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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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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

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

House of Lords

Friday 8 July 2016

10 am

Prayers—read by the Lord Bishop of Derby.

Death of a Member: Lord Evans of Temple Guiting

Announcement

10.05 am

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death of the noble Lord, Lord Evans of Temple Guiting, on 6 July. On behalf of the House, I extend our deepest condolences to the noble Lord's family and friends.

Modern Slavery (Transparency in Supply Chains) Bill [HL]

Second Reading

10.06 am

Moved by ***Baroness Young of Hornsey***

That the Bill be now read a second time.

Baroness Young of Hornsey (CB): My Lords, I have drawn number 2 in the ballot for Private Members' Bills on my very first attempt, so I feel that I have been quite lucky. I am lucky, too, to have had such valuable input and support from my noble friend Lord Alton, my noble and learned friend Lady Butler-Sloss, the noble Baroness, Lady Hamwee, Anti-Slavery International, the Ethical Trading Initiative, the BMA, the British Retail Consortium and its colleagues from the sector, and Safia Minney, director of People Tree and fair trade activist. This Bill exists because of all of them and countless others who have helped me get to this stage. I also want to place on record my thanks to Nicole Mason and her colleagues in the Legislation Office for their invaluable skill of turning wishes into draft legislation.

It is worth while establishing some of the background to the Bill. In 2007, we commemorated the bicentenary of the abolition of the slave trade on British ships. At that time, I have to confess that I, like many others, was only vaguely aware that in the 21st century human beings were being traded, exploited, trafficked, brutalised and abused on an industrial scale across the world.

Later, in 2009, during the passage of the Coroners and Justice Bill, I worked with Anti-Slavery International, Liberty and fellow Peers to introduce an amendment that criminalised forced labour and domestic servitude. Most people had assumed that such acts were already crimes, but they were not. The then Labour Government were initially reluctant to accept the amendment, as they thought it unnecessary and the ground covered by other legal instruments, but thanks largely to the persuasiveness of NGOs, civil society and victims, they took on the general thrust of the amendments and inserted them into that Bill. It is important to note because it is one of the steps that set us on the path that we are on now.

In 2015, the landmark Modern Slavery Act became law in recognition of the fact that such crimes were widespread and that a concerted, robust effort was needed to identify, and serve long sentences on, the perpetrators. The Government are to be congratulated on the way in which they gained cross-party consensus on the Bill, enabling it to be passed swiftly into law.

During the passage of the Modern Slavery Bill, several noble Lords spoke on the section on transparency in supply chains—which I shall shorten to TISC. In advocating TISC here in the UK, frequent references to the California Act were made both in the other place and in this House. The Californian legislation set an important and significant benchmark for identifying who owns responsibility for the use of enslaved and trafficked people in the supply chains of a wide range of brands and companies across different sectors, whether that be food, fashion, textiles, homewares, furniture, construction and so on. In spite of initial doubts and to their credit, Ministers ultimately accepted the arguments for including a section on TISC in the Modern Slavery Bill, persuaded by the views expressed by substantial, reputable businesses which wanted a "level playing field" created through TISC and by concerned NGOs and civil society.

Part of the point of my retelling this history is that Governments can change their mind. I know that the Minister, who kindly agreed to meet me yesterday, has substantial reservations about the Bill that we are debating today, but I hope that we are set on a similar trajectory as described above; that is, from a position of doubt to one of engagement and collaboration leading to some significant improvements on TISC.

As I have already suggested, last year there was a real sense of a collective desire to get the Modern Slavery Act through Parliament on a tight schedule. That was because everybody wanted to make sure that the legislation was put to work as soon as possible and to make a declaration of intent that the UK would vigorously pursue the criminals involved in such appalling activities. I hope that we can still count on that collective will today as we consider this Bill. Whatever its limitations, I hope that noble Lords will not be surprised to hear that I am happy to work with your Lordships to improve it or even to discard parts of it should there be convincing alternatives. After all, we all have the same goal: to do what we can to eradicate these crimes.

For the likes of Marks & Spencer, John Lewis, Next, Debenhams and so on, the case is clear. TISC reporting is seen not as a regulatory burden but as an opportunity to embed humane, fair practices in their organisational culture and across the sector. It makes good business sense because some businesses are gaining an unfair financial advantage through the use of forced labour and failure to address enslavement and trafficking in supply chain operations.

Now to the Bill. The amendments that I propose to be made to Section 54 of the Modern Slavery Act are relatively simple and are welcomed by the Transparency in Supply Chains Coalition, comprising CORE, Amnesty

[Baroness Young of Hornsey]

International UK, Anti-Slavery International, the Dalit Freedom Network UK, FLEX, the International Justice Mission, UNICEF UK and Walk Free. The Bill has also been positively received by the British Retail Consortium and Kevin Hyland, the Independent Anti-slavery Commissioner.

Clause 2 inserts public bodies into the Modern Slavery Act. Many contract and agency workers end up working on government contracts and this type of labour is particularly vulnerable to exploitation. Anecdotal evidence from NGOs and trade unions points to worker exploitation on government construction contracts in the south-west of England, in recycling plants in the north-west and in London. Social care contracts are another area of concern. There have been cases of exploitation of workers in the care industry and allegations of widespread worker abuse by some key local contractors have been reported.

Clearly, what I propose is not totally straightforward. For example, it is apparently difficult to determine which local authorities would be subject to compliance with TISC measures, particularly with regard to calculating thresholds, and I know that there is an argument that says that public bodies are already well regulated in terms of ethical procurement practices. But I draw noble Lords' attention to President Obama's executive order 13627 of 2012, *Strengthening Protections Against Trafficking In Persons in Federal Contracts*, which sets a high standard for all federal agencies. The order prohibits contractors and their subcontractors from engaging in a broad array of trafficking-related activities, such as providing misleading information about work conditions, requiring employees to pay recruitment fees, and so on. To ensure compliance, contractors and their subcontractors must agree by contract to co-operate fully with contracting agency audits and investigations and, for contracts above $500,000, contractors and subcontractors are required to maintain a compliance plan. Any violation of the provisions in this executive order can result in termination of the contract and potentially exclusion from future federal contracts. This level of contract compliance with regard to TISC is far more extensive than what is contained in this Private Member's Bill, and I wonder about the extent to which federal bodies can be said to be set up in a more complicated way than our public bodies here in the UK.

The insertion of public bodies into the Modern Slavery Act points to the potential of their combined purchasing power, of £45 billion, to contribute to a real change in behaviour from those operators in the commercial sector that are not on the high street and thus not instantly recognisable. At the heart of this clause is the question of how public bodies can use their purchasing power more effectively to root out enslavement and trafficking in their supply chains.

Clause 3 simply defines "public body" for the purposes of this Bill and the Modern Slavery Act. Clause 4 requires companies and public bodies to publish their statements in their company reports, lodging them with appropriate bodies such as Companies House or the Charity Commission. This means that all statements would be available in a central location and could be scrutinised alongside company accounts. Non-financial reporting is standard in annual reports, which have to be signed off by directors, and this addition should not represent a burden for those companies involved since they have to make the statements anyway.

As it stands, the Modern Slavery Act requires companies to put their statements on their websites. I am not arguing against that, obviously, but trying to enable scrutiny and monitoring of statements in as many publicly accessible places as possible. The publication of statements should ideally be linked to a list of companies that should be complying with TISC. That is precisely what is asked for in Clause 1(5), which requires the Secretary of State to compile a list of companies that should be compliant with TISC, to make it possible for NGOs, civil society and the general public to find the information required for effective monitoring. As I have just stated, the effectiveness of this measure would be enhanced by linking reports and statements directly to this list.

In the absence of any punitive measures for non-compliance, the Government expect that good, reputable businesses will encourage others to improve their efforts to rid their supply chains of enslaved and trafficked labour. The Government would also like NGOs, civil society and the general public to monitor and scrutinise TISC compliance, since there are no other mechanisms for doing so. Noble Lords will be aware that there is no mandatory requirement for companies to upload their statements to a government or indeed any other website. This means that that no one has any idea which companies have complied with TISC, or even how many companies should be complying. Of course, we know that most of the familiar high street companies will meet the £36 million threshold and comply, but what of other, less familiar businesses such as caterers, the construction industry, hotels and so forth? Will the Minister explain to the House how he sees the monitoring of TISC happening, given the lack of information available? I am sure, as he said to me yesterday, that requiring the Secretary of State to carry out this clause would be a difficult task, but have all the technological possibilities been explored and discarded? Is it really impossible to create a dynamic database of companies that can be consulted by the public, civil society and NGOs?

Apparently, one of the regrets of the creators of the California Act is that they did not build into the legislation provision for a central repository of TISC statements. This subject has been raised several times with the Government here with little by way of a positive response. What seems to be happening now is that several websites offering to host TISC statements have emerged claiming to be independent, with some charging fees of up to £5,000 and at the same time selling consultancy services to the companies concerned and offering to write the reports for a fee. That represents a clear conflict of interest. Given that of the 75 reports recently posted and analysed, only 22 met the minimum legal requirements of the Modern Slavery Act, and just nine met the minimum legal requirement and addressed all six of the criteria suggested in the Act, although obviously it is early days, this does suggest that there need to be examples of good practice in drawing up reports and statements. Monitoring is also needed to ensure that statement templates do not

become more widespread. Apparently, several statements from different companies sound suspiciously similar. Clause 2, which inserts paragraph (1A), and Clause 3 both relate to due diligence and contracting authorities, and aim to strengthen existing guidelines and regulation for public bodies, as I have already noted.

One reason I have brought this Bill to your Lordships' House is that I do not want us to settle into a complacent attitude which says, "We're leading the world on this; let's just see how things pan out over the next couple of years", during which time, bad habits such as low levels of compliance and poor reporting become the norm. That would be unforgivable and a betrayal of victims. I beg to move.

10.19 am

Lord Whitty (Lab): My Lords, I strongly support this Bill and congratulate the noble Baroness on introducing it. As we know, modern slavery takes a number of forms: forced labour and domestic servitude; indentured labour; and sexual exploitation. The reality is that victims come in all walks of life and all sectors.

We were all taught at school that William Wilberforce abolished slavery but here in 2016, more than a century and a half later, we are still faced with products and services that come to us through our shops and daily lives which have in part been produced by what we now call modern slavery. The growing reliance on the internet and social media means that we should know what is happening all over the world, but still in the clothes shops and fashions, in the food we eat and even in our medical supplies there is a component that has been produced by what is, to call it by its proper name, slave labour and equivalent labour practices.

The Modern Slavery Act of last year was indeed a major step forward. I am sorry I could not play a more effective part in that Bill but I strongly supported it. It was a beacon of light shining on to a dark place. In many ways it put the UK at the forefront of nations attempting to deal with this problem. However, the commitments reflected in that Act need enforcement in the commercial sector and across the world if they are to be fully effective. While there is now a relatively high level of public consciousness, it is certainly not sufficient to rely on well-motivated consumers or the important consumer-led bodies and other organisations, some of which the noble Baroness referred to as supporters of this Bill, to enforce it. We have consumer organisations such as the Fairtrade Foundation and trade organisations such as the Ethical Trading Initiative. These are vital to public consciousness and have been vital in getting us this far—particularly in Britain and, with equivalent organisations, in Scandinavia. However, they need to be backed up by effective enforcement.

Enforcement comes in two forms: a legislative and direct regulatory form and an economic form through pressure on the supply chain from the most powerful point in the supply chain, which is usually the final commercial or governmental user. I will say a few words about regulatory enforcement in a moment but this Bill deals primarily with economic enforcement through the supply chain. That is why the original Section 54 of the Act required major commercial organisations of all kinds to report on the steps they have taken to try to ensure that their supply chains are as free as possible from dependence on any form of modern slavery. That could be slavery, trafficking or forced labour which occurred in this country. Frequently we forget that, but there have been some horrific cases in our courts and reports of what is happening in this very city and in the fields of our farming areas. The Act also covers abuse throughout the world.

Our supermarkets and clothes shops—Tesco and Primark as well as the more obviously ethical stores such as Waitrose and Marks & Spencer—now have an obligation to check their supply chains. That does not rely on outside pressure but is, as a result of the 2015 Act, a legal requirement on the retailer or final provider themselves. I am not claiming in any way, any more than the noble Baroness did, that this is fully effective. There are still many clothes in our shops and much food in our supermarkets that we have probably all bought even in the last week that is tainted by these practices. This Bill will further strengthen that requirement so that such companies are listed, their performance much more accessible and the requirement is more widely known.

At least there is already a clear obligation on such retailers and final providers, and campaigners and consumers can therefore hold them to account. However, it was a peculiarly strange omission from the original Act that an equivalent obligation and similar assurance do not apply when we use our GP or go to a hospital, attend university or schools, benefit from the protection of our Armed Forces or the police force, or when we walk by construction sites contracted by the Government. Yet all these contractors and procurers are in the very same markets most prone to abuse down the supply chain—the supply of mass apparel, food, furniture and construction. Indeed, during the passage of the Bill, the noble Baroness was assured by the Minister that public contracts would be dealt with in a different way. However, to my mind that has not been forthcoming.

Evidence for the need to include public procurement and contracting authorities in the requirement to vet their procedures comes from many sources. The need for public procurement to exclude from its supply chain organisations that have been clearly convicted of modern slavery and labour abuse is not even there. I particularly refer to evidence that came to me only yesterday from the British Medical Association. Other noble Lords may have seen that. I appreciate that the BMA is not necessarily the Government's favourite organisation at this point but nevertheless it is a well-researched and effective report. It shows that in one quite large but obscure area—the procurement of surgical gloves—there are examples of severe labour abuses amounting effectively to forced and indentured labour, particularly in south-east Asia.

That BMA report on the working conditions surrounding the primary sector of the latex glove industry focused predominantly on Sri Lanka, Thailand and Malaysia. It is a damning insight into the living and working conditions of factory workers in those countries, with cases of severe exposure to safety hazards and retention of passports by the company so that people could in effect leave neither the company

[LORD WHITTY]
nor the country—it is mainly migrant workers who are employed. There is a long excerpt in the report from the examination of the situation in Sri Lanka, where the EPZ regions are designated by the Sri Lanka Government for special labour conditions. They are excluded from any of the labour standards that would apply in terms of ILO commitments in other regions of the country.

In terms of our procurement here in the UK, this area should already have been covered. NHS procurement rules and guidelines have, since 2009, been included in the code of conduct, which also includes a labour standards assurance scheme. However, it was due really only to BMA pressure that in December last year that assessment was applied to this trade in latex gloves. If that is one example, there must be myriad more examples in other areas of procurement by not only the NHS but also the major government contracting organisations both at local and national level. They really need to be included in the noble Baroness's Bill, putting them on a par with commercial organisations.

Will the Minister put on record aspects of the other way in which we strengthen enforcement in this country—direct regulation? A Statement in June related to the extension of the role of the Gangmasters Licensing Authority, together with a changed name for that body. I have an interest in that field, having brought the GLA legislation through this House many years ago, but at that time—and since—its remit was limited. It has been made more limited by subsequent Governments. Both the coalition Government and this Government resisted extending the GLA remit from agriculture, fisheries and first-line food processing to other areas such as construction and catering where modern slavery practices are known to occur. The turnaround in extending the remit of the GLA is welcome and important but needs to be backed by resources and effective enforcement. In replying on the economic pressures on the supply chain, will the Minister also refer to what parallel steps are being taken by the Government on the GLA and by the Independent Anti-slavery Commissioner? What resources are being given to them? How will that more effectively close down some of the appalling practices of which we are all now aware? If the Minister is not in a position to do so today, will he please write to me and other noble Lords? Meanwhile, I strongly support the Bill.

10.30 am

Lord Cormack (Con): My Lords, I am sure that the whole House will echo the questions just posed by the noble Lord, Lord Whitty, and await with interest the response of my noble and learned friend the Minister.

I may be the only speaker from these Benches in this debate but I am confident that most, if not all, of my colleagues would wish to thank the noble Baroness, Lady Young of Hornsey, for introducing the Bill and bringing this important issue once more before your Lordships' House. I echo entirely her reference to 1807. My greatest parliamentary hero is William Wilberforce, who did so much to spearhead the campaign for the abolition of slavery. However, I am glad that he did not call it AST. I was sorry that the noble Baroness introduced yet another acronym into parliamentary jargon. I have been tempted many times to present a Bill to your Lordships' House for the abolition of acronyms. I am further encouraged to attempt that by the noble Baroness's speech this morning. Perhaps I will do so in the next Session of Parliament.

I listened with great interest to what the noble Baroness said and entirely agree with all her sentiments. However, I wonder whether the Title of the Bill could be improved by calling it just contract compliance rather than this extraordinary phrase which brings in the vogue word "transparency", which everybody trots out and very few people completely understand. Transparency was always something you could see through, as far as I was concerned. What we want here is a Bill that we can all totally support, because it seeks to add yet another weapon to the armoury fighting the insidious evil—I use the words deliberately—of slavery in modern society. As the noble Lord, Lord Whitty, said, we are doubtless all of us occasionally unwillingly complicit in this through buying goods which have been produced by those subject to labour conditions that none of us—if we knew about them—could begin to tolerate, let alone condone.

There is, however, somebody who should be thanked in addition to the noble Baroness, because it was an act of courage, determination and vision to bring the Modern Slavery Bill before Parliament. On a rather appropriate day, I pay tribute to the Home Secretary, Theresa May, who was behind that. I very much hope that the steely determination and vision that she displayed in taking that Bill through Parliament will soon be available to the country in a higher office. All I would say in that context is that I hope we do not have to wait nine weeks as this country desperately needs an effective Prime Minister who is not a lame duck, and needs that Prime Minister soon. We should not wait upon the unduly protracted deliberations of a tiny fraction of the electorate. I hope that message will go forth from this House, and that we will soon see Theresa May, with all her experience and commitment to good causes, installed in No. 10 Downing Street. I do not think it is inappropriate to pay tribute to her today in this context. I hope very much that even my dear old friend the noble Lord, Lord Campbell-Savours, who himself is part of a party in search of a saviour, will realise that there is some sense in what I am saying.

The noble Baroness, Lady Young of Hornsey, has performed a very real service this morning. It is essential that loopholes are closed, if they exist, and that the circle is completed because we need a virtually cast-iron guarantee and assurance that any goods or products we buy are not the result of modern slavery. Of course, other aspects of modern slavery are even more sinister; one thinks of the sexual exploitation of the young. Forcing people to do things against their will and inadequately rewarding their labours, in whatever form these practices are carried out, should indeed have long been consigned to the dustbin of history. If we can ensure that the Act we already have on the statute books is made yet more effective by the noble Baroness's endeavours, we shall all have quiet cause for satisfaction. I wish her every success in her endeavours. She made it plain that she is open to suggestions for amendments

and improvements to the Bill. As one who has introduced several Private Members' Bills over the last 46 years, I know that every private Member in either House needs expert support and help, and that almost no Private Member's Bill is incapable of improvement. The noble Baroness was very generous in that regard.

I hope the Bill will have a successful and speedy passage through your Lordships' House and that my noble and learned friend the Minister will articulate carefully whatever reservations he might have, so that we can work together to ensure that, as I say, this circle is completed and the Act that we already have on the statute books is made even more effective than it promises to be at the moment. I have great pleasure in giving the Bill my support.

10.37 am

Baroness Butler-Sloss (CB): My Lords, I cannot resist commenting on the speech of the noble Lord, Lord Cormack. First, public Bills put forward by government nearly always need amendment; it is unfair to single out Private Members' Bills. Secondly, I would support any action the noble Lord takes to abolish acronyms. I spend my life having to ask people what on earth various letters mean, so that would be brilliant. However, I do not agree with his comments about the Bill's Title, because the noble Baroness, Lady Young, whom I congratulate very much on bringing this timely and necessary Private Member's Bill forward, quite rightly followed the wording of the Modern Slavery Act in that respect. If I may respectfully say so to the noble Lord, it would be madness to go out on a limb when we have the wording that is already in the Modern Slavery Act, and this Bill is intended to be a very necessary improvement to that Act. The Modern Slavery Act is a very good Act and I share the noble Lord's view that Theresa May is much to be congratulated on having courageously brought it forward. We are all very indebted to her for the Modern Slavery Act, on which I worked. Noble Lords know that I am much involved in modern slavery elements in both the parliamentary group and the Human Trafficking Foundation.

The Government are to be congratulated on the innovative supply chain requirement in the Modern Slavery Act. However, I wish to make two points. First, a good Act can always be improved. I cannot see why, in principle, the Modern Slavery Act applies to large private companies and not to government procurement, government agencies and local government. An example is procurement by the Ministry of Defence, which is absolutely enormous. There can be no good reason in principle why the Ministry of Defence should not have a similar, but not necessarily exactly the same, requirement as private companies. Why on earth should the Government not have a similar requirement to independent companies to have this transparency made absolutely clear?

The big companies gave evidence to the Modern Slavery Bill pre-legislative scrutiny committee. They were entirely happy to have transparency but they asked for—and I use the phrase that the noble Baroness, Lady Young, used—a level playing field. They did not ask for government procurement to be included but it must have been in their minds. I cannot see why the Government cannot lead and show the world that not only do they expect private companies to do this, but they themselves will get involved. That would be wonderful message not only for the United Kingdom but around the world. I spent some time at the Vatican quite recently, explaining to 22 other countries what the Modern Slavery Act was about but I was not able to say that the Government were intimately involved in this very important part of it, which many other countries are interested in.

I do not think the noble Baroness, Lady Young, would be at all embarrassed by my saying that it is quite clear that Clause 1(2) could be improved, in particular to include—regarding the second issue I want to deal with—what sort of statement should be provided. We could look in Committee at providing a way that would be acceptable to the Government. The fact that this may need to be changed does not mean that we should not have it; that it the really important point of this Bill.

My second point, therefore, is that at the moment there is absolutely no way that we can tell whether companies are obeying the law and making the appropriate return under the Modern Slavery Act. We do not know which companies are obliged to make the return; we have no idea. There is no one to report to. It is very unsatisfactory to have a law where one does not know to whom it applies and whether those to whom it applies are complying. It is an extraordinary situation in the state of law.

There are various ways in which this could be remedied. One could have a requirement to file with Companies House, or a government department could compile a list of companies to which the public have access. I understand that the Government are likely to say that this would be extremely difficult and that it would change all the time, but if the Government bring in legislation that requires companies to comply, they really also ought to be able to know to whom the law is applying. I therefore do not see that that is a very good argument. A government department—not necessarily the Home Office—could receive statements sent officially by a company. We could have a genuinely independent, properly managed website—if one could find it; I take the point of the noble Baroness, Lady Young, about the various organisations offering what look to be really spurious suggestions of how they would manage a website, which would be to their financial advantage. I would be very unhappy about that.

I am particularly worried about not only the big companies that have to give this information but the extent to which they are able to manage and scrutinise the work of their subcontractors and the agents who have other subcontractors over whom the company that sells the product does not have proper control. This is an aspect we need to look at. We need to encourage companies to do due diligence, not just at their own level and that of their subsidiary companies, but at the level of their subcontractors who provide them with the goods that they sell.

There is of course an argument about the burden of regulation but it was, in my view, utterly destroyed in

[Baroness Butler-Sloss]
the Joint Select Committee on the Draft Modern Slavery Bill by the biggest of the companies that came to talk to us saying that it did not object to doing this. Interestingly, John Lewis, for instance, has a document that shows that it is complying with human rights, which is of course already a requirement for companies, and is putting a requirement to deal with modern slavery in that same document. That seems a perfectly sensible way of doing it but it may not suit other companies. So the burden of regulation is not a good argument. I do not think that it matters which way companies do it, so long as it is set out in a company document that is the responsibility of the main board and not of someone subsidiary. We need a consistent approach by industry, including government procurement. The wording of Clause 1(4) could be improved; it does not need to be in an annual report and accounts so long as it is in an appropriate document. Business could probably tell us what would be the more appropriate phraseology to use.

I end by saying that, next Wednesday afternoon, the Human Trafficking Foundation will hold a meeting to talk about transparency in the supply chain, at 5.30 pm in Committee Room 3. We will be discussing what large companies are expected to do and among the companies coming are John Lewis, Primark, Tesco and the British Retail Consortium. Am I really going to have to say to them that we held this debate, thanks to the noble Baroness, Lady Young, and that, at the end of it, the Government resolutely refused to have anything to do with it and were not prepared to involve government procurement as part of what big business is expected to do? That would not, I suspect, go down very well next Wednesday.

10.47 am

The Lord Bishop of Derby: My Lords, I too thank and congratulate the noble Baroness, Lady Young, and support these suggestions. I declare an interest in that I am the chairman of the advisory panel to the Independent Anti-Slavery Commissioner and am therefore, among other things, quite heavily involved in some of these issues.

My first point is that the Modern Slavery Act recognised very clearly the importance of information, which gives power. If you hide information, people get the wrong kind of power to behave badly. Besides trying to press companies to behave well and have good practices, we need to remind ourselves that this is not simply to fight on behalf of victims—although that is of course the priority—but to fight against serious organised crime, which in itself is a very successful business model that is expanding all the time, as we speak. It is therefore in the interests of proper companies to help us all to push back against criminal business behaviour, which has these appalling human consequences and is also enormously damaging to the health of our economy and the well-being of business more generally.

The noble Baroness, Lady Young, mentioned that the Modern Slavery Act asks companies to provide information, in a self-regulatory way, about their performance in this area. The research that she mentioned shows very clearly that the Act highlighted six areas on which it would be sensible for companies to report, so that one could see that they were doing all that they could to fight slavery in their supply chains. The research done recently shows that only about 10% of the companies that have even filed any kind of report are looking at those six key areas, which are essential to give anybody a sense of how they are performing, what their aspirations are and where they might be going.

The desire to have companies report in the way that the Act has sketched it out is not working in terms of the performance and response of companies. As the noble Baroness, Lady Butler-Sloss, said, there is a big issue about how to get companies to pay attention to responsible reporting. One way, which I spoke about in the debates on the legislation, would be to make a small amendment to the Companies Act 2006 to simply require this degree of reporting. The Government were not keen on that; the Minister may want to comment on the latest thinking about that slight legislative change that would deliver some important steps in this direction.

If we are to maintain the understandable line that we do not want to burden businesses, but want them, for their own good, to develop good practice and create a positive business culture, how are we going to enable them to get over the line and work properly? Let me give noble Lords some encouraging signs and then end with a question for the Minister about a particular concern.

I do a lot in this area in Derbyshire, where I work as the Bishop. The University of Derby, with the Gangmasters Licensing Authority, offers a course on which businesses can send the people they employ to learn how to monitor supply chains, and how to organise supply chains and procurement contracts to develop good practice. That is one tool that is being developed. It is a simple one, but people in offices need to learn how to do it.

We have done some work with businesses in Derbyshire. I get the heads of businesses to meet the police, and when the police explain how unscrupulous agencies can filter people into the system and apparently give them a good deal, eyes are opened and they immediately see the importance for procurement contracts and for every kind of occasional supplier, down to the people who clean the windows in their factories. We must encourage businesses to recognise the scope of the crime and how vulnerable many of them are—especially the large ones—and show them the simple steps, such as this one, that can be taken.

Two weeks ago, the most reverend Primate the Archbishop of Canterbury was in our diocese for a few days. He and I convened a meeting with business leaders, at which a number of significant businesses—JCB, Bowmer & Kirkland and other large businesses in our culture—signed the Athens ethical principles about having good auditing practices to try to stamp out slavery in the supply chain. This is another voluntary effort. It is great that those companies are signing up, and it is an example and a model for others. However, it is very patchy, and it depends on someone like me having the passion to get people into a room and help them to get on the same page.

Another ray of hope is the fact that, with the Roman Catholic Church and on behalf of the Church

of England and the Anglican communion, we are working under the banner of the Global Sustainability Network. It is trying to help companies internationally and Governments in relation to their legislation to occupy this space creatively, learn from each other and develop good audit practices. This was much influenced by the Pope's encyclical last year, *Laudato Si'*, which brings together care for people and care for the planet. With good auditing practices, businesses can show that they are being positive in both those areas. Such auditing can help them to perform better and it satisfies public demand better.

I have a concern about the mechanism, which was discussed during the crafting of the legislation, for some kind of central repository. As other speakers have said, how can we know what businesses are doing, and how can a good business—such as the businesses that have signed up to the Athens ethical principles in Derby—show how it is performing? There is a free market, and a number of operators in it are offering services to help businesses. If they divide up the market, it will be even more difficult for anybody to know what a particular business is doing, whether it has registered and whether it is meeting the right criteria.

I want to ask the Minister about two organisations based in Bristol, Semantrica and a charity that works for victims called Unseen, which offer services that people will have to pay for using. Some of the information will be publicly available, but some will be available only to those who pay for it. This organisation, which is backed by Google and Polaris—some large operators are involved—claims to work in close collaboration with the UK Government. I would be very interested if the Minister commented on what that means. Are the Government trying to develop an official arm? If so, it would be helpful to know what investment the Government are making, what other models they have looked at and what processes have been considered in discerning this as the way ahead. If the Government are not involved, what are we going to do about this growing unregulated market of people trying to offer central repositories? By definition, such repositories will be not central, but partial. They are themselves businesses that are trying to do good work, but they are making our task more difficult.

The organisations I have mentioned are linking a central repository with the provision of a helpline. We also talked about this during the crafting of the legislation. It is absolutely crucial to have a proper helpline both to identify victims and, within that, to identify bad practice in businesses. What are we going to do about inviting in the people who provide intelligence—for the police, for the Government and for others—that might help us to fight this crime and about developing practices to enable us to do so efficiently? Has this particular initiative, which claims to be supported by the UK Government, looked at the practices followed by other helplines and learned any wisdom from them? Do the Government have a view about the role of helplines in this whole enterprise?

This issue is very difficult because of its sheer complexity and volume. If, like me, noble Lords occasionally meet victims, they would not hesitate to do everything they could to help businesses beyond the front line of this terrible exploitation and abuse of human beings. If, as I sometimes do, they meet business leaders, they would not hesitate to help them perform responsibly in a system that allows them to do so, sets benchmarks for them and gives them a way of letting their customers know that they are trying hard in this area. People are anxious to do that, but they need the right tools and structures. I would be very grateful if the Minister commented on what kind of tools and structures the Government want to endorse, given that, as I said at the beginning of my speech, the initial research shows that performance on the aims—I understand them to be to encourage businesses to self-regulate and to develop this themselves—is very skewed, very unsatisfactory and not very helpful to anybody.

10.57 am

Baroness Goudie (Lab): I thank the noble Baroness, Lady Young of Hornsey, and the organisations that supported her and helped draft the Bill. When the original legislation was taken through the House, we received a number of assurances from the Minister and civil servants at the time that a proper reporting mechanism would be put in place, including for companies employing more than a certain number of employees. That could be done—we went back over it time and again—but at no point was it resolved. We were then told that it would come to the House, but so far nothing has come to the House except this Private Member's Bill.

I do not want to go over all that my colleagues have said, but I will say that the *Athens Ethical Principles* is by far the best document for the Government to work on and to take to companies. This is partly a matter for the Department for Business, Innovation and Skills and partly a matter for the Home Office, but let us not allow it to fall between two stools—which is a great game with Governments and civil servants. The reporting side of this—the company reports—should go to BIS. It is quite easy to do that in company reports, as everything else is put in, including the gender basis, fair pay and what people are being paid. So this is just an additional piece to be done. It should be done by the companies or their accountants, not by outside agencies, which have approached me and others for help in getting to speak to the Government to say that they can assist and that they can speak to companies.

I turn to the whole question of slavery. We know that anybody who has in any way been a victim or survivor of human trafficking never lives a long life. What are the Primarks of this world, which are selling dresses and other things for £3 or £2.50, paying the people in the supply chain? What is the person being paid in Bangladesh or other places from where it gets these clothes? If you unpick them, you eventually find where they were made. At present, it is very vague, and that is where the supply chain must be looked at.

In the same way, where does the fish going to all the supermarkets come from? In many cases, it comes from boats off Australia and New Zealand that people are never allowed to leave. It is for that reason that we are pressing this Bill, which has cross-party support. It

[Baroness Goudie]
is absolutely important that the House gives its support and that the Minister goes back to the civil servants who keep coming up with reasons why this cannot operate. We know that it can operate.

If only they had been to the places that we have seen. When I was chairman of the UN Women Leaders' Council leaders a few years ago, we went to see some of the places where football shirts are made for top teams. I know of a manager, for example, who gets £75 million for this and that—I read it in the newspapers—at the same time as the team takes football shirts from places where they pay nothing for them.

That is what the Bill seeks to stamp out, and it should take in local authorities as well as government departments and quangos. Every form of organisation that procures goods should be part of this and it should not be limited by how many people they employ. It has to be the whole supply chain of our country.

11 am

Lord Smith of Hindhead (Con): My Lords, in today's debate I shall make one point and ask three questions. I trust that noble Lords will forgive me if I repeat any points that have been made or if I make a point that is to be made by other noble Lords who will speak after me.

In 2014, the Home Office estimated that the number of potential victims of modern slavery in the UK alone was in the region of 13,000 individuals. I think we can all agree that the prospect of 13,000 individuals not having a life but effectively having some form of existence is a truly horrific thought. Because of the hidden nature of this appalling trade in human misery, this figure is almost certainly an underestimate. I know that all noble Lords would instinctively wish to support the legislation which brought about the Modern Slavery Act 2015—and, as such, I recognise and respect the efforts made by the noble Baroness, Lady Young of Hornsey, in introducing an important opportunity to consider the extension and clarification of the Act under her Bill, which would increase supply chain transparency by extending Part 6 of the Act to include public bodies. Public bodies—those organisations which receive taxpayers' money—already have so many obligations which we almost take for granted, such as the public sector equality duty under the Equality Act 2010, that the Bill appears in most respects to be a simple and natural progression of an established practice.

Your Lordships will be aware that the equality duty ensures that all public bodies play their part in making society fairer by tackling discrimination and providing equality of opportunity for all. The equality duty has three aims. It requires public bodies to: have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people. As a nation, we are conscious of discrimination and equality. Furthermore, we are concerned about the protection of the vulnerable, the poor and those in need. Surely people unfortunate enough to be trapped in modern slavery encompass all three of those descriptions. What taxpayer in the UK would feel comfortable knowing that any part of their hard-earned money was finding its way into the pockets of people who exploit others? Most of the comments so far today have touched on the commercial area of the Act, which is already covered, whereas the Bill before us is specifically about extending the obligation to public bodies.

I am therefore pleased to note that under Clause 1(3) and (4) public bodies which are "governed by public law"—in other words, a "contracting authority" or a "central government authority" under the Public Contracts Regulations 2015—must include a slavery and human trafficking statement in their annual report and accounts. I hope that I have interpreted the meaning of this proposal correctly, which is that public bodies cannot make use of Section 54(4)(b) of the Modern Slavery Act 2015 and simply issue a statement that they have "taken no … steps" to ensure that slavery has not occurred in their supply chain.

I see that Section 54(4)(b) can still apply to qualifying commercial organisations, but should the clause extend it to public bodies? Will my noble and learned friend the Minister touch on this point in his summing up? In addition, and on a similar theme, is he able to shed any light on the number of qualifying companies and organisations which are already subject to the Modern Slavery Act 2015 and which have not completed their slavery and human trafficking statement? Thirdly and finally, what is the number of such qualifying companies and organisations that have used Section 54(4)(b) to declare that they have not taken steps to investigate their supply chain in this way?

Lord Cormack: Before my noble friend Lord Smith sits down, I profoundly apologise to him for getting my Smiths confused and not realising that he was to speak in this debate.

11.05 am

Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to support the Modern Slavery (Transparency in Supply Chains) Bill, a Private Member's Bill, which is being promoted by my noble friend Lady Young of Hornsey. She is a formidable and effective parliamentarian with a long track record in contesting modern-day forms of slavery. Her eloquent speech today was an impressive extension of that record.

I support the requirements in her Bill which would be placed on commercial organisations and public bodies to include a statement on slavery and human trafficking in their annual reports and accounts, and the requirement for contracting authorities to exclude from procurement procedures economic operators which have not provided such a statement. With the United Kingdom Government awarding £45 billion of contracts annually, it is self-evident what leverage this policy could provide in forcing businesses to strengthen their slavery and trafficking statements. I was particularly pleased to see that, following the publication of the BMA's report in March on the 150 billion medical gloves used globally, not least here in the National Health Service, the BMA is strongly supporting my noble friend's Bill because there are significant concerns, as we have heard—the noble Lord, Lord Whitty, referred to this—about labour abuses in many of the factories which produce disposable gloves.

This is a very modest Bill and a first step to addressing the concern of the Transparency in Supply Chains Coalition that early indications are that the majority of initial,

"company statements on modern slavery in supply chains appear not to meet the Act's requirements".

I am also glad that the Bill is before your Lordships as it enables us to have a broader and wider debate today. It could be used, as others have suggested, to meet the real expectations which we all had of the 2015 Act. Thanks to my noble friend Lady Young, we have the opportunity now to plug some of the gaps left in the legislation. Although the Government opposed my own amendment in 2015 proposing post-legislative scrutiny, my noble friend's Bill gives us an opportunity to do some of that. We have already heard the noble Lord, Lord Whitty, refer to the extension of the role of the Gangmasters Licensing Authority. We have also heard some concerns raised by the right reverend Prelate the Bishop of Derby, my noble and learned friend Lady Butler-Sloss and others about other issues in the Bill: everything from domestic visas to the national referral mechanism and the central repository, which was alluded to by the right reverend Prelate and which I will return to in due course.

Seven years ago, in 2009, I accompanied my noble friend Lady Young to see the then Minister, the noble Lord, Lord Bach, to support her amendments in Committee to the Coroners and Justice Bill, which sought to make it a criminal offence punishable by up to 14 years' imprisonment to hold someone in servitude; and to make it an offence for a person to subject another to forced or compulsory labour where the victim had been threatened with harm if they did not perform the work. The noble Lord, Lord Bach, could not have been more receptive or helpful, and I hope that that will set the tone for the response given by the noble and learned Lord to my noble friend's Bill today.

These abhorrent practices were the issues to which we all returned during the passage of the flagship Modern Slavery Bill. Like the noble Lord, Lord Cormack, I pay particular tribute to the right honourable Theresa May, the Home Secretary—I hope that that tribute does not do her too much damage—and to our own Home Office Minister, the noble Lord, Lord Bates, for their diligence and effectiveness in promoting flagship legislation which commanded support across both Houses and all sides of your Lordships' House.

I might say in parenthesis that the noble Lord, Lord Bates, is due to return to the United Kingdom around 8 August, having walked a staggering 2,460 kilometres so far, from Buenos Aires to Rio de Janeiro, while raising money for UNICEF and awareness of the 2016 Olympic Truce. Although his sons tease him that he is more "Beer and Grills" than Bear Grylls, he and his wife have, through their earlier walks, already given more than £200,000 to charity.

Through the noble Lord's work in government, a different gift will be the enduring legacy of the modern slavery legislation, not least the provision which requires businesses with a commercial presence in the UK and a worldwide turnover in excess of £36 million to report annually on steps that the business has taken to ensure that slavery and human trafficking are not taking place in its supply chains or any part of its own business. However, it was the noble Lord, Lord Bates, himself who admitted that, admirable though the Act was, it would never be the last word on the subject. The US State Department's *Trafficking in Persons Report*, published only this week, refers to our legislation in the United Kingdom and notes:

"Media and NGOs report compliance so far has been incomplete, in part due to misunderstandings among businesses about what the law requires. Critics noted the lack of monetary or criminal penalties for companies that did not comply with the reporting requirement".

It is obvious that there is a need for us to go further than we have done even in that admirable 2015 legislation. That need was underlined at a meeting held here, on Tuesday, in the Commonwealth Parliamentary Association room. Mr Kevin Hyland, the Independent Anti-slavery Commissioner, said at that meeting that the Act had been judged the world's third-strongest response to this cancer of modern-day slavery, surpassed only by legislation in the Netherlands and the United States. Nevertheless, it is not perfect and is not a panacea.

During consideration of that legislation, at Second Reading, in Committee and on Report, I argued that modern slavery is, by its very nature, a global phenomenon. It cannot be tackled by one Government alone but requires a global solution and a concerted and coherent global strategy. We heard again from Kevin Hyland that, for every person trafficked in the UK, there are dozens of children in forced labour in Uzbekistan's cotton mills, men and women enslaved in Mauritania, and Syrian children used as child labour in Lebanon. In addition, 90% of North Korean escapees are trafficked in China, women and children are exploited in bonded labour in India and Pakistan, and all over the world women and girls are trafficked into brothels. Your Lordships could recall, too, the fatal consequences of the collapsed garment factory in Rana Plaza in Bangladesh and ask themselves whether we are doing enough to deter suppliers that display such a fundamental disrespect for human rights.

On Monday, I met with representatives of India's Dalit community—so-called "untouchables"—who form a significant proportion of the 21 million people the International Labour Organization says are in forced labour around the world, who in total produce an estimated $150 billion in illicit profits. Then there are the 45 million people estimated to be living in modern slavery by the Global Slavery Index. India and China are among the top five countries on that index. It was of course good that earlier this year Her Majesty's Government ratified the Protocol of 2014 to the Forced Labour Convention, but perhaps the Minister will tell us when that protocol will come into effect and what penalties will accompany it.

Consider the abuses and exploitation of workers in such places as the cotton mills of Tamil Nadu in India. The mills in that region have supplied high-street retailers such as C&A, Mothercare and Primark. The *Flawed Fabrics* report, published by the SOMO Centre for Research on Multinational Corporations and the India Committee of the Netherlands, details many examples of forced labour abuses. Verité, an organisation promoting fair labour, estimates that 85% of migrant workers in Malaysia alone are in some form of forced

[Lord Alton of Liverpool]
labour. Modern slavery is so common in the fashion industry that each of us is probably wearing at least one garment that has been made with some element of forced labour. Modern supply chains are complex, many steps removed from the company, and operate across multiple countries with different approaches to workers' rights. This year both H&M, the Swedish multinational retail clothing company, and Next found modern slavery during an audit of their supply chain, specifically in the form of Syrian refugee children working in Turkish factories.

On Tuesday, at our meeting, the commissioner reminded us of how Nigerian boys have been lured to England with promises of riches from playing football in the Premier League but forced into slavery once they arrive. Many people, often immigrants and migrants, are forced into economic servitude, often wholly unremunerated or on paltry wages. It is thought that in industrialised nations, some 360,000 people work in such exploitative conditions.

This is to say nothing of the barbarity which often accompanies enslavement—and outright genocide—of Yazidis and Christians in Syria and Iraq by Islamic State. Their plight was highlighted again this week through the harrowing story of an 18 year-old Yazidi woman, Lamiya Aji Bashar, who was enslaved, raped, tortured and left partially blind and permanently scarred. She was given wonderful help by our colleague, my noble friend Lady Nicholson, who played a central role in Lamiya's escape. Two of the other enslaved girls who attempted to escape with her were killed. Her nine year-old sister, Mayada, remains a captive.

On Wednesday this week, along with my noble friend Lady Cox, who has done so much on these issues, I raised the genocide being perpetrated by Khartoum in Sudan's Nuba mountains and South Kordofan, where enslavement of Africans has been systematic and routine. Just last month, Sudan bombed the St Vincent school in El Obeid. This town in Kordofan is also where, in 1877, a girl aged seven who had been kidnapped in Darfur was forced to walk for some 600 miles, and was sold and bought by slave traders twice before she even arrived there. She was forced to convert and even her name was taken from her. To ensure permanent scarring, a total of 114 intricate patterns were cut into her breasts, belly and right arm. Subsequently, she was bought by Italians and ultimately freed. She then gave her life to the service of others, and in 2000 Josephine Bakhita was declared the patron saint of Sudan. The outcome of this 19th-century story may suggest the triumph of hope over cruelty, but her story, as a trafficked child, is one being repeated even while we meet.

On Wednesday, Mende Nazer, a former slave from the Nuba mountains, was in Parliament. She has described how she was abducted from her home in the Nuba mountains aged 12, and suffered rape and other forms of abuse while working for a family in Khartoum. In 2000, Mende was sent by her host father with false documents to work in the UK. She lived as a house slave for four months at the home of the Sudanese diplomat Abdel Al Koronky in Willesden Green, where she was not allowed to stray further than the front door. She managed to escape and applied for asylum. Her first application was denied two years after it was submitted, but that decision was reversed in November 2002. Understandably, Mende was traumatised by the events of her childhood and adolescence, and struggled to adjust to being free. Her story has been told in the book *Slave* by Damien Lewis, the TV show "I Am Slave" and the play "Slave—A Question of Freedom". Some Members of your Lordships' House may be familiar with that play, as extracts were performed here. Mende founded the Mende Nazer Foundation, which works with Nuba communities to build schools, wells and water purification systems, and she continues to be a fierce advocate of peace and human rights for the Nuba community.

Our Modern Slavery Act is exemplary, but we must not get into too much of a self-congratulatory mode until we have persuaded every country and every sector of society to play their part. Yesterday, the Home Office Minister, the noble Lord, Lord Ahmad, wrote to me following up my Oral Question on 13 June, when I asked about the plight of 10,000 unaccompanied children who Europol say have gone missing in Europe. I am grateful for the letter, but it does not answer my question of what has happened to those children and whether that number is being added to. I will ask again, and repeat a question asked by my noble and learned friend Lady Butler-Sloss on an earlier occasion. How many of the unaccompanied children whom we said we would take have actually arrived in the UK?

This is important because the anti-slavery commissioner told us this week that there is a direct connection between this vast exodus of refugees and vulnerable children, and modern-day slavery and trafficking. Indeed, this week the Dutch media reported that hundreds of children are living in what they described as a modern Oliver Twist story, some held against their will and others in thrall to their handlers, as they are forced to beg and steal their way around European cities. Some are just eight years of age. Fagin, the Artful Dodger and Oliver Twist should be the characters of Victorian literature, not 21st-century Europe.

On Tuesday, Mr Hyland said that Rob Wainwright, the director of Europol, had told him that the figure of 10,000 is a conservative one and that the number is probably higher. Mr Hyland said that there is a "clear" link between trafficking and these crimes, and that it has become a "crime of choice". I would be grateful if the noble and learned Lord would tell us what action is being taken by the Government about that and about the failure to refer the position of children through the national referral mechanism, especially where minors are involved, on to prosecution.

I realise that I have probably said too much in this debate and will bring my remarks to an end. I just want to press the Minister on something I raised in Committee and at Report and divided the House over, which is the national referral mechanism. The noble Lord, Lord Bates, said,

"we want to see these statements in one place so that people can monitor and evaluate them to ensure that the intended action takes place".—[*Official Report*, 25/2/15; col. 1750.]

Sadly, the noble and learned Lord, Lord Keen, contradicted that answer in answer to a question from my noble friend Lady Young when he said:

"There never was an intention to establish any central monitoring system with respect to these provisions".—[*Official Report*, 13/4/16; col. 256.]

I ask the Minister today, in advance of the opportunity to table amendments in Committee, kindly to outline the Government's current thinking on the creation of a central repository and tell us which of those two ministerial statements represents the Government's position.

We must take the Government at their word that they wanted this to be flagship legislation, which is why my noble friend's Bill is so welcome. I hope that it receives support from right across your Lordships' House.

11.20 am

Lord Boateng (Lab): My Lords, I was brought up in the shadow of two slave forts—I passed them every day on my way to school—and married a Barbadian descendant of slaves. My late grandfather was a campaigner against a particular form of fetish religion called Trokosi, which has to this day entrapped girls in a form of slavery to local priests in the Volta region. So, for me, this issue is intensely personal and I am extremely grateful to the noble Baroness, Lady Young, for her work and to other Members of the House whom we have heard speak for their day-to-day engagement with this issue over a long period.

In introducing the Bill, the noble Baroness referred to her journey with this issue as having commenced in 2007. I hope that the noble and learned Lord, Lord Keen, will indicate sympathy and, more than that, resource for the Memorial 2007 campaign for a continuing monument to the victims of the transatlantic slave trade. We need as a spur to present action not to forget past wrongs. A memorial of that sort in Hyde Park, as is proposed, would be a huge resource for the ongoing battle against modern slavery. I hope we have more than words from the Minister in support of Memorial 2007.

Having said that, I want to draw attention to the ongoing issue of slavery in Africa. There are more than 6 million people held in bondage in Africa as we speak—bondage of various sorts. Slavery is a complex issue. We talk of the transatlantic slave trade and the Arab slave trade. The reality is that there could not be a slave trade and could not have been slave trades without the active involvement and complicity of people within Africa itself. One has to recognise in the complexity of the issue that slavery is both an economic and a cultural issue and has to be fought on both fronts if it is to be fought effectively.

This measure is essentially one of law enforcement and I support it as such. I support contract compliance. My experience in law enforcement and as a Treasury Minister has taught me, however, that government is always extremely reluctant ever to accept the requirements that it imposes on others. I have no doubt, because I have seen similar briefs in the past, that the noble and learned Lord, Lord Keen, has come armed with a whole sheaf of reasons why this will be unduly burdensome and unnecessarily expensive. I understand his predicament, but our experience of enforcement of equal opportunity law teaches us that, without contract compliance, you do not in the end get anywhere. For that reason, if only for that reason, the Bill ought to be accepted.

My second point is that, in dealing with the issue of transparency in supply chains, we must address this problem at source, however complex it is, both economically and culturally. I fear that at source this issue is often not given the priority it ought to have by law enforcement. It is not for us to point the finger and cast stones in that regard, because it took us long enough to give it the priority that we do today in this country. It is very important that in our discussions with African Governments and, I hope, the African Union we raise the issue of modern-day slavery as one for law enforcement, where we expect law enforcement in Africa to respond to offers of partnership, assistance and resource from us. Without partners on the ground, we will be unable to tackle this issue at source. People-trafficking in Africa—I have seen this myself—often goes on without any effective challenge on the ground at all. As part of concerted action against modern-day slavery, there needs to be enhanced dialogue with our development partners about this issue.

I ask the Minister to assure us that our high commissions and embassies in those countries most at risk have been tasked with this specific responsibility. High commissioners and ambassadors have a whole heap of issues to deal with day in and day out. I know from my experience that if you do not hear from London that it is a priority, it does not happen. When you as a high commissioner hear from London that it is a priority and that you are expected to report on it, believe you me, you do it. You and your first and second secretaries are engaged in that process.

There are three countries in Africa in particular where the evidence shows that you are very likely to be at risk from slavery. On the list of the 10 countries in the world most troubled by slavery in terms of the potential for individuals to get caught up in slavery, the three highest are in Africa. They are Sudan, Somalia and Eritrea. I ask the Minister to assure us—if he cannot now, perhaps he will write—that our missions in Sudan, Somalia and Eritrea have been specifically tasked to raise this issue with their host Governments.

I also ask the Minister to ensure that in our developmental dialogue with African countries the issue of rurality is taken on board. No one has a better record globally than DfID and this Government on this issue, but all too often people are driven into forms of slavery because the land itself is incapable of offering them any sort of living. Agriculture was until recently a neglected area of development. I declare an interest as the chairman of the Africa Enterprise Challenge Fund. DfID is changing all that, but we must ensure that we continue to urge our developmental partners to raise agriculture and rural development higher up their list of priorities. Then people will not be drawn into the trap of modern-day slavery, as they surely are even as we speak. Greater emphasis on that area is much called for.

I refer the Minister and the House to the work of the Independent Anti-slavery Commissioner, specifically in relation to what he calls targeted international collaboration. The noble and learned Baroness,

[LORD BOATENG]

Lady Butler-Sloss, and the right reverend Prelate the Bishop of Derby know this well, as they have served and are serving on the advisory committee of the independent commissioner. He has identified targeted international collaboration as one of his priorities. In relation to that, he made a couple of visits in 2015 to Nigeria, again tackling the problem at source. He sought there to develop what he has described as a holistic strategic plan that aims to tackle the issue at source, but he has called specifically for government to come behind this plan with resources. I ask the Minister please to give the House an update on how the talks with the independent commissioner are progressing, and to say whether the Government have identified resources to put behind such a strategic plan that will tackle this issue at source.

Finally, the noble Lord, Lord Cormack, made some reference to this in relation to William Wilberforce, but over the years this House has had to tackle the issue of slavery, and has done so with varying degrees of success. It has done so in circumstances in which sometimes it has been in the pocket of slave-masters and slave-owners, but at the end of the day it has always got it right. Is that not something special, and something to celebrate and commemorate? In 1816, there was a rebellion in Barbados led by a man called Bussa and a woman called Nanny Grigg. These two people were part of a rebellion that had been initiated because of the horrors of slavery, obviously, but because word had got around on the plantation that a Bill was to be passed in this House that would free the people. There was huge anticipation and the cry went out, "De paper come", because that paper was to be the source of their liberation. The people rose; the people were disappointed because the paper did not come at that time, although it came later, and the rebellion was put down with tremendous savagery. We have an opportunity to write some words on "de paper" and to send it. Let us do that.

11.33 am

Baroness Hamwee (LD): My Lords, I wondered whether to congratulate the noble Baroness on her place in the ballot but I do not think it is a matter for congratulation. It is not an achievement; it is luck, says she who came 49th. Introducing a worthwhile Bill, however, is a matter for congratulation and I congratulate her warmly on that. Like her, I acknowledge the work done in the private and professional sectors on this issue.

The Modern Slavery Act was indeed an important landmark, and Section 54 was very welcome for starting us on the road we have been discussing. The recent paper, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, which is as recent as last May, said:

"Companies understand the business case for respecting human rights and the benefits this brings. They understand that positive action, supported by due diligence, transparency and reporting"—

all three relevant terms today—

"can … help to protect and enhance a company's reputation and brand value ... safeguard and expand their customer base … help them attract and retain good staff".

I could continue with its list of nine points, which ends with a reference to supporting company ethics and values. I will come back to companies.

The moral issues—the last of those points—which underlie Section 54 extend beyond companies to the public sector. I recall many noble Lords, particularly the noble Baroness and the noble and learned Baroness, commenting on that when we debated Section 54. In any event, the line between the public and private sectors is increasingly blurred, but this is nothing new as a general concept for public authorities. We have equality duties, environmental considerations and more. I was a councillor when it first became common to include an environmental assessment of a proposition. There was concern then that this would become just a tick-box exercise, and maybe sometimes it has. Maybe it is because transparency in supply chains, TISC, is not a tick-box exercise for which you need only a statement—there is no statement—that the Government are rather cautious about this.

There are at least two sides to the moral aspect. "Do as I say, not as I do", is not a very attractive way of going about things, and public bodies should have the highest standards. Earlier this week, I raised with the noble Baroness that local authorities were likely to have concerns about resources. This is not a new point to her, but I ask her today to give the House an assurance that, as the Bill goes forward—as I hope it will—she will consult local authorities, and specifically the Local Government Association. When the Minister responds, I hope he will confirm that the health sector, or certain parts of it—I am quite confused about this—would be covered by the clauses in the Bill.

In the commercial sector, we have said all along that it is crucial readily to identify the companies subject to the Section 54 duty because at present they are, in effect, anonymous. It is understandable that compliant companies feel they are not on the level playing field that has been referred to, and I know the Government consider it up to consumers to find out and to NGOs to do a good deal of leg-work. Frankly, both are unrealistic, and one has to acknowledge that consumers—I put myself in this bracket—often need spoon-feeding.

There is another aspect to this. Section 54 provides that the duties imposed on commercial organisations are enforceable by the Secretary of State bringing civil proceedings. The Secretary of State needs the information to be able to enforce the section in the statute. It is counterintuitive for the Government not to be working to find a way to give the infrastructure to the Secretary of State to enforce her own provision.

If the Bill is not the way to achieve transparency, including identification, I hope the Government can help us find the way that is. It is better not to be prescriptive about it, whether it is the annual report, annual accounts or whatever. It is about the transparency—about making the company's position clear and accessible without insisting on it being a particular mechanism.

To come back to procurement, the sheer muscle, because of their size, that public bodies can exert is notable. We have the Public Contracts Regulations 2015, which I believe will bring the authorities that we

are concerned about within their remit, through tracking Regulation 57(8)(a) back to Regulation 56. But what struck me in my failure to track that properly was that there is a heading to all this that says "Discretionary exclusions". Regulation 57(8) states:

> "Contracting authorities may exclude from participation in a procurement procedure any economic operator in any of the following situations".

I would be grateful if the Minister could comment on that.

When we debated the Modern Slavery Act, there was much reference to consumer power and making your spending count. That applies, perhaps in spades, to public authorities. I very much dislike the much-used phrase in politics, "Isn't it time that …" but the time came long ago to get this right. We cannot rewrite the past, but we can write the future, and I wish the Bill a very fair wind.

11.41 am

Lord Kennedy of Southwark (Lab): My Lords, I start my remarks today, as other noble Lords have, by congratulating the noble Baroness, Lady Young of Hornsey, on securing second place in the Private Member's Bill ballot and on securing the Second Reading of her Bill today. Last year, the Modern Slavery Act became law; it is a good piece of legislation, and noble Lords on all sides of the House made important contributions to ensuring we have a sound piece of legislation that will tackle the exploitation of people through human trafficking and slavery. The Bill before us seeks to build on that landmark legislation and strengthen it further. The Bill has my support and, I wish it speedy progress through your Lordships' House.

Worldwide there are estimated to be approximately 21 million people, or three out of every 1,000 people on the planet, in jobs that they were coerced or deceived into taking and which they cannot leave. Research undertaken by the International Labour Organisation found that the Asia-Pacific region accounts for the largest number of forced labourers in the world, at 11.7 million, which equates to 56% of the global total, followed by Africa with 18% and then Latin America with 9% of the victims. They also found that the lowest number of victims were in the developed economies and in the European Union, with 1.5 victims per 1,000 inhabitants. They found that 90% of the victims were exploited by the private economy, by individuals or enterprises. Of these, 68% are victims of forced labour exploitation in activities such as agriculture, construction, domestic work or manufacturing, and 22% are victims of sexual exploitation. Some 26% of the victims of forced labour are below the age of 18, and the majority are in their place of origin or residence, while those people moved across borders were more heavily associated with sexual exploitation.

The figures are truly shocking and the situation in the United Kingdom is on an unbelievable scale. As the noble Lord, Lord Smith of Hindhead, said, the Government's own estimate puts the total number of people in slavery in the, UK at around 13,000, of which approximately 3,000 are thought to be under the age of 18. Some experts believe that this figure is a massive underrepresentation of the true figure, and the thought that there could be even more victims in the UK is truly shocking.

As I said, the Bill seeks to build on the Modern Slavery Act 2015. It has only four clauses and one schedule, but they are extremely important and seek to move our legislation in this area further forward. Clause 1 would bring public bodies within the scope of the Modern Slavery Act and require them to prepare a slavery and human trafficking statement every year. I agree with the noble Baroness, Lady Young of Hornsey, when she spoke of the widespread abuse of various services provided by public bodies through contractors and subcontractors. As the noble Baroness said, public bodies have a combined purchasing budget of approximately £45 billion per year. I also agreed with the noble and learned Baroness, Lady Butler-Sloss, when she asked why the obligation should not be extended to the public sector. Public bodies spend large amounts of public money purchasing goods and services, and this clause would put the same obligations on them as we are expecting commercial organisations of a certain size to follow. Surely it must be right that we require public bodies to publish a statement so that we can see what action they are taking to combat slavery in the supply chains they purchase from.

Clause 1 also requires the Secretary of State to publish a list of all commercial organisations that are required to publish a statement. This was a matter under much consideration last year, and for some reason the Government were resistant to being required to publish such a list. The compromise I recall was that we were told that some other body in the voluntary sector may publish a list. The right reverend Prelate the Bishop of Derby was right when he said that the Government should not hesitate in finding the tools for business to get these matters right. The Government should produce such a list and categorise it in sectors, so that it is as easy as possible to access the information; that seems the most sensible way forward. I hope the noble and learned Lord, Lord Keen of Ellie, will be able to confirm that the Government have reflected on this since last year and are prepared to move on it. It always seemed odd to me that, having required commercial organisations to produce these statements in their annual accounts, the Government were not prepared to bring them all together in one easy and accessible place. We learned today from the noble Baroness, Lady Young of Hornsey, that an industry has been created which creates hosting statements, provides model text and statements and charges fees for preparing them; that should concern us all. Again, I agree with the right reverend Prelate that good practice is to encourage business to act responsibly and to stamp out slavery through chains. So far, that is voluntary; we need the support of the Government at all times to help deliver that.

Clause 2 would require contracting authorities to exclude from the participation in the procurement process companies that had not produced a slavery and human trafficking statement when they were required to do so. Why would any contracting organisation want to do business with a commercial organisation that had fallen down on its obligations in this respect? Clause 3 would require the Secretary of State to

[Lord Kennedy of Southwark]
produce guidance to comply with the changes to regulations brought in by the Bill. Again, it is important to ensure that proper clarity is given to contracting organisations so that they can be clear how they go about implementing these requirements.

The Bill is an important step in the fight against modern slavery in all its forms. It seeks to improve on legislation passed last year, which will always have to be kept under review to ensure we are at the forefront against the exploitation of human beings all around the world.

In conclusion, this is a very good Bill, as are the other Bills before us today. They are all to be referred to a Committee of the Whole House. I checked with the clerk, and it would be quite proper to refer some Private Members' Bills to a Grand Committee, which would help to speed things along. We have only so many Fridays, and many Bills get lost here and do not have a chance because they get clogged up in waiting for days in Committee and on Report. Again, I ask the Government—I particularly look to the noble Lord, Lord Ashton of Hyde, when he goes back to talk to his colleagues in the Whips' Office—why we cannot in future make use of the Moses Room and a Grand Committee and have these Private Members' Bills there on Fridays. That would be a good step forward.

I congratulate the noble Baroness, Lady Young of Hornsey, on her excellent Bill and wish it speedy progress through this House.

11.48 am

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am grateful to the noble Baroness, Lady Young, for introducing this Bill and this debate. This Government are determined to tackle modern slavery and ensure that UK supply chains are not driving demand for slavery around the world. That is why we included a world-leading transparency in supply chains provision in the Modern Slavery Act, and why we welcome suggestions for strengthening our approach.

The provision in the Act requires all commercial organisations carrying on business in the UK which supply goods or services and have a turnover of £36 million or more to set out the steps that they have taken to prevent modern slavery in their business and supply chains. This transparency will allow consumers, investors and civil society, and indeed commercial organisations, to hold businesses to account and drive a race to the top.

The first proposal in the Bill is to extend the transparency provision to include public sector organisations as defined by Regulation 2 of the Public Contracts Regulations 2015. The Government fully agree that the public sector must play a full part in increasing the transparency of supply chains. Work to achieve this is under way. Several major public sector procurers have already introduced anti-slavery measures in their standard procurement procedures. For example, the NHS standard terms and conditions for goods and services suppliers include conditions on labour standards, and the Department for Health and NHS Supply Chain have also developed a labour standards assurance system that encompasses issues of forced labour for auditing suppliers in high-risk categories.

We agree that such good practice should be used more widely. That is why we are taking action to ensure that information on slavery and trafficking statements informs future procurement decisions by the public sector. We are amending the cross-government procurement selection questionnaire so that large commercial organisations wanting to do business with government will be asked whether they are compliant with Section 54 of the Modern Slavery Act. This will enable contracting authorities in the public sector to decide whether to exclude the organisation from the procurement process. The new questionnaire will be in place later this year.

We are not, however, convinced of the merits of the proposal in the Bill which involves applying to the public sector a provision that was specifically designed with private sector organisations in mind. The public sector already has different kinds of transparency requirements and accountability to Parliament, which means that it is held to account in a different way from the private sector. Public authorities are also already legally required by Section 6 of the Human Rights Act to act compatibly with the European Convention on Human Rights, which incorporates Article 4 prohibiting slavery, servitude and compulsory labour. Public authorities can therefore be challenged under the 1998 Act for acting incompatibly with convention rights, which private sector organisations cannot, and there are other ways to make progress that do not require primary legislation.

The Bill would also require all organisations to include their statements in their annual report and accounts. This would be a departure from the current provision, under which the Government have made clear that businesses can include their transparency statement in another publication or report, as long as it is clearly marked as their slavery and human trafficking statement and there is a link directly to the statement in a prominent place on the organisation's website. The existing approach was very much based on a consultation with businesses and NGOs and reflected their desire to avoid a one-size-fits-all rule that could be restrictive. We remain open to feedback about this, but we would prefer to assess the impact of the provision in its existing form before considering any changes to the guidance.

This Bill would also require the Secretary of State to publish a list of all applicable organisations covered by this legislation. This is an interesting proposition. The Government are committed to doing everything we can to amplify the value of information in the slavery and trafficking statements. We want consumers, businesses and civil society to make informed choices that reward companies that take action to eradicate slavery. In theory, publishing a list of the commercial organisations which are captured by the duty by dint of their operation in the UK and their annual turnover could help with this. In practice, producing such a list is likely to be difficult and resource-intensive and may, in any event, not require primary legislation. We are prepared to look at this, but at this time we believe that no legislative change is needed.

The Bill would make it mandatory for contracting authorities in the public sector to exclude an economic operator from a procurement process, if it was established that it should have complied with Section 54 but had not. It would also require the Secretary of State to publish guidance for those public contracting authorities on how to comply with this requirement and with Section 54. We agree with the objective of this provision but do not think that legislating for more guidance is necessary. First, contracting authorities can already exclude an economic operator which has failed to comply with Section 54 of the Act. This is provided for under Regulation 57(8)(a) of the Public Contracts Regulations 2015, which was referred to by the noble Baroness, Lady Hamwee. The regulation is not absolute, as she observed. Secondly, the Cabinet Office will later this month publish cross-government guidance on social, labour law and environmental aspects of the public procurement regulations. This will help public sector authorities decide when and how to exclude economic operators. This guidance will be issued via a Crown Commercial Service procurement policy note which is binding on central departments, their agencies and non-departmental public bodies and which is recommended for the wider public sector. Thirdly, as I mentioned earlier, we are already taking steps to encourage compliance with Section 54 by amending the cross-government procurement selection process. We are confident that these steps will achieve the desired outcome.

I shall now consider one or two particular questions raised by noble Lords. The noble Lord, Lord Whitty, acknowledged that the United Kingdom is at the forefront of this form of legislation. He suggested that it may not be enough for us to rely on consumers and consumer organisations. Over and above that, we rely more particularly on peer pressure. That was underlined in the consultation process that preceded the original Act. There is a desire, particularly on the part of larger businesses, to ensure that at an economic level they are not unfairly prejudiced by the unlawful and disgraceful conduct of potential competitors. Therefore peer pressure plays a part in this process.

The noble Lord referred to the strange omission of public authorities but, with respect, the legislation was designed to apply to the private sector. I pointed out the distinction that arises under the Human Rights Act. Under Section 6, all public authorities are bound by the terms of the convention. He also asked questions with regard to gangmasters and the Gangmasters Licensing Authority. As the noble Lord may recollect, the Government used the Immigration Act 2016 to extend the remit and powers of the GLA. It will be renamed the Gangmasters and Labour Abuse Authority, and its new mission will be to prevent, detect and investigate worker exploitation across the entire economy, which will result in more scrutiny of companies from a law enforcement agency which can examine their supply chains. I hope that meets his concerns about the position of the GLA in that context.

Lord Whitty: I recognised the extent of its remit and asked what resources were given to it and to the other bodies involved in that area. Will the Minister reply to me in writing if necessary?

Lord Keen of Elie: I will reply in writing as I do not have the figures available to me this morning. I am obliged to the noble Lord.

The noble Lord, Lord Cormack made a number of observations about the Bill and the future of this country. What I would concur in, at the very least, is that we should work to ensure the circle is completed as far as this legislation is concerned.

The noble and learned Baroness, Lady Butler-Sloss, referred to the Bill as timely and necessary. I concur that, in a sense, it is timely because we should review such important legislation, but for the reasons I have given, I would not go so far as to say it is necessary at present.

Lord Cormack: I am sure we would all rather be defended by the Minister than prosecuted by him, but he gave us a glimmer of hope when he talked about the need to complete the circle. Will the Minister be kind enough to agree on the Floor of the House to meet the noble Baroness and all her supporters, those of us who have spoken and others, together with the Independent Anti-Slavery Commissioner to see whether something could be produced that would complete the circle?

Lord Keen of Elie: I am obliged to my noble friend. I have already met the noble Baroness, and I am obliged to her for making time for that meeting. I am perfectly prepared to meet again to discuss how we can address some of the issues raised by the Bill because the Government's position is that, while we welcome some of the proposals, we do not consider that primary legislation is required to achieve these ends. I would welcome an opportunity to discuss those points further in due course.

I turn to the observations by the noble and learned Baroness, Lady Butler-Sloss. She asked a number of questions about the burden of regulation and whether it was any longer an issue because, as she put it, in the consultation process the biggest companies said it was not a problem. We are not concerned with just the biggest companies, though; we acknowledge their role in this and the peer pressure that they can bring to bear, but this concerns every company with a turnover of £36 million or more and we have to take account of the burden upon all those companies, not just the biggest of them.

On the point about government procurement, I hope I have addressed that by pointing out that in a sense a parallel scheme is in place regarding procurement. I acknowledge the point made by the noble Baroness, Lady Hamwee, that the regulations do not carry an absolute. There are reasons for that. The code of practice will complement how and why those regulations should be taken into account.

Baroness Hamwee: Is the Minister aware, and he may not be, whether the Government have any plans to report publicly on the compliance with—"compliance" may be the wrong term for something that is discretionary, so perhaps I should say "observance" of—those

[Baroness Hamwee]
regulations? In other words, will they report on how successful those regulations are? That is a matter of public concern, obviously.

Lord Keen of Elie: I can understand the observation but, as the regulations are to be complemented by a code of practice that I believe is going to be brought into force in October this year, I do not think I am able to anticipate how compliance may occur. I will address in writing to the noble Baroness the question of whether there will be some form of requirement for compliance auditing in respect of that matter.

The right reverend Prelate the Bishop of Derby raised the question of central repositories, and mentioned an instance of an organisation in Bristol. I am not in a position to go into individual cases at this time. As noble Lords are well aware, the Government have not launched an online repository, although we are aware of a number of proposals from third parties who suggest that they could develop a website to host these statements and to help people to search for them. I would like to complete a quotation that the noble Lord, Lord Alton, made regarding an answer I gave in April this year when I said:

"There never was an intention to establish any central monitoring system with respect to these provisions".

That was in the context that there was never any government intention, which was perfectly clear. I went on to say:

"The Government have always been clear that it is for others to establish such a mechanism. We are aware of a number of organisations that propose to set up a central repository".—[*Official Report*, 13/4/16; cols. 256-58.]

The right reverend Prelate went into some detail regarding a particular development in this regard, and I undertake to write to him on that matter because he raised a point that I am not in a position to address this stage.

The noble Baroness made the point, which was also made by other noble Lords, that these are early days. I remind your Lordships that this legislation came into force in October 2015, requiring companies to respond and to obtemper their Section 54 statement in their financial year from March 2016 onwards. We are at the very beginnings of this process.

That brings me on to a point made by my noble friend Lord Smith, who asked me a number of questions about the number of companies that have complied and the number that have relied upon Section 54(4)(b) of the Act and said they could not make a statement. It is simply too early to say what the position is regarding those matters. Those figures have not been collated and cannot be, because it is only from March this year that companies have had to address the question of compliance. I regret that I cannot provide figures at this stage.

The noble Baroness, Lady Goudie, raised the issue of local authorities and government departments. I hope that to some extent I have addressed the point that she was making by seeking to explain that the original legislation was designed particularly for the private sector, and that there are parallel provisions. They may not be regarded as quite as absolute as those that apply to the private sector, but there are parallel provisions that we have under the procurement regulations and which are being developed by reference to the code of practice.

I turn to the observations from the noble Lord, Lord Alton. Again, he referred to early indications of how the Act is being complied with. I underline that point: these are only early indications. We have to look further and consider how the Act is going to bed in. In my submission, it is too early to suggest that we should be tinkering with the legislation before we know how it is actually going to work in practice. He also alluded to the alleged lack of any monetary penalty for those who simply ignore the provisions of the Act. I remind noble Lords that the provisions are civil. The Secretary of State has the right to bring injunctive proceedings against a company that persistently fails to obtemper its Section 54 obligations, and if it still fails thereafter to obtemper those obligations it will be in contempt of court and liable to an unlimited fine.

Lord Alton of Liverpool: Before the Minister leaves that point, he will recall that in fact the quotation was not mine; it was from the US State Department's observation about the working of our Act. I believe it is important to get the question of penalties on the record so I am grateful to him for doing that, but will he return to the question of post-legislative scrutiny? He will recall that, when I moved amendments in 2015 on that subject, the Government opposed them. Is there not a strong case for at least saying that there will come a point where, just as there was pre-legislative scrutiny of this legislation, which was incredibly effective, there will be post-legislative scrutiny so that we can decide what is working and what is not? Then it will not be a question of "tinkering", as he put it.

Lord Keen of Elie: I am grateful to the noble Lord. I understood that he had quoted the US source because he agreed with it, not because he simply wanted to put it into play. Be that as it may, I also observe that there is provision for review under the terms of the Act, albeit a five-year period. I am not suggesting that we wait that long because, as I indicated, I am perfectly content to sit down with the noble Baroness, Lady Young, and discuss these proposals further. We are sympathetic to some of the suggestions, or at least to the aims, but we do not believe they require primary legislation. I am quite happy to discuss some of these aspects with her.

The noble Lord, Lord Boateng, referred to the fact that we must not forget the past or past wrongs. I entirely concur with that, but perhaps he can appreciate that I can give no commitment with regard to Memorial 2007. He asked a number of questions about the tasking of high commissioners and ambassadors with regard to these matters. If I ventured into the realms of the Foreign and Commonwealth Office, I would fear for my future. I might fear for it anyway, but I hope the noble Lord will appreciate that I am not in a position to address questions that fall within the ambit of that particular department.

However, I have just been given this information: "18 minutes".

Lord Boateng: I am grateful to the Minister but, having consulted his ministerial colleagues, will he undertake to write to me?

Lord Keen of Elie: I will request that appropriate provision is made in order that the noble Lord can be written to.

Lord Boateng: I could not ask for more from a lawyer.

Lord Keen of Elie: I am obliged to the noble Lord.

The noble Baroness, Lady Hamwee, raised a number of issues. One of them was how we identify those corporate entities or partnerships that have an obligation under Section 54. The obligation was designed to coincide with the definition of large companies under the Companies Act in the context of registration. I am not saying that that takes us very much further forward, but there is at least a litmus test that one can have regard to in that context. I do not seek to ignore the other points that she raised, but I hope I have covered them in the course of this reply.

The noble Lord, Lord Kennedy, asked about public bodies. Again, if I may, I repeat that they are subject to a parallel provision—albeit not identical, for obvious reasons—and that is being developed under reference to the code that I mentioned before.

In conclusion, I thank the noble Baroness, Lady Young, for raising this important topic. The Government have listened and reflected carefully on the topics raised by her Bill. We are determined to lead by example on this issue and do everything that we can to prevent modern slavery in both the public and private sector supply chains in this country, and indeed overseas. While the Government are not persuaded that further legislation is the right approach at this stage, we welcome the ideas in the Bill. We will want to examine some of them in more detail and, as I have said before, I will be happy to meet with the noble Baroness again to do so.

Baroness Butler-Sloss: Before the Minister sits down, may I ask two questions? First, as I understand it, it is being suggested that in the public sector the human rights requirement meets what is needed for modern slavery. If that is correct, why on earth was it necessary to have a modern slavery requirement for the private sector? Secondly, it is all very well for the Secretary of State to have the power to go to the County Court, but what he needs to know is, first, who the companies are and, secondly, whether they have in fact not complied. From what the Minister has said, I do not understand at the moment how the Government are going to find either of those points.

Lord Keen of Elie: On the first point, the private sector is not subject to Section 6 of the Human Rights Act 1998, which is what I sought to explain earlier. On the second point—

Baroness Butler-Sloss: The independent private companies are also caught by the Human Rights Act under the current legislation because they have to do a human rights report every year. I do not quite understand why the Government think that that is good enough for the Government but not for private companies.

Lord Keen of Elie: As I say, the public sector is subject to Section 6 of the Human Rights Act; that was merely one aspect of my explanation as to why it was not considered appropriate to extend this legislation to the public sector. The other issues concern the Public Contracts Regulations 2015 and the codes and guidance that apply in that context.

As regards the Secretary of State having resort to the courts to bring a penalty, we will see consumers, NGOs and peer pressure bringing out the question of who is complying and who is not. I will give one simple example. If a retailer on the high street discovers that their competitor is retailing T-shirts at 50p each when they know perfectly well that they cannot be produced for anything like that sum, and they persist in doing so, they will detect that something is amiss. As the large corporate retailers observed in the consultation period, they want a level playing field and their one way of doing that is to ensure that their competitors comply with Section 54 and, if they do not, to bring that to the attention of the Secretary of State.

Lord Alton of Liverpool: Before the noble and learned Lord sits down, I raised with him the position of minors and those who have been referred through the national referral mechanism when it has not led to any kind of criminal action being taken on their behalf. Will he agree to write to me on that subject?

Lord Keen of Elie: The noble Lord also reminds me that he raised the question of children coming from Europe under the immigration scheme. He may appreciate that I do not have figures on these matters for the purposes of this debate, but I will be content to write to him on the point he has just raised.

12.12 pm

Baroness Young of Hornsey: My Lords, when I first looked at the list of speakers on the Bill, I was gratified, and I am now even more so. I know that it is customary to say what a wonderful debate it has been, but this morning's debate has been exemplary. I am grateful to all noble Lords who have spoken, particularly as all noble Lords have given such wholehearted support to the Bill—or, rather, most noble Lords have.

However, I think all noble Lords will agree, including the noble and learned Lord, Lord Keen, that we want to do something more; we just cannot quite agree yet on exactly how we will do it. However, as I have said—and as the Minister has said—I am open to discussion about the contents of the Bill, the way it has been drafted, and whatever legislation and mechanisms might serve the same purpose. I also refer back to some of the earlier remarks I made when I said that, each time we have had some sort of impetus to develop this work further, respective Governments have initially said, "Oh no, we don't need that because we've already

[Baroness Young of Hornsey]
got sufficient legislation and legal instruments to cover it", and then eventually they give in because they can see that these gaps are there.

I absolutely appreciate that it is of course early days, as all noble Lords have said; noble Lords will forgive me if I do not go through the important points that they have made. However, as I also said earlier, I do not want us to sink into a kind of air of complacency about this. We need to keep up the momentum that was established via the Act and make sure that we continue to raise awareness.

There are many unanswered questions, and I am afraid that the Minister has not addressed in a satisfactory way many of the questions that were asked here. However, I hope that through discussion, compromise and collaboration, including those voices from the private and public sectors, NGOs and civil society, we will be able to get to a place with which we are all happy. I conclude my speech in reply by asking the House to give the Bill a Second Reading.

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

Armed Forces Deployment (Royal Prerogative) Bill [HL]

Second Reading

12.15 pm

Moved by ***Baroness Falkner of Margravine***

That the Bill be now read a second time.

Baroness Falkner of Margravine (LD): My Lords, I will start with a figure: 179 men and women, who proudly wore the uniform of Her Majesty's Armed Forces. They are the 179 casualties of the war in Iraq, whose families expected the Government and Parliament to do the right thing by them at the time and to take the right decisions. Through the Chilcot report they now know more of what happened but find themselves listening to Mr Blair saying that he takes responsibility for the actions which led to their deaths, but no more, no less. Where, then, does democracy stand when no one is culpable and all were acting in an institutional capacity? Democracy stands diminished, but so too do the people's elected representatives. The country expects the House of Commons, their representatives, to be the place where the buck stops, not a single powerful individual, who himself was never held accountable for his judgments through a general election after the facts were revealed. However, democracy stands diminished too when MPs are misled or are simply given inadequate information or inadequate time to reflect on the most serious decision they will ever take, of committing the Armed Forces to conflict overseas and potentially to death and injury.

We live in an age where public trust in those who govern us is so low and causality between action and accountability so ephemeral that we need to rely on rules more than ever before. I wish it were not so, but we are at a place where the Government need the security of knowing that there is a mechanism for individual accountability for decisions, albeit through a general election. This is what I seek to do in formalising the role of the House of Commons in what is effectively a war powers Act, but one set squarely within the United Kingdom's own special constitutional arrangements.

The convention of referring to Parliament to authorise taking the country to war is relatively new, having first been used by Mr Blair in 2003. Nevertheless, the constitutional position is still that the Prime Minister acts under royal prerogative. This means that the commitment of British forces to military action is authorised by the Prime Minister on behalf of the Crown. In constitutional terms Parliament has no legally established role and the Government are under no legal obligation with respect to their conduct, including keeping Parliament informed.

Since 2003, Parliament has been consulted on the deployment on Iraq, where it was misled, on Libya, when it was assured that its role in consenting would be formalised, and on Syria, when it was recalled in the middle of the August break with inadequate time for information or consultation. It was also consulted on action against Islamic State, but where the parameters were tightly drawn. However, we know through the practice of embedding that the reality on the ground is that UK troops and materiel are possibly deployed in Syria too, although we are told that we cannot know.

Ever since the convention was introduced, Parliament has not been consulted in other key situations where considerable loss of life has happened. It was not consulted in the expansion of the Afghan mission to Helmand. This is relevant, as British military forces were initially deployed to Afghanistan in 2001 in a post-conflict, building and regional reconstruction role, whereas their deployment to Helmand put them very directly in the line of fire, some would say disastrously, as that is where the vast majority of the loss of life was incurred. Moreover, at the time of the Libya intervention the then Foreign Secretary, the noble Lord, Lord Hague, made his commitment in March 2011 that the Government would move to,

"enshrine in law for the future the necessity of consulting Parliament on military action".—[*Official Report*, Commons, 21/3/11; col. 799.]

Yet there has been stasis.

In the meantime, there have been deployments to Mali, albeit in a non-combat role, and we know now that there are 550 military personnel in Iraq, including soldiers. While they too may not be in a formal combat role, were they to be involved in firefights resulting in death and destruction, that would not be construed by the public as anything other than combat, irrespective of the technical description. So we are in a place where we can neither rely solely on the exercise of the royal prerogative—where we might be able to see that the buck stops with the PM—nor we do we have a war powers Act whereby we might hold elected representatives and/or the Executive responsible.

I turn to my Bill. The greatest objections I have heard to formalising the House of Commons role in giving consent is that it is hard to define what combat is, that the action might be justiciable and the courts would be involved, and that Parliament would be a

constraint on operational freedom for the military. I come to the definition. While the generals erect arguments to say that it is impossible to define armed conflict overseas, referring to technological advances such as the use of unmanned and/or autonomous weapon systems, I do not go for that level of sophistication in the Bill, although I accept that international law will have to change to acknowledge those advances and the ethical dilemmas they pose.

I am concerned with what the man or woman in the street might define as combat. When the House of Lords Constitution Committee took evidence on this point, the noble and gallant Lord, Lord Guthrie, held the view that the definition was key. However, Professor Michael Clarke, the director of RUSI—our foremost think tank on these matters—put it plainly. He said that it is defined as where "death and destruction" occur. Others, such as the former Lord Chancellor, Mr Jack Straw, agreed, as did a number of other lawyers.

In this House we have passed some four counterterrorism Acts in my time here. We have had arguments as to what constitutes terrorism or the glorification of terrorism or extremism, and we have always found a way forward. I note that these laws are being used in the courts today without any controversy over those definitions, so I will not linger on that point.

The second, more substantive issue—that of tying up more powers in the courts—is unfounded. We know from just these past few days that, even without this Bill, the families of those who lost their lives in Iraq are contemplating both criminal and civil remedies through the courts, so legislation will not affect judicial intervention one way or another.

However, I turn to the findings of the Commons Political and Constitutional Reform Committee. It took evidence on these powers and its constitutional experts have repeatedly looked at the position of the courts. Rosara Joseph, in her book *The War Prerogative*, stated that courts do not consider this issue as they see it as axiomatic, and as a matter where they should properly defer to the Crown. If you substituted "Crown" for "Parliament", the same exception would apply. Moreover, Professor Nigel White argued in his evidence that, while the courts would be concerned with a clear abuse of the process of the exercise of war powers, including as they currently stand, they would not be concerned with,

"detailed arguments about the legality of going to war under international norms".

He went on to say:

"The Courts already recognise that these are decisions for the political organs making difficult judgements in constantly changing international security situations".

Further, he said:

"Such an approach would continue under a War Powers Act given the rationale is that it is the type of governmental decision that is not reviewable whether it is derived from prerogative powers or not".

Another professor, Dr David Jenkins, shares the view that a war powers Act will not open up the possibility of judicial review. He says that it is not a danger, for,

"as the American example shows, American courts, even under the constitution, will not involve themselves in these questions".

But let us go beyond that and look at the actual jurisprudence. Two court cases in 2010—Regina (on the Application of Abbasi) v Secretary of State for Foreign and Commonwealth Office and CND v the Prime Minister of the United Kingdom—both considered that such matters were non-justiciable. In the latter case, CND sought a ruling on the legality of military action against Iraq without a further UN resolution. Ruling on the case, Mr Justice Richards stated that,

"it seems clear that the legal issue cannot in practice be divorced from the conduct of international relations and that by entertaining the present claim and ruling on the interpretation of Resolution 1441 the court would be interfering with, indeed damaging, the Government's conduct of international relations. That would be to enter a forbidden area".

He went on to say:

"In my view it is unthinkable that the national courts would entertain a challenge to a Government decision to declare war or to authorise the use of armed force against a third country. That is a classic example of a non-justiciable decision".

So it is clear that both constitutional experts, as well as the courts, have themselves ruled out judicial intervention in the area of war powers.

I turn to the other main objection—that parliamentary consent for going to war will imply interference with operational decisions. It blatantly will not. I arrived here in 2004, when the failure of Snatch vehicles was becoming evident. We questioned the Government about that and about insufficient helicopter support. It was right that we did so, and this was never construed as interference in operational decisions. In the myriad interventions we have taken under royal prerogative or under the new convention, parliamentary interference has never been an issue, and there is no reason why it will underformalise the role of the House of Commons. We are told that the success of military operations relies on three things: secrecy, security and surprise. I accept that and take account of it in my Bill.

Furthermore, Conservative Government Ministers who echo the military in saying that they support the new convention of seeking parliamentary approval nevertheless go on to say "except in emergencies". I agree. My Bill goes beyond that and makes exceptions not only for emergencies but for conditions where it will be imperative to have an element of secrecy—hence my emergency exception and security exception.

In Clause 3, those exceptions provide for the PM expressly not to seek the approval of Parliament and it clearly defines an emergency in Clause (3)(2)(a) and (b). It then goes further and says in subsection (3) that Parliament will have no role where public disclosure of information would prejudice operations and if the Prime Minister therefore decided that he did not wish to put this into the public domain by consulting Parliament. In those circumstances, all the Prime Minister has to do is to lay a report before the House of Commons within 30 days after his decision to deploy, telling us why he decided to engage in military action under the emergency or security condition and what objectives, locations and legal issues he thinks are appropriate in the circumstances. The Bill gives almost complete discretion to the PM in terms of emergencies or for the purposes of secrecy to tell us what he thinks

[Baroness Falkner of Margravine]
is appropriate. Moreover, he can decide not to lay a report before the House of Commons at all if he believes that national security concerns are still a risk.

So some might ask: if my Bill is so flexible, why bother? The answer is: for a very simple reason, which is that we currently have a situation where we simply do not know where we stand. Those in the House of Commons do not know; the public do not know; and the military does not know. We know that the Government of the day now consult in most circumstances, but we also know from the examples that I have given—pace Helmand; some would say Yemen and Syria—that sometimes they do not. We have situations where individual MPs try to hold the Government's feet to the fire. This type of ad hoc process is bound to misfire, as it did in late August 2013. Then, under Back-Bench pressure, the Prime Minister had to recall Parliament in late August when MPs were on holiday and lost the vote by 13—not because the merits of the argument had been exhaustively considered but because it happened under pressure and the Government were not able to prepare the ground sufficiently both with the Opposition and with their own Members of Parliament. Under my Bill, such a situation would be covered by the emergency condition whereby the Prime Minister would have 30 days to explain his decision to the Commons. In that particular case, the Commons was due to return just about two weeks later, so there would have been considered reflection before the Commons debated and voted on the matter if it had so wished. We would not have had the unedifying sight of MPs getting off flights and going into Commons Divisions without information. I would argue that the failure of the 2013 vote exacerbated the war in Syria. Presidents Assad and Putin knew that they would be unchallenged from that point, which has led to the refugee crisis among other things.

It is clear that the present situation is unsatisfactory because of the uncertainty it creates. We know, for example, that Mr Jesse Norman MP, the biographer of Edmund Burke, that great Conservative political philosopher, believes that the current convention is not fit for purpose, because once the Commons gives its consent it cannot do proper scrutiny of the aftermath. My Bill would deal with that, as Clause 2 would require the PM to set out the terms of approval, the objectives, the locations and the legal matters that he or she considered relevant. Mr Norman's objection to the current situation would be dealt with.

Let me reiterate: this is a simple and straightforward Bill. It contains four substantive clauses, but it is cleverly crafted—here I pay tribute to my noble friend Lord Lester of Herne Hill, who I believe was the originator of the draft Bill. It has been scrutinised by the Commons Political and Constitutional Reform Committee and recommended as the basis of its resolution. The Lords Constitution Committee looked at it in relation to its brief inquiry. While it did not change its mind, it did not find the Bill to be wanting. If there are gaping omissions, they can be corrected as the Bill goes into Committee. My motivation and that of the Liberal Democrats in seeking to enshrine a statutory basis for parliamentary approval for war powers is to give the country in whose name our Armed Forces deploy in the face of death and destruction constitutional security. After Chilcot, they need to know that one lesson of the Iraq war has been heeded and that never again should the country shed blood and treasure on the basis of sofa government and inadequate, hurried information and processes. This Bill is an attempt to ensure greater deliberation by all. That is the least we can do as a debt of gratitude to those who have given their lives. I beg to move.

12.32 pm

Earl Attlee (Con): My Lords, I congratulate the noble Baroness on the way in which she explained the purpose of her Bill. She has much experience in international affairs and we benefit greatly from it. If I wanted to draft a Bill to have the same effect as that of the noble Baroness, it would have more or less the same provisions. I was not surprised when she told the House that the noble Lord, Lord Lester of Herne Hill, was heavily involved in the drafting. It is obvious that the noble Baroness has carefully researched this matter.

I must declare an interest as I think that I am still commissioned in the Army Reserve—but not for very long, because my 60th birthday is rushing up in October. However, I served in Iraq in the spring of 2003.

Some say that we should not effect major constitutional change by means of Private Members' Bills. I disagree, the obvious recent precedent being the European Union (Referendum) Bill, which my party tried to get through as a Private Member's Bill. The House decided in the end not to pass it. I believe that the noble Baroness is using the correct parliamentary tool to achieve her objective. She is not seeking merely to have the Government do or stop doing something; she is seeking to change the law and the constitution.

However, I am concerned about the number of Private Members' Bills going through and being passed by your Lordships' House that would be unlikely to find favour if your Lordships decided to vote on the matter. Some noble Lords think that it is a convention in this House not to kill a Private Member's Bill, but it is a statistic not a convention. In other words, I have seen a few Private Members' Bills that were so objectionable to noble Lords that they decided not to proceed with them past Second Reading.

If a noble Lord proposes a Private Member's Bill that is on a small regulatory matter, be it deregulatory or putting a little regulation in, and the House acquiesces in it, I do not see that as a huge problem—we all know perfectly well that such a Bill might not find favour in the House of Commons, so we do not get too excited about it. However, if your Lordships pass a Bill of major constitutional and security significance, the general public may erroneously believe that it represents the considered view of your Lordships' House when it does not.

I have serious objections to this Bill. If your Lordships did not have other, very pressing matters in hand, I would have tabled a fatal amendment to the Second Reading. The noble Baroness is held in very high regard in your Lordships' House and I would not dream of taking such action without giving her at least seven to 10 days' notice, so I just ran out of time to do it.

I do not support even the evolving convention that the House of Commons should vote on a military deployment, both for parliamentary and for practical reasons. Such decisions should be made by the whole Cabinet after detailed discussions and with relevant JIC reports in front of them as the well as the JIC. Most importantly, the leaking of any such discussions by Cabinet members should come under the Official Secrets Act, The Prime Minister should make it quite clear that if any Cabinet Minister leaks details of such a discussion he will charge the security services with finding out where the leak came from, using all necessary resources to find out. That is because it is deeply damaging to national security to have these leaks, which is why Mr Blair used sofa government; he could not trust other members of the Cabinet to have a detailed and frank discussion about the issues. I hope that if I had been sat at that Cabinet table—I obviously do not have the capability of doing that, but if I did—I would have said, "This 45-minute claim. Does it relate to battlefield weapons or strategic weapons? Is the source signals intelligence or human intelligence?" As a Cabinet Minister, I would expect to get the answers to those questions and, if I did not, I would have to consider my position.

Conversely, Parliament is unsuitable because it does not have all the intelligence available. It cannot get answers to the obvious questions. I remember when your Lordships debated whether we should invade Iraq. I remember noble friends saying, "Fine. I'm sure we've got the combat power to get the regime to collapse, but what happens afterwards?" We were told, "Oh don't worry about that", but actually that is why the campaign failed, as Operation Telic 1 was a brilliant operation—I will address it when we discuss Chilcot. I do not believe that it is right for parliamentarians to make such decisions without access to the information that they need, and they cannot have it for obvious reasons. Of course, I fully agree that, if we do go to war, it is a matter for the Commons to agree or acquiesce with that decision. We can express our view, but it is very much a matter for the elected House.

There are many problems with the noble Baroness's Bill. First, an opponent may miscalculate the resolution of the UK by believing that the House of Commons will vote against the resolution or the Whips in the House of Commons will calculate that the Government would lose such a vote. That could have serious consequences for the diplomatic effort that should be taking place before you go kinetic. It might make conflict more likely rather than less likely. We only need to think of the Falklands conflict—I see the noble Lord, Lord West, is in his place—where it appeared that the Argentinians miscalculated our resolve.

I am not saying that there should be no parliamentary involvement or no check on the Executive. The noble Baroness suggested that the House of Commons had no role. The House of Commons has a very powerful tool indeed: it can have a vote of no confidence in the Government and the Government are in deep trouble if they lose that. In those circumstances, we used to have a general election straightaway. Unfortunately that has been slightly unwound by the Fixed-term Parliaments Act. Normally, the Leader of Her Majesty's Opposition will have access to Privy Council briefings with the Prime Minister and the Secretary of State for Defence, so he or she should be much better briefed than ordinary Members of the House.

The Bill would not have the effect that the noble Baroness desires. I do not believe that it will have any utility. When the Commons voted to go to war in 2003, it was far too late in the process of transition to war. I was there. Our troops were just about to cross the start line and engage the enemy. We were certainly vulnerable to a pre-emptive attack by Iraqi forces, if they had had the capability. We were just about to engage them and legally they could have launched a pre-emptive attack on us and we would have sustained significant casualties. I know that the issue of casualties is very important to the noble Baroness and I can quite understand that. Very often we have our own forces in harm's way long before the Commons makes a decision. I will not go any further along what I will call the Chilcot route because we will have a debate next week on that, but if in 2003 the Commons had voted no, it would have seriously damaged the relationship between the UK and the United States and, indirectly, seriously damaged NATO, although I accept that it was not a NATO operation.

From where I was, sat in Kuwait, the vote in the House of Commons was irrelevant. We were going to cross the start line. We were told that it was irrelevant and I suspect that our commanders knew perfectly well the arithmetic in the House of Commons. The Government of the day were confident that they would get a yes vote because of the support from Her Majesty's Opposition. It was too late, but it would have been compliant with the noble Baroness's Bill.

During Op Telic 1, there were some cases of servicepeople being unwilling to deploy to the operational theatre and claiming spurious legal reasons for doing so. In an operation such as Telic 1—a large-scale mission—it is not surprising that there are a few of those cases. It is disappointing, but there are disciplinary methods for dealing with it. But if a serviceperson refuses to put themselves in harm's way because the House of Commons has not yet authorised it, we could be creating a legal problem that we never had before. That is yet another problem with the noble Baroness's Bill.

I said that the Bill is not properly drafted to have the effect that the noble Baroness wants. Seriously, it excludes operations by Special Forces and Her Majesty's Armed Forces supporting Special Forces. The noble Lord, Lord West, will know perfectly well that nuclear submarines are also involved in deploying Special Forces—so you can insert Special Forces using very significant military power. I am not well briefed on Special Forces operations, for obvious reasons, but I can safely surmise. It seems to me that successful Special Forces operations have strategic effect but also very often the opponent is completely unaware that the operation has taken place. However, if our Special Forces were detected, that could have a significant effect. You could get yourself in an awful lot of hot water and quite easily be the genesis of a conflict. In other words, use of our Special Forces could get us in a lot of trouble if it went wrong. Again, there is no

[Earl Attlee]
authority by the House of Commons to deploy forces, including nuclear submarines with Special Forces, designed to have strategic effect—not just a little exercise.

If Parliament wanted to put controls on operations, especially medium and large-scale operations, it would have to do so much earlier in the process. For instance, controls would have to be put on outloading the ammunition from the base depot because that is a major indicator to one's opponent. You want to put controls on armoured vehicles subject to the CFE treaty—again, a major combat indicator. As soon as you start making those sorts of movement, you are vulnerable to pre-emptive attack and could take casualties as a result. I would not advocate putting those controls on the Government because I firmly believe in trusting the Government of the day. When I deployed to Iraq, I believed that the Prime Minister of the day was doing the best job that he could in the interests of the nation.

In conclusion, I fully appreciate the issue that the noble Baroness seeks to address, but I just do not believe that the Bill will have the positive effect that she intends. At the same time, it will create several serious new problems. It is not the right solution. I look forward to further discussions on these matters when we debate the Chilcot report.

12.46 pm

Baroness Smith of Newnham (LD): My Lords, I welcome the Bill brought forward in the name of my noble friend Lady Falkner. It comes at a very appropriate time. Unlike the noble Earl, Lord Attlee, I plan to support the Bill. I note that he said that, had things not been so busy in the last seven to 10 days, he would have tabled a fatal Motion. So for those of us who were rather keen that the UK should vote to remain in the European Union—I assume it was the referendum that deflected the noble Earl—there is at least, if not any sunlit upland, a little glimmer of light coming from the fact that no fatal Motion was tabled. For that we can be grateful.

Earl Attlee: My Lords, if I had tabled a fatal Motion, a difficulty would have been that it might well have had to be debated in prime time. I think the noble Baroness, Lady Falkner, would have been thrilled to bits by that. She would probably not have been that worried about the end result and we would have had a much bigger debate—so I was actually being a bit cruel by not tabling a fatal Motion.

Baroness Smith of Newnham: My Lords, this is actually a very serious Bill. Decisions to go to war and engage in military conflict always necessitate deep reflection, expert intelligence and other appropriate military advice. They must be taken responsibly and with due regard to not just the short-term military intervention but the medium and long-term consequences. We should never engage in military conflict without thinking through what the exit strategy might be. Leaving failed states behind is clearly not acceptable or morally right.

Of course, the decision to go to war is a prerogative power—but, as we have already heard, a convention has emerged in terms of consulting Parliament. Other states with written constitutions have rather more clarity in this regard. Finland, Spain, Ireland and Italy all require parliamentary votes before going into military conflict. Unless there is a direct attack on Germany, it has an even higher threshold of a two-thirds vote in Parliament before engaging in military conflict. Clearly, we do not have a codified constitution. It may be appropriate to have such a thing, but that is not something for a Private Member's Bill. But surely clarity would be helpful.

I share some of the concerns outlined by the noble Earl, Lord Attlee. Even Members of Parliament who are well informed and have been led to understand some of the military implications of a decision will not be the same as a Cabinet sitting round the table, fully briefed with all the relevant military intelligence. But the Bill of my noble friend Lady Falkner addresses some of these issues as it explicitly refers to emergency and security conditions. So if we are talking about issues that necessitate significant amounts of military intelligence that cannot be divulged to 650 Members of the House of Commons, that is presumably an area where the Prime Minister would be able to say that action would be taken under the existing prerogative.

Arguably, this leaves the Prime Minister with slightly more wiggle room than we as Liberal Democrats would want, because our party policy is very clearly that a decision should be taken by the House of Commons before going into military conflict, but I think that the balance is about right with the inclusion of the emergency condition and the security condition.

One key thing is that there should be clarity of thinking ahead of military decisions, but that does not always seem to have been the case. In the last few days, we have heard that the decision to intervene militarily in Iraq was taken without an adequate plan being in place and without adequate reference to intelligence, even if at the time it was thought to be there. Somebody has to take responsibility for decisions to go into military conflict. That could be left to the royal prerogative but, since we have a representative democracy and we have parliamentarians to take decisions for—

Lord Framlingham (Con): I am following what the noble Baroness is saying with great interest. Is there not a basic conundrum here that long and detailed debate on the action you plan to take against your opponent gives him the opportunity to decide exactly how he is going to deal with it? While I accept in a way that this is necessary, it is also a problem.

Baroness Smith of Newnham: My Lords, I am most grateful for that intervention. I think that there are two things to disaggregate. I had intended to speak only very briefly; I seem to have been on my feet talking about the EU for weeks and weeks, so I had not particularly planned to speak in this debate. But I think it is different in cases such as that of Sierra Leone, or in actions where we as a country are engaged in military conflict and there is a military operation but no direct threat to the United Kingdom. If there is a direct threat to the United Kingdom and emergency action were needed, the situation would be rather different, but I think that there will be some cases

where it is entirely appropriate for the country to take the decision that it wants to be engaged in a particular country.

Syria is probably a case in point—a decision to intervene in Syria is not about the direct security of the United Kingdom. But the noble Lord is absolutely right that it is not appropriate to lay out precisely what the battle plan would be. I am talking about a decision in principle to engage in conflict, with some guidelines or clear assurances from the Government that a plan is in place, but not specifics and certainly not day-by-day outlines, such as "This is what the RAF is going to be doing today. This is what the RAF is going to be doing in two weeks' time"—because that could clearly jeopardise the operational capabilities. So clearly there are areas where greater specificity in the Bill might be appropriate. My noble friend has already indicated that she would be grateful for ideas that could improve the Bill.

In conclusion, care and attention are required before engaging in military conflict. We particularly need to think through both the plan for engagement and the exit plan. In recent times, we have perhaps taken too many decisions that have not had an appropriate exit strategy. Leaving power vacuums and failed states is surely a failure of policy decisions and does not make the United Kingdom or anywhere else more secure. A time to reflect, and for Parliament to review what the Government are proposing, may assist our decision-taking. I warmly support the Bill.

12.54 pm

Lord Robathan (Con): My Lords, I welcome the Bill of the noble Baroness, Lady Falkner. I was surprised by how much I agreed with what she said, particularly relating to the circumstances of the August 2013 vote—I think she was pretty much accurate in what she said. However, the Bill, although well-intentioned, is in my opinion very unwise. I was glad to see emergency provisions in it but I want to address the argument from the other end, if I may put it that way.

No Government can take this country to war—and survive—without parliamentary and, by extrapolation, public support. I do not want to go back to Neville Chamberlain and the debate that led to his resignation but I want to raise three, now quite historic, events in which I had a little concern; I speak from my experience. The first is what was termed the Gulf War but is now termed Gulf I. I was in Kuwait in 1991. There was no vote, but there had been a long build-up to this Gulf war: there had been UN resolutions; there was a self-evident case for expelling Saddam Hussein, as an aggressive invader, from Kuwait; and there was, I suspect, broad support throughout the country and indeed in Parliament, although I also suspect that a lot of people did not know where Kuwait was, just that it was a small country a long way away of which we knew very little, or nothing. Nevertheless, it was a successful war—with no parliamentary vote.

The second Iraq war, or Gulf II as it is now called, in 2003—the noble Baroness led with the 179 fatalities from that war—paradoxically did have a parliamentary vote, with a huge majority of 263. I confess, I voted for it. Tony Blair made arguably the best speech I ever heard in the House of Commons in that debate. He was courteous, he was reasoned and he took interventions and arguments both from the Opposition and from the opponents behind him, of whom there were many. I have to say, it was extraordinarily impressive. We now know that beforehand, in September 2002, he had—I would say—misled the House of Commons with talk of the weapons of mass destruction that could be activated within 45 minutes and the so-called dodgy dossier. Nevertheless, his persuasive speech was fantastic; I think that the noble Lord, Lord Touhig, might have been there as well.

This is not the time to discuss the Chilcot report, but the war in Iraq had parliamentary approval and was, frankly, a disaster. There are now questions over its legality, notwithstanding the vote. I recall the late Charles Kennedy leading a march of some 1 million people against the war. Perhaps he and the noble Baroness were right. I voted for it because I believed that it was unfinished business from 1991 and that Saddam Hussein would continue to cause serious trouble in the region, and because I believed that he had weapons of mass destruction. Yet it was not the actual war that was the disaster; it was not the military campaign that took Baghdad—my noble friend Lord Attlee is nodding—but the aftermath, Paul Bremer and the disastrous lack of clarity over what was to be done afterwards that caused such an appalling tragedy. But there we are—that had parliamentary approval.

My third example, which, as I said, the noble Baroness, Lady Falkner, analysed rather well, is the vote on Syria in August 2013. At the time, I was Minister for the Armed Forces in the MoD and on the Monday of that week, before the House was recalled, I remember a headline in the *Times*—which I saw at Rugby station—that said, "Blair says we must attack Assad". I arrived at my office and said, "Actually, if Blair wants to attack Assad, I certainly don't want to". However, I was then convinced by the briefings that I had on the intelligence and what Assad had been doing that perhaps I was wrong. We will recall that President Obama said that there was a red line and that, if Assad used chemical weapons against his own people, "we will take action". Assad used them. Parliament was recalled for, as the noble Baroness so rightly said, a rushed vote—for reasons connected with, I think, supporting the Americans early, but it was rushed and mistaken. The Labour Party, in the morning of that day, had said that it would support the Motion, which had been changed to accommodate it, and then reneged on that deal. We had nine Liberal Democrat rebels, 30 Tories voted against the Motion and there were many abstentions. As a result, the UK—bound by Parliament—took no action. President Obama then, without his key ally, took no action. That action would have been against President Assad over his use of chemical weapons.

We now have Daesh, which, frankly, is rather a greater threat to us. Some might say, therefore, that it was a good idea not to bomb President Assad's troops, but I disagree. It is the consequence of not doing so that is most worrying. The message has gone out: "The West will warn, but the West is not to be taken seriously". Our enemies believe that and so, as the noble Baroness mentioned, does President Putin, who has since annexed Crimea and moved into Ukraine. Today, we have 600 British troops deployed to Estonia,

[LORD ROBATHAN]
because the Estonians are extremely worried about what Russia is doing on their border. Whether or not anybody likes to describe it as such, we have a new cold war on our borders, with visible Russian aggrandisement in Crimea, Ukraine and elsewhere.

Why did the Syria vote in August 2013 fail? One of the reasons one needs to understand is the public pressure put on MPs who may not be very well informed about the issues, for obvious reasons. They are emailed—these days, one gets endless emails, including from 38 Degrees and self-selecting pressure groups, which particularly influence some MPs in marginal seats. Did the Tories who rebelled know more about the chemical weapons than the Government? Because Members of Parliament are not in a position to be as well informed as members of the Government, I think we must leave such decisions to the Prime Minister and that we should trust her.

The current Prime Minister made a characteristically excellent Statement on the Chilcot report two days ago. He detailed the changes he has made, and I will mention them, if I may. He said:

"First, taking the country to war should always be a last resort and should only be done if all credible alternatives have been exhausted".—[*Official Report*, Commons, 6/7/16; col. 887.]

Of course, we all agree with that. Sadly, Chilcot has found that that was not done. The Prime Minister talked about setting up the National Security Council, of which the Attorney-General is a member, and that is hugely important. He has appointed a National Security Adviser, which is again hugely important. However, he also said—this is very important because the Bill would tie the Prime Minister's hands—that,

"just because intervention is difficult, it does not mean that there are not times when it is right and necessary".—[*Official Report*, Commons, 6/7/16; col. 888.]

To back up the noble Baroness, the Prime Minister said that he supported the growing convention of having parliamentary approval, but I, like my noble friend Lord Attlee, do not. I note that the Government have said they will not bring that forward in legislation, whatever my noble friend Lord Hague said in 2011 or 2012. If the wrong decision is made about fighting, the Prime Minister and the Government—and, indeed, Parliament—will have to answer for it, but parliamentary approval does not negate the possibility that things will go wrong, as we saw in Iraq. I suggest that a parliamentary refusal can have dire consequences, as we saw with the Syria vote in 2013.

The Bill would make it less likely that we would take the necessary military action in a time of crisis. If we were to pass such a Bill, I fear we would reinforce the view that this country is not to be taken seriously when we warn aggressors threatening us or our allies in future.

1.03 pm

Baroness Deech (CB): I have decided, more or less at the last moment, to jump in in the gap because of the Chilcot inquiry and the perspective it has given us. In brief, to agree with the noble Lord, Lord Robathan, it seems clear that if Parliament were presented with a similar situation again, it would vote the same way. In other words, MPs have no more, and probably much less, information than the Prime Minister in making such decisions. They are no better equipped to make the decision; indeed, the decision could be much worse. For example, it is not necessarily right to accede to public opinion in making a major decision, such as whether to invade Iraq. Votes may take place in Parliament not because of the global issue, but because of parliamentary in-fighting. If, for example, the leader of the Opposition says that we should not do so and his MPs want to undermine him, they may go the other way.

I was much struck by the fact that, when there was a vote on air strikes over Syria and 66 Labour MPs voted in favour, they received opprobrium—unpleasant emails and so on. It seems to me that it is not right that individual MPs should have on their shoulders the weight of those decisions. It is for the Prime Minister herself to take the glory—if it is such, as in the Falklands—or the disgrace, as has happened this week. That is what Prime Ministers are there for and it is not right to pick apart and play party games with MPs.

Briefly, I am of course in favour of democracy, while the royal prerogative has clearly been rolled back over the years. I am on record as having said that the use of a royal charter is not a good way forward. Whether it is for the BBC or on other issues, a royal charter covers territory where Parliament's input would be much better. We had the benefit of a report by a Commons committee on this some years ago, which seemed in favour of having statutory definition. We also had the Lords Select Committee on the Constitution recommend a few years ago that a better way forward is through convention, which I would support. Gradual convention is one of the glories of our unwritten constitution.

I congratulate the noble Baroness, Lady Falkner, on giving us the opportunity to open up this enormous and important topic but, in relation to her Bill, I am worried by the disclosure provisions in Clause 2(2)(b) and, in an emergency, Clause 3(9) because there would undoubtedly be opposition. We would for sure be in court with a judicial review if opponents of the decision decided that the Prime Minister had or had not withheld information that should be before Parliament. Moreover, what would happen to troop morale if a vote was taken and it was very narrow? Would individuals feel that they did not have the wholehearted backing of the country? That would be extremely important. In other words, knowing lawyers as I do, the Bill would open the door wide to endless litigation if it became law. We see the beginning of that today in the aftermath of the Chilcot inquiry, so I say: let convention grow. This is not an area that I would put into statute or one where MPs ought to have the responsibility as individuals. They do not have the information and should not personally have to bear the weight of the aftermath.

1.07 pm

Baroness Jolly (LD): My Lords, I shall not delay the House too long in speaking to my noble friend's excellent Bill. It is not only timely but very clear and overdue. This has been quite a week and the timing of

this debate is serendipitous. Wednesday saw the long-awaited publication of the Chilcot report, which was critical of the decision, made by the Cabinet and led by the Prime Minister, to go to war against Iraq. Noble Lords are all too aware of the details and my noble friend outlined them in her excellent and comprehensive speech.

This simple but comprehensive Bill puts it beyond doubt that the decision to commit our country and our excellent, dedicated and professional Armed Forces to war is to be put firmly in the hands of the elected Parliament. The process outlined is clear, not protracted, and with the option of consulting your Lordships' House. With Clauses 3 and 4, the Bill more than allows for the objections of the current Secretary of State for Defence and gives complete discretion to the Prime Minister in the writing of the report.

I remind noble Lords that the convention which has arisen since the Iraq conflict is just that—a convention. As we have heard, the previous Foreign Secretary, the noble Lord, Lord Hague of Richmond, stated in 2011 that it was the position of the Government to introduce such a measure. It is also most certainly Lib Dem policy. However, also in 2011, the House of Commons Political and Constitutional Reform Committee called for greater clarity and for a draft for consultation to be presented. This did not happen. By contrast, your Lordships' own Constitution Committee believed Parliament's role should not be formalised. One House therefore seemed to be leaning in one direction, and the other in a different one. My noble friend Lady Falkner of Margravine was a member of that committee and disagreed with it. As a result, she got people to draft this Private Member's Bill and produced it.

The current Secretary of State for Defence has stated that the Government have a strong commitment to the convention. I do no doubt that for a moment—the current Secretary of State is an honourable person, as I am sure the next Prime Minister will be, whoever she is. However, we make legislation not for the present but for the future—for when a Government may have ignored or forgotten the consequences of Iraq and the recommendations of Chilcot. This Bill is the right way to deal with this, and I am happy to support my noble friend in introducing it. Unlike others, I believe it certainly deserves further debate in Committee.

1.11 pm

Lord Touhig (Lab): My Lords, I have lost count of the number of times we in this House have considered matters relating to the unwritten constitution during the short time of six years that I have served here. As someone who believes that constitutional affairs, no matter how important, are a major turn-off for the British public and an electoral cul-de-sac for politicians, why do I think this particular piece of constitutional fine-tuning is so important?

The main reason is that I believe that the first duty of any Government is the care and well-being of the British people, and that includes the defence of our country. The deployment of British forces into conflict must always be a major concern for the people, for Parliament and for Government. In the many debates on matters constitutional that I have already mentioned, the one theme that is most common to all is the ability of this House in particular, and Parliament in general, to hold the Executive to account.

In the 20-plus years I have served in both Houses of Parliament, there has been a drift, although it is sometimes not immediately obvious, towards adding more and more powers to the Executive at the expense of Parliament and therefore at the expense of the rights of the British people to hold their elected Government to account. This small Bill is worthy of our support, because it attempts to place a check on that drift.

From the earliest times of structured government in these islands, the Executive—as embodied first in the Crown and now in the elected Government—have on so many areas been able to exercise authority over the people without the people or their elected representatives in Parliament being consulted. The Bill is a step towards reversing that. It underpins the need for the Government to show that they draw their powers from the people, through Parliament. In any democracy, the flow of power from the people to the Government should be balanced by the ability of Parliament to hold the Government to account. However, when the Executive rely on the powers of the royal prerogative—powers where the Government act on the monarch's authority—it is difficult for Parliament to scrutinise and to challenge the Government's actions.

If voters do not believe that the Government are wielding their power appropriately, or that they are properly accountable, then public confidence in the accountability of decision-making risks being lost. The Bill could start to strengthen our democracy by codifying the power of the Prime Minister, and thereby the Executive, and making the Prime Minister come to Parliament when seeking to commit British troops to conflict. It is important that the key decisions that affect the whole country, such as the decision to send troops into armed conflict, are made in the right way and with Parliament's consent. The Bill does just that.

My own party, when last in government, planned a piece of legislation just like this. One does not need a long memory to look back at the time when the present party of government also wanted such a piece of legislation. In March 2011, the then Foreign Secretary, William Hague, now the noble Lord, Lord Hague, said that the Government planned to,

"enshrine in law for the future the necessity of consulting Parliament on military action".—[*Official Report*, Commons, 21/3/11; col. 799.]

Since then, we have seen a change of heart on the Government Benches. The Defence Secretary, Mr Fallon, said that the Government in 2011 acknowledged that a convention had developed in Parliament that before troops were committed, the House of Commons should have the opportunity to debate the matter. The Government pledged to observe the convention, except where there was an emergency and such action would not be appropriate. But Mr Fallon then said:

"After careful consideration, the Government has decided that it will not be codifying the Convention in law or by resolution of the House".—[*Official Report*, Commons, 18/4/16; col. 698WS.]

The Defence Secretary said that this was to retain the ability of Governments and Armed Forces to protect the security and interests of the United Kingdom in circumstances that cannot be predicted. That is eminently

[LORD TOUHIG]
sensible, but the Bill retains the Government's ability to protect Armed Forces operations. It sets that out in Clause 3(2) and Clause 4.

On these Benches and in other parts of the House, there has been growing concern about the use of embedded forces: British forces committed to a potential field of conflict and, as embedded forces, placed under the command of the armed forces of the country in which they are operating or a coalition operating in that country. Mr Fallon said that, in those circumstances, the convention would not be observed at all. This is in danger of prosecuting war by stealth.

On these Benches, we recognise that there are occasions when to protect the safety of our forces and for reasons of national security it would not be right to come to Parliament, but our worry is that this is now becoming the rule, not the exception. That is why we need a Bill such as this. In a statement published in December, I think, last year, the Ministry of Defence told us that there were 147 of our troops in embedded forces in various parts of the world—the large majority of them, 94, in coalition HQs. We do not even know where they are, yet they are under the command of the power of another country who can commit them to conflict and Parliament has not even been told. This is not the way we should be going.

As I mentioned, in July 2007, in a document entitled *Governance of Britain*, the then Labour Government stated:

"In most modern democracies, the government's only powers are those granted to it by a written constitution or by the legislature. A distinguishing feature of the British constitution is the extent to which government continues to exercise a number of powers which were not granted to it by a written constitution, nor by Parliament, but are, rather, ancient prerogatives of the Crown".

It also stated:

"It is important that Parliament is strengthened to ensure that its own powers—whether ancient or more recently acquired—continue to be exercised effectively within appropriate limits and in a way that means the people whom it serves understand its work and have faith in its decisions".

That is why we need a Bill such as this.

1.18 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the noble Baroness, Lady Falkner of Margravine, is to be congratulated on introducing the Bill and I thank her for the characteristically clear and cogent way in which she introduced it. Her desire to formalise the war powers convention that Parliament should be consulted before troops are committed to conflict overseas may be considered understandable given the events of the past few years. It is clear that she also recognises the difficulties in the existing convention and believes that her Bill would serve as a useful measure of clarification. I also fully appreciate her concern not to constrain the Government's room for manoeuvre during crises and conflict.

In drawing up her Bill, she has undoubtedly—as she explained—consulted expert legal opinion and the excellent report into the subject produced by the House of Lords Constitution Committee in 2013, of which she was a member. The report's conclusions are highly pertinent and worth repeating. It found that the existing convention was the best means by which the House of Commons can exercise control over decisions to use force, that Parliament's role should not be formalised by way of legislation or resolution, and that the risks associated with formalisation outweigh the benefits. This report was of considerable assistance to the National Security Council, chaired by my right honourable friend the Prime Minister, which decided earlier this year that the war powers convention should not be codified. It took that decision in order to retain the ability of this and future Governments to protect the security and interests of the UK in circumstances we cannot predict, and to avoid such decisions becoming subject to legal action. The noble Baroness, Lady Deech, spoke very powerfully on that point, as did my noble friends Lord Attlee and Lord Robathan. We are debating this Bill in a week when the findings of the Chilcot report are much on everyone's minds. To the extent that that report has raised concerns about the role of the Cabinet, and the accuracy of the information available to Parliament, it is worth reflecting that formally codifying the convention would not address those concerns in any way.

The Government's policy position was set out recently by my right honourable friend the Defence Secretary, in an admirably clear Written Statement. That Statement said:

"In 2011, the Government acknowledged that a Convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter",

and that the Government—

"proposed to observe that convention except where there was an emergency and such action would not be appropriate."—[*Official Report*, Commons, 18/4/16; col. 11WS.]

That exception is one which I believe is widely understood and accepted. As the Statement explained, it is important to preserve the exception in order to ensure that this and future Governments can use their judgment about how best to protect the security and interests of the UK. In other words, while observing the convention, we must also ensure that the ability of our Armed Forces to act quickly and decisively, and to maintain the security of their operations, is not compromised.

The issues raised by the noble Baroness's Bill have been thought about very carefully. I have to tell her that we do not believe that what she is proposing is the right way to go. We believe it would have the opposite effect to the one intended, potentially tying the Government's hands in an unhelpful way, and at the same time muddying the waters. The combined effect would be to make our country less safe and less secure, rather than the reverse. I am of course happy to have discussions with the noble Baroness to explain the Government's position in further detail, should she wish me to. Meanwhile, however, I fear that my overall message to her must necessarily be a disappointing one.

1.23 pm

Baroness Falkner of Margravine: My Lords, I start by thanking all noble Lords who have taken part in this debate on a Friday. It has been a long week, and I

genuinely appreciate that their interest and their concern for our country, and the situation in which these things can go wrong, is heartfelt.

I will start by going very briefly through some of the arguments that were put. I have great affection and respect for the noble Earl, Lord Attlee. We have known each other over many years and I have always listened to not just his wise words but his practical experience in these matters very carefully. He made the point that the House of Commons would not have access to the level of intelligence that these days the National Security Council obviously provides to the Prime Minister and that the full Cabinet would have.

That is of course true—except for two things. My Bill provides in Clause 3(6) for the Prime Minister to consult any of the existing committees of the House of Commons that he so chooses. Of course, the Intelligence Committee of the House of Commons would be one that one would expect the Prime Minister necessarily to brief, consult and provide assurances to. We also know that there is a convention that Her Majesty's Opposition are always briefed on Privy Council terms. In the past, it has not just been Her Majesty's Official Opposition; I know that my party was briefed on Privy Council terms before being in government. That would continue to be the case; my Bill does not do anything in that regard.

The noble Lord, Lord Framlingham, said that our opponents would know what we were up to if we debated this openly in Parliament. Of course, to some extent that is right—but they would not have access to the intel or any of our strategic or operational details. The noble Lord sits behind the Minister on the Conservative Benches but may not be aware of how committed the current Government: indeed, the Prime Minister, speaking only two days ago on the Chilcot report, gave an assurance that he believes in consulting the House of Commons. He upholds this convention. So the noble Lord seems to want Parliament not to know anything about it at all and simply for the royal prerogative to be exercised. I respect his position. It is a perfectly fair position to say that we should be either there or there, and that when we find ourselves somewhere in the middle that he might not like—

Lord Framlingham: I do not know as much about this subject as the noble Baroness; I am just concerned that in warfare the element of surprise is often very important. That comes into the kind of things that we are talking about.

Earl Attlee: And I am just as naughty because I oppose the convention as well.

Baroness Falkner of Margravine: I say to the noble Earl, Lord Attlee, that his problem is one for the noble Earl, Lord Howe, to deal with—not me. But I completely accept the concerns of the noble Lord, Lord Framlingham, which were voiced by the noble Baroness, Lady Deech, as well. But, ultimately, either we trust MPs to do a job and have access to the information or we do not.

The concern expressed by the noble Lord, Lord Robathan—I am grateful to him; I know that he was a Minister for the Armed Forces and is therefore very knowledgeable and has huge experience in these matters—was that if the wrong decision was taken, parliamentary approval would not negate that. That is right; I completely agree with him. But the point that I am making is that although Parliament might not negate that, the country would not need to listen, as it did three days ago, to someone saying, "I take complete responsibility, but that is it, and I would not have changed anything that I did". If the House of Commons was consulted, and if the country moved away from that decision, the country would have the ability to kick those people out at the next general election. In that sense, there is a direct line of accountability—the golden thread.

I am so grateful to the noble Baroness, Lady Deech, for having spoken—I count her as a friend, as well as somebody for whose legal prowess I have huge admiration. She supports the Lords Constitution Committee but she does not like the current convention of Parliament being consulted. But the Lords Constitution Committee supports the status quo ante. It wants Parliament to be consulted along the current method; it just does not want codification in the Bill. But of course these are details that we can move to in Committee, should that come to pass. I do not intend to detain the House very much longer.

I express huge gratitude to the noble Lord, Lord Touhig, and the Labour Party for their support. In public life, a lot of decisions are not straightforward and all of us, on all sides, sometimes take the wrong decisions. Sometimes we were culpable, sometimes the information was not accurate, and sometimes the imperative to move quickly took us to that potentially wrong decision. But what is really important, and what the country needs to hear from us now, is that we are learning from decisions that we have taken in the past. I think that the position of the Labour Party, which is so very welcome, is that there is an indication that things went wrong and that it has learned, as we all have. One of the things Mr Cameron said in the Chilcot debate was that he took responsibility for his own vote. I thought that was important.

The most important point made by the noble Lord, Lord Touhig, was that the reason the Labour Party supports this small, modest measure is that it recognises that this underpins the need for the Government to show that they draw their powers from the people. That is terribly important.

The Minister has been incredibly gracious and kind to me in having engaged in some discussion. We did not agree. We come from different positions. I come from a party that is internationalist in its outlook, trusts the people to the nth degree and takes its responsibilities as parliamentarians extremely seriously—which is not to suggest that other parties do not. Indeed, I mentioned Edmund Burke, and the Minister will know how important he was for Conservative Governments in historical times. The Minister raised some exceptions that are entirely valid, and I look forward to engaging with him privately, as he has invited me to come to talk to him, and as we move into Committee. But the point I do not understand is how this Bill ties the Government's hands. The contrary criticism I am getting from NGOs—38 Degrees was mentioned, along with others—is that the Bill is too

[Baroness Falkner of Margravine]
flexible and does not tie the Government's hands enough. There are people who want to hold the Government's feet to the fire and think that this Bill is too grown-up, too considered and too reflective to do that.

I do not wish to weary the House any more. We hope to move on. I beg to move.

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

Bread and Flour Regulations (Folic Acid) Bill [HL]

Second Reading

1.32 pm

Moved by ***Lord Rooker***

That the Bill be now read a second time.

Lord Rooker (Lab): My Lords, my Bill concerns a measure of preventative medicine designed to reduce the number of children born with a lifelong serious disability and reduce the high level of terminations of affected pregnancies following antenatal screening and diagnosis. Some may think the number is small. We are talking about approximately 1,000 pregnancies per year in the UK, of which 80% are terminated. We can do something about this, and in my view we should act.

In 1991, UK research by a Medical Research Council team discovered that a deficiency of vitamin B9, folic acid, is the cause of neural tube defects. The defect is that, just after conception, the neural tube does not close as it should. This leads to defects of the brain, spine and spinal cord leading to spina bifida and other serious, lifelong disabilities. The neural tube closes at 27 days, which for most women is before they know they are pregnant.

In all health matters, it is wise for Parliament and government to take expert advice. Following the 1991 ground-breaking UK research, in 2000 the then Committee on Medical Aspects of Food and Nutrition Policy gave advice to government to improve the blood folate status of the UK population through the mandatory fortification of flour with vitamin B9, folic acid. This advice was repeated by the Scientific Advisory Committee on Nutrition in 2006 and in 2009. The Food Standards Agency gave similar advice in 2007 and 2009.

Further research was requested by one or more of the Chief Medical Officers, and it was conducted by various scientists. Several aspects were looked at, including a possible male colon cancer rise due to folic fortification, but a peer-reviewed study of 50,000 cases published in 2013 found no evidence. The National Diet and Nutrition Survey was requested in particular to check the blood folate levels in the whole population, especially among women of child-bearing age. This took some years and the results were published in March 2015. The results showed that the blood folate levels for UK women are below the WHO thresholds.

By October 2015, the Scientific Advisory Committee on Nutrition had collated all the latest evidence, and on 20 October wrote to all four Health Ministers in England, Scotland, Wales and Northern Ireland. Its eight-paragraph letter alerted Ministers to the recent information, the WHO studies, evidence from the USA and the blood folate levels, as well as concerns that the UK food industry was actually reducing amounts of voluntary folic acid in its products. In summary, the letter repeated the advice of 2006 to go for the mandatory fortification of flour.

My Bill would effectively put that advice into legislation. Drafting a Bill like this was easy. As the UK already fortifies flour on health grounds, vitamin B9, folic acid, can simply be added to the list.

To date, the policy in the UK has been that women planning pregnancy should take folic supplements. Health is of course a devolved matter, but there are two problems here. First, the UK has the second-highest number of unplanned pregnancies after the USA. Secondly, the use of supplements is in decline. Taking supplements after becoming aware of pregnancy is too late, as this will be after 27 days. A preventative medicine strategy to cut the numbers of affected pregnancies has to take these facts into account. It cannot be that 80% of terminations after the 20-week scan is a preventative strategy.

Recent peer-reviewed research published in February 2014 by a team led by Sir Nicholas Wald, the leader of the 1991 Medical Research Council study, showed that in a 10-year study of 500,000 women in the UK the policy of advice regarding supplementation was not working. The study showed a decline in women taking supplements from 40% in 1999-2001 to 28% in 2011-12. It showed that women under the age of 20 were five times less likely to take folic supplements than women aged 30 and over. Even among women who had previously had a neural tube defect pregnancy, only half were taking supplements. The conclusion was stark: the current government policy was,

"failing and has led to health inequalities".

On average, 69% of women of child-bearing age are not taking supplements. Half the pregnancies are unplanned. It cannot be right there is no proper strategy.

In my view, saying that it is individual responsibility is unacceptable. Department of Health officials have been known to say that terminations after the 20-week scan identifies the defect are how the issue is managed, and have stated that dealing with neural tube defects via folic fortification is "not a vote winner". This was told to a public meeting in Parliament last year, and the Minister is aware of the source.

Based on the 1991 UK research, over 80 countries have introduced the mandatory fortification of white bread flour with folic acid, vitamin B9. There is abundant evidence of efficacy and no suggestion of any harm. It reduces the abnormality by up to 50%, though I have seen some research giving an even higher figure than this. The USA mandated the fortification of flour in 1998, based on the 1991 UK research. Recent American published research showed a significant reduction in neural tube defect births there, and they have a Folic Acid Awareness Week. There has been a large saving

in America both in human misery and public expenditure. The US expenditure saving on averted medical costs alone for surviving babies is put at $600 million. It spends $4 million on fortification.

No country which has introduced fortification has reversed the decision. The various countries that have introduced it include America, Australia, Iran, Chile, Iraq, Canada and Saudi Arabia. In July 2015, a report on preventable spina bifida in Europe reached the conclusion that Europe has an epidemic of spina bifida compared to countries that apply mandatory fortification. The prevalence of neural tube defects per 100,000 births in the UK, Denmark, France and Germany is in general twice the level in the United States of America, where flour has been fortified for nearly 20 years.

There is a need for a strategy on neural tube defects rather than a campaign for fortification. It is not mass medication, as only white bread flour has ever been involved, so the argument about mass medication does not apply. Research galore has shown no ill effects on the male population. The principle of flour fortification in the United Kingdom is not at stake. The UK has fortified flour on health grounds since World War II with four substances: two vitamins and two chemicals. That was last reviewed in 2013 and a decision to continue that was made by the coalition Government. Industry pays for the fortification, by the way, so it is not a question of public expenditure. People will say that the numbers are not huge, but they are bound to grow as supplement-taking declines and as industry reduces voluntary fortification.

I am in favour of a woman's right to choose, but I reject the Department of Health view on managing neural tube defects by termination. That is quite unacceptable. The human tragedy, much of which could be avoided by a science-led policy, should be the reason for a push on policy change. There are too many terminations, and too many babies are born with a serious lifelong disability. Mandation is needed to reduce this human distress and misery, to save lives by avoiding terminations, and to prevent lifelong disability and significant public health costs.

During the many times I have raised this matter over the last few years, I have never used any real-life examples, because the science tells the story. However, yesterday I found a letter from a colleague, who is absent from the House at present due to poor health. Although we knew each other for many years before we joined your Lordships' House, they have never mentioned their family history to me. Our colleague's letter said that before our colleague was born,

"my parents lost three children to spina bifida: one was still-born, one lived for a year and another for 6 weeks. The grief caused by these deaths cast a very long shadow over my parents' lives and indeed over my own—I felt an obligation to live for the three of them. The point is that this degree of suffering is largely avoidable by measures like your proposal".

We have the means, not for a complete cure but vastly to decrease this harm and misery. I cannot see how we can stand by and do nothing when we have the chance to reduce the human misery caused by neural tube defects. I beg to move.

1.44 pm

Baroness Hayman (CB): My Lords, the House owes a debt of gratitude to the noble Lord, Lord Rooker, for his persistence in pursuing this case. I should tell the Minister at the Dispatch Box that I was a colleague of the noble Lord, Lord Rooker, in the days when we were both young MPs in a hurry, and he is a formidable opponent. We are, in our later years, perhaps old Peers in a hurry, but that does not mean that we are any less determined on this issue. Today, the noble Lord has provided the House with irrefutable evidence of the case for supporting his Private Member's Bill, and in fact I think he has done more than that. A Private Member's Bill is not the way to implement a measure that is so self-evidently important for public health. He argued for a change in government policy, and I hope that the Minister will not be put in what I know to be the profoundly uncomfortable position on the Front Bench of once more defending the indefensible on this issue.

Last night I was telephoned by my son, who told me of his frustration over the length of time it was taking to get the Government to respond on a completely different, although equally important, issue. It is an issue supported by five Select Committee chairs and committees and over 90% of parents—that of making PSHE a statutory subject in the national curriculum so that all our young people are given the means to protect themselves in today's world. I fear that, when I explained to him that today I would be talking about an issue on which I had been campaigning for 25 years, that did not add to his optimism or enthusiasm. However, I also told him that one thing I had learned in politics was never to take no for an answer, and that applies to this issue and to his.

As I said, I first became aware of this matter in 1991. I was involved then, as I am now, in the ethics of medical research. The MRC trial, to which the noble Lord, Lord Rooker, referred, was the first trial I had ever known to end early. That was because the results were so clear that it was considered to be unethical to continue to allow one half of the group—the control group—not to receive the folic acid supplement which the other half was getting. The evidence that has had such a profound effect in the rest of the world, but not in the UK, is based on that trial.

A second reason for my concern was that in the preceding years I had helped to found an organisation called the Maternity Alliance. It was particularly involved in pre-conception care—in the health of mothers and babies. It was absolutely clear that the fortification of flour with folic acid was the most effective mechanism for delivering pre-conception and early pregnancy care, as has been demonstrated by the ineffectiveness of the supplement route, as the noble Lord, Lord Rooker, has demonstrated.

However, the main reason for my interest was that I had been having babies myself. I knew the intense anxiety of waiting for antenatal checks and then the birth, worrying about whether the baby was healthy, and thinking through what I would do in the case of an in utero diagnosis of an abnormality and having to face up to the question of whether to undergo a late termination.

[Baroness Hayman]

A generation has gone by; I am no longer having babies, but I am having grandchildren and I see my sons, their wives and partners going through exactly the same anxieties. It is no wonder that the British Pregnancy Advisory Service says that this one measure would ensure that some of the saddest cases it sees would not need to come through its doors, and women in the devastating situation of ending a wanted pregnancy because of foetal abnormality would no longer have to do so. Beyond that, many families would not have to deal with the devastating and heart-breaking situation described by the noble Lord, Lord Rooker, of one of our colleagues and of having to support children who endure short and painful lives because of the burden of preventable disease.

In those 25 years, we have had the opportunity in this country to see not just pilot schemes of fortification of flour with folic acid but mass implementation of it. We have had the opportunity to see the effect—an up-to-50% reduction in the incidence of the neural tube defects—and to see that the theoretical risks of the policy have been investigated and not come to fruition.

The question for the Government now is how they can in all conscience continue to ignore the evidence before them and not accept what their own Chief Medical Officer, the Scientific Advisory Committee on Nutrition, the other Administrations of the United Kingdom and the rest of the world accept. I cannot believe that they maintain their position given the conclusions of every piece of research—ending with that which found in December last year:

"Failure to implement folic acid fortification in the UK has caused, and continues to cause, avoidable terminations of pregnancy, stillbirths"—

and permits "serious disability in … children". That situation should not be allowed to continue. This Bill would not solve every instance of it, but it would do a great deal. Not to do what we can do is a dereliction of duty.

1.53 pm

Lord Hughes of Woodside (Lab): My Lords, I join the noble Baroness, Lady Hayman, in paying tribute to our mutual friend, the noble Lord, Lord Rooker, for bringing forward this Bill and I certainly hope he succeeds. The three of us, the noble Baroness, Lady Hayman, the noble Lord, Lord Rooker and I, were in the other place for some years together. I can testify to the noble Lord's capacity for identifying a public policy that needs to be taken up and his tenacity in seeing it through. He is perhaps best known, at least among the three of us, for the so-called Rooker-Wise amendment—an unlikely duo—which was successfully introduced to a Finance Bill to make national allowances subject to the rate of inflation. He annoyed the then Chancellor of the Exchequer, Denis Healey, no end. Such tenacity is worth having and it certainly makes us in your Lordships' House proud.

The issue of adding folic acid to flour has been around for a long time, because we share knowledge of the suffering of families who have had children aborted, who have lost children early or who have had children born with defects that last for years of their lifetime. The question must be asked: why are the Government so reluctant to move in the face of such indisputable evidence about the efficacy of adding folic acid to bread when there are certainly no signs at all of any detrimental effects in doing so? I do not know and I hope the Minister can answer that question.

At Question Time in the House—I say this without malice—the Answers given by the Minister for not doing so have been rather flimsy. He has cited the fact that health problems are improving in women, and there is no doubt about that. But beyond that, there is no reason why the Government cannot move. As my noble friend Lord Rooker said, many countries in the world already do this. The Scottish Government are considering moving on their own and have the power to do so as health is a devolved matter. It would be a great shame if that were to be the case.

Why is there such opposition? I know from personal experience how difficult it is to argue against those who, possibly for genuine reasons, are opposed to vaccination or fluoridisation of the water. I still have the scars on my back from trying to persuade Aberdeen Town Council to adopt that when I was the convener on the welfare committee there. I do not know whether it is a matter of prejudice. It cannot be ignorance because the facts are very well known. But the fact is there is huge opposition to any move to what is called public health medicine. The worst example of that is adding fluoride to the water. I emphasise absolutely what my noble friend said. Adding folic acid is not mass medication. That argument might be made in the case of putting fluoride in the water but this is a different matter altogether. This is a simple and straightforward measure that has been well documented as being successful and safe and for making people's lives much better.

As my noble friend said, this is not a panacea. It will not eradicate NTDs, but the fact that 50% of women may be beneficially affected by this is a prize that makes it worth doing. The only slight disagreement I might have, although I may have misheard what my noble friend Lady Hayman said, is whether this is the right way to go about getting the legislation. I may have misunderstood what she was saying. But in the face of a Government unwilling to move on their own account through lack of time—and goodness knows what the Government will face in terms of time in the coming months and years—it is absolutely essential that those who have the opportunity to bring forward a Private Member's Bill should do so.

Baroness Hayman: I would be more than content were the Minister to say today that the Bill in the name of the noble Lord, Lord Rooker, be taken forward with all speed and support by the Government in another place.

Lord Hughes of Woodside: Hear, hear to that. But in the event of that not being the case, it is the duty of this House to pass this legislation through all its stages and send it to the other place to deal with. That is imperative and essential and I am pleased to give my support to my noble friend Lord Rooker.

1.59 pm

Baroness Flather (CB): My Lords, I thank the noble Lord, Lord Rooker, for his very clear and forceful statement about adding folic acid. We cannot say that this should not be done. From what he said, there is no doubt that this should be taken up: adding folic acid to flour should take place very soon. If we can save any children from disability, it is our duty to do so. Since many other countries relied on UK research to bring in their own legislation on this, it is pretty pathetic that we have not. The US, Canada and Australia have done this using our research so it is very strange and pathetic that we have done nothing. I cannot understand what the negative is here. What could be the reason for not doing this? If there are, say, 50 births with defects, that is 50 people—human beings—who will not see a good life, or even see life at all. A friend had a daughter with spina bifida. It wrecked that girl's life and it wrecked the lives of her parents. It is not just the child—if they live—who suffers but the whole family.

I got up to say something else as well. It may not be the right moment—but then, when is the right moment? If folic acid is to be added to flour, I would like to make a case for adding vitamin D as well. People who have come from the subcontinent suffer greatly from vitamin D deficiency. There are now cases of rickets even in adults. There is a lot of evidence that vitamin D deficiency affects people from the subcontinent. Again, it will not hurt or harm anybody to add it. It is particularly necessary, if it is not to be added to all flour, that it be added to chapatti flour, the atta, which most Asian families use. This is a serious matter for Asian families and their children, as they, too, have rickets. When I was teaching many years ago, in the 1960s and 1970s, it was not unusual to see children who came from India in the classroom with rickets. There is no vitamin D around us here. In India or Pakistan, it is all round everybody. There is a new problem, too, because we now say to people, "Don't sit in the sun; you might get skin cancer". People are not keen to sit in the sun. It is a real issue. Many families from the subcontinent suffer from vitamin D deficiency.

As has been said, why can they not take supplements? We know that people are not good at self-medication of any kind. It is not medication but it is still something for their health. We get medication and all sorts of things, including advice. Do we take it? I think 90% of people are quite slack about it. That is why I make the case for adding to the Bill the vitamin D deficiency aspect. We will probably never get another chance to do this. If it can be done by an amendment, that would be absolutely wonderful. On the other hand, I have no intention of detracting from folic acid by putting this forward. Clearly, that is absolutely a must, must, must. But vitamin D deficiency is beginning to grow in this country and it would be a very good thing if that were taken on board.

2.03 pm

Lord Turnberg (Lab): My Lords, the usual folate aficionados speaking in this debate do not need me to talk about all the nasty effects of neural tube defects, spina bifida and the impact on children's lives and that of their parents, or repeat that folic acid given early in pregnancy is an extraordinarily effective preventive measure akin to vaccination and immunisation. There is no argument anywhere against that. We also know that if it is to work, folic acid must be taken before a woman knows she is pregnant because the neural tube forms in the first 28 days. Taking it when she confirms that she is pregnant is just too late. All that is accepted.

The argument for fortification has been made many times and, indeed, as we have heard, has been accepted in very many countries. Now many millions of people across the world have been eating bread made with fortified flour for very many years, and it seems that Scotland is about to follow. So what are the arguments against fortification in the UK? These rely on two major premises. First, this would be a case of mass medication and we should avoid that whenever possible. That is not unreasonable. It is a type of philosophical argument about free will and freedom of choice, and I understand that. However, I cannot accept it in this case. We already fortify our flour with iron, calcium and Vitamin B1—thiamine—without a peep from anyone.

I hope that I do not offend noble Lords if I say that I have just had a sandwich in the Bishops' Bar, and that I do not scare them when I tell them what was in the sandwich. In the white bread there was some wheat flour—that was useful—with added calcium, iron, niacin and thiamine. There was water, yeast, salt—that is reasonable—emulsifier, E472e, soya flour, preservative, E282, rapeseed oil, flour treatment agent—whatever that is—and a smidgen of E300. We add these things, and many others, despite the fact that the case for these sorts of fortification, especially of vitamin B1, are not nearly so compelling as that for folic acid. Vitamin B1 deficiency was something we saw in concentration camp victims. In normal life and normal diets, it is as rare as hen's teeth. Folate deficiency, on the other hand, is common, and its potential to cause devastating disease is there for everyone to see and accept.

The second argument against fortification is that folic acid, when taken in excess, can cause unpleasant side effects. That, too, is a rather specious argument. The amounts we are talking about, and the form in which it is added to flour, have been shown to be perfectly safe. Just look at the control trial in which the whole population of North America—many millions of people—took fortified flour for 10 or more years. You might have expected some of the threatened changes and dangers to have emerged, but there has been none. Large doses of folic acid may possibly be problematic, but then large doses of iron are also dangerous, yet we have carried on with iron fortification. Large doses of almost anything are dangerous. However, what we are talking about here is a small dose—a minute dose—that would pose no conceivable danger to anyone else and would prevent a very nasty disease.

I strongly support this Bill and am grateful to the noble Lord, Lord Rooker, for his persistence and tenacity. I hope that the Minister will think again about this whole thing.

2.07 pm

Baroness Walmsley (LD): My Lords, I strongly support the noble Lord, Lord Rooker, in putting forward the proposal that the UK mandates fortification of white flour with folic acid or vitamin B9, and I congratulate him on his Private Member's Bill and his persistence in promoting this measure. Twenty-five years ago when I first stood for Parliament, I was given the advice by my noble friend Lord Maclennan of Rogart to never take no for an answer. The noble Lord, Lord Rooker, is doing exactly that. It is good advice.

There have been mountains of scientific evidence that this fortification works in preventing foetal neural tube defects, prevents a great deal of disability and distress and causes no harm, as we have heard. When will the Government stop stalling and take action? I do wonder whether they would have taken the same attitude if it was a matter of men's health rather than that of women and babies. I wonder whether a woman Prime Minister would have a bit more understanding of the level of distress that is caused to women affected by this issue. Perhaps we should start a petition of all the thousands of women who over the years have had to have terminations for this reason, or given birth to children with terrible disabilities. Perhaps that might have some effect.

To my mind, five facts make the case. First, currently the folate levels in the blood of women in the UK of child-bearing age are below WHO recommended levels and risk NTDs.

Secondly, supplementing the diet with vitamin B9 can protect against neural tube defects that can be caused by a shortage of this vitamin. Thirdly, there are 1,000 cases—that is a lot of people—of NTDs in the UK every year, of which 800 are terminated and 200 are live births. The terminations and the live births cause parents great distress and cost the NHS a great deal of money, both for the terminations and for the lifelong services needed by the children. Fourthly, supplementation needs to take place, as we have heard, before the 27th day of gestation—long before most women know that they are pregnant. It really is nonsense to rely on the suggestion that women planning a pregnancy should take supplements when we know that half of all pregnancies are unplanned and so, if followed 100%, that would prevent, at most, only half the cases. You cannot rely on women taking supplements, because only 28% of women of childbearing age take vitamin supplements and, for women under 20—the age group least likely to plan their pregnancies—it is even lower, at 6%. Fifthly, the UK has the second-highest rate of unplanned pregnancies, behind only the USA. However, as we have of course heard, there they fortify their flour and have half the relative incidence of NTDs compared to us.

The problem is getting worse. The number of abortions due to NTDs has risen 40% in England and Wales in the four years to 2013, which is the latest figure that I have seen. The availability of terminations free on the NHS is not a cost-free option. Termination is not in the best interests of women, because it can cause great distress and present dangers to the woman's health. It is also a very bad strategy for the NHS, because terminations cost money and, of course, there are some women who would never choose a termination, no matter what. It is like controlling conception with the morning-after pill. It is even worse than closing the stable door after the horse has bolted; it is closing the stable door after the horse has bolted, broken down hundreds of fences and broken all four of its legs.

On the other hand, it would cost the Government nothing to insist that, along with calcium, iron, niacin and thiamine, manufacturers must fortify flour with folic acid. As we have heard, the principle of fortification has been established since World War II. I think that the case is made. At a time when prevention of disease is more important than ever before to ensure the sustainability of the health service because of the growing demand and rising costs, it is perverse to resist the call of the BMA and all the other medical and scientific experts, as well as the noble Lord, Lord Rooker, to agree to this small but important measure. I hope that the Government will stop procrastinating and will act by supporting and giving time to this Bill.

2.13 pm

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to wind up for the Opposition and to congratulate my noble friend Lord Rooker on bringing this Bill here. As the noble Baroness, Lady Hayman, said, my noble friend is not giving up. I am delighted about that; I hope that he will carry on with force to press the case.

The argument is overwhelming. It is not just a matter of regret in relation to the women and babies who have been so affected by the failure to implement an entirely rational decision. What is striking is that it was British research, led by that brilliant scientist Sir Nick Wald, which found the link and recommended as a result of the MRC work that flour be fortified—in 1991. This Government have an accelerated access review and have adopted a number of initiatives to speed up the introduction in the National Health Service of proven new technologies and medicines. Yet here we have a brilliant piece of British research that this country—unlike many other countries—has ignored. I think that is a matter of great regret.

The Government have clearly been prevaricating for a number of years. When the noble Earl, Lord Howe, was the Minister a few years ago, there was a clear indication that the Government were prepared to go with it. Then there was a step back and prevarication by referral to any number of scientific bodies. Finally, the noble Lord, Lord Prior, made it clear in one debate that the Government had decided not to go ahead.

That was followed up in his letter of 7 June 2016—I am very grateful for a copy of it—confirming that decision. In it, the noble Lord, Lord Prior of Brampton, said that,

"whilst we will continue to consider emerging evidence, the Government currently has no plans to take forward the mandatory fortification of white flour with folic acid in England".

So, essentially, the Government have made their decision, Like the noble Baroness, Lady Walmsley, and my noble friend Lord Hughes, I hope that the Minister will say exactly why they have done so. What happened to change the Government's view? Is it to do with the nanny state argument? What is it to do with?

If it is to do with the nanny state argument, I remind him of our debate earlier this week on the recommended number of units of alcohol. The Government took the CMO's advice to reduce the level—I am not sure it is right to call it the "recommended" level, but the Minister will understand me—from 18 units to 14 units per week for men. As I told him earlier in the week, I looked at the department's website to find out what the change in risk would be of keeping it at 18 units per week—but the website simply talks about risk.

I also went back to the main research in relation to cancer on which the decision was based and looked at the lay summary. Again, there is no quantification of the change in risk. Going through the paper, I encountered a lot of scientific terminology that, as a layman, I could not work out. My suspicion is that the actual change in risk is quite small. Yet the Government are quite prepared to accept that they should take action in that area. That is why I find it so puzzling that the Government will not take action in relation to folic acid in white flour. It is beyond comprehension.

Finally, I will mention the other issue raised in the Minister's letter. He is very gracious in agreeing to meet organisations that noble Lords ask him to meet, and he should know how grateful we are to him for that. But my noble friend Lord Rooker asked whether the Minister for Public Health, Jane Ellison, would meet Sir Nicholas Wald, and obviously she has turned down that request. I must say that it is outrageous for a Minister to turn down a meeting with Sir Nicholas Wald. He has huge scientific advances to his credit, and he was the leader of the research in 1991. Given that the Government have decided not to go ahead with fortification, it is really a bit much that the Minister concerned is not even prepared to tell Sir Nick to his face why they are not going ahead with it.

We know that the noble Lord, Lord Prior of Brampton, is a great servant of this House. I hope that at the end of this debate he might at least be able to open the door to some further dialogue on this matter.

2.18 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): I, too, congratulate the noble Lord, Lord Rooker. I think he has raised this issue in the House—I wrote this down—10 times in the past three years, as well as in a great many Written Questions. I have been a Minister for just over a year, and he has certainly raised it three times with me. You could say he hopes that doing so will be a triumph of hope over expectation, but it reflects his real passion and genuine heartfelt concern about such tragedies. He mentioned a letter he had received from a colleague whose mother had lost three children from spina bifida, and other noble Lords have brought home to the House what the impact can be. We can sometimes have rather arcane debates in this House, but that impact is very profound not just on the children but on the parents and families of those children. Far from being an irritation to those of us on this side of the House, his single-minded determination to keep this issue before the House has won him a great deal of admiration and respect in all parts of the House.

Perhaps I may start with the science, although frankly my argument will not be with the science. The noble Lord and others have argued that the science is absolutely black and white; I would say that it is clearly strong but there are still some residual issues.

The SACN has advised that the fortification of white bread flour with folic acid should be introduced only if it is accompanied by a number of preconditions: for example, action to reduce folic acid intakes from voluntary fortified foods, to ensure that individuals do not substantially exceed their safe maximum daily intake of folic acid. The noble Lord, Lord Turnberg, addressed that in his speech so it is perhaps questionable how strong that argument is. It also told us that there is inconclusive evidence on several possible adverse health effects of the mandatory fortification of flour with folic acid. For example, for people aged 65 and over, folate fortification of flour may result in cases of vitamin B12 deficiency not being diagnosed and treated.

However, there is no doubt, certainly in my mind, that the scientific evidence is strong. Regarding other countries, the noble Lord, Lord Rooker, mentioned the huge controlled experiment in America. I certainly would not feel comfortable standing here today and arguing with him on the science. Mine is a different argument: fundamentally, it is not a scientific dispute but more of a philosophical dispute. The science is to inform policy but not to determine it. For policy, we must look more to philosophers than scientists, more to moral choice than scientific experiment, and of course to Parliament and not the laboratory.

The nub of the question is this balance between state and individual responsibility. I know that when we bring it down to this issue, it may be felt to be beside the point but that balance is important because it is fundamental to the kind of society that we choose to live in. It is perhaps especially important now, when lifestyle behaviour is becoming such a big driver of healthcare demand. It is such a big driver that unless it is addressed, there is a serious risk that no healthcare system anywhere in the world will be able to afford the level of healthcare that we expect. I know that a special committee of the House of Lords is looking at this now.

Lord Hughes of Woodside: My Lords, can the Minister explain whether his argument on philosophy applies only to this measure? Does it apply to the treatment of water for safety purposes or to vaccination? It is equivalent to saying that vaccination should not be compulsory in any sense of the word. Where does the line fall as to where the philosophy overcomes the practicality of the matter?

Lord Prior of Brampton: The noble Lord makes a very good point and I hope to address that issue as I go through this, because where the line is drawn is critical to the debate that we should be having.

The ways in which we live our lives—what we eat or drink, how much exercise we should take and how we should look after ourselves and one another—all directly impact on the likelihood of getting cancer, a stroke or diabetes, or premature death. In this case it directly affects the health of children, so prevention has never

[Lord Prior of Brampton]
been more important. I am sure everyone in this House would agree. The question, as raised by the noble Lord, is then: what are this Government or any Government to do? At one extreme, the answer is to do nothing and, at the other, it is to be highly prescriptive: to determine how we should all live and what we should eat and drink.

The noble Lord, Lord Hunt, referred to alcohol, which I will take as an example. The Government could have washed their hands entirely of that issue and left it to individuals—the classic, John Galt, libertarian approach, which he may have read about in *Atlas Shrugged* in his youth. Alternatively, they could have opted for some form of prohibition, as tried in the USA and as we do with certain drugs today—although with profound unintended consequences, I might add.

In the UK, as in most democracies, the balance as to where responsibility lies has shifted over the years. It has not shifted seismically or even consistently—there have been ebbs and flows of where that line should be drawn over the years—but it has shifted away from government intervention towards the individual. That is not surprising: you would expect that shift as the population becomes better educated, better informed and better able to make good decisions.

Baroness Flather: Could the noble Lord give way?

Lord Prior of Brampton: I will in a minute but will just finish this point. That is not to say that the Government have no role—far from it—just that the role is different. It is to inform, to educate, to persuade, to nudge, to incentivise, to influence and to cajole but not, I would argue, to dictate, except in the most extreme and difficult circumstances.

Baroness Flather: What amazes me is that we are talking about nudging and not doing this or that, but we often have research on issues which are of great importance not only to the individual—as we have been talking about—but to the family and to the country. When a child needs lifelong care, surely it is not a good idea to not do anything about that. We seem to be going round and round, saying that we cannot be led by research, while the Government must have their policy. But what is the policy based on?

Baroness Walmsley: The noble Lord has just read out a list of the functions of government. Would he not add protection to that? We chlorinate all our water to protect people from water-borne diseases. Why not put folic acid in flour?

Lord Prior of Brampton: I will continue with the example that the noble Lord, Lord Hunt, gave, of alcohol. Clearly, the Government have the responsibility to put the science into the public domain. But should they ban people from drinking more than 14 units of alcohol a week or should they leave it to people to make that choice themselves, on the basis of the information that they have? That is the philosophy that lies behind the Government's position on folic acid. It is also our thinking on how we address the scourge of obesity and lies behind the way we deal with our smoking and alcohol problems and behind all our prevention strategies. It is about doing all we can to help people make the right choice, but ultimately accepting, outside of extreme circumstances, that the final choice has to be made by them and not by the Government.

This is why the Government agree with the statement made by my honourable friend in the other place, Jane Ellison, when she said that the Government consider that a broad approach to the promotion of good pre-conception health needs to be taken to make sure every child gets the best start in life. On balance, the Government have decided that mandatory fortification is not the right way forward and therefore have no plans to introduce it in England.

We know that good pre-conception health, of both future mothers and fathers, can lead to healthier pregnancies and good infant health. By contrast, poor pre-conception health—for example due to diabetes, poor diet, obesity or smoking—can lead to poor pregnancy outcomes, including gestational diabetes, NTDs, premature births, and poor perinatal and infant mental health.

Many parents make few preparations to improve their health before pregnancy. That is why a more proactive approach which promotes good pre-conception health to reduce the risk of poor pregnancy outcomes for women and their families should be adopted. This is why my colleague Jane Ellison has set up a ministerial round table. She held her first meeting with interest groups on 13 June to help identify additional measures to promote good pre-conception health.

I recognise the tragedy of neural tube defects. I recognise the urgency and passion that lies behind this Private Member's Bill but, at this time, the Government have decided that, on balance, we are against mandatory fortification of white bread with folic acid and therefore have no plans to introduce it in England. Instead, all our efforts will be directed at promoting good pre-conception health. I realise that that is a disappointing but probably not unexpected reply to the noble Lord, Lord Rooker, and to his colleagues who support the Bill. Of course, that balance may change over time. As the noble Baroness, Lady Hayman, said, he is a formidable opponent and I have no doubt that he will carry on pushing the case for fortifying with folic acid. In time, who knows where that argument will go but, for the time being, the Government's position is that we will not support the Bill.

2.31 pm

Lord Rooker: My Lords, I do not propose to make a windup speech, but I thank all colleagues who have spoken—I am very grateful. I am grateful to the Minister as well, because we have had a little more time today than we get in Question Time exchanges. I understand where he is coming from. I do not accept it, but at least he has put things on the record about the philosophy argument that will be useful for the future.

It is a bit like somebody in South America at the moment finding a real cure for the Zika virus and not using it. We are standing by with a 100% cure and not

using it. I used the example of the United States of America. They do not just do fortification, they have a disability child awareness month and a folic acid awareness week as well—we do not even do that; that is refused as well in Parliamentary Answers—that is voluntary, but they see the benefit of it. Basically, you are on your own, girls. That is a summation of where we are. The Government refuse to accept the fact that half of pregnancies are unplanned. Despite any pre-conception advice, half of pregnancies are unplanned. People will not be listening. That is one of the problems.

I tried to keep my speech devoid of all the scientific quotes, but the issue about the industry is important. I fully accept that the advice to industry from the Scientific Advisory Committee on Nutrition on mandatory fortification was, "Be careful what you do voluntarily". Since its warning letter last October, industry has taken steps to reduce its voluntary folic acid fortification on the basis that the advice of 2006 would be implemented at some time—that is, there would be mandatory fortification. We have a problem. The industry is reducing voluntary fortification and we are not introducing mandatory fortification, so the position will be even worse. The blood levels will be even lower as a result. That is a cause for concern and I have not heard a solution to it.

I also avoided any reference to devolution. The English Government, for whom the Minister speaks—he does not claim to speak for anyone else—could well be faced, in the next couple of years, because these things take a while, with Scotland, Wales and Northern Ireland legislating for white bread flour fortification. The mills are in the wrong place when one looks at the borders. Industry wants a UK solution. As I said, during the general election, I wasted time knocking on doors, but I also spent time with Sir Nicholas Wald and Sir Colin Blakemore visiting the supplement manufacturers and others. It is quite clear that they want a UK-wide solution.

In September, the Cabinet Secretary for Health and Sport in Scotland and the Chief Medical Officer in Scotland had a meeting with myself, Sir Nicholas Wald and Sir Colin Blakemore to listen to the argument. They do not have all the solutions, and do not profess to have all the answers. Scientists do ask the question, which is why, when I left the Food Standards Agency, I said I would pursue this. The independent scientists were saying on this and on other issues that Government never pronounce about the advice. In this case, the Government have pronounced; they said no. I fully accept that; there is no doubt about that any more. We know where we stand, but I am not going away, and I beg to move the Bill be read a second time.

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

House adjourned at 2.36 pm.

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