively and I commend them to the House.

Amendment to the Motion

Moved by ***Baroness Hayter of Kentish Town***

As an amendment to the above motion, at end insert "but this House regrets that the Government have made the decision to legislate on restrictions of use, supply and disclosure of the marked register following a recall petition in the draft Regulations, rather than in primary legislation."

Baroness Hayter of Kentish Town (Lab): My Lords, I must thank the Minister, who could almost make statutory instruments sound fun. I seek, however, to move my amendment, which regrets that such an important decision on whether this is a secret vote or an open petition should be snuck away in a 174-page SI, which I think the Government hoped would be dealt with rather quickly in 10 minutes in the Moses Room, rather than, as we urged at the time, being included in the Bill. I will deal with my amendment to the Motion first and then attempt to cover all the remaining parts of the 174 pages before the moon rises.

4.15 pm

During the passage of the Bill, we urged the Government to take that decision on the nature of this unusual procedure: a vote on whether an MP should face a by-election. We asked the Government whether they considered that it was a petition, where people sign up and their signatures are known, or more like our traditional ballot where your vote was secret. If it was the latter, of course, then considerable efforts would have to be made to guarantee such secrecy, given that the simple act of casting a vote or signing can mean only one thing: being in favour of recall. As that would be the only option on the paper, the very act of signing would say to anyone which way you have chosen to express your opinion. The normal practice of publishing a marked register showing who has voted would therefore need to be curtailed, as it effectively shows who has called for a recall.

That is quite a change to the electoral law, regardless of what the Minister says, but even more importantly it is a policy decision. It is not an implementing decision, which is what SIs are really about. It is hard to blame the Minister for this, as he was not here at the time—but I will do so, all the same. Our regret is that the Government did not choose at the time of the passage of the Bill to take that fundamental policy decision. That is why we are arguing that this is not the correct use of a statutory instrument. We do not question the particular decision but the way that it is done. We happen to think that the Government are right to have opted for a secret poll, and in consequence for therefore not making a marked register available, but it should have been in the Bill rather than the regulations here today.

I can see why the Minister was so pleased that the regulations went through in the Commons. They took under 30 minutes there and, other than his honourable friend the Minister, there was only one speaker. I trust that we will not have that situation today. At the time, the Minister in the other place described the regulations as "extremely long and detailed". Indeed, I doubt very much whether, other than my honourable colleague Wayne David, anyone else in that House knows that this is now to be a secret ballot rather than an open petition. That is therefore what lies behind my amendment.

However, we have some queries with the implementing of the decision, even once taken, particularly as it still leaves observers able visibly to identify who is going in

[Baroness Hayter of Kentish Town]
to sign. Those people can be going in for only one purpose: to sign that the MP should face a by-election. I have read all 174 pages and I could not find anything in them to stop the names or photos being taken of people going in to call for a recall. Outside the normal area with which we are all familiar, I do not think that there is anything to prevent filming. Perhaps the Minister could clarify that.

What consultation took place with local authorities on these regulations and why was it not thought fit to involve political parties, given their expertise in all matters electoral? Who is to pay for the cost of the six-week recall and for any subsequent by-election? I would also like some clarification about the funding of the yes and no campaigns, especially as there will be any number of pro by-election campaigns but presumably only one campaign against a by-election being run by the incumbent MP.

We asked in Committee, and I think on Report, whether, if the Government did proceed with their wrong-headed plans to extend voting rights in perpetuity to nationals who had long since left these shores, by remaining on the electoral roll these non-taxpayers would then be permissible donors. If so, would they be able to fund an "MP must go" campaign, even from the Virgin Islands? We have still had no answer on this, despite these 174 pages of very detailed verbiage. Perhaps the Minister is now in a position to answer this. It is very significant for the funding of these campaigns, should they happen.

We also have some serious questions about the return which will be made by the various campaigns after the process is over. These are to be lodged with the petitions officer, who appears to have no responsibility for checking them. Those of us who finish work early will have seen Michael Crick's revelations on Channel 4 this week about the thousands of pounds in hotel and other by-election expenses allegedly missing from the Conservatives' returns, seemingly—this is the interesting point for these regulations—with no one responsible for checking these returns. Will the same happen here? If so, the campaigns could outspend any limit and, provided the paper return is on time and shows no discrepancy, then all would be safely filed away.

We were certainly told in Committee that no one would check whether the donors were indeed permissible donors. Would anyone check that no extras had been omitted from the returns, or would we have to rely on a member of the public to check the figures and raise concerns? PPERA simply says the responsible person must, within 30 days, at the end of the recall petition, deliver the returns to the petition officer. There is nothing about checking them. We did persuade the Government to amend the Bill so that the returns at that stage would have to be forwarded to the Electoral Commission, which would produce and publish a report on the recall petition process. But that was really to evaluate the process itself—it has told us it would not have time to check the veracity of the returns.

The Minister will, I hope, be very pleased that we concur with some of the decisions taken in these regulations. We are pleased that our call for a ban on publishing running totals of how many people have signed each day during the six weeks has been accepted. We are also pleased that, as the Minister has said, the actual figure needed for a call for recall—the 10% figure—will be published at the start of the process.

However, we continue to have concerns on another aspect, in regard to postal votes. The register will be published very quickly after the process is started and will be distributed to the signing locations before the closing date for the application for postal ballots. This means that someone can go along and sign in person, and then after that apply for a postal vote. At that point, there would be no check on whether they have already voted, as there is no automatic electronic record updated hour by hour. Therefore they will apply for a postal vote and will be sent one with no check until the very end of the process, when presumably the petition officer's staff would need to check every single postal vote to assure themselves that no one had voted both in person and by post. Given that this is a six-week period, there may be quite a few such cases.

The form which is included in the regulations is really not very strongly worded to warn against this. Surely it ought to have said—it is on page 90 if anyone wants to look it up—that if you have already signed in person, you may not apply for a postal vote. But it only says that if you apply for a postal vote, in future you will not be able to sign in person. Added to this, on page 86, the signing form does not have a date on it, which surely should have been included. If there are arguments later as to whether someone had signed at the point that they applied for a postal vote, there will be no evidence as to when they had signed the petition. I would like the Minister to explain why on earth the date is not included on the form that someone will sign.

Finally, the daily verification of slips issued and returned, which is effectively a daily count, is presumably to take place at the petition station under the simple supervision of the presiding officer and one other person. This seems to be an extreme variation of the normal customs associated with voting in this country. Was it intended that it should be so different, or might usual process have been considered, such as the transportation of sealed boxes to secure, central locations where the seals may be broken and the contents securely packaged and stored prior to the count?

Just a week ago, the Law Commission called for a complete redrafting or, as it called it, a rationalisation of election law in a modern legislative framework, as it has become such a mess, with differing, sometimes inconsistent rules applying to different sorts of elections. Now, added to what the commission considered, we have a further 174 pages of regulations written for a long time ago, in that they demand P&P on printed material, when surely a recall petition will be all about tweets and Facebook, and there will be no limit on the use of those.

The Act, perhaps well-intentioned to achieve the Government's and, indeed, the Opposition's aim of having a recall measure, was hastily drafted and ill-thought-out, with one major policy decision left to a statutory instrument rather than included in the Bill. We have a statutory instrument which, because of its

length, makes proper scrutiny impossible. If I were marking the Government's homework, I would have to say, "Not good enough. Must try harder". I beg to move.

Baroness Donaghy (Lab): My Lords, in the debate on the Recall of MPs Bill, as it then was, I recall my noble friend Lord Grocott saying that it is a measure of constitutional significance that will, as the Constitution Committee has said, affect the United Kingdom's representative democracy. He reminded the House that had the Bill been an Act of Parliament 25 years before, only two MPs would have been affected. Although there were some supporters, including the noble Lord, Lord Cooper of Windrush, in his maiden speech, the overwhelming majority of speakers expressed concern. The noble Lord, Lord Forsyth of Drumlean, summed it up by saying:

"Members of Parliament are, bit by bit, dissolving their authority and removing the primacy of the House of Commons".—[*Official Report*, 14/1/15; col. 820.]

As a former member and acting chair of the Committee on Standards in Public Life, I expressed the view in debate that the Bill was unlikely to improve standards in public life or the standing of Members of Parliament. I thought it would enhance the powers of the Executive at the expense of parliamentary democracy.

Nevertheless, we are where we are. The Bill is an Act and will not be implemented fully until the draft statutory instrument before us today has been approved. As has been said, the Bill was 60 pages long and the draft statutory instrument is 174 pages long. I must admit that I approached it with some trepidation, secretly hoping that it would do credit to Jarndyce v Jarndyce. In the interest of staying onside with my noble friend Lady Hayter, who has been incredibly loyal to her Front Bench on this and has played a straight bat throughout, I shall not reveal whether the draft fulfilled my secret hopes or not.

I think we all hope that the Act will never have to be used. I would be grateful if the Minister could give some guarantees about the issues raised by my noble friend in moving her amendment to the Motion. First, what guarantee will there be that people walking in to sign for recall will not be intimidated? Secondly, how will he ensure that there will be no double voting? Thirdly, how much would overseas people be able to put into a campaign? Fourthly, is the Minister content that the election returns will be checked?

4.30 pm

The impact assessment, such as it is, anticipates that recall petitions will occur "extremely infrequently". Does the Minister have a definition for "extremely infrequently"? Is it as infrequent as floods in Cumbria, for instance, or England—or should I say English men—winning the football World Cup, or some other assumption, such as two MPs every 25 years?

My final point is to refer back to the concerns expressed about the Bill by the Delegated Powers and Regulatory Reform Committee in December 2014. The committee expressed concern about the "rolling up" of different scrutiny procedures which,

"appears to us to be unconventional in its extent".

The committee was referring to the then Clause 12(7) and (8), and stated:

"Taken together, the two subsections would allow powers that attract the affirmative procedure, powers that attract the negative procedure and powers that are not subject to any form of Parliamentary scrutiny to be exercisable in a single affirmative instrument".

The committee was concerned that,

"in that respect, the practice could be seen to represent a further shifting of the legislative initiative from Parliament to the Executive, because it would leave to Ministers and not to Parliament the decision whether or not particular provision to be made by them should be subjected to a higher (or some) level of Parliamentary scrutiny".

Those are not my words but those of the Delegated Powers and Regulatory Reform Committee.

Bearing in mind that the draft statutory instruments come from the Cabinet Office, which immediately raises suspicion in my mind, can the Minister give us an assurance that this "rolling up" of different scrutiny procedures does not occur in these draft instruments?

Lord Campbell-Savours (Lab): My noble friend Lady Hayter raised a number of issues, and I think that I have deleted nearly all of them from my own contribution, because she has obviously raised all 174 pages of the document, as have I.

I supported the principle of the legislation when it went through the House; I have no problem with recall, although I took an active part in opposing a particular section of the legislation which dealt with the 10 working day trigger for suspension, which to this day I believe will end up with some rather difficult decisions for Members—in particular, the Committee on Standards in Public Life in the other place, where, I suspect, Members will be compromised. However, today's debate does not deal with the trigger but with what it describes as the conduct rules. It is a classic case of the size of the regulations exceeding the size of the Bill, raising once again the whole discussion about skeleton Bills and the use of SIs.

Skeleton Bills are described, in the report from the Joint Committee on Conventions in 2006, as providing the circumstances in which it would be permissible for the House to divide on fatal Motions—not that that is my intention today. However, if today's SI had formed part of the primary legislation, there would have been scope for Divisions, although I need to make it clear that I am not complaining. I recognise that the law in this area needs to cover all eventualities.

I want to deal with the detail of the SI and comment on comments made by Mr John Penrose speaking for the Government in the other place on 25 January. He said:

"The petition officer must publish the number of people allowed to sign the petition and the number that must sign for it to be successful. Those figures will be updated when a petition opens, to include any alterations to the electoral register".

I ask a simple question on principle: should a person who is either too lazy or too indifferent to vote in the general election really be entitled to remove an MP on a petition? This is a quite interesting question. When you look at the stats, if the general election turnout is generally about 60% now—it used to be much higher when I was an MP, but it has gone down over recent

[LORD CAMPBELL-SAVOURS]

years—suggesting an abstention rate as high as 40%, it means that if 25% of the abstainers sign the petition in a constituency, effectively they trigger a by-election. I wonder whether that is really the way we want to proceed on this. I accept the principle, but should abstainers have all that power to precipitate a by-election?

Penrose then went on to say,

"the petition officer must make 'reasonable' provision for the petition to be available for signing outside those times, which could include evenings and weekends. The regulations do not prescribe what the additional hours must be; they will be determined by local circumstances and covered by Electoral Commission guidance".

Guidance can be ignored. The local authority decides what happens in the case of a borough where there is an overwhelming single party majority. The local authority could be awkward. It might wish to protect its Member of Parliament for two reasons. One might be political—it is sensitive to the loss of the seat and therefore does not necessarily want to follow the guidelines set by the commission—and secondly, as my noble friend said from the Front Bench, what about the cost? If the cost falls upon the local authority, it may well be that it is not too keen on the prospect of a by-election taking place. Are we absolutely satisfied that we have covered all such eventualities, that is to say, eventualities where local authorities might be a little cautious—I use the term—in the way it wishes to proceed?

I have to admit that a number of my questions might appear pedantic, but this is going to be a very controversial process, perhaps leading to legal proceedings challenging petitions. Every eventuality has to be covered because when Members of Parliament are subject to these petition proceedings and face the prospect of a by-election they will be hiring lawyers and whatever to go through these regulations in great detail to establish whether there is a basis on which they can appeal against the proceedings that are under way.

Penrose goes on to say:

"Unlike at an election, accredited observers will not be allowed to be present at signing locations, or at any stage of the petition process other than the count".

I stood in a number of general elections over many years. My noble friend raised from the Front Bench the issue of people observing. People observe. People stand outside polling stations. They take numbers. On this occasion, they will not be taking numbers but, as my noble friend suggested, they might be taking photographs. If people are to be assigned a signing location which, as I understand it, is the position under Clause 16, you could have as few as 600 people entitled to sign at a particular station—I keep calling them polling stations, but in fact they may well actually be called polling stations or stations used in general election campaigns. If that is the case, then if they can observe from outside, why can we not observe from inside? What is the distinction? As I understand it, the way that the regulations are drawn up is that unless you are in a particular category—I think it is the Electoral Commission—you cannot enter the signing location. However, you can stand outside or sit in an office over the road and watch who is going in. There seems to be a lack of understanding about what will happen when people go in to sign off their names.

Penrose then went on to say:

"Accredited observers may be present at the count, along with the representatives of the Electoral Commission".—[*Official Report*, Commons, 25/1/16; cols. 3-4.]

Again, my noble friend asked about payment. Who is going to pay even the Electoral Commission observers? Are they going to be paid by the local authority? Are any of these people? We are trying to establish on whom all the costs of this process are going to fall.

What about the issue of people signing twice? Mr Penrose, in his reply to Wayne David in the Commons, stated:

"It should be easier to make sure that people cannot sign twice, in the same way that we do not allow people to vote twice on a polling day. However, the checks and the principle underlying the process—the mechanics—will, of course, still be the same".—[*Official Report*, Commons, 26/1/15; col. 7.]

Because the whole process is so controversial, if not the regulations then certainly the guidance from the Electoral Commission should be quite specific on this matter. For MPs affected, every petition signing will count, particularly if they are on the margin.

Paragraph 57(5) of the regulation states:

"A person is not entitled to sign any one petition as proxy on behalf of more than two persons to whom that person is not related".

The same issue is raised in paragraph 63, which deals with the declaration. My question is simple: what does "related" actually mean—a cousin, a brother-in-law, a civil partner, a sharia-based marriage or an informal partner arrangement? These are the sorts of things that people are going to query, particularly in areas with a large ethnic-minority population.

Paragraph 59 deals with the use of personal identifiers. On that subject, I simply point out that a national identity card would do away with many of these administrative requirements. My next question is one of principle. Why is there a different approach in the conduct of the process in Northern Ireland? Northern Ireland is part of the United Kingdom.

Finally, I turn to paragraph 129, which is headed:

"False statements as to MP or accredited campaigner".

The paragraph says:

"A person who … during the period beginning with the giving of notice"—

I am deleting words that are not relevant to what I am saying—

"and ending with the last day of the signing period … makes or publishes any false statement of fact in relation to the personal character or conduct of a relevant person is guilty of an illegal practice, unless that person can show that they had reasonable grounds for believing, and did believe, the statement to be true".

The "relevant person" is described later as,

"the MP to whom the petition relates; or … a person who is an accredited campaigner in relation to that petition".

For a start, who is an accredited campaigner? Secondly, what about a statement made in a local newspaper, particularly during the last days of the petition period? It could be in the form of editorial comment, an article or even a letter to the editor. We know from our experience of tabloid journalism that it is quite easy, without libelling the person, to write an article that completely undermines the credibility and character of a public figure. I oppose censorship and had great

difficulty in thinking about this section. However, should not the last few days or week of a petition period be the subject of some restraint? A local newspaper could destroy a local MP's reputation without even libelling them. We need some way of exercising restraint if an MP is to be given a fair hearing. Perhaps Ministers can discuss with the Electoral Commission whether some guidance might be appropriate in these circumstances.

I have raised a number of what might appear at this stage to be minor points. Each and every one of them could be the subject of argument both during and after a petition period. As I have already said, ideally, much of the regulatory detail outlining this SI should have been presented in primary legislation, thereby giving us the opportunity to amend and divide. I therefore hope that the Electoral Commission in its guidance notes will take on board the thrust of my comments, those of my noble friend from the Front Bench and those due from my noble friend who is to speak.

4.45 pm

Lord Lipsey (Lab): My Lords, I am grateful, and I hope the House is grateful, to the noble Baroness, Lady Hayter—I should have said my noble friend because she has been my noble friend for many years now—for putting down this amendment, because it has led us to have a fuller debate this afternoon than we might otherwise have done. She has ably made her points of substance. However, I will go a little wider and consider what this tells us about secondary legislation.

This document, which I just managed to carry from the Vote Office without being forced to my knees by its weight, is an exemplar of how secondary legislation should not be. The fact is that secondary legislation in part is being considered by the committee of the noble Lord, Lord Trefgarne, on the Strathclyde report. Some of the things said this afternoon may be very useful input into the work of that committee.

This is secondary legislation and it has passed through both Houses, so I will not restart a debate on its purpose. I was in error by not participating at that stage. It was of course a delayed reaction to the MPs' expenses scandal. The Government—and the opposition parties—wanted to show they were doing something about that. However, the Government, and the opposition parties, did not want to open the door very wide. There are countries which use the recall quite widely: in the United States a governor of California was recalled not long ago, and the speaker of one state who recently had the temerity to favour gun control legislation has also been recalled, which might be a warning sign of some of the effects which recall legislation that goes wider can have. In the Andean countries of Latin America, especially in the light of the pink tide that took place there in the 1990s, there are quite a lot of recall elections—Lima is the world capital, having held some 7,000. Incidentally, I am relying for this information on a seminar I chaired at St Antony's College Oxford, at which the noble Lord, Lord Cooper, spoke—which shows that academic seminars can sometimes help us. I learned there the nearest thing to an amusing fact about recall elections that I have ever learned, which is that one of their greatest exponents was Vladimir Lenin. He was a huge enthusiast. In post-revolutionary Russia there were hundreds of thousands of recall elections, until of course Lenin established himself and his friends in power, when for some strange reason their enthusiasm for the recall ebbed away. Our Government, wisely, did not want to establish a recall on the American or Peruvian scale, let alone on the Leninist scale, therefore we remain a representative democracy.

This legislation could hardly be more limited—the conditions in which it applies are very limited. If an MP is sentenced to more than 12 months in the jug, they are disqualified anyway, so the measure can apply only when the sentence is shorter than that, when they are suspended for more than 10 days by a committee of fellow MPs or when they withhold information on expenses. That is not going to happen very often and in most such cases the MP would, through shame, resign anyway. They could not hang on in those circumstances. Even if those conditions are met, you then have to get 10% of the electorate to sign your petition within six weeks. That 10% of the electorate is probably around one in five of those who voted at the last election, with turnout having been around 60% or slightly less. It is going to be one helluva job to organise that. The noble Lord, Lord Cooper, explained at the seminar how uninterested in politics people generally are. Some were asked, in a focus group, to name one politician and they were able to manage David Cameron. When pressed, they also managed Ed Miliband and his brother, Ed Balls, as the noble Lord reported to the seminar, so there is not a fantastic surge of interest. It could happen but it does not seem very likely.

The House does not need me to tell it that this is going to be a rare event. As my noble friend Lady Donaghy said, the Cabinet Office says so itself in paragraph 10.2 of the Explanatory Memorandum. It says that it is anticipated that recall petitions will occur extremely rarely. If you ask me, extremely rarely probably means never. Be that as it may, this really is a mouse of a proposition—and I am pleased that it is—but, although it is a mouse of a proposition, it has given birth to a mountain of secondary legislation.

I cannot claim to have read all 174 pages of the regulations—I defer in diligence to my noble friend Lady Hayter—but I have poked about in it. As a journalist, I always read documents from the back and usually get to the bit that someone is trying to hide. Regulation 128 deals with illegal canvassing by police officers. Can one imagine? "Mr Plod is going from house to house illegally canvassing. Let's lock him up as swiftly as we can". I admire the imagination that puts that into the regulations.

Another regulation bans exit polls. Why it should do that, I am not quite sure, but I can tell your Lordships that nobody is ever going to commission one. No single recall petition could possibly be interesting enough for anybody to commission an exit poll.

Parts of the regulations are wholly incomprehensible. I read Regulation 132, on the prohibition of paid canvassers, about eight times. I may not be the sharpest kid on the block but I still do not have the faintest clue as to what it means. I am reluctant to ask

[LORD LIPSEY]
the Minister to explain when he winds up because we might then be here into the early hours of the morning, but I am sure that he will take the point.

We rightly deplore the growth of Henry VIII clauses. As I reflect on the legislative situation, there is one thing that has changed hugely since Henry VIII. In his day, the secondary legislation had to be written on parchment. It was a helluva process and, if anybody wanted to change it, it was a helluva process to write it on parchment again. Alas, our legislative procedure has been bugged by the discovery of the word processor. This makes it possible to add, muck about with and expand clauses, thus expanding legislation, with extraordinary facility. It is a case of, "If in doubt, put it in". That is why the number of pages of secondary legislation has expanded from 4,800-odd in 1970 to 12,000 in the latest year for which figures are available, according to a recent Hansard Society study which was made available to the Campaign for an Effective Second Chamber this week. There is nothing to stop it.

Secondary legislation this may be but it is the law of the land. Citizens can be sent to prison for disobeying the stuff that is before your Lordships this afternoon. Ignorance of the law, as we know, is no excuse, but not necessarily every citizen is going to read the 174 pages of this—I could not even manage it.

Although the Government have made one change in response to representations made to them, neither House has had the opportunity to amend this, and that refers to the point that my noble friends Lady Hayter and Lord Campbell-Savours made: that much of this should have been in primary legislation.

I hope that this afternoon's narrow debate, and the slightly wider but still narrow debate about the Strathclyde report, will transmute into a much wider debate, which we urgently need, and one that uses one of many ways available to Parliament to look at the whole issue of secondary legislation and of scrutiny in the round. If that happens, this misshapen monster that we have before us this afternoon may, at last, have found a purpose to serve.

Lord Bridges of Headley: My Lords, it has been an excellent debate and I am delighted that we are having it on the Floor of the House. The noble Baroness was extremely gracious in trying to absolve me of responsibility for this misshapen monster, but I will do my very best to try to defend it, warts and all. The noble Lord, Lord Campbell-Savours, described some of his points as pedantic. I do not see them as pedantic at all. That is exactly what we are here to do: to question the details, whatever they might be, in this volume before us. If what I say fails to accurately address some of the points that noble Lords raised, I will certainly write to all those who spoke and place a copy of that letter in the Library. As the noble Lord said, there are some very important points that we need to iron out.

I heed entirely what has been said about secondary legislation, especially something as long as this. The noble Lord, Lord Lipsey, is absolutely right: this is exactly the kind of debate that we need to be having in the weeks ahead. My noble friend Lord Trefgarne is here, and I very much hope that he heeds what was said. I will certainly endeavour to draw his attention to those points.

To pick up on a few of the points that were made, the noble Baroness, Lady Hayter, and the noble Lord, Lord Campbell-Savours, asked about people taking photos and intimidating petitioners outside the place. I want to make two points about that. First, petitioners have the opportunity to have a postal vote if they are really concerned about that happening. Secondly, and more to the point, I am told that—it is the same as for elections—anyone intimidating signers would be committing a criminal offence. I will write to the noble Lord and the noble Baroness on precisely where that offence lies.

Lord Campbell-Savours: If you can observe from outside, why can you not observe from inside?

Lord Bridges of Headley: I think it comes back to the point that, if there is an accredited observer inside, they may be able to take the names of people who are petitioning and, therefore, those people might feel intimidated. I entirely see the noble Lord's point, but I gently disagree. Let me come back to noble Lords on where exactly that is in law.

As regards the consultation on this, as I said in my opening remarks, the Electoral Commission has been consulted, as is required by statute. On top of that, consultation has been undertaken with the Association of Electoral Administrators, returning officers, electoral registration officers, the Chief Electoral Officer for Northern Ireland, the Electoral Management Board for Scotland and the electoral management software suppliers. The territorial officers and officials in the Scottish Government have also been consulted on the relevant parts of the legislation. It is not statutorily required for the Government to consult political parties.

A very good point was made about the cost, and I apologise for not mentioning that in my opening remarks. I am told it is expected that a recall petition would cost approximately £100,000. In terms of the payment of that, the Electoral Commission would pay for its own staff and it would not be reimbursed for that. Other payments would be met centrally by the Treasury from the Consolidated Fund. Again, I will write to noble Lords to confirm exactly that point.

5 pm

A couple of noble Lords referred to the issue of whether someone might be able to sign twice. This point was raised in the other place and I remind your Lordships of what was said there by my honourable friend John Penrose. He said: "It is important that the proper processes are followed over the six-week period to ensure that people cannot sign twice. This means that any application made to sign the petition by post during the signing period will have to be checked by the register held at the signing place. If the register has been marked to show that the elector has been issued with a signing sheet at the signing place then the application to sign by post will be refused. If the register shows that a signing sheet has not been issued, then the application will be approved and the register held at the signing place will be marked accordingly.

The fact that the register held at the signing place is marked when signing sheets are issued prevents attempts at double signing". I should add that I understand that it is an offence to vote twice.

The noble Baroness asked why there is no date on the signing sheet. The date is marked on the register by the petition officer.

The noble Baroness, Lady Donaghy, asked me to define "infrequently". As the noble Lord, Lord Lipsey, said, this is covered in the Cabinet Office guidance. It is hoped that this would mean very rarely indeed. However, it is not for me to define what "infrequently" means; that is an issue for Members of Parliament. I say no more than that.

The noble Baroness also asked whether I can give an assurance that the scrutiny powers being used are not mixed. The powers being exercised under these regulations will all be subject to the affirmative procedure and so there is no mixing of procedures.

The noble Lords, Lord Campbell-Savours and Lord Lipsey, made interesting, valid points about whether someone who did not vote in a general election should be able to sign a petition. Should abstainers have this power? That is the current state of the Act. I cannot address the issue now in regard to these regulations, but I heed what has been said.

I will need to write to the noble Lord about is meant by "family relationships". I am afraid that my understanding, which potentially may not be helpful to him, is that it mirrors the process for elections and is not defined in legislation. I shall write to the noble Lord to define further exactly what that might mean.

The noble Lord also asked about who is the accredited campaigner. There will be two categories of campaigners —accredited and non-accredited. Anyone who wishes to incur expense of more than £500 in relation to petition campaigning must become an accredited campaigner. Those wishing to become accredited campaigners must notify the petition officer and nominate a responsible person to ensure that the spending limits are observed. The campaigner will be entitled to spend up to £10,000. Accredited campaigners must provide details of any donations over £500 to the petition officer. Non-accredited campaigners will be able to spend up to £500 campaigning on the petition without having to make any declaration concerning spending.

I hope your Lordships will forgive me for not addressing the other points now. As I say, I shall certainly write to noble Lords about them.

Lord Campbell-Savours: I am worried about the media destroying the reputation of a Member of Parliament during the last week or so of a campaign. When the Minister writes to us, will he ask his officials to give consideration to this matter? I think it will be an issue when we get the first one. Everyone in the debate has presumed that the first one will be quite involved—and I think we are very near to the first one.

Lord Bridges of Headley: I certainly undertake to do that and to give it some consideration. It is another very valid point.

The noble Lord, Lord Lipsey, asked me to interpret Regulation 132. I will try to do so. It prevents people being paid—in other words, employed—to canvass on behalf of either side of the petition. To do so is an offence of illegal employment.

These regulations deliver on the manifesto commitments of the three major parties in the previous Parliament to introduce a system of recall. As I said in my opening remarks, I hope that they will go some way to restore the public's faith in our elected representatives in Parliament. I commend them to the House.

Baroness Hayter of Kentish Town: My Lords, I thank my noble friends Lord Lipsey, Lady Donaghy and Lord Campbell-Savours. My noble friend Lord Lipsey said that we had known each other a long time; it is actually some 45 years since we started work together. The last point, which my noble friend Lord Campbell-Savours raised, about it being illegal to canvass, is very interesting. That means that an MP's member of staff presumably could not work on behalf of the MP. I had also read and reread that. Presumably it means that no paid official of a party will be able to do it. It would be helpful for the Minister to be absolutely clear in writing that personal staff will not be able even to go around with the MP.

I will be brief because there are only two points I want to leave with the Minister. He has not answered the point about overseas voters. The significance of that is that there is no upper limit on what can be spent on a recall petition. The MP could spend only up to £10,000, but there could be 10 or 20 accredited campaigns working for a recall. Each of those 10 or 20 campaigns could spend up to £10,000. Indeed, there could be 20 or 30 campaigns spending up to £500 without even having to say where their money comes from. There is no upper expenditure on this. If the vote is extended beyond the 15 years to people who have been out of the country, these campaigns could be funded solely from outside the country. I do not expect the Minister to answer on that now because he has obviously chosen not to, but it is something that anyone who wants to keep big money out of politics has to think about.

I also remain worried about intimidation. The Minister said that people can, of course, apply for a postal vote, but that is only if the intimidation starts before the closing day for the postal votes. It is very likely, if people queue up and look at who is going into a signing place, that it would be much closer to the closing date, by which time it would be too late to apply for a postal vote. So the question of noting who goes in remains an issue.

Above all, my noble friend Lady Donaghy has shown the greatest wisdom today in her hope that this never has to happen. That would keep all of us most content—but, as my noble friend Lord Campbell-Savours said, if it happens it will be highly controversial. The way that these regulations have been written, and particularly the fact that they were not voted on either in this House or the other place, is regrettable. I thank the Minister for his time today, and my noble friends for supporting me on this Thursday afternoon. At this stage, I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

House adjourned at 5.10 pm.

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