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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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

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House of Lords

Friday 21 October 2016

10 am

Prayers—read by the Lord Bishop of Birmingham.

House of Lords Bill [HL]

Second Reading

10.05 am

Moved by ***Lord Elton***

That the Bill be now read a second time.

Lord Elton (Con): My Lords, I have brought this Bill before your Lordships because, although I have served in this House since 1973, I do not remember a time when Parliament has stood lower in public esteem than now. There is deep unease in this country with not just parliamentarians but Parliament itself. We need to be aware of what lies further down that road if we do nothing: a growing disillusion with not just us—we are expendable—or with the Westminster model, which is amendable, but with parliamentary democracy itself as the safest and surest way for a free people to manage their affairs under the law.

An important function of this House is to give the public reason to be confident in our Parliament, and to do that we need to take action now before that troll begins to stir in its mountain. Noble Lords may think that I exaggerate the danger but I assure them that it is there. It is frequently cloaked by the smoke drifting across the field from the artillery engaged in Brexit, Boundary Commissions, Calais, Syria and so on, but it is there and it constantly emerges, and every time it is stronger. If only we could give eye-catching, attention-getting proof that Parliament knows that it needs mending and is prepared to do the job itself. The attempt in 1999 to carry out wholesale reform of this House proved that every aspect of that reform was highly controversial. Controversy in Parliament takes time—legislative time—which we do not have.

On only one issue that has not already been dealt with in isolation has controversy subsided and consensus begun to emerge in the media, among the public and even in Parliament. The irony of the present situation was highlighted by the debate in the Commons on Wednesday on a complex Motion which brought together the two issues of Lords reform and boundary changes—that is, one big House getting bigger and one smaller House getting smaller. That alone is enough to draw the attention of those who have not been paying attention to the embarrassing position—to say the least—in which we find ourselves today. If your Lordships care to read that colourful debate, which is not at all flattering to them, they may be wiser on this issue.

People agree that there are too many of us. However, that is not the only, or the most important, problem. The reservoir of expertise among rare attenders is a strength rather than a weakness. Against that we have the experience of debates with speaking time limits of a single minute for Back-Benchers and, indeed, for an Archbishop of Canterbury, of more than a few not being able to get a seat in the Chamber at all on an increasing number of occasions, even of a certain difficulty, which I hope does not yet extend to the Doorkeepers, although it well may, of remembering who everybody is and where they are coming from, in the current jargon.

There is internal unease and growing public resentment of the cost of our numbers at the present rate of attendance. Because of the absolute need for consensus, this Bill addresses only one issue—the number of Members of this House. The prime importance of consensus means that it has to leave intact the Prime Minister's power to appoint new Peers, which is a position many of my noble friends and others would like to see diminished. However, that is not on the table at the moment. The Bill avoids all the other wasps' nests stirred up by the great debates on reform in 1999, because every one of them would cause enough disagreement to kill the Bill. It does not affect existing party balances, does not propose an age limit or a limited tenure or any involvement of the parliamentary electorate and does not stake out a particular number of seats for Cross-Benchers or anybody else. It does not even touch the Bishops' Benches, although we shall be very interested to hear the account of the right reverend Prelate the Bishop of Birmingham of his brethren's intentions. The Bill addresses the single question of size and no other.

The Prime Minister's power of appointment means that whatever limit is agreed will be exceeded as soon as he or she uses it and must be reimposed at the beginning of every Parliament. Therefore, the Bill focuses instead on the Writ of Summons which will entitle its recipient to sit only until the first Session of the Parliament after the one in which he or she was appointed. Membership beyond that point would be determined by elections within each affiliation group. The power to design those elections is delegated, within certain parameters, to the House of Lords and is to be implemented in the new Standing Order. This is, therefore, essentially an enabling Bill, but I anticipate that your Lordships will be more interested for the most part in what we do with the enablement than what is in the Bill itself, which is of course important. The Standing Orders in this House, however, are devised by the Procedure Committee and then put into place by a Motion of the whole House. The draft Standing Order I put into the Explanatory Notes to the Bill is just that—a draft. It is important that we discuss it—our discussion will be helpful to that committee in drawing up the final version—but we cannot amend it in any way at any stage of the Bill. That is for the committee, to which any representations must be made.

The draft is a modification of Standing Order No. 10 under which elections were successfully held to reduce the membership of this House by, I remind your Lordships, just over 50% in 1999: a far bigger task than we face today. Nevertheless, I understand that I stand in the position of a consultant anxiously telling a patient that some form of surgery is necessary. My task is to convince your Lordships that it is indeed necessary and that it need not be unduly painful, and in the end the patient's life expectancy will be extended by it.

[LORD ELTON]

Under the proposal, each affiliation group will hold its election in secret. Each will be allocated the same proportion of the new, smaller total that it had of the total immediately before the election. In other words, every group will be reduced by the same percentage. In round figures, if 800 were to be reduced to 600, the new total would be 75% of the old, the House would therefore have lost 25% of its Members, and every constituent group would be reduced by 25%. The political balance in the House would remain unchanged; as I say, the Bill and the draft order do not seek to do anything except to address the size. There is great discontent about all sorts of other elements of our House, but this is all it touches.

The Explanatory Notes are pretty explicit, but I had better follow the convention and quickly tell your Lordships that Clause 1 limits the period during which the holders of peerages are automatically Members of the House. Their right to sit extends through the remainder of the Parliament in which they were appointed, and ends at the end of the first Session of the next Parliament. Clause 2 delegates to this House the power to grant exemption from this rule and sets the parameters within which it may do so. A lot of this draws on the 1999 Act. Clause 2(1) provides that the disapplication should be by means of a Standing Order; Clause 2(2) limits the exemptions to a specified number and their duration from the beginning of the first Session of one Parliament to the end of the first Session of the next. Clause 2(3) defines the specified number as the number of MPs and not as that number or less—that may have got obscured in my explanation earlier. Clause 2(4) says that the two ex officio hereditary Members are unaffected by the Bill. Clause 2(5)—this is the reassuring one—gives the Clerk of the Parliaments the power and duty to decide whether a person has been properly elected if that comes into question. Clause 3 is necessary to preserve the rights of non-parliamentary Peers to vote in parliamentary elections. Clause 4 is a consequential amendment of the 1999 Act.

That is all I will say at this stage. However, I will revert to the question of the need for consensus. To give your Lordships a glimmer of hope as to the future of this measure I read from the words of Mr Ellis, the deputy leader of the House of Commons, who said:

> "It is right that the House of Lords continues to look at how it can work more effectively. Where further possible steps can command consensus, Her Majesty's Government would welcome working with peers to take reasonable measures forward in this Parliament. If that is possible in consensus with peers, we would welcome doing so".—[*Official Report*, Commons, 19/10/16; col. 888.]

Following the continuation of the brawl that constituted the debate—at least that is what it would look like from these Benches—we come to the wind up for the Government of the debate on a Scottish Nationalist Party Motion:

> "The Government agree that the House of Lords is too large, but believe that it must be for the Lords themselves to lead the process".—[*Official Report*, Commons, 19/10/16; col. 915.]

I invite noble Lords to become the leaders of that process. I beg to move.

10.17 am

Lord Strathclyde (Con): My Lords, I am delighted to follow my noble friend in this debate on the Second Reading of his Bill. As he has ably demonstrated this morning, he knows a great deal about the House of Lords; he has studied it for a long time and has come forward with a workable proposal. I also thank him because he consulted widely on the Bill, right across the House, amended it from his original draft and has now presented it to the House. As he explained, the aim is to reduce the total number of Members of this House. My noble friend produced but one reason for it: the way Parliament is regarded as a whole from outside, by the public. I am not entirely convinced that the Bill would necessarily solve that. The reasons why Parliament is not held as well as it once was are many and varied; we do not need to go into those today.

There are a number of ways to achieve what my noble friend wants. The simplest—the noble Lord, Lord Steel, talked about it—is an automatic age limit of 80, and there are powerful statistics to demonstrate that, in an ever-ageing House, that would be a good way to reduce the numbers. However, for obvious reasons, that is deeply unpopular in this House and, apart from anything else, I am not entirely convinced that it would be legal, given the various equalities Acts that exist.

More Peers could be encouraged to take voluntary retirement from the House, which was impossible until two or three years ago. You could take a leave of absence but you could not exclude yourself permanently. We now can, and there are various ideas about how that could be made more practical. My view is that, given that this House is due to be relocated in a few years and we are to be removed from this building, we may well find then that more Peers are prepared to take voluntary retirement than is the case today.

The system that my noble friend has alighted on is well precedented, and the last time it was used, it worked. However, I have to say to noble Lords from all parts of the House that it is not an easy or pleasant system to go through—in fact, it is deeply unpleasant, and my noble friend and I have both been through it. It is precedented by the late Lord Weatherill's amendment to the 1999 Act, which generally speaking has been a success. I wonder whether, if we were to use this for the whole House, my noble friend has considered some de minimis provisions for very small parties. We have only one Member from the Green Party, and it would be difficult to reduce her by 25%. I am not sure whether UKIP is a full designation in this House, but it may well be under the terms of the Bill or if it becomes an Act.

My real purpose is to question the motivation, intention and necessity behind the proposal. I spent a bit of time reading some statistics from the very helpful people in the Library. Taking the basis of the Bill—that the House should not be bigger than 600—I decided to test how many people currently attend the House. We all know the overall figures: just over 800 Members are entitled to sit, and that is an increase since 1999-2000 of about 220. Since 2015-16, the figure has increased by about 100. Perhaps unsurprisingly, the daily attendance has increased by a similar number: currently, about

100 more Peers attend on a daily basis than did in 2009-10. What is interesting about these daily attendance figures—these are averages across the Session—is that none is anywhere near 600; in fact, none breaches 500. Therefore, they are well within the limit set by my noble friend. In the current year, the average daily attendance is 471 and in 2009-10 it was 388.

The next interesting statistics to look at are for Divisions over the past 10 years, which measure a good degree of participation in the House. In 2009-10, which was a short Session, the average number of Peers voting per Division was 206. The most recent figures available, for 2015-16, show that there were 114 Divisions with 362 Peers on average voting. It is interesting that, in the past 10 years, the highest average number of Members voting per Division was 394 in the 2013-14 Session. What I extrapolate from these figures is that the problem may not be quite as big as my noble friend thinks.

In discussing this with many Peers, I have realised that there seems to be more of a problem at Question Time, when the House is very full indeed. Again, there are many different reasons for that, and perhaps we should ask the Procedure Committee to consider moving Question Time to another time of the day to see whether that would lessen the problem. My question is: is the proposal necessary?

Comparing this House to the House of Commons is also not as helpful as one might initially suggest. We are a very different and varied House. We are not like Members of another place. We do not represent anybody and we do not have constituencies, but we are very regionally based. There are full-time Peers here, sitting on all the Front Benches, who devote their lives to this House. There are Peers who have retired from their formal employment who devote a great deal of time to this House, and there are those who are in part employment or full employment. In other words, people come when they can to try to play their part. I worry that the Bill would create the spectre of a full-time and, increasingly, fully paid House. My point for the Minister is to be very cautious in accepting this.

This will be an extremely useful and interesting debate.

Lord Forsyth of Drumlean (Con): Does my noble friend not conclude from the statistics that he has drawn to the attention of the House that the issue is the relationship between attendance and participation?

Lord Strathclyde: My Lords, no, I do not. I produced the average daily figures for attendance and for voting in Divisions. It is entirely fair that some Peers come here and do not necessarily vote. There may be many reasons for that, including for the Cross-Benchers, who often do not vote in Divisions for their own political reasons.

The point I was about to make, which my noble friend might enjoy, concerns whether the House of Commons would welcome the Bill. We know what the House of Commons thinks. Only a few short years ago, the Deputy Prime Minister, Nick Clegg, produced a Bill in the House of Commons to have a largely elected House of Lords, which was passed overwhelmingly. I wonder whether enough time has gone by to ask the House of Commons to consider again a reduction Bill rather than an elected Bill.

10.27 am

Lord Goodlad (Con): My Lords, I join my noble friend Lord Strathclyde in warmly congratulating my noble friend Lord Elton on bringing this Bill before the House. I offer both him and the Bill my warm support. My noble friend mentioned the surgeon who told a bewildered patient that they needed some form of surgery. My late father was a doctor. He told me that when faced with a particularly bewildering diagnosis, he occasionally fell back on the formula, "Have you had this before?", to which the patient would usually say, "Yes, something like it, a few years ago". My father would then say, "Well, I think you've got it again". We have been round something similar to this course before.

My noble friend Lord Strathclyde referred to the unpleasantness of the elections that took place following the passage of the Weatherill amendment. Those of us who have even more experience of elections than my two noble friends would say that that would have to be a matter for the opinion of noble Lords, but elections, unpleasant as they may be, are tolerable and sometimes necessary.

The Bill encapsulates a growing consensus in the House—consensus rather than unanimity—about how best to limit our numbers. That consensus has a long pedigree, for which my noble friend Lord Jopling—who I am happy to see in his place but who I know cannot stay until the end of the debate because of a charitable obligation and therefore cannot contribute—deserves a large amount of credit. He has blazed the trail for this particular format.

The Bill, is wisely narrow in scope. Important matters such as the functions and powers of the House are wisely left for another day. That narrowness in scope none the less does not entirely avoid the necessity of considering contentious issues during its further stages, if such there be. Is it wise to leave the Prime Minister's present powers untrammelled? We are in the present position because they are effectively quite untrammelled.

The Bill does not solve the problems raised by the current definition of recognised affiliation groups. The UK Independence Party's 4 million votes at the last election are not reflected in its representation here. The position of the Liberal Democrats here is similarly anomalous. A combination of votes cast in favour of and seats won by existing and—who knows?—as yet unthought-of political groupings, could produce a formula for a better definition of recognised affiliation groups. My noble friend Lord Jopling has done much work on this. As to the timing of elections within affiliation groups, perhaps it would be better for them to take place immediately after general elections rather than immediately before, to give a more up-to-date reflection of popular opinion.

My noble friend's Bill is wholly in tune with the will of the Government, as expressed by my noble friend Lady Chisholm of Owlpen in our debate on 16 September, to work with noble Lords to support incremental reform that commands consensus across the House.

[LORD GOODLAD]

I hope the Government will give effect to that will by providing as much time as is necessary to consider the remaining stages of the Bill, so that consensus may emerge from its chrysalis with wings fully and gloriously emblazoned. I remind those who, perish the thought, might seek to inhibit the passage of the Bill of William Blake's warning in *Auguries of Innocence:*

> "Kill not the Moth nor Butterfly
> For the Last Judgment draweth nigh".

10.31 am

The Lord Bishop of Birmingham: My Lords, I am resisting the temptation to tear up my notes and respond to the noble Lord's last quote. I am grateful to the noble Lord, Lord Elton, for again bringing before us this important matter. It is widely agreed in many places that as we seek to be effective as a House, the size of the House is of great concern. Of course, as has already been said by the noble Lord, Lord Strathclyde, recent changes have attempted to alleviate the size of the House—we have adopted retirement provisions—yet they have not been sufficient to alleviate the flow of new Members. The statistics have already been referred to.

From this Bench, the Lords spiritual have spoken consistently over the past few years in support of reform aimed at addressing the size of the House—and we do so again, keeping in mind the aim of the House to improve the core functions of our scrutiny of legislation and government proposals from the other House, and of offering expertise and independence, which have already been referred to. That the initiative for change, responding to a clear need with a focused and incremental approach, is once again being led by your Lordships' House rather than imposed from outside is to be welcomed. But taking decisive responsibility for making delicate if radical constitutional improvements is something that we can do, keeping in mind our determination to better serve the country. I believe that it is a good way forward.

In detail, your Lordships' House and this Parliament have already made a change to allow women to serve on this Bench in a small constitutional change. I will also refer to the debate this week in the other place that has already been mentioned. Noble Lords may also like to know that there are some such as myself on this Bench who were born and bred in Scotland and have strong roots in that part of Britain—but if that is too detailed a point to make, noble Lords may ignore it and I will continue.

This current Bill leads the Lords spiritual untouched at this stage and applies only to the Lords temporal. Noble Lords may think that that is appropriate, given the different circumstances that pertain as to how we on this Bench arrive and leave your Lordships' House. Nonetheless, when it comes to the size of the House, including the most recent government Bill in 2011-12, referred to by the noble Lord, Lord Strathclyde, we acknowledge that if the overall size of the House is to be reduced, of course the Lords spiritual must play their full part in that arrangement. That means that we would indeed continue to look constructively at a decrease in our own numbers in proportion with an overall decrease in the size of your Lordships' House.

Noble Lords may know that at the moment, the number of Lords spiritual is fixed at 26, which has been the case for more than 150 years. I cannot compete with the detailed statistics provided by the noble Lord, Lord Strathclyde, but the proportion of bishops in your Lordships' House has risen and fallen over that long period over successive decades. It is currently running at about 3% of your Lordships' House and has been in recent years.

Lord Elton: Will the right reverend Prelate forgive an academic interruption to point out that before the Reformation, this House consisted of more Lords spiritual than Lords temporal?

The Lord Bishop of Birmingham: I thank the noble Lord for his reminder of that. I did not want to give a history lesson today, but behind my remarks and the responsibility that we are taking for incremental change is the desire for stability and to give consistent service to the country at a time when there is widespread uncertainty in other areas.

Lords spiritual have some experience, therefore, under the present arrangements, of living within the constraints of an upper cap on numbers. We also have the experience of one of the alternatives to a cap on numbers—a compulsory retirement age. In your Lordships' House, that is set at the ridiculously young age of 70—which is when a bishop has to leave their see and retire from stipendiary service. The 2011-12 Bill wisely left space for the Church to determine a mechanism for a smaller number of Lords spiritual to be selected to receive a Writ of Summons. As we go on in these debates, that is something that we might find useful in the process.

I will indulge in a pastoral note in passing. While we are having these discussions, we should not inadvertently regard newcomers to the House as an unwelcome nuisance, nor should we regard older Members —here I am not patronising the excellent initiative taken by the noble Lord, Lord Elton—as merely taking up space. There are many on all sides who will bring great value to this House during the years ahead.

There are many noble Lords here today who are better qualified to go into the detail of this Bill and suggest alternative schemes. In the proposals before the House today, there are, as has already been hinted, unresolved questions about patronage and the potential to add numbers during the period suggested, which might distort the process. I hope that the Bill proceeds from today so that we can have these and other matters discussed further for decisive action as well as careful consideration.

10.38 am

The Earl of Caithness (Con): My Lords, my noble friend Lord Elton is absolutely right to say that there is concern about the size of the House. But my noble friend Lord Strathclyde is equally right to say that this is more a perception than reality. Of course, there was a perception pre-1999 that the House was too big, but the vast number of the hereditary Peers did not attend. The net result of the 1999 Act was that about 90 working hereditaries were removed from the House, as well as a lot of non-working hereditaries.

If we are concerned about the size of the House, the Bill before us does nothing to reassure me. To limit this House to the size of the House of Commons would positively encourage Prime Ministers to keep on appointing working Peers in order to build up their number to 600. I think that that would be to the great detriment of the House.

My noble friend Lord Strathclyde was absolutely right to say that when we move out of here in a few years' time, that will be the ideal point at which to start reducing numbers. Rather than follow the suggestion of my noble friend Lord Elton, I would rather go for a fixed number of Peers. I would go for 350, which is not that different from the current working House. To have a figure of 600 that would be variable over the course of a five-year Parliament would be a nonsense that would not help the situation.

If it comes to an election in order to achieve that, it will be nothing new in your Lordships' House. For 273 out of the last 309 years, part of this House has been elected. I refer in particular to the Scottish representative Peers. Since 1707 until the Peerage Act 1963, there were 16 elected Scottish Peers—Peers of Scotland. After every general election they held an open election in Holyrood Palace, to which they were summoned, and they decided who the 16 would be. When that happened in 1707, it represented a reduction of 90% of Peers sitting in Parliament, because there had been 143 Scottish hereditary Peers sitting in the Scottish Parliament. So what my noble friend Lord Elton suggested, and indeed what the Lord Chancellor at the time, the noble and learned Lord, Lord Irvine of Lairg, who I am pleased to see in his place, did in 1999 is minor in comparison with what the Scots suffered in 1707.

One of the problems that resulted from the reduction in 1707 applies to what my noble friend suggested. There was resentment in Scotland that they were not properly represented. As we move increasingly towards becoming a full-time working House, the remoter parts of the country are going to get cut off. I found this particularly when I was living in Caithness; it was one of my reasons for moving back to London. If one wanted to take part in business here on a Monday, the only way to guarantee that was to leave home on Sunday night. On a good day it was possible to make the journey in around five hours, but on a bad day it could take well over 16 hours. If the House of Lords is to become more political and professional, inevitably Peers in the outer reaches are going to be squeezed because they will not be able to participate.

Lord Foulkes of Cumnock (Lab): I support what the noble Earl said. Is he aware that almost 50% of the membership of this House is currently from London and the south-east of England?

The Earl of Caithness: My Lords, I am grateful to hear that from someone who lives comparatively close to an airport compared to where I used to live. I always welcome the noble Lord's support—and indeed he makes a point for me. We are far too south-east orientated—M25-orientated—and if there is to be an election, it should be on a regional basis rather than on any other. We must make certain that we cover the geography of this country.

Also, the election should not be held on the proportion of Peers sitting at the moment but on the vote at the last general election. At the moment we have a disproportionate number of Liberal Peers, while the number of UKIP Peers in this House is insufficient to represent the electorate, and there are no Scottish Nationalist Peers. That might be their choice, but at least it should be built into our legislation that the parties that get a certain percentage of the vote at a general election should be allowed to be represented here. It should be up to them who they put up and in which region.

So I say to my noble friend that I would like more of what he is proposing in the Standing Orders to be on the face of the Bill—far too much is left to Standing Orders—and that the system that he is proposing is not one that will be workable or indeed popular throughout the country.

10.44 am

Viscount Bridgeman (Con): My Lords, I too thank my noble friend Lord Elton for the work that he has put into this Bill and I appreciate the wide consultation that he has undertaken. The Bill is to be welcomed because it is a constructive attempt to address the problem of the size of the House, which dominates our thinking at present. My noble friend has made the point that it is complementary to other related measures which may be on the table for consideration or debate at some point in the future, an example being that of possible legislation to abolish the by-election of hereditary Peers.

Several other schemes are being introduced to restrict the size of the House, many of which are based on the arithmetic of linking its composition either to votes cast, seats won, or a combination of both based on the results of the last general election. I think that the Bill in the name of my noble friend Lord Elton would fall into that category. All of them will involve a cull of Peers who are currently Members of your Lordships' House. As my noble friend Lord Strathclyde and others have pointed out, there is only one example of this, which was the House of Lords Act 1999. There will be many Members of your Lordships' House who will recall the sadness and bitterness that accompanied the process. Perhaps I may retrospectively pay tribute to my noble friend Lord Strathclyde for the sensitivity and skill with which he conducted that process.

Every cull will cause its personal problems, but my noble friend's Bill has one positive feature. Unlike most of the arithmetical schemes which are based in some form on the results of the most recent general election, this Bill provides that the proportion of Peers surrendered by each category is the same. This is a very important point. We have had an example which according even to my limited arithmetic would mean around 800 Peers being reduced to 600. I suggest that this arrangement will be seen both inside and outside the House as more equitable than some of the other proposals where the proportion surrendered, geared to the results in the Commons, will vary widely between the categories. My noble friend Lord Caithness was slightly more specific about this point.

The process of reducing our numbers under this Bill will be relatively straightforward in the case of the three main political parties. For the Cross-Benchers it

[VISCOUNT BRIDGEMAN]
will be a challenge, but I suggest that the members of that group will be well able to achieve a mutually acceptable procedure. However, I have one problem about the proposed reduction. On the first time there is no problem but can my noble friend reassure me that, under paragraph 6 of the new Standing Order, in the case of a large number of Peers being appointed by the Prime Minister there is not a danger of the advantage to that party being carried through to subsequent Parliaments? I shall leave that with my noble friend, and in conclusion I congratulate him on the work he has put into this Bill.

10.47 am

Lord Selsdon (Con): My Lords, I have been here for only 50 years or so. We have six Members who have been here for more than 50 years. It is a remarkable institution that I thoroughly enjoy. The question here is about age and length of service. I have details of every single Peer who has served in this House, and our weakness at the moment lies in the number of new entrants who are untrained and inexperienced. As I say, six of us have been here for more than 50 years, 23 for between 40 and 50 years and 30 for 40 to 45 years; those are long years of service and they mean that we have quite a remarkable knowledge base.

I am an elected hereditary Peer who was one of those who fought hard to be elected when my noble friend Lord Strathclyde was trying to do something else at that point. Since then we have found that the elected hereditary Peers have the highest level of attendance and the greatest amount of participation in the House. The problem above all others is that we do not know each other. I have before me details of the length of service and details of every Peer. For fun we had an exercise whereby it might be nice to reward people for their service by binding up copies of their speeches in red vellum as memorial gifts for their long service. My noble friend Lord Carrington is our longest-serving Member, followed by my noble friend Lord Denham, and this great expertise and knowledge, if we can call them that, need to be understood. However, we do not know who we are. It is extraordinarily difficult to put names to the faces one sees in the House. I was sitting quietly and looking to see who I knew as several Peers came through the door. I found that the only way to get to know anybody these days is to ask the doorkeepers. How they have that ability to remember everyone, I do not know.

The question, therefore, is: if we look at length of service, do we ask people to retire because of age, or do we ask that they should retire because they have not performed? Performance is probably one issue to look at. I have all the figures for those who have not attended at all and for those who have attended only once or twice. But whoever people are, and whether they attend or not, they cost money and organisation.

Lord Elton: My Lords, I did not intend to intervene again in this debate if I could avoid it, but I would like my noble friend to tell us, rather than for me to hear afterwards, how much somebody who never attends costs the House.

Lord Selsdon: My Lords, I am afraid that is beyond my pay grade.

The facilities of the House are designed to accommodate a whole range of people. If one wants to see attendances, we have figures for them. It is not just attendance in the sense of walking in and out of the door and claiming one's allowance that counts, it is people's participation. There should perhaps be a requirement to invite people to participate. Having been in the research world for many years, I can say that I have learned more by being drip-fed in this place than in any other institution that I have come across. The difficulty I find is that I am not very good at putting names to faces. Therefore, when I look at someone, I am not sure who they are or what their background is. However, we now have quite a good internet facility for everybody and if anybody would like details or information, I would be happy to provide them. I have in my hand figures for the length of service of everybody. I have great respect for this and for the noble Lord, Lord Elton.

So my simple question is: what do we do next? I am not sure, but if your Lordships would like to share some of the data that I have, I would willingly pass them on. They are quite interesting and provide confirmation that we have probably the greatest institution in terms of concentration of knowledge and experience in the world.

10.52 am

Lord Cullen of Whitekirk (CB): My Lords, the quality of the work of this House and its committees depends on the range and depth of the knowledge, experience and expertise possessed by its Members. It is surely essential that whatever is done to reduce the size of the House should not impair those resources.

The proposal in this Bill that for each successive Parliament there should be an election of a limited number of Peers presents a number of practical implications. Voting in an election would call for each Member of the House to make a personal choice. He or she could hardly be expected to gauge the overall effect of that choice on the availability, strength and balance of the resources to which I have referred. As regards candidates, some Peers may be less visible than others, preferring to concentrate on subjects on which they have some particular expertise. So there is a risk that the outcome of an election may be a loss of Members who are distinctly well qualified to assist the House and its committees.

If a Member of this House fails to secure election under the proposed system, it appears to mean his or her final exit from the House. I say final, since he or she will have ceased to be a Member of the House and so would not be eligible to stand as a candidate for the next Parliament after that. That is reasonably clear from the draft Standing Order attached to the Explanatory Notes for the Bill. On the face of it, there does not appear to be any way in which that Peer could stand as a candidate in the next Parliament, however desirable that might be.

New Peers, such as new Cross-Benchers, provide a particular case in point. There is nothing in the Bill to prevent those who have newly been made Peers becoming

Members of the House during the life of a Parliament. However, their membership would indeed be short-lived if they did not secure election for the next Parliament. They may have been Members of the House for only one or two Sessions and thus would be at a disadvantage compared with seasoned Members of the House who were better known to the electorate. If they were not elected, it follows that they would not be able to stand as candidates for the next Parliament after that. That would be particularly unfortunate. The House surely benefits from the infusion of new Peers who can make valuable contributions, perhaps in fields not previously well represented in the House, if at all.

I have mentioned the Explanatory Notes, which brings me to say something about the content of the Bill. It is remarkable how brief are its provisions. One might expect the Bill to set out the substance of what was proposed, whereas notes would set out the explanation for the Bill, what the point of it was and how it fitted into the law. However, in this case, the Explanatory Notes seem to extend the content of the Bill in various ways that I need not go into. I wonder whether that is a usual or appropriate use of Explanatory Notes. At least some of their content should appear in the legislation. That is not an academic point, since the Bill seeks to restrict the entitlement of Peers to sit as Members of this House. For the purpose of discussion in this House or, for that matter, in the other place, the legislation should contain what is proposed and do so with clarity and certainty.

10.56 am

Lord True (Con): My Lords, I agree with most of the wise words of the noble and learned Lord who has just spoken. I congratulate my noble friend Lord Elton on the way in which he has introduced the Bill; he is a great ornament to the House and his wisdom is respected by us all. However, I confess to a mild dulling of the senses when another Bill comes forward to reform your Lordships' House: three Bills up and more than six months still to go in this Session—perhaps we are trying for the record in the number of discussions of ways to reform ourselves. I sometimes think that there are greater priorities to discuss.

Of the schemes advanced, that of my noble friend may in many ways be the least bad; indeed, if we are to accept the proposition, which I do not, that there should be a cull of the numbers in the House which did not pretend to be reform—and this is certainly not real reform—then a proposition that imitated for the life Peers what happened to the hereditary Peers in 1999 is clearly one logical way to proceed.

However, I am afraid that I share the view of those who have said that limiting the numbers in the House is not a tearing need. I do not often feel that I need sharp elbows here, nor do I think it a disaster if a great Chamber of a great Parliament is sometimes crowded on a great occasion. What is so wrong with that? Nobody outside here has ever tugged me angrily by the sleeve and said, "By God, we need to reduce the number of Lords by a hundred or two".

The problem that some noble Lords do not wish to face is that if there are people out there who want real reform of the Lords, their beef is not that we have more than enough life Peers to ride into the Valley of Death at Balaclava but that we have any appointed Peers at all in the 21st century. I have never hidden the fact, uncongenial though I know it is to many of your Lordships, that I would have no objection to standing for election to the political Benches—after all, I face the electorate daily in my day job—but if we are to have election, the daringly modern part of me would rather that the electorate of the political Peers were the British people and not the Bishops' Bar.

I do not follow my noble friend with this Bill, however well intentioned it is; but if we are to proceed, I agree with what has been said: that much of the material in the Standing Orders will have to be discussed in detail. Let me give just a couple of examples.

First, there is the problem of even a periodic limit on the size of the House, alluded to by my noble friend Lord Bridgeman. The five-year cull, as I understand it, would cut the size of the House to 600. Then—and I must make it clear that I make no objection to this, for with the Fixed-term Parliaments Act preventing Dissolution, a cap on the size of the House that does not allow a Government to swamp this House in the case of a constitutional crisis is unacceptable—my noble friend's Bill rightly allows for creations after every cull. However, as my noble friend Lord Bridgeman said, the effect of that could be that a Prime Minister could pump the numbers back up from 600 to 800 and those new loyalist Peers would then weigh the percentage size of the various party colleges in the next Parliament. There could be a ratchet towards a party in office that did not show the restraint in creations that Prime Ministers should show. We all know that the real root of the matter is the rash of creations by Prime Ministers, excepting Gordon Brown and Ted Heath—there have been a few who have shown restraint. We should not appoint more Peers than, frankly and bluntly, die. So the ratchet would be a problem.

The second potential objection—which was alluded to by my noble friend Lord Caithness, although I fear I have to be a little blunter than he was—is why on earth should the proportion of Liberal Democrat Peers in this House be frozen by paragraph (6) of my noble friend's draft Standing Order? The Lib Dems won 7.9% of the vote at the last election. They now have 13.2% of the whole House and 17.9% of the political House. Under that party's policy, until the 2015 election made it rather inconvenient and awkward for them, the number of Lib Dem Peers reflecting the votes cast at the election would not be 104 but 62 on the eligible House basis and 46 on the narrower political base. I could not support any propositions, such as those of my noble friend, which entrenched such a gross over-representation in this House of a party represented by eight in the other place. I calculate that the effect of the Standing Order as drafted would be 79 Lib Dem Peers in a House of 600 if we used the 13.2% number or 107 in a political House-only calculation.

My third point, alluded to by the right reverend Prelate in some telling remarks, relates to the treatment of newer Peers. I have always found very distasteful the underlying messages of those who say that because there are too many of us, either at the long-serving end, "Bring in an age limit; you are 75 and past your

[LORD TRUE]
sell-by date, you must go"; or, at the newer end, "There are too many like you coming in, not of the right calibre and we have to stop it". I do not care for either of those messages, but I read in my noble friend's draft Standing Order that anyone who has been appointed to the House after the first Session of the preceding Parliament—in other words, less than five years before each cull—would have no vote in the quinquennial balloon debate about who should be chucked out, in that they are not deemed to have served for a whole Parliament. I understand the idea, though I do not agree with it, that new bugs don't know enough to be allowed a say, but surely by the time they have worked their way up to C or even B block they might actually have enough knowledge to cast a vote. I appreciate that my noble friend's intention may be to deny a voice to nominations made after each cull, but we cannot presume that every new Peer is a party hack incompetent to judge fairly. As I read this provision, it is fairly demeaning and we will need to look at it as it goes forward.

As I have taken a little time, I shall stray no further into what I think is an absolute mare's nest of probing amendments, bringing into the Bill some of the Standing Orders that we will have to have if the Bill goes forward. However, I will speak about the process involved, following on from the remarks of the noble and learned Lord, Lord Cullen, but in a slightly different guise. People have said that the process of choice is difficult. Of course it is. I have been rejected at the ballot box and I have won at the ballot box, but the problem with this proposition as it is emerging is that in my judgment it risks empowering a club mentality. One can imagine the grey suits of the "Campaign for Effective Peers", or whatever it is called, chewing over who might stay. The people who would stay might be the product of a consensus into which some are either not privileged to be invited or not inclined to join. Had I not known my noble friend Lord Goodlad better, I might have thought that the conclusion of his speech was a veiled threat to the inconvenient and those who do not fit the consensus, that if they do not pipe down they may not be chosen. I do not wish to go down that road; perhaps I misinterpreted my noble friend, but with his Whips' Office experience, I doubt it.

I fear that it would be divisive, alter behaviour, have the perverse effect of raising attendance levels in every pre-election Session, as Peers try to catch the eyes of the selector or to join the consensus, and would inevitably prove hurtful to the losers, many of whom make a good, if occasional, contribution but might not make it, perhaps for lack of knowledge through the straitened gates of a cull. On balance, therefore, I would prefer it if my noble friend were to leave what is reasonably well alone.

11.06 am

Lord Trefgarne (Con): My Lords, I do not intend to detain your Lordships for more than a very few moments. During the course of the debate this morning I have learned a number of possible difficulties with the Bill proposed by my noble friend, which he will no doubt take into account. If the Bill is to proceed I suspect that it will need a fairly massive Committee stage. Whether that proves to be possible remains to be seen. I was particularly struck by the observations of the noble and learned Lord, Lord Cullen, who felt that much that is in the Explanatory Notes ought to be put into the Bill. I rather agree with that. I also agree about some of the difficulties that have been described over Peers who have come to this House for a comparatively short period and then find themselves unelected.

The other point that occurs to me is that the Bill does cut across the famous undertaking given by the noble and learned Lord, Lord Irvine, back in 1999, about the position of the hereditary Peers, who would remain here, topped up by by-elections as necessary, until House of Lords reform was complete. If my noble friend believes that his Bill is in that position he will, perhaps, tell us. I would not have said so and I remain of the view that the undertakings given in 1999 ought to be honoured. I hope that they will be and that the Bill will not cut across that.

11.07 am

Lord Rennard (LD): My Lords, on 7 September last year I asked from these Benches whether the then Leader of the House agreed that,

"there should be a moratorium on further appointments to this House until sensible measures are agreed to reduce its size and that seeking consensus through a constitutional convention, involving all parties, is the best way forward for reform of this House in the long run".—[*Official Report,* 7/9/16; col. 1211.]

I made it clear that I wanted to see action to limit the size of the House, and many noble Lords have referred today to concerns about its size at present. Sadly, the Government accepted neither the principle of a moratorium on appointments, nor the kind of constitutional convention argued for then by my noble friend Lord Purvis of Tweed and others.

The reason that we now have a House of more than 800 Members is a simple one. The last Prime Minister and the present one have between them created 261 Peers over the last six years. That is a rate of 43 per year. Gordon Brown was relatively modest, only creating an average of 11 Peers per year, but his predecessor, Tony Blair, created them at a rate of 37 per year. So the current rate of creating Peers exceeds significantly the number of Members leaving the House for whatever reason. I do not want to dwell too much on actuarial calculations, nor on the fact that the average age of membership of your Lordships' House is 69. Suffice it to say that what one might call the natural reduction in the size of the House is somewhat less than 20 per year. Some progress has been made on reducing the size of the House through various measures such as the House of Lords Reform Act introduced by my noble friend Lord Steel of Aikwood. Between them, these measures have allowed 61 Members to resign or retire in the past six years—an average of 10 per year. So the size of the House has increased by more than 100 since 2010, giving rise to present concerns.

I want to address particularly the issue of linking the size of this House to that of the House of Commons. I have said before that I agreed with the Lord Speaker when he said in an interview with *The House* magazine:

"I don't think that we can justify a situation where you have over 800 peers at the same time as you're bringing down the Commons to 600 MPs".

But I also believe that we should re-examine the case for a reduction in the number of MPs. The passage of the Parliamentary Voting System and Constituencies Bill was a very difficult experience for me and for a number of other noble Lords present—I look particularly at the noble Lord, Lord Strathclyde. It was part of the coalition programme that I had to accept if I accepted the coalition. The constituency boundary review proposals were a major part of it, and I was really unhappy about them. This was partly because I did not see the case for reducing the size of the Commons from 650 to 600 without securing the progress that we needed on other related measures such as reducing the size of the ministerial payroll in order to prevent the Executive gaining greater leverage over the elected House, much greater devolution of power from Westminster, and establishing greater legitimacy for this House to hold government to account, which I believe could come only from electing at least some of its Members. In the absence of these things, the case for reducing the size of the House of Commons was, in my view, not made.

It was claimed that the size of the House of Commons had grown inexorably with previous Boundary Commission reviews. But the fact is that membership of the House of Commons grew only from 640 in 1945 to 650 in 2010, while in that 65-year period the electorate grew by more than 12 million voters. In 1945 each MP represented an average of 52,000 voters, while in 2010 each MP represented an average of just over 70,000 voters. The Boundary Commission proposals that have just been published show that in future MPs will be expected to represent an average of 75,000 voters; in other words, after the next general election, MPs will be expected to represent 44% more voters than their predecessors did in 1945, even though expectations of what they can do for individual constituents have risen inexorably. So when we compare the size of the Houses, parity is not such a bad principle, but we need to agree on the relevant size of each House. If we consider again the size of each House, we also have to consider the representation of the Lords Spiritual in this respect, which the Bill does not.

Of course, the fundamental question is: how might we reduce the size of this House? I believe that this Bill does not provide a good way of doing that. The noble Lord, Lord True, appeared to think that the simplest and best answer to the problem is to reduce the size of the representation on the Lib Dem Benches, based on our level of support at the last general election. I would be very happy if our representation was based on the latest election result: 30% in Witney yesterday. My more serious point is that if you do base representation on previous election results, you should not base it simply on the most recent election. In five of the last six general election results, the Liberal Democrat share of the vote was always 20 plus or minus three. So actually our representation of 105 out of more than 800 is less than proportionate if based on votes over the past 30 years. I rest my case.

Repeating the kind of process by which hereditary Peers voted to determine which of their number remained in the House would not be very seemly, as many noble Lords have said. It seems to me, working out the maths, that it would be possible for everyone who wanted to stay here to do so provided that they voted for themselves and found one Peer who wanted to vote for them also. Finding support from people who have been appointed to the House in various ways but do not wish to remain in the House would not, I think, be a great exercise in democracy.

However, we could take some practical and immediate steps to reduce the size of the House. First, we must end the farcical process of the by-elections to replace hereditary Peers. The noble Lord, Lord Grocott, has put forward a Bill to do exactly that and it should be properly considered without the threat of filibuster. I noted the suggestion that this Bill might require a rather long Committee stage. I believe that we should take these issues rather more seriously. Secondly, and most importantly, we have to curb the power of prime ministerial and party leader patronage. The original "Steel Bill" was drafted so as to put the independent Appointments Commission on a statutory footing. Pending the kind of real reform that my party supports, the Appointments Commission should be able to consider and approve party nominations subject to a strict cap on numbers aimed at bringing the size of both Houses into line over time.

In conclusion, we should be acting to reduce the size of the House, and in the absence of other constitutional reforms, the size of the House of Commons may be a good target to aim for over time. This Bill, while worth considering, does not provide the best answers to the problem, but curbing prime ministerial and party leader privilege to appoint Peers may be an important part of the solution.

11.16 am

Baroness Hayter of Kentish Town (Lab): My Lords, I welcome the initiative of the noble Lord, Lord Elton, in bringing the Bill forward because it deals with a topical and, I think, urgent issue on which this House must take a lead. I am also delighted that the noble Baroness the Minister and I are able at last to reflect the women in the House. If we do come to any method for reducing the numbers here, a gender allocation will be high on our list of considerations. The noble Lord, Lord True, referred to selection being done in the Bishops' Bar. To spare their blushes, we should make it clear that it is a coffee bar that I have never seen a bishop enter.

I rarely repeat anything the SNP says—but, as it has no representatives here, I will, for once, endorse its words in the other place this week when it expressed concern about the size of the House of Lords, which,

"with more than 800 members, is considerably larger than the elected House of Commons … there is no case … for the number … to exceed the number of members of the democratically elected House".

The SNP said that it,

"cannot condone any Government action that may increase the number of unelected members while reducing the number of elected Members of Parliament"—

as has just been referred to by the noble Lord, Lord Rennard. It called on the Government—splitting an infinitive—

"to significantly reduce the number of unelected Lords",

[BARONESS HAYTER OF KENTISH TOWN]
and,

"to abandon any plans to reduce the number of Members of Parliament".—[*Official Report*, Commons, 19/10/16; col. 876.]

Two years ago, Labour Peers concluded that the House had to reduce its size—since when, of course, it has grown significantly. The fault, although he has not been named, lies, I am afraid, fairly and squarely with David Cameron, who, despite the 2015 manifesto promise to reduce the size of the Lords, handed out life peerages at a faster rate than any other Prime Minister since their introduction in 1958—some 260 since the 2010 election. At a cost of more than £100,000 each, that is some £30 million—and this despite his party's repeated rhetoric that it wants to cut the cost of politics. Furthermore, as Professor Meg Russell has shown, he has appointed a greater proportion of government Peers, with fewer for the Cross Benches and the Opposition. It is time to take action.

We support the very modest Bill referred to by others, introduced by my noble friend Lord Grocott, to end hereditary by-elections. Surely it is right in itself, and a tiny step on size, but it is too modest to take us anywhere near the size of the Commons. So we need more—and parts of this Bill point the way. There must, however, be some serious debate about the actual size, the freedom of a Prime Minister to appoint at will, as has been mentioned, and the balance of composition. Freezing as of today will not attract consensus. Indeed, without clear agreement on an appropriate balance between the parties and the Cross Benches, it is unlikely that there will be consensus on a way forward.

This Government—the first Conservative one without an effective majority here—seem to dislike having their will challenged. But that is our role. Their action on numbers seeks to undermine a balanced House to which an Executive must listen. Indeed, the Conservatives became the largest party in the Lords after just three years of minority party government. Tony Blair, the Labour Prime Minister, has been referred to; it took him three successive general election victories—two of which, we must recall, were landslides with majorities of 174 and 167—before Labour became the largest party in the Lords in 2005. Yet only just over a year into the first majority Conservative Government, and with a majority of only 12 in the other place, the Tories are now 50 ahead of Labour. So how we move forward on size has to include consideration of the role of the House and whether it is right to engineer a government political majority.

The Liberal Democrats, as the noble Lord, Lord True, mentioned, are greatly overrepresented here compared with their eight Members in the Commons. It is hard to justify the continuation of this, as I fear the current Bill would allow. The issue is one of balance between the Government, the Opposition and the Cross Benches. As always, we welcome the very non-political spiritual Members. Cementing the currently engineered relative numbers between those groups might not attract the wide political support which we will need for any move forward. This will probably be the issue that most needs addressing before we look at how each political grouping should be reduced pro rata. Perhaps we might move to an all-female House and do it that way.

The hope today from this Bill is that the Government will see size as the "incremental" step referred to by the Minister on 9 September when she said that the noble Baroness, Lady Evans of Bowes Park,

"looks forward to working with Peers to support incremental reform".—[*Official Report*, 9/9/16; col. 1251.]

I hope, too, that the Bill moved by the noble Lord, Lord Elton, will nudge the powers that be to ensure that, before we move out of this building, we, too, have our own restoration and renewal to make ourselves fit for purpose.

11.23 am

Baroness Chisholm of Owlpen (Con): My Lords, let me start by congratulating my noble friend Lord Elton on securing time for the consideration of this Bill. My noble friend's proposals address a matter that continues to be of interest to us all. I thank him for his thoughtful contribution to this debate and all noble Lords who have taken part, with many excellent and amusing speeches. I am humbled to be answering this debate following speeches from many noble Lords who have been part of this House for far longer than me. I, too, am pleased that, as the noble Baroness, Lady Hayter, mentioned, two women are speaking from the Front Benches but I make no further comment on this.

This is a subject that we have debated many times before and will continue to debate in the future. It goes without saying that this House plays a vital role in the scrutiny of legislation and in holding the Government to account. It is crucial that it continues to undertake that role effectively. We therefore welcome this debate and the commitment of Peers from all sides of the House in contributing to it. We are aware that consensus is a crucial component of any proposals for reform, if they are to progress past the stage of debate. As many noble Lords will no doubt recall, in 2012 the House of Lords Reform Bill was withdrawn not for lack of commitment from the Government but because there was no overall agreement on what shape any reform should take.

We have many pressing constitutional reforms on which we should focus our attention in this Parliament—not least devolving more powers to Wales and delivering all that is necessary for the UK's exit from the European Union. However, that does not mean that we should rule out further change. It seems logical that this House should continue, as it has for centuries, to question whether there are better ways to work and whether we can find ways of fulfilling our role more effectively. Where there are ideas for change and improvement that command consensus, we would welcome working with noble Lords to take them forward.

We know that change is possible. The Government supported the Bills introduced by the noble Lord, Lord Steel, and the noble Baroness, Lady Hayman. Those Bills enabled Peers to retire for the first time and provided a mechanism for the House to expel Members where their conduct fell below the standards that the public have a right to expect from those who make laws in this country. I am glad to say that we have not had to use the latter power. However, 52 Peers have taken the opportunity now open to them to

permanently retire from this House, reflecting a real cultural change among our membership of which we can be proud.

Turning to the detail, my noble friend Lord Elton's Bill would introduce elections every five years to elect Members of the House from among existing life and hereditary Peers who were Members of the House. Only those Peers who were already Members would be able to vote. The provision in Clause 2 would cap the number of Members elected to be Members of this House at the number of seats in the House of Commons. Currently that is of course 650, although under the Parliamentary Voting System and Constituencies Act 2011 it will reduce to 600. The Bill does not seek to amend the process for appointing life Peers or their right to membership of this House, although Clause 1 would prevent their remaining a Member after the first Session of the Parliament after they first receive a Writ of Summons. The effect of this would be that any new peerages conferred would take the overall membership above the 650 cap for the duration of that Parliament. It also means that some Members may serve as a Member of this House for only a very short period.

The Bill would also amend the House of Lords Act 1999 to ensure that the 90 hereditary Peers provided for by that Act to sit in this House becomes a maximum of 90 since, depending on the outcome of the elections, all 90 provided for in the 1999 Act may not be elected. The Bill would not otherwise amend that Act, so it would appear that the process by which a hereditary Peer is replaced through a by-election remains intact and that if a hereditary Peer died, they would be replaced by another hereditary Peer. As we heard in debate on the Private Member's Bill introduced by the noble Lord, Lord Grocott, a number of weeks ago—and during the debate today—this is an area where noble Lords have slightly differing views. The Bill also provides for Peers who are not Members of this House, in accordance with the provisions in Clause 1, to vote in elections to the House of Commons and to stand for election to that House. Currently, those Peers who are not Members by virtue of being excepted, expelled or resigned are able to vote. This provision would extend that to those Peers who are not Members by virtue of having not been elected under the Bill.

As a Government, we agree that the size of the House cannot grow indefinitely. However, the kind of fundamental change to our composition that the Bill outlines would represent comprehensive reform of this House and, as noble Lords will not be surprised to hear me say and as my noble friend Lord True said, at a time when there are many pressing challenges facing us as a country, not least in giving effect to our withdrawal from the European Union, we do not believe that now is the right time to embark on such reform. I must therefore express reservations about the Bill.

However, that does not mean that we should not continue to work to make sure that your Lordships' House continues to work well. Indeed, it is vital that this House continues to work effectively in holding the Government to account and scrutinising legislation, given the challenges ahead of us, and as a House we should always consider whether there are ways for us to do our job more effectively. Where there are reforms which can command the consensus of the House and improve how we work, we would be interested to work with noble Lords in taking them forward.

So while I express reservations about the Bill before us today, I welcome again the spirit of the debate and the quality of the contributions we have heard. The best step forward from here would be to harness the enthusiasm around the Chamber to explore the options available. That is something I will absolutely take away to discuss with my Front-Bench colleagues, as we move forward, and I would also welcome further conversations with many of those involved today.

11.31 am

Lord Elton: My Lords, I thank all noble Lords for their contributions, friendly, confusing or hostile. I am not quite sure where to classify the Minister's remarks. They seemed to be about as bright a red light as you can get without actually feeling that you necessarily have to stop because of it. If I spend a moment in replying as best I can to the remarks noble Lords have made, it may not be time wasted in the future.

In response to the Minister, I shall anticipate what I was going to finish by saying. Consensus remains the jewel—the holy grail—that we should try to achieve, and we should not abandon the search at the first difficulty. Time is very much of the essence, and I therefore hope we shall be allowed a Committee. To make that not a complete waste of time, I hope noble Lords will accept my invitation to come to an informal discussion in which we can each bring improvements to the Bill—I have some myself—and perhaps as a result we can finish with something approaching consensus. Listening to my noble friends Lord Caithness and Lord True, and very carefully to my noble friend Lord Strathclyde, I realise that that may be a vain attempt, but it should be made.

I thank all noble Lords for their contributions. I am not sure noble Lords want a response now, before Committee, to the points they have made. I feel like the unfortunate English soldiers leaving the Battle of Hastings and pulling arrows out of their shields when they got home. I have so many of your Lordships' arrows in my shield, I think I had better write as I will give much clearer, more concise answers than if I grope in my memory for the slightly unfocused recollections I have of the diamond-sharp ideas put forward.

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

Abortion (Disability Equality) Bill [HL]
Second Reading

11.34 am

Moved by ***Lord Shinkwin***

That the Bill be read a second time.

Lord Shinkwin (Con): My Lords, as someone with a disability, it gives me immense pride to present to your Lordships' House a Bill about disability rights and the fundamental principle of equality under the law.

[LORD SHINKWIN]

Noble Lords have treated me with nothing but respect as an equal since my introduction to your Lordships' House just under a year ago. The reason for my Bill is that in respect to disability before birth the law does not recognise or accept that equality.

I wonder if I could extend an invitation to noble Lords to join me briefly on a journey, to put themselves in my place and to view the issues under discussion from a disabled person's perspective. From this disabled person's perspective, there is a stark anomaly, an inconsistency in the law, whereby discrimination on grounds of disability is both prohibited in law after birth yet, confusingly, actually enshrined in law at the very point at which the discrimination begins, at source, before birth. How do I know it is enshrined in law and that disability discrimination begins before birth? I know because the law says so. It is there in black and white in Section 1(1) of the Abortion Act 1967, which gives disability as one of the grounds for abortion:

"if two registered medical practitioners are of the opinion, formed in good faith ... that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped".

So by rights I should not be here. I should be dead. Indeed, more than that, according to the eugenic screening programme of our Department of Health, I would be better off dead because of serious handicap, to use the outdated terminology of the Act. I regard my Private Member's Bill as a modest, reasonable and logical correction of that anomaly in the law to bring it into line with the thrust and spirit of existing disability discrimination and equality legislation.

Before I go into the detail of why I regard my Bill as a modest, reasonable and logical correction of that anomaly, I would like to place my Bill in context. I do so in the context of gratitude to the various clinicians who have treated me over the years without any discrimination, especially Hanus Weisl, a wonderful Jewish orthopaedic surgeon who rebuilt his life after a narrow escape from Nazi-occupied Prague in 1939 and rebuilt me as a child with brittle bones more times than I care to remember—how I wish I could thank him today—to my family and friends for only ever supporting me and never discriminating against me; to our Holy Mother for her non-discriminatory, sustaining love; and to your Lordships' House for its tireless work to advance disabled people's rights, as demonstrated by the pivotal role it played in securing the Disability Discrimination Act 21 years ago and the Equality Act, and for the authoritative report of the Select Committee, *The Equality Act 2010: The Impact on Disabled People*. In fact, I hope the new Minister for Disabled People, Penny Mordaunt, will look at its pragmatic recommendations again.

The second context in which my Bill must be placed is historical. I cannot seriously believe that noble Lords could ever have intended any law to discriminate to the eugenic extent that Section 1(1)(d) of the Abortion Act 1967 permits and of which a particular regime of the 1930s and 1940s would heartily approve.

Moreover, I struggle to understand how such eugenics can somehow be in any way less abhorrent 80 years later, especially given the supposed societal and attitudinal changes that have transpired since and the marvellous medical advances that have been made in that time. I also cannot believe that noble Lords could have intended that laws governing or giving rise to disability discrimination should be moving, in their effects, in such conflicting and contradictory directions as equality law is on the one hand and abortion law is on the other.

The inconsistency would be farcical if its impact were not so tragic. This is perhaps highlighted by how ridiculous it is that I should be a Member of your Lordships' House, for whom a Health Minister recently professed in an email to me, no doubt sincerely, to have the greatest respect, yet were a younger, unborn version of me to be detected in the womb today, Section 1(1)(d) of the Act and his department's search-and-destroy approach to screening would make me a prime candidate for abortion. How is that consistent with respect or equality?

It is in the context of such contradiction that I regard my Bill as modest, reasonable and logical. The logic I have just explained. I believe it to be modest and reasonable because its scope is so limited. This is borne out by the legal advice I have received by Hugh Preston QC that the practical effect of my Bill would be that, where there is a substantial risk of serious handicap, the mother's ability to abort would be governed by the same criteria that apply in the case of any other foetus. Where the foetal handicap is such as to present a risk to the mother's life or a risk of serious permanent damage to her, the mother would still be allowed by law to abort right up to birth.

Moreover, where the risk of injury to the mother is not so grave as to meet these criteria, the question of abortion would be governed by Section (1)(1)(a) of the Abortion Act—that is, abortion is permitted subject to there being a risk to the physical or mental health of the mother or her existing children greater than the risk of continuing with the pregnancy. In practice, in circumstances where a mother has concluded that she does wish to have an abortion, having decided that she does not wish to have a seriously handicapped child—to use the outdated wording of the Act—the advice I have been given is that one anticipates that this relatively low threshold would not be difficult to overcome, as indeed is the case generally for foetuses presenting no risk of serious handicap.

It follows that the practical effect of abolishing Section 1(1)(d) of the Act, which is what my Bill would do, is that any abortions by reason of disability would need to be carried out within the first 24 weeks, subject to the other sections that I have already mentioned—for example, where there is a risk of serious permanent damage to the mother or her life is at risk, in which case they will remain legally permissible until birth.

What is the legal difference between my Bill and the status quo? The difference in practice is modest; the difference in principle is huge. If a woman chose indirectly to discriminate on grounds of disability, the law would allow her to do so up to 24 weeks, but the principle of disability discrimination itself would no longer be enshrined in law, as I understand it.

Each of us has made different personal journeys to our Lordships' House, but I submit that each of us has made that same essential journey through life: adulthood, childhood, infancy and before that the state of being

an unborn baby, safe and secure in our mother's womb. Only that is precisely the point, because for unborn babies whose disability is detected, a mother's womb has become an increasingly dangerous place. I will share a few statistics with noble Lords. There were 230 terminations after 24 weeks on grounds of disability in 2015, and a 56% increase in the number of terminations on grounds of disability after 24 weeks over the last five years, between 2010 and 2015. There has been a 271% increase in the number of terminations on grounds of disability after 24 weeks over the last 20 years, 1995 to 2015. There were 3,213 terminations on grounds of disability in 2015, and a 68% increase in the number of terminations on grounds of disability over the last 10 years, 2005 to 2015. There were 689 terminations for Down's syndrome alone in 2015 and a 43% increase in the number of terminations for Down's syndrome over the last five years, 2010 to 2015. There was a 143% increase in the number of terminations for Down's syndrome over the last 20 years, 1995 to 2015. Perhaps almost as chilling, there were 11 terminations for cleft lip or palate in 2015—an easily surgically rectifiable condition. I find the contrast between the 0.3% decline over the last decade in the number of overall abortions and the rise in the number of abortions on unborn babies detected with a disability alarming and deeply offensive.

As a disabled person, I am a prime candidate for abortion on the grounds of disability. I admit that I would like to say to the eugenicists in the Department of Health and those who obviously fail to appreciate the enormity of what is being perpetrated in our name:

"How dare you? How dare you wipe us out as mere conditions?",

as the journalist Janice Turner so poignantly, if sadly approvingly, put it in the *Times* recently. My message to Janice Turner and all those who share such views is this: I am your equal. I will not be defined by my disability. I will be defined by who I am and by my contribution to your Lordships' House and public service.

In conclusion, I know why they dare. They dare because they can, because discrimination in the form of abortion on grounds of disability is both lethal and legal, enshrined in law by Parliament and by your Lordships' House. They dare not only because Parliament has legalised disability discrimination before birth or even simply legitimised it. No, we have gone one better than that and have allowed it to be normalised. I suggest that, collectively, we are in denial about the consequences of the choices we have made. But to deny equality here is inconsistent, incompatible and irreconcilable with the wonderful work that your Lordships' House has done over many years to advance disability rights and equality. It is within that noble tradition of equality legislation that my Bill sits, and that is why I hope noble Lords will agree that my modest, logical and reasonable Bill deserves support and, crucially, government time in order that this corrosive, unjust and deeply discriminatory anomaly in the law is corrected, and equality is upheld in a society that is truly for everyone. I beg to move.

11.52 am

Lord Alton of Liverpool (CB): My Lords, I support the Abortion (Disability Equality) Bill of the noble Lord, Lord Shinkwin, and congratulate him on bringing this timely piece of legislation to your Lordships' House and on the eloquent way in which he introduced it. It is hard to overstate my admiration for his courage, his compassion and his integrity.

I hope noble Lords will forgive me for saying so, but I cannot help thinking that if the noble Lord's Bill had set out to facilitate the assisted suicide of disabled people, it would have been on every national news bulletin. But because it seeks to end the taking of the life of a viable disabled baby, it is being treated very differently. That unwillingness to treat ethical issues with equal respect and impartiality is a disturbing sign of the times—but not as disturbing as the issues of equality, discrimination and the very right to life itself raised by the noble Lord's important Bill

As the noble Lord observed, our legislation currently affords unborn disabled babies significantly less protection than that which is afforded those who are able bodied. Paradoxically, we will campaign and raise our voices for wheelchair ramps to be placed on public buildings but fail to uphold the innate right to life itself of the disabled person who uses that wheelchair.

Although the able bodied may be aborted up to 24 weeks, those who are disabled may be aborted up to birth. This inevitably implies that these unborn disabled babies are, as the noble Lord said, significantly less valuable than those who are able bodied. What message does this convey about the human dignity and the value —or, rather, the lack of value—of disability in society generally? As the law stands, it is a legal arrangement that invites and encourages discrimination—which is why, in 1990, I spoke and voted against it in another place when this provision was made.

At the time, I was given significant support by a woman called Ellen Wilkie, who had Duchenne muscular dystrophy. In her short 31 years, Ellen gained an honours degree in classics from Bristol University and was a published poet, worker, author, actress, radio and television presenter, journalist and musician. Her parents had been encouraged to abort her but had refused. I particularly commend her autobiography, *A Pocketful of Dynamite*, to anyone who contests her assertion that, "No one can say what a disabled person will be capable of".

The arguments that Ellen Wilkie put at that time were set aside by Members of another place, and that legislation was incorporated into statute. It has had a very negative effect on the attitudes that people have. It is a throwback to a time when society had remarkably different attitudes to the inclusion and contribution of people with disabilities. We have moved on as a society and it is time that the law moved on, too. The Disability Rights Commission—now the Equality and Human Rights Commission—has, rightly, argued that this provision,

"is offensive to many people; it reinforces negative stereotypes of disability and … is incompatible with valuing disability and non-disability equally".

As the We're All Equal campaign has pointed out, statute insists that we must not discriminate against people with disabilities, but the 1990 provision runs contrary to both the spirit and the letter of the law.

The net effect of the noble Lord's Bill would be that the 24-week time limit would apply to all babies, regardless of disability—it has no effect on other

[LORD ALTON OF LIVERPOOL]

grounds detailed in the 1967 Abortion Act. It is hardly a secret that I oppose not just the time limits in our current legislation but the provisions that have led to 8 million nascent lives being prematurely ended in the United Kingdom. But this Bill is not about that; it is solely about a eugenic law that flies in the face of our usual protestations and tips the balance in favour of equality and against discrimination.

That the noble Lord's Bill is desperately needed may be graphically seen in the abortion statistics provided by the department, which the noble Lord referred to. He specifically referred to the situation of people with Down's syndrome. We live in a country where around 90% of all Down's syndrome babies are routinely aborted. I know that I am not alone in having been deeply affected by Sally Phillips's recent documentary, "A World Without Downs Syndrome?", and the subsequent debate which the programme inspired. Rosa Monckton, mother of Domenica, born with Down's, remarked that,

"Sally is entirely right about the relentless pressure to persuade mothers to 'give up and start again'. I hate to think of what our family would have missed if we had gone down that path".

What does it say about us and our society when amniocentesis and other tests are used as part of search and destroy mission with barely a murmur of dissent? Sally Phillips brilliantly highlighted the appalling pressure put upon mothers who receive a pre-natal diagnosis to abort their babies, but it also revealed from her own experience that living with Down's is not a death sentence or incompatible with life. Paradoxically, in seeking to eradicate these wonderful individuals from the human race, it suggests that it is we who have the problem, not them. What does it say to the survivors—those who have been inconsiderate enough to avoid the perfection test and have somehow managed to slip through the net?

The noble Lord's Bill challenges these negative stereotypes, but it also challenges casual attitudes to the law and to the requirement to keep scrupulous records. In 2014, a Department of Health review found evidence that there is significant underreporting of the number of abortions for some foetal disabilities. I hope that when the noble Baroness comes to reply to the debate, she will say what is going to be done to rectify this. I also have another question, arising from the remarks of the noble Lord, Lord Shinkwin. Although we were warned about it in the debates in 1990, not least by Professor John Finnis, who was rubbished at the time and accused of scaremongering, very few people realised that the provision would lead to abortion on babies with, as the noble Lord said, rectifiable disabilities such as cleft palate and hare-lip. What does the Minister have to say about that?

The shocking discrimination that we are witnessing through both what our law says and what it facilitates has devastating practical implications. I will conclude my remarks by returning to the pressures exerted on parents. The United Kingdom's initial report on the UN Convention on the Rights of Persons with Disabilities said:

"Concerns were expressed around the approach to abortion in the UK, where disabled people have suggested a bias towards termination of pregnancies if a child is likely to be disabled".

This view was backed up by evidence submitted to the 2013 independent parliamentary inquiry, which heard from a number of parents who said that, when it became apparent that their baby was disabled, their doctors expected them to abort. Among a number of contributions that I read, one parent said that her doctor became,

"short-tempered and abrupt with me because he clearly didn't agree with my decision".

Another said she felt pressured into an abortion and reported that her doctor,

"threatened that all medical help would be denied".

The inquiry also heard from parents with disabled children. A representative of the British Academy of Childhood Disability said:

"Parents I have spoken to have said that Doctors treating their children with Down's Syndrome for example (for heart and other conditions post natal) criticised them for not having abortions, saying their children will not have a good life".

A parent, meanwhile, said:

"Parents who learn of their baby's disability after birth are sometimes told that it's too bad they didn't find out earlier so they could have 'taken care of it'".

Another parent said:

"I have heard views expressed that suggest my child is seen as a drain on resources. A common view is that it was not fair on my other child to bring a disabled child into the world".

When she comes to reply, I hope that the Minister will reflect for a little while on the department's attitude to some of the alternatives to this that are available. I have read about and seen some of the extraordinary in utero operations that can take place now on disabilities such as spina bifida, and I have also read the work of Professor KJS Anand, one of the world's leading experts on foetal pain, whose says that,

"it seems prudent to avoid pain during gestation",

because of the danger that the unborn child will experience pain. Noble Lords should recall that babies have been born and lived from 23 weeks' gestation, and this provision permits the ending of a life right up to and even during birth. What pain must it experience in this life-ending procedure?

All of this is very sad, so I am extraordinarily grateful to the noble Lord, Lord Shinkwin, for bringing forward his important equalities Bill. It is specific in its intention and specifically targeted at the issue of discrimination and inequality. I urge your Lordships' House to give it your support at Second Reading today.

12.03 pm

Baroness Nicholson of Winterbourne (Con): It is with the greatest possible pleasure that I rise to support the Bill proposed by the noble Lord, Lord Shinkwin. It is a significant step forward in logical thinking and in the investigation of what we as a society feel about handicap, about handicapped people, about life ownership and about who should make the judgment on whether a person should live or die. Considered internationally, it is a topic and issue on which there is the widest possible variation, as there is with capital punishment. Curiously, this is exactly what this is—a form of capital punishment. It is a form of disallowing by decree the life of someone who is not the person in question.

I am aware immediately that under United Kingdom law a foetus has no personality. This is not the same as in some of our EU member state partners. In Germany, for example, the foetus has a right to life as a personality from the moment of conception. Even in Germany, a would-be mother, a pregnant lady, can have an abortion at any time up to 12 weeks, with nothing except a consultation with a medical professional and three days' waiting time—but after 12 weeks nothing is allowed, unless the health of the mother is severely compromised. If I recall correctly, considerably earlier legislation in the United Kingdom gave the health of the mother as the key to the question of whether there should be an abortion on any grounds at all. It seems that we switched considerably when it was deemed that external judgments, including that of the mother but mainly those of medical professionals, on the health of the foetus itself, became the judgmental point, rather than the health of the mother.

A major or minor handicap is a difficult issue to determine. But, as the noble Lords, Lord Shinkwin and Lord Alton, have already declared and pointed out, some of the handicaps that were once deemed major are not so today, because there have been medical advances. There are ways in which either they can be ameliorated or the person can be adequately supported. We can look some of the ways in which mental handicap has been supported, for example with special assistance in schools. One hundred years ago it might not have been possible for someone with a certain level of intelligence to be educated and have a fulfilling life. Now, with special teaching and assistance and the attitude of society towards children with a mental handicap, it is amazing how flourishing those children and adults can become.

I myself feel very powerfully that the focus on Down's syndrome as an impossible handicap, and the idea that the person with the handicap should be discarded, are intolerable. On the other hand, I would have great difficulty in supporting the birth, if the condition was known, of a foetus with Tay-Sachs disease, when the pain, grief and suffering is eliminated after about two and a half years, but the time up to that is agonising for the baby—and, of course, very difficult for the parents.

One has to think about the major issue that we are looking at with this Bill. The noble Lord, Lord Shinkwin, has based his argument on equality and equal opportunity. Everyone who is disabled is just as important and valuable as anyone else. I speak as someone who happens to be profoundly disabled from an in utero problem. I would very much have avoided being discarded before birth if I had had any opportunity to comment on it—but the problem that we are discussing involves making judgments on another potential human being who is not there to make the judgment themselves.

The attitude of society towards the mother is a critical issue. Perhaps we are guilty of hypocrisy here, because we claim that we have a wonderful attitude towards those who are disabled—that it is absolutely perfect. Did not we do the Paralympics? Were we not number one? Were we not special British people with a handicap—Paralympic brilliance? Yet here we are discussing the discarding almost at the moment of birth a potentially valuable human being who might go on to win a gold medal in the Paralympics. Is not there a hypocrisy here that needs significantly to be addressed and discussed? This is why I am such a keen supporter of the Bill, because the noble Lord, Lord Shinkwin, is tackling that very hypocrisy.

On the one hand, we are very proud of ourselves. Indeed, this House recently published a report on disability. I have to question whether it is fulfilling the goals and activities of that disability report, which was welcomed and lauded and supposed to be so wonderful. Are we doing it? I suggest that we not, in fact. It is time that we woke up to the fact that we are hypocrites on disability. This is a very clear example. I am referring not just to the House of Lords report, which I am criticising a little bit in terms of its implementation here, because it does not happen. The great hypocrisy is saying that we, the British, are special on handicap and are in advance of everybody else. Here we are with the Paralympics: those poor old Brazilians could not match us—not one tiny scrap, we think. Yet actually we are making sure that we have the fewest possible supposedly disabled citizens in our society.

Looking at some of the EU member states or across the globe, we find a vast disparity of views. I do not suggest that this is a topic that is very easy to discuss or one on which it is very easy to reach a solution, but I ask that we are honest with ourselves. While suggesting that we have the perfect Equality Act, that we are absolutely wonderful and that we are doing everything for the disabled, we are, on the other hand, allowing ourselves to discard all disabled people before they are actually born. We need to have a very careful look at the quality of life for those who are disabled and ask disabled people themselves why they find life so happy, exciting and worth having that they wish to still be here.

I was interested the other day to attend a round table with seven of the most important disabled societies in the UK. Disability and disabled people were being discussed and rather the same attitude prevailed. As I looked around the table, I could find only one person in that vast discussion who was actually disabled. I speak here as someone who, for a decade or so, chaired and ran ADAPT, promoting access for disabled people to arts premises and public libraries. We were the body responsible for adapting, to a certain extent, the House of Commons—and, sadly to a lesser extent, the House of Lords. Going around the UK and getting grade 1 and grade 2 listed buildings adapted was a tremendous experience and I was glad that we managed to do so much. However, it is interesting that, even today, the disabled are talked about but are not the ones who are giving the evidence.

It is with the greatest possible pleasure that I hope my few remarks will convince noble Lords that this Bill deserves not just full support but a wholehearted and wide societal discussion. This is our hypocrisy and it is something which noble Lords can very well address and resolve.

12.11 pm

The Lord Bishop of Bristol: My Lords, I too am grateful to the noble Lord, Lord Shinkwin, for introducing this Bill. I understand that its focus is the principle of disability equality, not some underhand attempt to

[THE LORD BISHOP OF BRISTOL]
limit women's access to abortion services. Noble Lords will, of course, have a variety of opinions on the ethics of abortion, but that is not, in principle, the focus of the Bill. It needs to be said that, in general, historically and indeed today, churches and other faith groups have always maintained a cautious approach to how the rights of women and the rights of the unborn child can somehow be maintained without, we hope, falling in to those who reside at the extremes of arguments around ethics on both sides of this debate.

Our debate today is effectively restricted to whether we ought to remove from the 1967 legislation one ground for permitting abortions to take place—specifically, that,

"there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped".

Given the nature of the remaining grounds for abortion, it is unlikely—as the noble Lord, Lord Shinkwin, has implied—that if this Bill were to become law, the numbers of terminations of pregnancy would significantly decrease. The Department of Health, in its commentary on 2015 abortion statistics, implied that unquantified, but notable, numbers of abortions where foetal abnormalities were present were conducted on other grounds, most probably that of injury to the mental health of the pregnant woman. It is reasonable, therefore, to conjecture that if Section 1(1)(d) were to be removed from the Act, many such pregnancies could and would still be terminated under other existing provisions. That might be a matter for either reassurance or regret for noble Lords, but that particular discussion lies beyond our remit.

Why then do we seek to amend the Abortion Act? The answer is that the principle of disability equality is essential. It is essential for the welfare of individuals living with disability and it is equally essential for a society that wishes not only to protect but to celebrate the lives of those with disabilities. Many of us looked at our television screens just days ago and saw the joy of the crowd and of athletes, both able and disabled, in celebration of their achievements. There is something profoundly worrying in our current contradictory stance, which says that people living with disability are valued, respected and cherished, but that disability, in and of itself, represents a valid ground for abortion. In the end, there is a world of difference between an abortion taking place because a diagnosis of foetal disability adversely affects the mental health of a pregnant woman, and stating that foetal disability is, in and of itself, a ground for abortion.

As other noble Lords have mentioned, by way of example I should like to pursue one pertinent area further—that of the Down's syndrome community. That there are challenges to be met in caring for a child with Down's syndrome is undeniable. Without in any way seeking to minimise the impact of a diagnosis for Down's syndrome on parents, my experience as a father of five is that there are challenges in caring for all children. However, neither would I want to minimise the joy that many parents receive from sharing their lives with Down's syndrome children. The recent TV programme made by Sally Phillips made that point very clearly. For those noble Lords who are, like me, addicts of the TED talks, there is a very compelling talk on that website by a young disability rights campaigner, Karen Gaffney, who has Down's syndrome. She is an Olympic gold medal-winning swimmer and has swum 16 times across San Francisco Bay—a feat which, I gather, none of the inhabitants of Alcatraz successfully managed.

Not only children but adolescents and adults with Down's syndrome live valued and valuable lives, contributing greatly to the welfare of those around them. All of this is undermined by the continued existence on our statute book of a law that, in effect, states that Down's syndrome is a ground for abortion. The current debate with regard to non-invasive prenatal testing, recently the subject of a consultation by the Nuffield Council on Bioethics, brings a new urgency to this issue. NIPT screens for genetic conditions such as Down's syndrome can now be carried out by means of a simple blood test from the 10th week of pregnancy. This procedure is more accurate than the previously available early screening tests and does not carry the risk of miscarriage because of its invasive nature. If, either through the NHS or commercial companies, it becomes routine for pregnant women to undergo this form of screening, it could have extreme consequences, not only for the numbers of Down's syndrome children to be born but for society's attitudes, not just to those who are born with Down's syndrome but to disabled people in general.

I congratulate the noble Lord, Lord Shinkwin, on bringing this issue to the attention of the House and I hope that, regardless of our no doubt diverse views on the ethics of abortion, we can unite to give the Bill a Second Reading in the interests of disability equality.

12.19 pm

Baroness Stroud (Con): My Lords, I am pleased to support the Abortion (Disability Equality) Bill and I commend my noble friend Lord Shinkwin for bringing it forward. As a parent and a friend to mothers who have disabled children, I appreciate that this is a hugely difficult and sensitive subject, whichever way one approaches it. However, the arguments about the value, contribution and importance of people with disabilities are just too important for me to remain silent.

The Bill introduced by my noble friend Lord Shinkwin accomplishes two very important objectives. First, it restores equality to the face of our legislation, as set out in the Abortion Act 1967. The issue of Section 1(1)(d) being discriminatory was indeed raised, as the noble Lord, Lord Alton, said, by the Disability Rights Commission soon after its creation in August 2001, when it stated that,

"it reinforces negative stereotypes of disability; and there is substantial support for the view that to permit terminations at any point during a pregnancy on the ground of risk of disability, while time limits apply to other grounds set out in the Abortion Act, is incompatible with valuing disability and non-disability equally ... In common with a wide range of disability and other organisations, the DRC believes the context in which parents choose whether to have a child should be one in which disability and non-disability are valued equally".

When I first found that that clause existed in the Abortion Act, I was really surprised. I struggled to understand how a British society that seeks to value

disabled people in every way and is a world leader on the issue of disability equality could behave so differently in its approach to a disabled baby in the womb, allowing abortion up to birth for disability. For every other situation, it is permitted only up to 24 weeks, unless the life of the mother is at risk.

In some ways even more troubling, however, is that disability, which is a protected characteristic in UK law, should be a basis for abortion at all. Lest anyone should be tempted to think that one can be discriminatory in a confined abortion context and not have it spill out into life beyond the womb, the evidence received by the Parliamentary Inquiry into Abortion on the Grounds of Disability in 2013 is less than reassuring. The representative of the British Academy of Childhood Disability stated:

> "Parents I have spoken to have said that Doctors treating their children with Down's Syndrome",

as we have already heard,

> "criticised them for not having abortions, saying their children will not have a good life".

Another said:

> "I have already come across people who view my choice to have my child as detrimental to the rest of society".

That has certainly been my experience, as one of my friends went through this process. There are mutterings at the school gates, and people asking, "Why did they choose to have that baby?" gets into our attitude as a society. All those accounts are available in the inquiry's report, which is in the House of Lords Library. I am afraid that this is an inevitable consequence of the law endorsing the idea that abortion on the grounds of disability is perfectly acceptable.

The second crucial objective that the Bill fulfils relates very specifically to the consulting room. One way in which the message of our current legislation is communicated is through those charged with responsibility for its implementation. If disability were not a ground for abortion, doctors would not mention it. However, the fact that it is means that doctors will, quite properly, inform a mother carrying a child with a disability that she should or could have an abortion. However, a significant number of parents say that that puts very real pressure on them to have an abortion. Again, the inquiry into abortion on the grounds of disability heard some very concerning evidence. One mother said that she felt she was treated differently because she was carrying a disabled baby. Another said that she experienced some disdain from medical professionals for deciding to keep her baby.

Indeed, you can see the effect of the law on decision-making and the approach to abortion by looking at the latest statistics. Between 2005 and 2015 the abortion rate in Great Britain, as we have heard, remained largely constant, decreasing very slightly by 0.3%, but between 2005 and 2015 the rate for abortion on grounds of disability up to birth rose by 68%. If this were any other group with any other protected characteristic, we would be seriously concerned.

The contrast between approaches to abortion of the able-bodied and abortion of the disabled is deeply concerning. It provides yet another reason why the Bill of my noble friend Lord Shinkwin should become law. Of course, the Bill will not mean that if a mother discovers at any point up to her last 21-week scan that her baby is disabled, the option of abortion will not still be open to her up to 24 weeks. It would obviously remain so.

As we have heard, that point was recently confirmed through a legal opinion issued by Hugh Preston QC on the Shinkwin Bill. It states that it is,

> "succinct and limited in its scope. If enacted, it would remove s. 1(1)(d) of the Act completely. It follows that the practical effect of abolishing s. 1(1)(d) of the Act, is that any abortions by reason of disability will need to be carried out within the first 24 weeks subject to s. 1(1)(a) of the Act, unless there is a risk of serious permanent damage to the mother, in which case they will remain permissible until birth. Thus, abortions by reason of disability will remain permissible, but subject to the same safeguards as apply in any other case".

Crucially, however, the provision of the Bill expressly removes discrimination from the face of our legislation.

Our abortion Act would send out the message that disabled lives are worthy of protection equal to that afforded to able-bodied lives. This legislation is overdue and I very much hope that the Government will take their equalities responsibilities in this matter seriously and support the Bill.

12.26 pm

Baroness Tonge (Ind LD): My Lords, debates about the availability of abortion are always harrowing, whatever side of the argument we take, and I congratulate the noble Lord, Lord Shinkwin, on a brilliant and very moving speech. This debate is doubly difficult because I feel that I am under pressure to say what the noble Lord wants to hear. No one can deny the amazing contribution that disabled people make to our lives in this country, and the insight and experience that they bring to us, even here in the House of Lords. That contribution is enormous.

However, I must give the other point of view. I must speak from the experience I have had as a GP and family planning doctor working with mothers, babies and children for most of my professional life, having, over many years, to advise and counsel women who find themselves pregnant in circumstances in which they cannot contemplate having a child to rear. Their voice must be heard too and I beg noble Lords to listen.

It is difficult enough when a woman has to make a decision early on in pregnancy, not knowing the development—normal or otherwise—of her foetus. It is much more difficult when a woman is carrying a foetus that has been shown to have a severe disability. Through no fault of the mother, this is often not definitely diagnosed until the later stages of pregnancy—hence the exceptions made in existing legislation. That is currently the problem: often the diagnosis cannot be confirmed and the decision cannot be made before 24 weeks.

In my experience, it is untrue and cruel to suggest that women who, in the later stages of pregnancy, undergo abortion because of foetal abnormality are doing it simply because they want a "perfect baby" and that they want to discriminate against disabled people. They have to take into consideration the effect on themselves and their ability to cope, as well as the ability and tolerance of their partner and family to cope in the future. It has to be recognised that a severely disabled child can—although not always—have a huge impact on existing children in the family,

[BARONESS TONGE]
however much support is or is not given by the NHS and social services, and we know that that support is often deficient. These women have to make the decision, which is theirs alone, and I say that they have the right to decide.

There is no contradiction in my mind in campaigning for the rights of disabled people alongside the right of a woman to choose what she does with her own body. We have to accept that. A pregnant woman should not be used as a campaign tool for the rights of disabled people. We must also acknowledge that any unborn child needs a willing mother to nurture it and, if that mother is unable or unwilling to do so, we must respect that choice. To impose a duty on a woman to bear a child whom she did not want and give birth to that child after many weeks knowing what the baby's condition will be is cruel and heartless and should not be done. I beg noble Lords to support the right of a woman to choose in this situation. For the time being, the law should remain as it is.

12.30 pm

Viscount Bridgeman (Con): My Lords, I am most grateful to my noble friend Lord Shinkwin for bringing forward this Bill. It is a courageous move. On the face of it, it restricts the options available to a mother faced with the appalling dilemma of knowing that she is carrying a seriously disabled foetus, and of having the time available for making a decision on abortion reduced under these proposals from the whole period of pregnancy to the first 24 weeks. I am very well aware that I speak after the noble Baroness, Lady Tonge, who articulated this issue so eloquently.

However, my noble friend Lord Shinkwin has seen this problem in a different light—a vision shared by most of the speakers today, and reinforced by his own personal experience. He is supported by a huge body of outside evidence from the UN Committee on the Rights of Persons with Disabilities, the Disability Rights Commission and the UK report on the UN Convention on the Rights of Persons with Disabilities. Furthermore, the parliamentary inquiry into abortion for disability specifically recommended the repeal of Section 1(1)d of the 1967 Act. Finally, there is the legal opinion prepared by Hugh Preston QC, who agrees that the Bill—as others have said—is succinct and limited in its scope. I am grateful to my noble friend for reading extracts from this opinion, which is very realistic. Incidentally, the document reminds us that there is a relatively low threshold for aborting a disabled baby under Section 1(1)(a) .

My noble friend recalled the statistics that revealed the large number of abortions on the grounds of disability that had taken place over the past five and past 20 years respectively. He also mentioned that there has been only a tiny decrease in overall abortion numbers of 0.32% over the period 2005 to 2015. My noble friend has significantly described the law as it stands as "abortion by stealth", and most certainly not what was intended by the Abortion Act 1967 or the Human Fertilisation and Embryology Act 1990.

In conclusion, I congratulate my noble friend on his meticulous research and the compelling case he makes, given his truly personal experience, for the removal of Section 1(1)(d) of the Abortion Act, which this Bill proposes. I look forward to the Minister's reply.

12.33 pm

Lord Elton (Con): My Lords, this is not a field in which I am expert but it is one on which one has to take a position. The noble Baroness, Lady Tonge, helpfully indicated the tensions involved in these cases. I congratulate my noble friend Lord Shinkwin on his logical and clear speech. He said that he believed the Bill was modest and reasonable. That is a perfect description of its progenitor—modest and reasonable. I congratulate him on the skill of his advocacy. I realise that other considerations are involved when it comes to the world in which the foetus will be born. Having listened to the speech of the noble Baroness, Lady Nicholson, I believe that the Germans have the right approach in that they know that foetuses are people, whereas we treat them as if they are not. If you put that into the equation, the balance comes down on the side of my noble friend. That is all I am qualified to say.

12.35 pm

Baroness Hayter of Kentish Town (Lab): First, I pay a heartfelt tribute to the noble Lord, Lord Shinkwin, for his living testimony that disability is as much in the mind as in the body. As others have said, as we have recently witnessed at the Paralympics, many of us so-called able-bodied are indeed rather weak imitations of those either born with, or who later acquire, a physical or mental disadvantage.

Despite the contribution that disabled people make to national life and their human right to equality of treatment, there are, sadly, still huge hurdles in the way of many of them being able to pursue a full, and indeed fulfilled, life. The House does not need me to enumerate the physical barriers, whether access to transport, buildings, facilities or the availability of aids or support required, or the social and psychological barriers—in the minds of others, of course—in terms of expectation or discrimination, to say nothing of the lack of adequate resources to meet their additional needs. Of course, all this is not helped by the Government's welfare reforms, which I hope the noble Lord, Lord Shinkwin, continues to rail against within his own party. Indeed, just yesterday in the House the noble Baroness, Lady Deech, said that,

"the Government have not removed the barriers between disabled people and jobs. There is a lack of transport and an unwelcoming workplace. What disabled people need—and I hope that this will be favourable to the Minister—is that all buses should be accessible with audiovisual information and all the taxi provisions of the Equality Act should be brought into force".

The noble Baroness, Lady Thomas of Winchester, noted:

"Up to 600 disabled people a week are losing their Motability cars because of the harsh PIP reassessment test".—[*Official Report*, 20/10/16; cols. 2437-38.]

Therefore there remains much to do, in virtually every avenue of life, to improve the life chances and opportunities of disabled people so that they—and we—can benefit from them achieving their full potential.

However, I have to query whether a Bill, no matter how well intentioned, which could have the effect of forcing some 200 or 300 women a year to carry to full term a much-wanted and planned child, knowing it might not even see the light of day, or live just a few hours or days or face a life of pain and illness, is the best way of moving us further along the line of promoting equality and removing disability discrimination. The BMA, as well as the Royal College of Obstetricians and Gynaecologists, the Faculty of Sexual and Reproductive Healthcare, and the British Maternal and Fetal Medicine Society all oppose the Bill, which they describe as neither "patient nor woman-centred" and which they think is about restricting abortion care, while the Genetic Alliance stresses that,

"abortion on grounds of foetal abnormality is an important component of the options available to a woman who discovers that she has a pregnancy affected by a serious genetic condition".

As it says, genetic conditions can often come to a couple with no advance warning. Where it is due to an autosomal recessive condition, they are likely to have discovered the risk only during the pregnancy—a shocking, disappointing, often devastating discovery, and frequently of a condition serious enough to cause stillbirth or severe, eventually lethal, neonatal illness. These are voices we should heed, as the noble Baroness, Lady Tonge, said, as they come from people who, day by day, deal with the women and children who would be affected by the Bill. In addition, I am sure that they deal with situations which I am certain the noble Lord, Lord Shinkwin, never meant to cover but which would be caught by his Bill.

We welcome the attention the noble Lord draws through the Bill to the continuing discrimination disabled people face, but this is not the way to improve their lives.

12.40 pm

Baroness Chisholm of Owlpen (Con): My Lords, I start by congratulating my noble friend Lord Shinkwin on securing time for the consideration of this Bill. We have had a very interesting and thought-provoking debate on a subject that remains a sensitive area of public policy and on which we have heard a range of strongly held views.

I should start by setting out the current legal position regarding abortion for foetal abnormality and the possible introduction of non-invasive pre-natal testing—NIPT—for Down's and other syndromes. Under the Abortion Act 1967, women have early access to safe, legal and regulated abortion services. In each case, there should be careful and sensitive inquiry as to the reasons for requesting an abortion. These reasons will be particularly complex in the case of abortions for foetal abnormality, where the pregnancy is far more likely to have been planned and where the woman and her family will need information on and time in which to reach a decision with her doctor and other health professionals.

It is a sad reality that not every pregnancy goes to plan, and foetal abnormalities of varying degree of severity occur. Abortion is currently available where two doctors agree that,

"there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities to be seriously handicapped".

In 2015, 3,213 abortions were performed under those grounds on women resident in England and Wales. Some 230 of those were performed at gestations of 24 weeks and over.

Antenatal screening enables practitioners and maternity teams to monitor the development of the foetus throughout pregnancy, and as technology continues to progress, the ability to detect foetal abnormalities increases. Non-invasive prenatal testing, also known as cell-free DNA, is a relatively new test that can identify pregnant women who have a higher chance of having a baby with certain genetic and chromosomal conditions, such as Down's, Patau's and Edwards' syndromes. So far, non-invasive prenatal testing has been used by the NHS in special circumstances; for example, to detect genetic changes leading to specific skeletal abnormalities and certain forms of cystic fibrosis. In addition, non-invasive prenatal testing for Down's, Patau's and Edwards' syndromes is currently available privately.

On 15 January 2016, the UK National Screening Committee announced its recommendation that non-invasive prenatal testing should be introduced as an additional test into the NHS foetal anomaly screening programme in England as part of an evaluation. That is because the evidence suggests that non-invasive prenatal testing is much more accurate than the current testing used in screening and can substantially reduce the number of pregnant women needing an invasive test, which carries a high risk of miscarriage. The introduction of non-invasive prenatal testing would not alter fundamentally the choices currently available to pregnant women who opt to take up the offer of screening. We want women to make informed decisions and access safe and appropriate tests. We are considering the recommendation from the UK National Screening Committee carefully and will make an announcement in due course.

Appropriate information and support should be offered to all women undergoing antenatal screening. Regardless of how an abnormality is detected or suspected, a woman has to be given time to understand the nature and severity of the condition so that she is able to reach an informed decision about how to proceed and whether to continue with the pregnancy or seek a termination.

It is an understatement to say that the decision to end what is usually a wanted pregnancy is extremely difficult and painful for most parents. The severity of the prognosis has a major bearing on their decision-making. Once an abnormality has been confirmed, arrangements should be made for the woman to see an expert who has knowledge about the abnormality and the options available. All staff involved in the care of a woman or couple facing a possible termination of pregnancy must adopt a non-directive, non-judgmental and supportive approach.

In addition, Public Health England, which takes the lead on the NHS screening programmes, recently met stakeholders from the Down's Syndrome Association to understand where further improvements can be made to ensure that prospective parents get the right information and support throughout the screening process when making these very difficult decisions.

[Baroness Chisholm of Owlpen]

Sometimes, the diagnosis or prognosis does not give the whole picture of each individual case. In 1990, when the grounds for abortion were amended, Parliament agreed that doctors were best placed to make these decisions with the woman and her family. In 2010, the Royal College of Obstetricians and Gynaecologists published updated guidance on the termination of pregnancy due to foetal abnormality. This guidance concluded that it would be,

"unrealistic to produce a definitive list of conditions",

and that,

"the seriousness of a fetal abnormality should be considered on a case-by-case basis, taking into account all available clinical information".

I must make it clear that as they are matters of conscience, the Government maintain a neutral stance on abortion issues. We have had a good debate, and I look forward to hearing what my noble friend Lord Shinkwin has to say in response to the points that have been raised.

12.47 pm

Lord Shinkwin: My Lords, I thank all those who have most kindly contributed to this debate for their constructive comments. Mindful that time is pressing, I hope that noble Lords who have contributed will excuse me if I am brief in my closing remarks.

I thank the noble Lord, Lord Alton, for drawing attention to the need for the media to pay more attention to ethical issues and treat them with a higher priority. I also agree that the legislation under discussion is a throwback to times that are, I am happy to say, long passed. We have moved on as a society and it is time that the law and Parliament catch up with that and challenge negative stereotypes.

I thank my noble friend Lady Nicholson for agreeing with me that the attitude of society has changed and that everyone is equal. I agree with her that it does seem rather jarring, if not hypocritical, to celebrate as a society the amazing achievements of our Paralympians and then, as I alluded to in my opening remarks, to tell them in effect that, by law, we would have killed you if we had had the chance and we believe that you would be better off dead. I am afraid that although none of us may articulate such thoughts, the subtext of the existing law signals exactly that message.

I thank the right reverend Prelate for his supportive remarks. I emphasise, with him, that this is not about the ethics of abortion. Indeed, it is perfectly true that it would be unlikely that the number of abortions would markedly decrease. But, as he rightly said, the principle of disability equality is essential if society wants to celebrate people with disabilities, as they did so recently in Trafalgar Square.

Moving quickly on to the remarks of my noble friend Lady Stroud, I think she made a very pertinent point when she said that most people—most Members of your Lordships' House—are surprised to discover that not only is disability grounds for abortion, it is grounds for abortion up until birth. I hear the comments made by the noble Baronesses, Lady Hayter and Lady Tonge, but, with respect, I must say that it is important that we take on board the points made by my noble friend Lady Stroud about the pressure exerted on women by clinicians, nursing staff and legislation—by the societal norms constructed by the legislation passed by your Lordships' House. It is the crucial importance of attitudes.

With regard to the remarks of the noble Baroness, Lady Tonge, I would simply say that either we believe in equality or we do not. George Orwell helpfully pointed out that no one can be more equal than others. That is exactly the point about the need for consistency in equality. I simply thank the noble Baroness for the overpowering clarity of her views.

On the remarks of my noble friend Lord Bridgeman, I cannot help but agree with his appropriate description of how the interpretation of the law passed by your Lordships' House has inadvertently resulted in abortion on grounds of disability by stealth, and that that was not what this House intended.

I thank my noble friend Lord Elton for his supportive remarks. I agreed with the noble Baroness, Lady Hayter, when she opened her remarks by drawing attention to the contribution of disabled people. I would like to believe that I make a contribution to the business of your Lordships' House; I certainly attempt to. But perhaps I could leave her with this point. If the law is not changed, how many Members of your Lordships' House—perhaps this is even more pertinent in light of the debate that immediately preceded this one—do your Lordships think would be in this place in 40 years' time if they had had an anomaly or disability detected before birth? I think we all know the answer to that question. The noble Baroness also mentioned the hurdles that disabled people face. I would simply say this to her: the biggest hurdle to society being truly for everyone is attitudes.

My noble friend the Minister restated the Government's position, which I respectfully hope will change. I have to say that I am serving notice on Her Majesty's Government that, should they proceed to introduce the new non-invasive prenatal test without the Health Secretary having met with me and with people with Down's syndrome, their families and representatives to discuss their grave concerns—a meeting I requested as long ago as 8 March this year—I will be very seriously concerned. I urge my Government and my party not to disown their own Disability Discrimination Act and their commitment to ensuring that disabled people are heard on all the critical issues that affect them, which is consistent with the spirit of that Act.

I conclude by thanking all those who have contributed to this important debate and I ask the House to give the Bill a Second Reading.

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

Marriage and Civil Partnership (Minimum Age) Bill [HL]

Second Reading

12.56 pm

Moved by ***Baroness Tonge***

That the Bill be now read a second time.

Baroness Tonge (Ind LD): My Lords, child marriage, which is marriage that takes place before one or both of the spouses has reached adulthood, is a global phenomenon although it is most prevalent in the developing world. However, there is evidence that it is still happening in the UK and in other developed countries. While boys can be married when they are children too, it is girls who are disproportionately affected by child marriage. I hope that noble Lords are aware that when really young children are married, the consequences for girls are enormous. They can suffer lifelong injuries following childbirth and, because they then have children to look after, they lose out on education and opportunity.

The all-party parliamentary group that I chair held hearings on child marriage in 2012. We took a great deal of evidence and heard many stories about horrendous child marriages and their consequences as well as taking testimonies from British women who had been married against their will between the ages of 16 and 18. We also learned during those hearings that young girls in the 16 to 18 age group are often badly treated and abused within their new families. The report is entitled *A Childhood Lost* and it is still available online and from my office. When older girls but still under the age of 18 marry, they also frequently lose out on educational opportunities. I can well remember years ago in one of my clinics giving advice to two sisters, both of whom were being taken out of school after sitting their GCSEs in which they had done very well. They were to be sent abroad to be married. Their parents wished this, and although the sisters desperately wanted to continue with their education and did not know their future partners, they were obedient and were going willingly to comply with their parents' wishes.

At the moment we do not know exactly how many children under the age of 18 are being married, willingly or not, but we do know that in 2014 the United Kingdom Forced Marriage Unit gave advice about or provided support related to possible forced marriage in 1,267 cases. Of those, 11% involved children aged 16 and 17. Most child marriages are forced marriages, but not all forced marriages involve children—that is an important distinction.

The Anti-social Behaviour, Crime and Policing Act 2014 made forced marriage a criminal offence and strengthened provisions relating to the consent of children when involved in marriage between the ages of 16 and 18. Many such young marriages may not appear to be forced because of the compliance of the young person concerned with their parents.

I wish to concentrate on the 16 to 18 age group. The current minimum legal age to enter into marriage in England and Wales is 16 years, with parental consent required from 16 to 18. I want all young people in this country to fulfil their dreams for the future. Target 3 in goal 5 of the new sustainable development goals commits all UN member states to,

"eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation",

by 2030. Numerous conventions exist and have been signed by the UK, including the UN Convention on the Rights of the Child, which specifies that "child" means every human being below the age of 18.

My Bill is to make illegal any marriage of a young person under the age of 18, straight or gay—and it applies to marriage and civil partnerships. I propose the measure for several reasons and have the support of several NGOs set up to demand change for young people caught by provision in the existing law.

First, as I have already pointed out, girls in particular lose out on educational opportunity, which can seldom be regained. Parental consent in a family where parents are strict and domineering could mean parental insistence and the young person being forced to go along with the decision. I am well aware of the sensitivities around not wanting to offend different cultural groups in this country, but the Bill will benefit their children's future and that of children who are indigenous here.

Is it really wise in any case to be married at 16, with or without consent? At 16, I would have married Richard Burton given half the chance, but fortunately for me the offer never came. At 16, young people can be sexually active, but that no longer means that they must commit to the first person they have sex with. Marriage is a legally binding process and very expensive to reverse should the great love of youth be lost.

Some noble Lords may argue that if I support voting at 16, which I do, then I should support marriage at that same age, but voting for the wrong party can be corrected in a maximum of five years, but not so marriage —and referenda, it would appear. Yes, 16 year-olds can join the Army—this is another campaign I know about—but in the UK they can opt out of that commitment at any time after the first three weeks up to the age of 18. They cannot opt out of marriage.

It has been pointed out to me in recent days that a problem could arise with refugees and immigrants. It was suggested that I was trying to make immigration difficult for young people who had married as children, or prevent refugees coming here by erecting another barrier. Nothing could be further from the truth. I understand that, according to our present law, marriages are recognised if they took place legally under the laws of the country of origin. The issue clearly needs to be looked at in more detail, with amendments tabled as necessary in Committee. My Bill seeks to raise the minimum age of marriage or civil partnership and will amend Section 2 and omit Section 3 of the Marriage Act 1949 and amend Section 3(1)(c) and omit Section 4 of the Civil Partnership Act 2004. It will also amend those parts of the Anti-social Behaviour, Crime and Policing Act 2014 which were about forced marriages: subsections (1)(a) and (b) of Section 121 and subsection (2). It will apply only to England and Wales.

Marriage is legally binding and irreversible without great difficulty. We should be protecting our children from this until they are 18 years old by passing this Bill to establish 18 as the minimum age of marriage, with no exceptions for customary law, parental consent or judicial consent. I beg to move.

1.06 pm

Baroness Uddin (Non-Afl): My Lords, each year, globally, 15 million girls are married under the age of 18. This all too frequently signals the end of their education, it risks early pregnancy and childbirth and it certainly seriously curtails their personal development

[Baroness Uddin]
and potential life chances. Child marriage looks the same no matter where in the world it happens and in the UK, like elsewhere, it perpetuates cycles of poverty, oppression and inequality. A change in the law would provide real protection for our children and empower them to make their own choices when they are physically and emotionally mature enough to do so, so I support my noble friend. I should also say that I am pleased to serve as vice-chair of the All-Party Parliamentary Group on Population, Development and Reproductive Health.

It is time that we put our own house in order. We have been courageous in our international development ambitions and Britain often calls other countries to account for falling behind on theirs. I do not have the figures to hand, but many of our friends around the world are making efforts to ensure that the age of marriage is 18, although I acknowledge that in many ways this may only be emblematic. This was the very subject of a recent European Parliamentary Forum discussion to which Holly Lynch MP and I contributed. It seems that despite good laws being in place, in many countries of Africa, Asia and the Middle East early marriages continue to blight women's lives. We often speak of women's education and participation in the labour force being a catalyst for gender advances; however it seems that despite women experiencing levels of equity at university level and participating in the labour force, there remain vast swathes of women who continue to suffer from early marriage.

Our banal imagination can run away with the picture of some remote villages in India, Africa, Bangladesh and Pakistan practising early marriage, but the truth is that we cannot leave room for complacency: we have early marriage written into our laws. While there may be many 16 and 17 year-olds here in the UK who feel they are ready and mature enough to enter into marriage, by our very own law these adolescents are still children until they reach the age of 18. The reality is that having a parental consent clause not only sanctions children to make lifelong, adult decisions while they are still children, it also, sadly, continues to aid practices such as forced marriage in many communities across the UK. While I note significant attitudinal changes in my own area of Tower Hamlets to forced marriage, as a chair of the 1998 task force on forced marriage I am not content with the numbers of reports still being dealt with. Some 40% of calls received by the helpline of the Government's Forced Marriage Unit concerned minors and 15% concerned children under the age of 15. Our current law on marriage is putting children at risk of being married too early. This is not a risk the Government should be willing to take.

Noble Lords who are wavering in support of the Bill should take a moment to reflect on why it is important to have laws that set a minimum age of marriage. We know that all Governments responsible for the well-being and safeguarding of children have clear and consistent legislation that establishes 18 as the minimum age of marriage, with no exception for parental or judicial consent. Setting the minimum age of marriage at 18 provides an objective rather than a subjective standard of maturity, which protects a child from being married when they are not physically, mentally or emotionally ready. It is also an important step towards ensuring that all individuals have free and full consent about if, when and whom they marry.

More notably, our laws also set an example to the rest of the world. They show how serious we are about practising what we preach. In this case it could be a powerful message of solidarity to many Governments in the world who are also facing societal attitudes and barriers to ending child, early and forced marriage. We have a duty to abide by the human rights and development standards that we have signed up to and are keen to advocate across the developing world and emerging economies. The Department for International Development recently invested £36 million in a global programme to accelerate action to end child marriage in 12 countries around the world. Sadly, these countries include Bangladesh, which has the second-highest number of child brides in the world at just under 4 million. In 2014, the Bangladeshi Government drew a comparison with our minimum age of marriage legislation, using it as an example of why 16 is a favourable age and citing the difficulties that they were facing in enforcing Bangladesh's legal age of marriage—currently 18, although there is pressure to lower it to 16. We can be a leader only if we lead without any burden of unattended baggage of our own.

I hope very much to see this Bill progress. This is a good opportunity to mention the immensely important campaign on the registration of marriage. If the Bill progresses, I hope that my noble friend and the Minister will consider an amendment to ensure the protection of thousands of women in the UK who are getting married in a religious ceremony and not registering their civil marriage, which leaves many young women unprotected and without recourse to law. The campaign is ably led by Aina Khan, to whom I pay tribute.

On a personal note, I got married at 16, following my mum, who also got married at 16. She fell in love with her husband and married in 1958, causing much contention in our family because her sister had got married well after her education and became the first woman principal in a women's college. There was utter disgust in my family, but I followed suit in 1976. My mother got divorced but I am still married. Sadly, my daughter never listened to me and she married at what I consider the still immature age of 23. I am sure she will berate me for saying this. It is not necessarily a pattern but I often think about whether I felt I had permission because my mother had married at 16. I hope we do not send the message out that people should get married at 16. I am not a hypocrite. It comes from the experience of 40 years' labouring at marriage to say that children should be given as much chance as possible to have a life before they marry. I disagree with my noble friend on one point: once you enter marriage, it should not be the be-all and end-all. Although there are emotional and family pressures when a marriage comes to an end, we should not indicate to women that they cannot get out of a bad marriage.

As a leading, progressive and a much-respected donor country in global development efforts, the UK is already at the forefront of setting the agenda for gender empowerment. Therefore, we must set an example

to end early marriage worldwide and meet international human rights standards. Critically, this must begin at home in the UK.

1.14 pm

Lord Collins of Highbury (Lab): My Lords, I congratulate the noble Baroness, Lady Tonge, on her work in chairing the APPG on Population, Development and Reproductive Health. On receiving her Bill, I took the opportunity to read the APPG's report on child marriage published in November 2012, and in line with her request in the introduction I did not just read the summary: I read the whole report. The evidence in that report and the personal testimonies were truly horrific. I strongly recommend that all noble Lords read through it. We have of course seen the shocking exploitation of not only women but young girls—some as young as 10, 11 and 12—being forced into marriage. As the noble Baroness said, it is not only a shocking infringement of human rights and the rights of the child. It has significant health and well-being consequences, which can be lifelong. Those can scar people all their lives.

One issue for me with the Bill is that I acknowledge, as the report does, the significant lead of the United Kingdom in challenging these norms, particularly by challenging violence against women but, more importantly, in terms of how we change things. The most important thing that we can do is to encourage all kinds of activity which empowers women. It is not about limiting ourselves simply to trying to change laws. One thing that would slightly worry me is if the focus were simply on a law that said, "Marriage will be barred below 18". That would ignore the potential that often, in countries we are dealing with, laws are ignored anyway and the real change comes from the empowerment of women. That means education and job and income opportunities. Significant change happens, including in Bangladesh, when women are properly empowered. That covers all our activities.

As the noble Baroness said, in this country we have had the success of the Forced Marriage Unit, which has worked incredibly well. We also had the passing of the Anti-social Behaviour, Crime and Policing Act 2014, which made it an offence for someone to force a person into marriage.

Reading through the APPG's report, I was looking for a little more evidence to back up the case on linking to the UN convention and saying that the Government should take the lead by increasing the minimum age for marriage. I was prepared to hear and see that case but, fundamentally, it comes down to my noble friend Lady Uddin's point: it is about how we take the lead and strengthen the position through our global advocacy on the protection of the child. That may be what we need to do—I am open to the arguments here—but this is a domestic Bill relating to domestic law. What would its impact be on people throughout the United Kingdom?

Addressing the issue in the past, the relevant Minister in the coalition Government, the noble Lord, Lord McNally, said that that Government did not,

"consider that it is necessary to amend the age at which people can enter into marriage",

and that the,

"existing provisions that require parental consent for people under the age of 18 to marry provide adequate protection ".—[*Official Report*, 15/10/13; col. *WA 74*.]

Do the noble Baroness, Lady Tonge, and the Minister think that case remains?

Fundamental issues were raised in the 1967 House of Commons report on the age of majority. There are debates about the age of majority and the age of consent. I think that getting married at 30 is a bit too young. It is something that you need to take time to consider as it is not something that you should undertake lightly, but then nor is having sex. I do not think that the noble Baroness is suggesting that we increase the age of consent. There is an issue about choice here. I strongly believe that we have to address teenage pregnancy through better education and support, the principles that were raised in the noble Baroness's original APPG report. All these things need to be undertaken. We need to think extremely carefully about the idea that someone aged 17 who has a baby could be legally barred from marrying, entering into a partnership that has legal protection, in order to bring up a child if they so wish.

The ONC report referred to in the Library briefing states that there has been a substantial drop in the number of people getting married under the age of 20 in the past 10 years but, as the noble Baroness, Lady Tonge, said we do not have any clear statistics on marriages involving people aged between 16 and 18. Perhaps the Minister will tell us what problem this Bill seeks to address. What are the numbers? I hope that we will have an opportunity in Committee to go through some of these issues in more detail, but we need to think hard about making statutory changes without being clear about the evidence. I totally support the policy advocacy of the noble Baroness, Lady Tonge, challenging cultural norms and empowering women. As she said, the exploitation of women does not start or stop at 18 or 16. In many countries, it is ongoing. It has taken this country a long time to address those issues, and we have still not reached the end of the road. I certainly welcome the promotion of the APPG's report and that we are debating these issues, but I would like the Minister and the noble Baroness, Lady Tonge, to address the evidence and the conclusions we might reach from it.

1.24 pm

Baroness Goldie (Con): My Lords, I thank the noble Baroness, Lady Tonge, for bringing this debate to the House today and acknowledge her work as chair, with Heather Wheeler, my honourable friend in another place, of the All-Party Parliamentary Group on Population, Development and Reproductive Health, a committee to which several of your Lordships bring their deep expertise and wide experience.

There can be no doubt that it is the gravest matter when someone is prevented from making a free and informed decision about their future and must suffer consequences that may be abusive, brutal and even fatal. The Government share the noble Baroness's concerns about this and remain committed to their work in improving the life chances of women and girls around the world.

[Baroness Goldie]
The UK is a world leader in tackling forced marriage. Internationally, we have demonstrated our leadership through co-hosting the first ever Girl Summit in 2014, which galvanised global action to end child, early and forced marriage and female genital mutilation. Following the Girl Summit, the UK has supported UN resolutions and advocated a separate target on ending child, early and forced marriage within the global goals.

Child marriage carries specific risks that have been a focus of our international development work overseas, but we know that forced marriage is no respecter of age or boundaries. That is why the previous Government introduced the offence of forced marriage in 2014 and criminalised breach of the existing Forced Marriage Protection Order. To date, over 1,000 orders have been made to protect victims and those at risk, so I suggest there is evidence of protection working.

Stopping forced marriage at home forms an integral part of our cross-government strategy on violence against women and girls, which sets out our ambition that by the end of this Parliament no victim of abuse is turned away from the support they need. Where cases involve a minor, either in the UK or overseas, the Forced Marriage Unit works with the relevant statutory agencies and consular officials to provide advice and expertise to make sure that appropriate safeguarding measures are taken. Last year, the Forced Marriage Unit handled cases relating to 67 countries to which a victim was at risk of being taken in connection with a forced marriage, or had already been taken. Of the 1,220 cases it handled in total, 175 were identified as relating to the United Kingdom.

The Government have committed £36 million towards ending child marriage around the world, including support for civil society organisations working to address a broader range of sexual and reproductive health and gender issues that are associated with child marriage. I thank the noble Lord, Lord Collins, for his sensitive and thoughtful contribution in relation to education and the empowerment of women which are absolutely vital, and his acknowledgement of the Government's progress on forced marriage.

In the UK, we are fortunate that the conditions, customs and laws that give rise to the high prevalence of child marriage in some other countries bear little resemblance to our own experience. In England and Wales, the number of people marrying at 16 or 17 is small and continues to decrease without any legislative encouragement. In 2013, the latest year for which statistics are available, there were over 240,000 marriages in England and Wales, meaning over 480,000 people entered into marriage that year. Out of these 480,000 people, 210 were aged 16 or 17, of whom 33 were boys and 177 girls, amounting to less than 1/20th of 1% of the total.

The number of civil partnerships each year has been in sharp decline since the Government opened marriage to same-sex couples. In 2015, the number of civil partnerships almost halved, from 1,683 the previous year to 861. Last year, not a single 16 or 17 year-old formed a civil partnership. With this background and perspective in mind, I turn to the measures of the Bill.

The Bill proposes amending the Marriage Act 1949 and the Civil Partnership Act 2004 to raise to 18 the minimum age at which people may enter into marriage or form a civil partnership. Statute generally defines a child as being under 18, but it is sometimes necessary to make different provision for children at different ages. The minimum age for marriage, 16, has not changed since 1929, when the Age of Marriage Act raised it from the common-law ages of 12 for girls and 14 for boys. The freedom to marry in England and Wales at 16 has stood much longer. In recognition of the difference between marrying above and below the age of majority, there has also long been a provision requiring parental or other consent for those people who seek to marry before reaching the age at which they could marry as of right. In addition to that, there is a legal requirement to give public notice of the marriage.

The Government believe that the existing requirement of parental or judicial consent for those under 18 continues to provide adequate protection, and they have seen no evidence of any failing that requires raising the minimum age to 18 in England and Wales. To raise this age would introduce a disparity with the minimum ages in the other UK jurisdictions: provision in Northern Ireland runs on the same age lines as England and Wales, whereas in Scotland, people may marry at 16 without the requirement for parental consent. Raising the minimum age would also introduce a disparity with the age of sexual consent across the United Kingdom. The implications of both these disparities require very careful consideration.

Importantly, the position of England and Wales is not exceptional among more developed countries. Many Council of Europe member states allow marriage at 16 on condition of either parental consent, or judicial consent in certain circumstances. Where member states have raised the minimum age, expressly to prevent child marriage, Governments have not reached consensus about the appropriate age to achieve this. Sweden raised the minimum age to 18 in July 2014, removing capacity to marry at a younger age with consent. Spain, however, raised the minimum age to 16 in the following July but kept the requirement for consents for people under 18, in line with the existing law in England and Wales.

It is not clear that a minimum age of 18 would prevent abuse domestically, as it would have effect only on marriages conducted in England and Wales and in compliance with our marriage Acts. We should be mindful that, in many cases, parents will seek to circumvent the law by taking their children to marry abroad or by marrying them at home in an unregistered ceremony. These ceremonies cannot be scrutinised and, without the legal requirement to give public notice, they do not come to the attention of registration officers.

The third clause of the Bill seeks to include civil partnerships within the offence of forced marriage. This offence, which the previous Government introduced in the Anti-social Behaviour, Crime and Policing Act 2014, was drafted to define marriage broadly, by including,

"any religious or civil ceremony of marriage (whether or not legally binding)".

Government policy takes as its starting point the fact that there should be parity between the protections available in marriage and those in civil partnerships, where such provision is appropriate. The nature of the social and cultural pressures behind forced marriage, however, makes it unlikely that families and communities will force same-sex couples into civil partnerships, and there is currently little evidence of such abuse. With the declining numbers and the rising ages of people forming civil partnerships, the reach of the forced marriage offence is uncertain. However, I make it clear that we are not complacent. The Home Office is currently working with the police and the Crown Prosecution Service to review implementation of the forced marriage offence more broadly to ensure that we do all we can to protect victims of this abhorrent crime.

I conclude by saying that there can be no doubt that the Government understand, share and take very seriously the noble Baroness's concerns. No one should ever tolerate the abuse which she seeks to eradicate, and it is right that the UK Government should continue their work to bring this to an end, both here and around the world. However, the Government do not see sufficient evidence that the measures in the Bill would be effective in preventing abuse, bringing perpetrators to justice or offering additional protection. It would be disproportionate to prevent people exercising the freedom to marry or form civil partnerships in England and Wales at 16 or 17 with their full, free and informed consent. Their numbers, already small, continue to decline. People are now marrying much later, not because of the law but because of changes over the decades in society and in the educational, employment and economic opportunities open to them. The Bill would not reach those vulnerable people whom others have shielded from social change and who have been denied the opportunities that are rightly theirs, and it would not achieve a just, proportionate or effective means of enabling us to prevent or remedy the harmful impact on people's lives that both the Government and your Lordships will not hesitate to condemn.

1.35 pm

Baroness Tonge: My Lords, I thank the small number of people who contributed. It was scheduled at a very difficult time—I was told that it was the graveyard hour—and I had several apologies from noble Lords who would have spoken had it not been Friday afternoon. Nevertheless, it has been very interesting and has stimulated me to further thought.

The noble Baroness, Lady Uddin—perhaps I can call her my noble friend, because we are colleagues on our all-party group—made the important point that we are very good at telling other countries what to do, particularly in international development. We are always telling them how they can arrange their social affairs and look after their women and girls. While the accepted international definition of a child is up to the age of 18, we cannot then say that we will allow marriage at the age of 16 with parental consent. It is somehow a little bit hypocritical, because in the countries that we preach to—if I dare use the word "preach"—the distinction between a marriage with parental consent and a forced marriage is very shadowy indeed. We had lots of evidence in our committee, when we had those hearings, that that goes on in this country. People may say that they have parental consent but they have been forced into a particular liaison and told to say that they have parental consent. It is a very difficult issue, I agree, but we should stick to the principle that a child is a child until they are 18, and that they should not enter into these contracts, which are difficult to get out of, before the age of 18.

The noble Lord, Lord Collins, made a very good point which I should have thought of: what do you do with a teenage girl who gets pregnant at 17 and wants to get married? Looking back on my medical, family and social experience, I would say, "Never mind, you've had a baby, there are loads and loads of single parents in this world today—you are one of them". What is the old phrase about marrying in haste? I cannot remember it. But just to get married because you have a baby and you want to marry the father—

Lord Ashdown of Norton-sub-Hamdon (LD): Repent at leisure.

Baroness Tonge: I thank the noble Lord. It is something that we should consider, but I do not think that simply having a baby at the age of 17 means that you have to get married. That is a very old-fashioned view and it should be discouraged until the parents know that they want to be with each other for a long time and did not just have an accidental event one night after clubbing.

The Minister gave us lots of very encouraging figures about the declining rates of young people being married. That is all very encouraging, but I emphasise that we know that coercion is still going on and that it is not called coercion but marriage with parental consent. We know that it is going on and we know that girls are taken abroad to be married. We know, as the noble Baroness, Lady Uddin, pointed out, that there are ceremonies in this country that are unofficial but are binding to the couples concerned. That is why the Bill deserves a serious look in Committee —which I hope we shall have.

I thank all noble Lords for their contributions and ask for the Bill to be given a Second Reading.

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

Child Refugees: Age Checks

Statement

1.40 pm

Lord Young of Cookham (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given to an Urgent Question in the other place by my right honourable friend the Minister of State for Immigration. The Statement is as follows:

"I can reassure the honourable Member for Shipley that we work closely with the French authorities to ensure that the cases applying to come to the UK qualify under Dublin, including in terms of conducting

[Lord Young of Cookham]
an age assessment where necessary. All individuals are referred to the UK authorities by the France Terre d'Asile, the FTDA, which is an NGO, and they are then interviewed by French and UK officials. Where credible and clear documentary evidence of age is not available—and the pace at which these children have fled situations of war and persecution means that many do not have any definitive documentary evidence—we will use criteria including physical appearance and demeanour to assess age as part of the interview process.

My officials are working in difficult circumstances in Calais to ensure vulnerable children are safeguarded. There has been significant media coverage over the last week questioning the appearance of those admitted to the UK. I think we would all agree that teenagers' appearances vary widely and my officials, and all those agencies working in these difficult circumstances, have the safety and welfare of young people in mind.

This week has also reopened the old debate about the value of dental X-rays and medical tests to determine an individual's age. A significant number of experts have spoken out against such checks. The British Dental Association has described them as inaccurate, inappropriate and unethical. The Royal College of Paediatricians said the margin of error can sometimes be as much as five years either side of medical tests. Doctors of the World UK has called the idea "unethical and unnecessary". That is why the Home Office does not use dental X-rays to confirm the ages of those seeking asylum in the UK. The House should also note that, legally, we cannot force anyone to undergo such a check. That is why officials are trained to assess age, and—I want to be clear—where we believe someone is clearly over 18, they will be refused. Indeed, the information that I have today suggests that around 10% of cases referred to us on this basis are being refused in France.

We have made significant progress to bring to the UK those children with family members. We are absolutely determined to get those children here but I would call on all Members of the House, the media and the public to respect the privacy of these vulnerable young people".

1.42 pm

Lord Rosser (Lab): I thank the Minister for repeating the Answer to the Urgent Question in the other place. We welcome the reference in the Answer to the statements made by the British Dental Association, the Royal College of Paediatricians and Doctors of the World UK in the light of the pressures from some political figures to use dental X-rays and medical tests as age checks, rather than to concentrate our energies on welcoming and supporting unaccompanied children coming to this country under the Dublin regulations and the Dubs amendment.

We also welcome that, after some months of little obvious action, there now appears to be much greater urgency on the part of the Government to physically move eligible unaccompanied children to this country. By when will all children eligible to come to this country under the Dublin regulations have arrived here, particularly in the light of the imminent demolition of the camp at Calais? How many such children have arrived so far, how many are still to come and what information is there on the breakdown of the originating countries from which they have come? Likewise, what are the latest comparable figures, and information on the breakdown of originating countries, for unaccompanied vulnerable children who have come here, and are still expected to come, under the Dubs amendment?

Finally, to get the figures in perspective, will the Government give their own estimate, and the estimate presumably given to them by the road haulage industry, of the number of those entering the country illegally each day—adults as well as children—across the English Channel in heavy goods vehicles?

Lord Young of Cookham: I am grateful to the noble Lord for his support for our position on dental checks, and I agree with what he said about the importance of welcoming those who come to this country through very difficult circumstances.

So far this year 140 children have arrived under the Dublin convention, about 80 of whom have come from France. That is the figure up to 1 October, so it excludes those who have arrived this week, and it compares with a figure of about 20 last year.

So far as the number of children still to come is concerned, it is estimated that about 1,300 children are still in Calais, but of course not all those will qualify to come here under the Dublin convention. It is the Government's intention that all those children who are entitled to come to this country under the convention should have been processed and have arrived here before the camp is removed by the French authorities. That intention was set out in a statement by the Home Secretary earlier this month. I do not have to hand the data that the noble Lord has asked for on the originating countries of those who have arrived under Dublin, or indeed under the Dubs amendment, but I will let him have them if they are available.

The noble Lord asked about those who have arrived illegally. On top of the 140 who arrived under the Dublin convention, up to June this year 3,472 unaccompanied asylum-seeking children arrived in this country, most of them via Calais—a figure that is up by about 54% compared with last year. Those are the ones who clearly arrived other than through the appropriate routes.

The noble Lord may have asked for other figures. If I have not given him the answer, I will do my utmost to secure them and will write to him.

Lord Paddick (LD): My Lords, the apparent ages of the first group of unaccompanied children brought from the Jungle camp in Calais are a cause for concern on these Benches too, not because they might be over 18 but because it appears that the Government may not be giving priority to the youngest and potentially most vulnerable children to be reunited with family members in the UK. Does the Minister agree that even older teenagers are likely to be vulnerable, particularly as many will have been through the trauma of having their homes bombed, followed by a treacherous sea journey? However, the political consequences of choosing,

for the first group, children who could be mistaken for adults could and should have been foreseen. Were they?

Lord Young of Cookham: The first point to make is that nobody in the camp in Calais needs to be there; they can all claim asylum in France. Indeed, so far this year about 5,000 of those who were in Calais have turned to the French authorities and have been taken to what I understand is a reflection centre, where many of them may then claim asylum. The same is true for unaccompanied children. The French regime for supporting unaccompanied children is broadly the same as the one here.

Our top priority is children with families in the UK who qualify under the Dublin convention. As I said in response to the noble Lord, it is our intention to process those of all ages before the camp is dismantled.

With regard to other children who do not qualify under Dublin but do qualify under the Dubs amendment, we have made it clear to the French authorities that, if and when the camp is dismantled, they should be taken to safe reception centres, where their claims should be processed, and whatever is in the best interests of the children should then take place. We have made it clear that we will help in that regard both with funds and by helping to process the children so that we can identify those who would be best placed in the UK.

Lord Alton of Liverpool (CB): My Lords, as one of the signatories to the Dubs amendment, I signed it because it captured the spirit of Sir Nicholas Winton who, through the kindertransport, rescued 669 children from the Nazis. He had to prioritise the most vulnerable and the Government, while ruling out what is unethical, are right to do so too. Beyond Dublin, will the Government—as the Minister was asked by the noble Lord, Lord Paddick—specifically prioritise the youngest and, indeed, orphaned children such as the brother and sister whose case I highlighted in your Lordships' House a few days ago, who were sleeping on the forecourt of a derelict petrol station? They are aged 13 and 12 and were orphaned in Aleppo.

Will the Minister also say what progress has been made on galvanising and co-ordinating the international community in assisting the 88,000 displaced young people now in Europe without parents and in establishing the fate of the 10,000 children who Europol has said have gone missing, and who must inevitably be at great risk of trafficking and exploitation?

Lord Young of Cookham: As regards the first half of the noble Lord's question, I can confirm that exactly those children who he has identified will be our priority when we move on to helping those who qualify to come here under the Dubs amendment. We want to help those in the greatest need so I can give him that assurance. As regards the broader issues, we are liaising with non-government organisations and the Greek and Italian authorities in order to identify those children in those countries who may qualify to come to the UK, so that we can play our full role in bringing support to people living in desperately difficult circumstances.

Baroness Jenkin of Kennington (Con): My Lords, having visited the camps, I am well aware of how chaotic the situation is and how difficult it is to manage. This morning I spoke to a friend who has been working in the camp. She was with a 14 year-old Syrian yesterday who arrived this week. He has a passport, so it is easy to verify his age. I reinforce the point that it is better to work through those who have documentation. However, he said that the majority of those on his bus were adults. In order for the British people to trust the system, I encourage my noble friend to make sure that the screening and registration are as robust as possible—I understand from my friend today that people being screened now are being given priority whereas those who were screened a month ago seem to be at the back of the queue—and to co-ordinate with the organisations on the ground such as Citizens UK which have been working in the camps for a long time and know exactly what is going on, and may know more than the French authorities do.

Lord Young of Cookham: I am grateful to my noble friend. As I think I said in my Statement, it is up to the FTDA to refer eligible children to UK officials in Calais. Once that process has taken place, we are now dealing with those applications in a matter of days, whereas previously it was taking a matter of weeks, so we are dealing with this now with some urgency. I pay tribute to the NGOs working in Calais in very difficult circumstances.

As regards working out the age of an applicant, clearly one can work on that where there is documentary evidence, as in the case to which the noble Baroness referred. Where there is no documentary evidence, there is no single way of determining the age of an applicant. If the applicant is clearly beyond any doubt an adult and way over 18, they are turned down in Calais, and roughly 10% are refused. However, if they arrive in this country and there is still dispute about their age, they are then subjected to what is called the Merton process, whereby a local authority over a period of some 28 days assesses the age of the applicant through social workers, with interpreters if necessary, and an independent adult present if that is also necessary. If, at the end of that process, the applicant is determined to be an adult, they will no longer be treated as a child but will have to make their way through the system as an adult applicant for asylum.

House adjourned at 1.54 pm.